

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

In the Matter of the Appeal by Carl Wayne and Terry Elaine Leeks of the Denial of their Child Foster Care License Application and the Maltreatments and Disqualifications of Carl Wayne and Terry Elaine Leeks

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

This matter came before Administrative Law Judge Barbara Case for a hearing on March 27, 2018. The record closed on April 20, 2018, the deadline for the filing of closing statements.

Kathleen A. Heaney, Sherburne County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Carl Wayne Leeks and Terry Elaine Leeks (Appellants), appeared on their own behalf, without counsel.

ISSUES

1. Did the Department prove by a preponderance of the evidence that Appellants committed recurring maltreatment as defined by Minn. Stat. § 245C.02 (2016)?
2. Did the Department prove by a preponderance of the evidence that the Appellants committed felony financial exploitation of a vulnerable adult as defined by Minn. Stat. § 609.232, subd. 11 (2016)?
3. Did the Appellants demonstrate that their application for a foster care license should be approved and a license granted?

SUMMARY OF RECOMMENDATION

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

FINDINGS OF FACT

I. Background

1. O.L. was the mother of Carl Wayne Leeks (Mr. Leeks) and the mother-in-law of Terry Elaine Leeks (Mrs. Leeks) (or jointly, Appellants).¹ O.L. was born in 1922 and was 94 years old during most of the time relevant to this report.²

2. O.L. lived with and was cared for by Appellants since 2007, when she moved from her home in Michigan, Indiana to live with Appellants.³ As Mr. Leeks is employed as a cross-country truck driver,⁴ the majority of the care for O.L. was done by Ms. Leeks.⁵ Ms. Leeks transported O.L. to church and church-related activities, to community outings, to medical appointments, and to other places she wished or needed to go.⁶ On August 4, 2014, O.L. gave Mrs. Leeks power of attorney over all of O.L.'s financial transactions.⁷ O.L. named Mr. Leeks as her power of attorney in the event that Mrs. Leeks was unable to serve in that capacity.⁸

3. Prior to August 2015, Appellants had been living with O.L. in North Dakota, where they both had good jobs.⁹ In August 2015, Appellants moved to Minnesota because they had two grandchildren who were in foster care in Minnesota, and Stearns County was moving forward to have the children adopted by their foster home parents. Appellants tried to have the grandchildren moved to North Dakota but believed that if they moved to Minnesota, it would facilitate their ability to have their grandchildren live with them.¹⁰ Mr. Leeks believed he would get work in St. Cloud with the same trucking firm he worked for in North Dakota; however, it turned out that there was no work. By the time Mr. Leeks secured work with another firm, the family was in debt, he was behind on his vehicle payments, and his vehicle, which he needed to get to work, was repossessed. Mr. Leeks also needed the vehicle to return from North Dakota, where he had returned to work because he had not found work in Minnesota.¹¹ Appellants moved to Minnesota, believing it would assist them in adopting their grandchildren, on the advice of the Stearns County social worker.¹² During this time, Mrs. Leeks was seeking employment at Legacy Place, an assisted living facility.¹³

¹ Testimony (Test) of Carl Wayne Leeks and Terry Elaine Leeks.

² Exhibit (Ex.) 12 (Vulnerable Adult Maltreatment Investigation Summary of Kim Klein, May 9, 2016).

³ Ex. 4 (Letter of Ms. Leeks, May, 12, 2016); Ex. 5 (Letter of Mr. Leeks, May 12, 2016); Test. of C. Leeks and E. Leeks.

⁴ Test. of C. Leeks.

⁵ Test. of T. Leeks.

⁶ *Id.*

⁷ Ex. 22 (Power of Attorney, Aug. 4, 2014); Ex. 21 (Handwritten letter from O.L. giving Ms. Leeks power of attorney, Aug. 14, 2014).

⁸ *Id.*

⁹ Test. of Mr. and Ms. Leeks.

¹⁰ Ex. 20 at 5 and Test. of Mr. Leeks.

¹¹ Test. of Mr. Leeks.

¹² Ex. 20 at 5. The record is not clear as to whether the move was to facilitate providing a home for the grandchildren or for O.L. or for some other reason.

