

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by G&M II
Adult Day Care, Inc. of Order of License
Revocation

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

In the Matter of the Revocation of the Child
Care License of Minneapolis Child Care
Center, Inc.

The above-entitled matters came before Administrative Law Judge Barbara Case for a hearing on May 12 and 13, 2016. The record closed on June 8, 2016.

Marsha Eldot Devine, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Deborah C. Eckland, Goetz & Eckland, P.A., appeared on behalf of Muhyadean Mahamoud (Appellant). Jonathan Geffen, Arneson and Geffen, PLLC, filed his appearance on behalf of Kiman A. Ugas, co-owner of Minneapolis Child Care Center, Inc.; at hearing his client submitted no exhibits, called no witnesses, and waived her appearance.

STATEMENT OF THE ISSUES

1. Did the Department prove by a preponderance of the evidence that Muhyadean Mahamoud was a controlling individual with G&M Adult Day Care, Inc. and therefore had a license revoked within the past five years pursuant to Minn. Stat. § 245A.04, subd. 7(e) (2014)?

2. If Mr. Mahamoud was a controlling individual for G&M Adult Day Care, Inc., should his licenses for G&M II Adult Day Care, Inc. and Minneapolis Child Care Center, Inc. be revoked pursuant to Minn. Stat. § 245A.04, subd. 7(e)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Mr. Mahamoud was a controlling individual with G&M Adult Day Care, Inc., a facility which had its license revoked by the Department, and therefore the Department is required by statute to revoke Mr. Mahamoud's licenses for G&M II Adult Day Care, Inc. and Minneapolis Child Care Center.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Background

1. On December 1, 2015, the Department issued Appellant an Order of Revocation for License Number 1063002, an adult day care facility license issued for G&M II Adult Day Care, Inc.¹

2. On December 10, 2015, Appellant appealed the Order of Revocation for License Number 1063002.²

3. On December 1, 2015, the Department issued Appellant an Order of Revocation for License Number 1074578, a child care center facility license issued for Minneapolis Child Care Center, Inc.³

4. On December 8, 2015, Appellant appealed the Order of Revocation for License Number 1074578.⁴

5. On January 13, 2016, the Department issued a Notice and Order for Hearing to Appellant and G&M II Adult Day Care, Inc. The Notice and Order for Hearing stated that the basis for the license revocation was the Department's determination that Appellant was a controlling individual of G&M Adult Day Care, Inc. and Minn. Stat. § 245A.07, subds. 1, 3 (2014).⁵

6. On January 13, 2016, the Department issued a Notice and Order for Hearing to Appellant and Minneapolis Child Care Center, Inc. The Notice and Order for Hearing stated that the basis for the license revocation was the Department's determination that Appellant was a controlling individual of G&M Adult Day Care, Inc. and Minn. Stat. § 245A.07, subds. 1, 3.⁶

7. By agreement of the parties, the matters were consolidated at the beginning of the hearing on May 12, 2016, and by Order issued May 18, 2016.⁷

¹ DHS-G&M Exhibit (Ex.) 18. Note: The Department prepared two sets of exhibits in anticipation of two hearings. To differentiate between them, the citations note either G&M or MCCC before the exhibit number.

² DHS-G&M Ex. 19.

³ DHS-MCCC Ex. 9.

⁴ DHS-MCCC Ex. 10.

⁵ Notice and Order for Hearing, OAH file number 1800-33121.

⁶ Notice and Order for Hearing, OAH file number 1800-33120.

⁷ Order of Consolidation, Order Sealing Portions of the Record, and Post-Hearing Order (May 18, 2016)

G&M Adult Day Care, Inc.

8. Guled Mohamoud is Appellant's brother and the owner of G&M Adult Day Care, Inc.⁸

9. On July 9, 2010, Mr. Mohamoud submitted an Adult Day Care Center Program Application for G&M Adult Day Care, Inc. to the Department.⁹

10. Mr. Mohamoud listed himself as the controlling individual on the application form where applicants are prompted to list controlling individuals "responsible for the direction and management of the program, including all board members."

