

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

In the Matter of the Denial of the Family
Child Care License of Sherrita Jones

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

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on July 7, 2016. The record closed on July 22, 2016.

Grace C. Song, Assistant Hennepin County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Sherrita Jones (Respondent) appeared on her own behalf without legal counsel.

STATEMENT OF THE ISSUES

1. Was the refusal to set aside the disqualification proper?
2. Was the denial of the license proper?

SUMMARY OF RECOMMENDATION

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

FINDINGS OF FACT

1. Respondent applied to Hennepin County Social Services for a family child care license on or about September 3, 2015.¹
2. In response to a question on the application regarding criminal history, Respondent disclosed that she was charged “with a felony in 2002 for retail theft . . . put on probation for 1 year and completed probation successfully.”²

¹ Exhibit (Ex.) 5. The application is dated June 17, 2015, but was notarized on September 3, 2015.

² Ex. 1.

3. As required by state law,³ the application triggered Hennepin County Social Services to obtain a background study on Respondent.⁴

4. The background study revealed that Respondent had been charged in Illinois with three separate felony theft charges in 2002.⁵

5. The Department was unable to determine when Respondent was discharged from her 2002 offenses.⁶

6. The background study also showed that in Minnesota in 2005 Respondent was charged with two counts of offering a forged check, a felony.⁷

7. Both of the 2005 charges were dismissed on the condition that Respondent attend a diversion program.⁸

8. Respondent completed the diversion program and probation in April 2010.⁹

9. Respondent believed that she did not have to disclose the 2005 charges because they were dismissed and the diversion program staff represented to Respondent that the charges would be expunged.¹⁰

10. On September 24, 2015, in response to her child care license application, Respondent received a letter from Hennepin County's Child Care Licensing Division (County) which informed her that she was disqualified from direct contact with "persons served by the program" due to her 2005 felony charges.¹¹

11. The Department determined that Respondent's disqualification period expires on April 23, 2025.¹²

12. The letter informed Respondent that she could request reconsideration of the disqualification by submitting information showing:

- a. the information relied upon in determining the disqualification is incorrect; and/or

³ Minn. Stat. § 245C.03 (2016).

⁴ Exs. 2, 7.

⁵ Exs. 6, 10.

⁶ Ex. 3. The Illinois records are confusing. It appears Respondent was placed on short periods of probation in 2004 but had some subsequent involvement with the courts as late as March 2008.

⁷ Ex. 7.

⁸ Testimony (Test.) of Respondent.

⁹ Ex. 8.

¹⁰ Test. of Respondent.

¹¹ Ex. 9. The letter gives the date for the "disqualifications" as September of 2015, but during the hearing testimony from C. Dutrieuille clarified that the dates should have been 2005.

¹² Ex. 3.

- b. respondent does not pose a risk of harm to any person “served by the program.”¹³

13. Respondent submitted a request for reconsideration on the basis that she does not pose a risk of harm but not on the basis that the information relied on in determining the disqualification was incorrect. The reconsideration request was received by the County on October 6, 2015.¹⁴

14. On December 21, 2015, Respondent received a letter from the County which informed her that she was disqualified from direct contact with “persons served by the program” due to her 2002 convictions.¹⁵

15. The letter informed Respondent that she could request reconsideration of her disqualification by submitting the information set forth in Finding of Fact Number 12.

16. Respondent submitted three requests for reconsideration dated January 3, 2016, for each of her 2002 convictions. Her requests for reconsideration were on the basis that she does not pose a risk of harm and not on the basis that the information relied on in determining the disqualification was incorrect.¹⁶

17. Respondent submitted one request for reconsideration dated September 30, 2015, for her 2005 charges.¹⁷

18. In her requests for reconsideration, Respondent explained that the 2002 convictions were over 13 years ago and the 2005 charges were over ten years ago. Respondent stated that she does not pose a threat to the children she would have in her care because she would never hurt a child, she is not a violent or neglectful person, and she has no violence in her background.¹⁸ Respondent also explained that since her convictions, she worked for four years with children in a non-profit preparing children for college. She also pointed out that since the convictions, she received her Bachelor’s Degree in Paralegal Studies and has been working on a Master’s Degree in Childhood Development.¹⁹

19. The County licensing worker assigned to Respondent’s case performed a “risk of harm analysis” for Respondent’s 2002 and 2005 offenses.²⁰

¹³ *Id.*

¹⁴ Ex. 14.

¹⁵ Ex. 10.

¹⁶ Ex. 11.