¹³ *Id.*

4. During this time, three of Appellants' minor grandchildren began living in the Leeks' household along with O.L.¹⁴ Two of the grandchildren were placed with Appellants by Stearns County and one grandchild was placed with them by Sherburne County.¹⁵ On January 13, 2016, Appellants applied to operate a child foster care program at 823 Ninth Avenue SE, St. Cloud, Minnesota, under license application number 1084293.¹⁶

5. The county case manager, Kristen McCollum, social worker with Stearns County, had no concerns about the level of care O.L. received from Appellants while she lived with them.¹⁷

II. O.L.'s Finances and the Move to Good Shepard

6. In late 2016, caring for O.L. became too difficult for Mr. and Mrs. Leeks,¹⁸ and on December 29, 2016, O.L. moved into Good Shepard Assisted Living in Sauk Rapids.¹⁹

7. On a St. Louis University Mental Status Exam (SLUMS) administered by Good Shepard assisted living facility staff to O.L. on December 22, 2015, O.L. scored 9 out of 30, putting her in the dementia range.²⁰

8. O.L. received \$1,025.00 per month from social security.²¹ While O.L. lived with Appellants, the entire amount was available to O.L. and to Ms. Leeks, who had control of her financial matters pursuant to the power of attorney. Once O.L. moved into Good Shepard, the amount available to O.L. was \$96.00 per month for personal expenses.²² The remainder, \$926.00, was owed to Good Shepard for room and board. In addition, \$30.00 was owed to Good Shepard each month until the full damage deposit of \$300.00 was paid to the facility.²³

9. Kristen McCollum, a social worker with Stearns County Human Services, worked with Appellants and O.L. to find a nursing facility for O.L. Before O.L.'s move, Ms. McCollum talked to Ms. Leeks about O.L.'s finances and about what would be the

¹⁴ Ex. 14 (Letter from Kim Klein, May 26, 2016). The letter states that two grandchildren were placed with appellants through Stearns County and one grandchild through Sherburne County. However, exact dates for the beginning of the placements are not found in the record.

¹⁵ *Id.*

¹⁶ Notice and Order for Prehearing Conference and Hearing, March 31, 2017 and Ex. 1 (Order of Denial, Feb. 21, 2017), which was not offered as an exhibit at the March 27, 2018, hearing or as part of either of the summary disposition motions brought in this matter.

¹⁷ Ex. 20 at 3.

¹⁸ Test. of Kristin McCollum, Stearns County Case Manager; Ex. 14 at 1 (Letter from Kim Klein, Benton County Adult Protection Worker, to Philip Miller, County Attorney, May 26, 2016); Ex. 20 at 3 (Case notes of Kimberly Klein, Benton County Social Worker, entry of March 14, 2016).

¹⁹ Ex.

²⁰ Ex. 14 at 1.

²¹ Ex. 20 at 14.

²² *Id.*

²³ Ex. 28 (Letter to Appellants from Kristin McCollum, Social Worker with Stearns County, Dec. 30, 2015).

priorities for her income once she moved into Good Shepard.²⁴ On December 30, 2015, Ms. McCollum also sent the Appellants a letter which explained the amounts that were due to Good Shepard. The letter stated that “this needs to be paid each month to prevent issues with the placement . . . Her Social Security check each month needs to go for her room and board, the damage deposit fee, her medications and her personal hygiene needs. She won’t have much left after the rent is paid as we talked about. It is important that her money go to cover her needs. Call me with any questions.”²⁵

10. Allison Buersken, Cottage Program Director at Good Shepard, also explained in person to Appellants the importance of Appellants using O.L.’s funds for O.L.’s needs, and the small amount that would remain after O.L.’s bill for rent, food, and care was paid to Good Shepard.²⁶

11. The Social Security Administration deposited the following amounts on the following dates into an account controlled by O.L. and Ms. Leeks:

- a. Dec. 1, 2015, \$1,025.00.
- b. Dec. 31, 2015, \$1,025.00.
- c. Feb. 3, 2016, \$1,025.00.
- d. March 3, 2016, \$1,025.00.
- e. April 1, 2016, \$1,025.00.²⁷

12. On January 1, 2016, O.L.’s account had a balance of \$1,066.66. In January, the following withdrawals were made from O.L.’s account using the debit card associated with the account (in the order found on the bank statement):

- a. 1/01 Wal-Mart \$134.48
- b. 1/02 ATM Withdrawal \$62.50 with a transaction fee of \$1.50
- c. 1/03 Home Depot \$67.43
- d. 1/03 Walmart \$22.06
- e. 1/03 Walmart \$142.86
- f. 1/02 Menards \$95.68
- g. 1/02 Short Stop restaurant \$8.11

²⁴ Test. of K. McCollum.

²⁵ *Id.*

²⁶ Test. Of K. McCollum; Test. of Allison Buersken.

²⁷ Ex. 24. (Bank Statements, various dates).