11. Mr. Mohamoud also listed himself as the owner, the contact for sensitive information, and the Program Director on submissions to the Department made on or about July 28, 2010.¹⁰

12. G&M Adult Day Care, Inc. was licensed by the Department to provide adult day care services under License Number 1058148.¹¹

13. G&M Adult Day Care, Inc.'s initial effective date of licensing was January 3, 2013.¹²

14. G&M Adult Day Care, Inc.'s business address and facility location were listed on the license as 2607 Bloomington Avenue South, Minneapolis.¹³

15. A Minnesota Business Corporation Articles of Incorporation form, filed with the Secretary of State on October 2, 2009 for Al-Nasi Adult Day Care, Inc. lists Asli Abdi Jama as the Incorporator and Mr. Mohamoud as the contact person for Al-Nasi Adult Day Care, Inc.¹⁴

16. An Amendment of Articles of Incorporation form filed with the Secretary of State on May 27, 2010 lists Mr. Mohamoud as the authorized person and contact person for the business. The purpose of the amendment was to, in relevant part, change the name of the business from Al-Nasi Day Care, Inc. to G&M Adult Day Care, Inc.¹⁵

⁸ DHS-G&M Ex. 1; Transcript (Tr.) at 271-72. Mr. Mohamoud's name is spelled differently than Appellant's because of a recording error at the hospital. Mr. Mohamoud is the only family member whose name is not spelled "Mahamoud."

⁹ DHS-G&M Ex. 1.

¹⁰*Id.*

¹¹ DHS-G&M Ex. 7.

¹² Ex. 113.

¹³ DHS-G&MIII Ex. 7.

¹⁴ Ex. 101.

¹⁵ Ex. 102.

17. A Domestic Corporation Annual Renewal form filed with the Secretary of State's Office on December 21, 2012 lists Appellant as the registered agent, Chief Executive Officer (CEO) and contact person for G&M Adult Day Care, Inc.¹⁶

18. Appellant denies submitting the form and denies knowledge of the form having been submitted.¹⁷

19. A Notice of Change of Registered Official/Registered Agent form filed with the Secretary of State on December 21, 2013 lists the registered official/agent as Appellant.¹⁸

20. A Domestic Corporation Annual Renewal form filed with the Secretary of State's Office on June 19, 2014 lists Appellant as the registered agent and CEO for G&M Adult Day Care, Inc.¹⁹

21. Appellant denies submitting the form and denies knowledge of the form having been submitted.²⁰

22. In addition to the positions listed above, Appellant was the bookkeeper, a role which included overseeing payroll, billing and general finances,²¹ and a direct care provider for G&M Adult Day Care, Inc.²²

23. Appellant was the sensitive information contact person for G&M Adult Day Care, Inc. and for G&M II Adult Day Care, Inc.²³

24. On May 15, 2015, the Department issued an Order of License Revocation addressed to Mr. Mohamoud on behalf of G&M Adult Day Care, Inc.²⁴

25. The Order of Revocation identified 27 licensing violations, which included 14 repeat violations.²⁵

26. The Order of License Revocation issued to G&M Adult Day Care, Inc. was not appealed.

27. Appellant was aware of the Order for License Revocation a few weeks before the facility closed.²⁶

¹⁶ Ex. 105.

¹⁷ Tr. at 321.

¹⁸ Ex. 106.

¹⁹ Ex. 108.

²⁰ Tr. at 321.

²¹ Ex. 100.

²² DHS-G&M II Ex. 5.

²³ DHS-G&M II Ex. 3.

²⁴ Ex. 109; DHS-G&M II Ex. 8.

²⁵ Ex. 109.

²⁶ Tr. at 317.

G&M II Adult Day Care, Inc.