¹⁷ Ex. 14.

¹⁸ Exs. 11, 14.

¹⁹ Exs. 11, 14.

²⁰ Exs. 15, 16. These analyses are checklists filled out on December 8, 2015 and September 15, 2015 respectively.

20. For the more recent offenses, the licensing worker rated Respondent as being a low risk of harm. For the 2002 offenses, the licensing worker rated Respondent as an intermediate risk of harm.²¹

21. On February 19, 2016, the County recommended to the Department that Respondent be denied a child care license.²²

22. The County's recommendation was based on Respondent's five disqualifying acts and on Respondent withholding the 2005 felony-level convictions on her application.²³

23. On March 28, 2016, the Department completed a Risk of Harm Assessment regarding Respondent's application for a child care license. The Department concluded that Respondent's disqualification should not be set aside.²⁴

24. On March 29, 2016, the County informed Respondent that, on the basis of her convictions and criminal charges, she was disqualified until April 23, 2025. By the same letter, the County informed Respondent that the Department had determined that her disqualification should not be set aside.²⁵

25. On March 29, 2016, the Department denied Respondent's application for a family child care license.²⁶

26. The Department denied Respondent's application because of her convictions, criminal charges, and the incomplete information on her application.²⁷

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Department have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50; 256B.04, subd. 15(c); .064, subd. 2 (2016).

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

²¹ Exs. 15, 16.

²² Ex. 4.

²³ *Id.*

²⁴ Ex. 3.

²⁵ *Id.*

²⁶ Ex. 2.

²⁷ *Id.*

3. If a disqualification for which reconsideration was timely requested and which was not set aside is the basis for a denial of a license, the applicant has the right to a contested case hearing if the applicant submits a timely appeal.²⁸

4. Respondent timely appealed the Department's refusal to set aside her disqualification and the denial of Respondent's license application.²⁹

5. The Department may deny a license if an applicant knowingly withholds relevant information from or gives false or misleading information to the Department in connection with an application for a license.³⁰

6. Respondent gave misleading information on her application.

7. In 2002, Respondent was convicted of crimes that constitute felony theft.

8. An individual is disqualified from direct contact with persons receiving services if a background study shows that the individual has a conviction for felony theft³¹ and less than 15 years have passed since the discharge of a sentence imposed.³²

9. The disqualification period for a conviction of felony theft is 15 years from the discharge of the sentence imposed.³³

10. Respondent's 2002 convictions for felony theft result in her being disqualified until approximately 2019.³⁴

11. A preponderance of the evidence also shows that Respondent committed two acts of felony theft in September 2005, which were discharged on April 23, 2010.³⁵

12. An individual is disqualified from direct contact with persons receiving services for a period of 15 years, from the date of the dismissal, the date of discharge, or the date of the incident, whichever occurs last, if a background study shows by a preponderance of the evidence that an individual committed felony theft.³⁶

13. Respondent's 2005 theft offenses result in her being disqualified until 2025.

²⁸ Minn. Stat. § 245C.28, subd. 1 (2016).

²⁹ Notice and Order for Hearing (Apr. 29, 2016).

³⁰ Minn. Stat. § 245A.05(a)(3) (2016).

³¹ Minn. Stat. § 609.52 (2016).

³² Minn. Stat. §§ 245C.14; .15, subd. 2 (2016).

³³ Minn. Stat. § 245C.15, subd. 2.

³⁴ The exact date is unknown as the discharge of those convictions is unclear in the record. The point is moot as Respondent's 2005 charges disqualify her until 2025.

³⁵ Ex. 8.

³⁶ Minn. Stat. § 245C.15, subd. 2(f).

14. A disqualification is conclusive if the disqualified individual did not request a reconsideration of the disqualification on the basis that the information relied upon to disqualify the individual was incorrect.³⁷

15. Respondent did not request reconsideration of her disqualifications on the basis that the information upon which her disqualifications were based was incorrect.

16. Respondent's disqualifications are, therefore, conclusive.

17. Respondent requested reconsideration of her disqualification on the basis³⁸ that she does not pose a risk of harm.³⁹

18. In reviewing a request for reconsideration of a disqualification, the Department shall give preeminent weight to the safety of each person served by the license holder or applicant over the interests of the disqualified individual, license holder, applicant, or other entity.⁴⁰

19. The Department may set aside the disqualification if it finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant.⁴¹

20. In determining whether the individual has met the burden of proof by demonstrating the individual does not pose a risk of harm, the Department shall consider:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and

³⁷ Minn. Stat. § 245C.29, subd. 2(a)(2) (2016).