- h. 1/01 Cash Wise \$41.07
- i. 1/01 Walmart \$70.26
- j. 1/01 SuperAmerica \$26.64
- k. 1/04 Wal-Mart \$200.13
- l. 1/05 Burger King \$11.77
- m. 1/04 Scoresense \$39.95
- n. 1/05 Panera Bread \$23.15
- o. 1/13 Save A Lot \$32.24
- p. 1/15 Foxy Nails \$25.00

13. Ms. Leeks' explanation for the money spent at Walmart was that it was for cookies and books that O.L. liked.²⁸

14. On February 1, 2016, O.L.'s account had a balance of negative \$2.12. Following the Social Security Administration's deposit of \$1,025.00, on February 3, 2016, O.L.'s account had a balance of \$1,022.88. In February, the following withdrawals were made from O.L.'s account using the debit card associated with the account (in the order found on the bank statement):

- a. 2/03 McDonalds \$4.95
- b. 2/03 ATM Withdrawal \$203.00
- c. 2/03 ATM transaction fee \$1.50
- d. 2/03 Transfer to Carl Leeks \$480.00
- e. 2/03 J.C. Penny \$67.98
- f. 2/05 ATM Withdrawal \$62.50
- g. ATM transaction fee \$1.50
- h. 2/04 Scoresense \$39.95
- i. 2/03 America's Best (eye glasses) \$156.79
- j. 2/29 Bank Fee \$3.95

²⁸ Ex. 19 (Police Report last modified on March 28, 2017); Ex. 38 (recording of interview of March 29, 2016).

15. On March 3, 2016, O.L.'s account had a balance of \$1,025.76, following the Social Security Administration's deposit of \$1,025.00. In March, the following withdrawals were made from O.L.'s account using the debit card associated with the account (in the order found on the bank statement):

- a. 3/03 House of Pizza \$53.12
- b. 3/05 Payment to Good Shepard \$800.00
- c. 3/05 Family Dollar \$33.66
- d. 3/05 Walmart \$20.16
- e. 3/04 Scoresense \$39.95
- f. 3/10 WalMart \$12.86
- g. 3/22 ATM transaction fee \$1.50
- h. 3/23 Save A Lot \$15.00
- i. 3/22 Coborns \$2.15
- j. 3/22 Jimmy Johns \$28.45
- k. 3/22 Wendy's \$11.56
- l. 3/22 Wendy's \$4.86
- m. 3/31 Bank Fee \$3.95

16. On April 1, 2016, O.L.'s account had a balance of \$1,023.54, following the Social Security Administration's deposit of \$1,025.00. In April, the following withdrawals were made from O.L.'s account using the debit card associated with the account (in the order found on the bank statement):

- a. 4/01 Check to Good Shepard \$900.00
- b. 4/01 Cash Withdrawal \$100.00
- c. 4/01 Walmart \$17.96
- d. 4/01 Cash Wise \$4.51
- e. 4/04 bank fee \$32.00
- f. 4/04 Scoresense \$39.95
- g. 4/30 Bank fee \$3.95

17. There was only one debit card issued to O.L.'s account.²⁹

18. Good Shepard made numerous attempts to work with the Appellants to get O.L.'s bills for Good Shepard paid.³⁰ Ms. Leeks confirmed that Appellants were still receiving O.L.'s social security payments and that they were having financial difficulty but were hoping to catch up on O.L.'s bill. At one point, \$1,864.00 was owed for O.L.'s care at good Shepard.³¹

III. The Vulnerable Adult Maltreatment Investigation

19. On March 10, 2016, Benton County Human Services received a vulnerable adult (V.A.) report on possible financial exploitation of O.L. by Appellants. At the time of the V.A. report, Appellants had not paid O.L.'s share of the cost of Good Shepard for February and March of 2016. The county completed an investigation and determined that Appellants were financially exploiting O.L.³²

20. On March 11, 2016, Benton County wrote to Appellants to inform them that Benton County had been notified that O.L.'s bills from Good Shepard had not been paid in full. The letter stated that there was an outstanding balance of \$1,064.00 "for March rent" and "\$300. For a security deposit."³³

21. On or about March 11, 2016, Good Shepard filed a vulnerable adult report with Benton County because O.L.'s funds had not been used to pay her room and board costs.³⁴

22. Kim Klien, a Benton County Adult Protection Investigator, investigated the maltreatment of a vulnerable adult report from Good Shepard.³⁵ Ms. Klein took a number of actions in order to complete her investigation, including speaking with Appellants. On March 17, 2016, Ms. Leeks told Ms. Klein that Appellants had used O.L.'s money in order to rescue Mr. Leek's vehicle from repossession.³⁶ On May 5, 2016, Ms. Leeks told Ms. Klein that her priority is to keep a roof over her head in order to be able to keep her grandchildren.³⁷

23. On April 18, 2016, Good Shepard became the representative payee for O.L.³⁸

²⁹ Ex. 24 at 1 (Facsimile from St. Cloud Federal Credit Union, May 13, 2016).