28. On or about November 30, 2012, Appellant submitted an Adult Day Care Center Program Application to the Department for G&M II Adult Day Care, Inc.²⁷

29. The application listed Shujri Mahamoud as the Director and Appellant as the Office Manager.

30. The Program Location and Contact Information form submitted with the application listed Appellant, Ms. Mahamoud and Asli Jama as controlling individuals.²⁸

31. The Program Location and Contact Information form listed Ms. Mahamoud as the Director, President, and sensitive information contact.²⁹

32. The day care center's location was 110 2nd Street South, Number 138, Waite Park.³⁰

33. Appellant is the owner of G&M II Adult Day Care, Inc.³¹

34. The Department issued a license to G&M II Adult Day Care effective January 3, 2013.³²

35. On April 30, 2013, the Department received a Change of License Information form for G&M II Adult Day Care, Inc.³³ This form listed G&M II Adult Day Care, Inc. as the Controlling Individual and its address as 2607 Bloomington Avenue South, Minneapolis. This is the same address as that of the facility location and mailing address of G&M Adult Day Care, Inc.³⁴

36. The Change of License Information form changed the name of G&M II Adult Day Care, Inc.'s Sensitive Background Study Information Person from Asli Jama to Appellant.³⁵ The form also changed the name of the Program Director and Contact from Asli Jama to Appellant.³⁶

37. On December 31, 2013, Mr. Mohamoud wrote a check made out to "D.H.S." in the amount of \$770 on behalf of G&M II Adult Day Care, Inc.³⁷ On the same

²⁷ DHS-G&M II Ex. 10 (The application was dated November 26, 2012 by the applicant and stamped received by the Department on November 30, 2012.).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Tr. at 280.

³² Ex. 113.

³³ Ex. 11.

³⁴ *Id.* (Part of this exhibit contains undated forms that change the address back to Waite Park and then back to the Bloomington address. The forms also place Appellant in all of the roles for the facility including controlling individual.).

³⁵ *Id.*

³⁶ *Id.*

³⁷ DHS-G&M II Ex. 13.

date and from the same account, Mr. Mohamoud wrote a check to DHS in the amount of \$770 on behalf of G&M Adult Day Care, Inc.³⁸

38. At the hearing Appellant produced a “promissory note” of \$1,000 with a typed date of December 13, 2013. This note was offered as evidence that the \$770 was a loan made by Mr. Mohamoud to Appellant.³⁹

39. Mr. Mohamoud worked at G&M II Adult Day Care, Inc. providing interpreter services to clients of the facility. A background study was submitted for Mr. Mohamoud so that he could work in a direct service capacity at the facility.⁴⁰

Minneapolis Child Care Center, Inc.

40. On October 14, 2014, the Department issued Minneapolis Child Care Center, Inc. License Number 1074578.⁴¹

41. On or about April 17, 2014, the Department received an initial application for a child care center license from Kiman A. Ugas.⁴² The application identified Ms. Ugas as the sole owner and authorized agent of Minneapolis Child Care Center, Inc.⁴³

42. On or about March 30, 2015 the Department received a Change of Information form for Minneapolis Child Care Center, Inc. which was signed by Appellant and Ms. Ugas.⁴⁴ The changes were approved by the Department to be effective on April 24, 2015.⁴⁵ The form requested that Appellant replace Ms. Ugas as Minneapolis Child Care Center, Inc.’s background study information contact and authorized agent. It also requested that the contact information, including email address, telephone, and mailing address be changed from Ms. Ugas’s contact information to Mr. Mahamoud’s contact information.⁴⁶

43. On March 5, 2015, Ms. Ugas and Mr. Mahamoud filed shareholder information with the Secretary of State which indicated that Ms. Ugas held 30 percent of the stock in Minneapolis Child Care Center, Inc. and Appellant held 70 percent of the stock.⁴⁷

44. On April 21, 2015, the Department received an Authorized Agent Signature form signed by Appellant.⁴⁸

³⁸ *Id.*

³⁹ Ex. 115; Tr. at 87-88.