³⁸ Minn. Stat. § 245C.22, subd. 1(b) (2016).

³⁹ Minn. Stat. §§ 245C.29, subd. 2(c); .21 (2016).

⁴⁰ Minn. Stat. § 245C.22, subd. 3 (2016).

⁴¹ *Id.*, subd. 4 (2016).

(9) any other information relevant to reconsideration.⁴²

21. Respondent did not submit sufficient information to demonstrate that Respondent does not pose a risk of harm to the children to be served by the proposed daycare.

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

RECOMMENDATION

Based upon these Findings of Fact and Conclusions of Law, the Administrative Law Judge respectfully recommends that the Department deny Respondent's request for a set-aside of the disqualifications and that the denial of her license application be **AFFIRMED**.

Dated: August 11, 2016



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

⁴² *Id.*, subd. 4(b).

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2016), 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 64989, 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 (2016). 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 (2016), 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

In this appeal from a refusal to set aside disqualifications and the resulting denial of an application for a family child care license, Respondent has the burden to show, by a preponderance of the evidence, that she does not pose a risk of harm to those who would be served by the program for which she seeks a license, in this case a family child care license.⁴³

Respondent's testimony, along with the Department's exhibits, show that since her 2005 arrest, Respondent has made positive changes in her life. She has been attending college and has not been charged with a crime for over ten years. Respondent correctly points to the fact that there is no evidence she has exhibited any violent behavior or violence in her home. She has a close extended family and she is raising five children. There is no evidence of any involvement of Respondent's family with the criminal justice system.

⁴³ Minn. Stat. § 245A.08, subd. 3(b) (2016). At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the appellant has complied fully with this chapter and other applicable law or rule and that the application should be approved and a license granted.

The Department's risk of harm analysis was based, in large part, on the fact that Respondent committed five crimes over a three-year period, the lack of clarity about whether Respondent successfully completed probation for her 2002 offenses, and the fact that the County recommended that Respondent's disqualification not be set aside.⁴⁴

The County, in making an initial determination about whether Respondent posed a risk of harm, found that Respondent's 2002 offenses made her an intermediate risk and her 2005 offenses made her a low risk of harm.⁴⁵ However, a large factor for the County recommending that the disqualification not be set aside was that Respondent withheld her 2005 felony level offenses from her application.⁴⁶ Respondent explained at the hearing that she did not believe she had to disclose those charges because they had been discharged and, she believed, the convictions had been expunged.⁴⁷

The County witness explained that, in order to assure that children in the child care facility will be safe, the County must rely on the honesty of day care providers. Where, as here, the application is for an initial license the County has no experience with the applicant besides the application. Even though Respondent was credible as to her belief that her record had been expunged, there were other concerns about her honesty raised by her application and testimony. First, Respondent committed crimes that demonstrated she was untrustworthy and dishonest when she committed those crimes. Retail theft is a crime of dishonesty. Second, Respondent then minimized and misrepresented the crimes by stating that there was one offense in 2002, when there had been three convictions. Third, Respondent did not mention the 2005 charges. While Respondent explained her reasons for not disclosing the 2005 charges, her application and testimony raise the concern that she has not accepted the fact that she actually committed crimes in 2005.⁴⁸

Finally, Respondent did not provide evidence of her behavior and character such as employment records, letters of support from employers, testimony or affidavits from community members, or letters of support from the diversion program in which she participated. Respondent focused on trying to refute the Department's case rather than presenting her own. For example, in response to the County witness raising concerns about the fact that Respondent had not expressed remorse for her crimes, Respondent argued about whether the question had been asked of her, rather than stating that she had remorse or giving examples of how she has been rehabilitated.

The County and Department had reasonable concerns about Respondent's past behavior. These concerns were compounded by concerns about whether Respondent was completely forthcoming in her application. Therefore, the Department had reason, after considering all of the statutory factors, to refuse Respondent's request for a set-

⁴⁴ Ex. 3.

⁴⁵ Exs. 15, 16.

⁴⁶ Ex. 4.

⁴⁷ Test. of Respondent.

⁴⁸ In her application and in her request for a set-aside, Respondent repeated the story she had told the police about the forged checks she tried to cash. However, the police report is replete with facts that tend to show that the story was not true.

aside of her disqualification and to deny her license application. Respondent did not submit sufficient information to meet her burden of showing by a preponderance of the evidence that she does not pose a risk of harm.

B. J. C.