³⁰ Test. of A. Buersken. (Contacts were made with Ms. Leeks on Feb. 15, 2016; Feb. 29, 2016; March 1, 2016; and March 17, 2016).

³¹ *Id.*

³² Ex. 14 (Letter from Kim Klein, May 26, 2016).

³³ Ex. 17 (Letter of Sarah Rauchbauer, Mar. 11, 2016).

³⁴ Ex. 13 (case notes); Ex. 12 (Vulnerable Adult Maltreatment Investigation Summary); Test. of A. Buersken, Good Shepard Cottage Program Director.

³⁵ Ex. 12 at 4 (Vulnerable Adult Maltreatment Investigation Summary).

³⁶ Ex. 12 at 3 (Vulnerable Adult Maltreatment Investigation Summary).

³⁷ Ex. 12 at 4. (Vulnerable Adult Maltreatment Investigation Summary).

³⁸ Test. of A. Buersken, Good Shepard Cottage Program Director.

24. On May 20, 2016, Stearns County removed two of the grandchildren from Appellants' care.³⁹

25. As of May 26, 2016, Benton County determined that \$1,093.00 was owed to Good Shepard plus a \$300.00 damage deposit.⁴⁰

26. On May 26, 2016, Benton County Human Services petitioned the court for emergency guardianship of O.L.⁴¹

27. On August 29, 2016, a Sauk Rapids police officer, Tim Sigler, interviewed Ms. Leeks, who was accompanied by a representative of the NAACP. During the interview, Ms. Leeks explained that she did not intend to harm O.L. and that any money the Appellants used for themselves was with the permission of O.L. Officer Sigler explained that Appellants had no right to use O.L.'s money for anything other than O.L.'s care.

28. O.L.'s outstanding debt to Good Shepard was paid in full on September 1, 2016.⁴² On September 2, 2016, the police file on the matter was closed because a representative of Good Shepard informed the Sauk Rapids Police Department that the debt to Good Shepard had been paid in full and Good Shepard no longer wanted to proceed with any action.⁴³

IV. Denial of Foster Care License

29. On May 9, 2016, Benton County informed Appellants by letters that it had received, investigated, and substantiated an allegation that Appellants had committed financial exploitation of a vulnerable adult.⁴⁴ The letters also informed Appellants of their right to request reconsideration of the County's determination.⁴⁵

30. The Appellants requested reconsideration of the maltreatment determinations on May 17, 2016.⁴⁶

31. On May 31, 2016, Benton County explained by letters to Appellants that it had received their requests for reconsideration of the maltreatment determination and had determined that the determination that Appellants had committed financial exploitation of a vulnerable adult was correct.⁴⁷ Benton County reached its determinations based on: "(1)Benton County case notes; (2) Good Shepard Memory

³⁹ Ex. 14 (Letter from Kim Klein, May 26, 2016).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Test. of A. Buersken.

⁴³ Ex. 19 (Police Report last modified on March 28, 2017); Ex. 38 (recording of interview of March 29, 2016).

⁴⁴ Ex. 1 (Letter to Terry Leeks, May 9, 2016); Ex. 2. (Letter to Carl Leeks, May 9, 2016).

⁴⁵ *Id.*

⁴⁶ Ex. 6 (Letter from Benton County to Terry Leeks, May 31, 2016); Ex.7 (Letter from Benton County to Carl Leeks, May 31, 2016); Ex. 4 (Letter to Benton County from Terry Leeks, May 13, 2016); Ex. 5 (Letter to Benton County from Carl Leeks, May 12, 2016).

⁴⁷ Ex. 6 (Letter to Terry Leeks, May 31, 2016); Ex.7 (Letter to Carl Leeks, May 31, 2016).