⁴⁰ Tr. at 298-99.

⁴¹ Ex. 114.

⁴² DHS-MCCC Ex. 1.

⁴³ *Id.*

⁴⁴ DHS-MCCC Ex. 6. (The date is unclear because the date on the signature line appears to be March 30, 2015, the requested effective date is March 10, 2015.).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ DHS-MCCC Ex. 8.

⁴⁸ DHS-MCCC Ex. 7.

45. On July 21, 2015, Appellant signed a statement giving another individual the right to make any decisions on Appellant's behalf and to act as CEO/President until "I . . . am fit to return to work. . . ." ⁴⁹

46. On December 1, 2015, the Department issued an Order of License Revocation for Minneapolis Child Care Center, Inc.'s license to Appellant. ⁵⁰

47. The Department's basis for the Revocation Order was that Appellant, a current controlling individual for Minneapolis Child Care Center, Inc., was a controlling individual for G&M Adult Day Care, Inc., which had its license revoked on May 15, 2015. ⁵¹

48. On December 8, 2015, Minneapolis Child Care Center, Inc. appealed the Order of License Revocation and requested a contested case hearing by letter from Jonathan Geffen, Attorney at Law. ⁵²

49. Ms. Ugas waived her appearance at the hearing.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Human Services (Commissioner) and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50, 245A.05 (2014).

2. The Department gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant procedural requirements of statute and rule.

4. Appellant's appeals of the license revocation relevant to both G&M II Adult Day Care, Inc. and Minneapolis Child Care Center, Inc. were timely and this consolidated matter is properly before the Commissioner and the Administrative Law Judge.

5. In Minn. Stat. § 245A.02, subd. 5a, a controlling individual is defined as: "a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a program. . . . For purposes of this subdivision, managerial official means those individuals who have the decision-making authority related to the operation of the

⁴⁹ DHS-MCCC Ex. 5.

⁵⁰ Ex. 111.

⁵¹ *Id.*

⁵² DHS-MCCC Ex. 10.

program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.”

6. Appellant was a controlling individual of G&M Adult Day Care, Inc. by virtue of being its CEO.

7. Minn. Stat. § 245A.04, subd. 1(b) (2014), states in part that “[i]t is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.”

8. Appellant had legal and actual notice of the revocation of the license of G&M Adult Day Care, Inc.

9. Appellant’s argument that he was denied due process because he was not personally notified or served is contrary to Minn. Stat. § 245A.04, subd. 1(b).

10. Minn. Stat. § 245A.04, subd. 7(e), states that “the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has had a license revoked within the last five years.” The section further states that “[w]hen a license is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A or 245D for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.”⁵³

11. The Department proved by a preponderance of the evidence that Appellant was a controlling individual in G&M Adult Day Care, Inc., a facility whose license was revoked during the time that Appellant was a controlling individual.

12. According to Minn. Stat. § 245A.04, subd. 7(e), the Department is required to revoke Appellant’s licenses for G&M Adult Day Care II, Inc. and Minneapolis Child Care Center, Inc.

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁵³ Minn. Stat. § 245A.04, subd. 7(e).

RECOMMENDATION

The Administrative Law Judge recommends that the Department's Orders of Revocation for the Licenses of G&M Adult Day Care II, Inc. and Minneapolis Child Care Center, Inc. be **AFFIRMED**.

Dated: July 15, 2016



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
Transcript prepared by Kirby Kennedy & Associates

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64998, St. Paul, MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Controlling Individuals: Definitions and Restrictions

Every application for a license under the Department of Human Services Licensing Act must identify all controlling individuals of the program. Minn. Stat. § 245A.04, subd. 1(b), states:

“An application for licensure in the programs at issue here must identify all controlling individuals and must specify an agent who is responsible for dealing with the commissioner of human services on all matters provided for in this chapter and on whom service of all notices or orders must be made. The agent must be authorized to accept service on behalf of all the controlling individuals of the program. Service on the agent is service on all the controlling individuals of the program. It is not a defense to any action arising under this chapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individuals under this chapter.”

The term “controlling individual” is defined in Minn. Stat. § 245A.02, subd. 5a, as follows:

[A] public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a program. For purposes of this subdivision, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this chapter. For purposes of this subdivision, managerial official means those individuals who have the decision-making authority related to the operation of the program and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program. A site director who has no ownership interest in the program is not considered to be a managerial official for purposes of this definition.

Under Minnesota law, the Commissioner of the Department has no legal authority to issue or reissue a license to an applicant, license holder or controlling individual who has:

- 1) been disqualified and the disqualification was not set aside and no variance has been granted;
- 2) been denied a license within the past two years;
- 3) had a license revoked within the past five years;

- 4) an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent; or
- 5) failed to submit the information required of an applicant under subdivision 1, paragraph (f) or (g), after being requested by the commissioner.⁵⁴

The applicable statutory authority specifically provides as follows: “When a license is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A or 245D for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.”⁵⁵

Appellant as a Controlling Individual of G&M Adult Day Care, Inc.

The principal question in this matter is whether Appellant was a controlling individual in G&M Adult Day Care, Inc. If Appellant was a controlling individual in G&M Adult Day Care, Inc., then he is disqualified from being a license holder in another licensed facility for a period of five years. If he was not a controlling individual, then none of the Department’s other issues regarding G&M II Adult Day Care, Inc. form a sufficient basis to revoke the license of G&M II Adult Day Care, Inc. or of Minneapolis Child Care Center, Inc. The Administrative Law Judge concludes that Appellant was a controlling individual of G&M Adult Day Care, Inc. by virtue of being its CEO. A CEO is an officer, and an officer is by definition a controlling individual.

The parties disagreed about how much control Appellant had over the direction of management or policies of G&M II Adult Day Care, Inc. This question is not critical since Appellant was the CEO. The list of possible controlling individual positions are separated by the disjunctive term “or” such that each stands alone. The qualifying description that comes after “managerial official” modifies that term alone and not the terms preceding the word “or.”

Appellant also argues that although he was on file with the Secretary of State as being the CEO of G&M Adult Day Care, he was not a controlling individual because he was unaware that he was the CEO. However, the evidence shows that Appellant and his brother were in business together. The same evidence leads one to reasonably conclude that Appellant was aware of his position as CEO of G&M Adult Day Care, Inc. The enmeshment of the brothers’ businesses is evidenced by the fact that when Appellant began his adult day care he used the same name with just the addition of “II,” he used the same mailing address for his business as his brother used for G&M Adult Day Care, Inc., and funds were paid to the Department out of the same bank account for both businesses. Furthermore, each worked at the other’s facility. The Administrative Law Judge is not persuaded that Appellant and his brother shared a business name, an

⁵⁴ Minn. Stat. § 245A.04, subd. 7(e).

⁵⁵ *Id.*

address, and finances, but that the Appellant was uninformed that he was the CEO of his brother's business.

Appellant argues that he was not a controlling individual because he was not listed as such on the documents that G&M II Adult Day Care, Inc. filed with the state. Appellant's argument is unavailing. The Department has no control over whether an applicant lists all controlling individuals on the license application form or on subsequent filings. One who meets the definition of controlling individual cannot avoid that fact by not being listed on filings with the Department.

When a license is revoked the license holder and any controlling individual may not hold any license under Minn. Stat. ch. 245A or 245D for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked. The Administrative Law Judge concludes that Appellant was a controlling individual of G&M Adult Day Care, Inc., a licensed facility that had its license revoked. Therefore Appellant's licenses for G&M II Adult Day Care, Inc. and the Minneapolis Child Care Center, Inc. must be revoked.

B. J. C.