Care Cottages case notes; (3) [Appellants'] admission and acknowledgement that O.L.'s social security funds should have been immediately redirected to the Good Shepard Memory Care Cottage for rent (per the original letter of terms, dated December 30, 2015); and (4) multiple agreed upon arrangements to make up late payments that were disregarded except one payment of \$800.⁴⁸ The letters also informed Appellants that they had a right to appeal the maltreatment determination by requesting a fair hearing under Minn. Stat. § 256.045 (2016).⁴⁹

32. On February 21, 2017, the Department issued an Order of Denial of the application for a foster care license to Appellants.⁵⁰

33. The Order of Denial said that Appellant's foster care license application was being denied because "while in the process of being licensed a separate investigation was completed in Benton County. In letters dated May 9, 2016, Benton County informed each of you that you were responsible for maltreatment (financial exploitation) of a vulnerable adult and of your right to request reconsideration of your maltreatment determinations."⁵¹ The Order went on to tell Appellants that "in letters dated September 23, 2016, [the department] notified each of you of a disqualification from any position allowing direct contact with, or access to, persons served by programs licensed by the [Department], and the right to request reconsideration. The disqualifications were for recurring maltreatment and felony financial exploitation of a vulnerable adult." According to the Order, the Appellants requested reconsideration of the disqualifications which the Department reviewed. The Department subsequently affirmed the disqualifications for recurring maltreatment and felony financial exploitation of a vulnerable adult and did not grant a variance.⁵²

34. The Leeks appealed the Order of Denial on March 16, 2017.⁵³

35. The County filed a Motion for Partial Summary Disposition on May 4, 2017.⁵⁴

36. The Administrative Law Judge recommended that the maltreatment determination be upheld and concluded that the maltreatment finding necessarily resulted in the denial of the foster care license.⁵⁵

37. On October 13, 2017, the Department granted the County's Motion for Partial Summary Disposition, affirmed Appellants' maltreatment determinations, dismissed Appellants' appeal from the maltreatment determinations, and remanded the appeal from the denial of the foster care license to the Office of Administrative Hearings

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Ex. 33 (Order of Denial issued by Department, Feb. 21, 2017); Ex. 14 (Letter from Kim Klein, May 26, 2016).

⁵¹ *Id.*

⁵² *Id.*

⁵³ Final Order of the Commissioner, October 13, 2017.

⁵⁴ *Id.*

⁵⁵ *Id.*

for a full evidentiary hearing on the merits.⁵⁶ The Department remanded the case for specific findings on whether the maltreatment was recurring and whether the Appellants committed acts which meet the definition of felony financial exploitation of a vulnerable adult.⁵⁷

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department of Human Services (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08 (2016).

2. The Notice and Order for Pre-Hearing Conference and Hearing is proper in all respects and the Department complied with all substantive and procedural requirements of law and rule.

3. This tribunal previously affirmed the Department's finding that Appellants had committed maltreatment. The Department affirmed Appellants' maltreatment determinations and dismissed their appeals from those determinations.⁵⁸

4. Under the criminal code, a vulnerable adult is defined as any person 18 years of age or older who is a resident inpatient of a facility.⁵⁹ The definition of "facility" includes nursing homes.⁶⁰ A vulnerable adult is further defined as any person 18 years of age or older who possesses a physical or mental infirmity . . . that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision, and because of the dysfunction or infirmity and the need for assistance, the individual has an impaired ability to protect the individual from maltreatment.⁶¹

5. O.L. was a vulnerable adult at all times relevant to this report.

6. Whoever does any of the following acts commits the crime of financial exploitation:

In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501 intentionally:

(i) fails to use the real or personal property or other financial resources of the vulnerable adult to provide food, clothing, shelter,

⁵⁶ Final Order of the Commissioner of Human Services (Oct. 13, 2017).

⁵⁷ *Id.*

⁵⁸ Order of the Commissioner dated Oct. 13, 2017.

⁵⁹ Minn. Stat. § 609.232, subd. 11(1) (2017).

⁶⁰ Minn. Stat. § 609.232, subd. 3 (2017).

⁶¹ Minn. Stat. 609.232, subd. 11 (4)(i)(ii) (2017).

health care, therapeutic conduct, or supervision for the vulnerable adult;

(ii) uses, manages, or takes either temporarily or permanently the real or personal property or other financial resources of the vulnerable adult, whether held in the name of the vulnerable adult or a third party, for the benefit of someone other than the vulnerable adult; or

(iii) deprives either temporarily or permanently a vulnerable adult of the vulnerable adult's real or personal property or other financial resources, whether held in the name of the vulnerable adult or a third party, for the benefit of someone other than the vulnerable adult.⁶²

7. A crime means conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine. Felony means a crime for which a sentence of imprisonment for more than one year may be imposed.⁶³ Financial exploitation of a vulnerable adult is a crime for which a sentence of imprisonment for more than one year may be imposed.⁶⁴

8. The Department proved by a preponderance of the evidence that Appellants committed felony financial exploitation of a vulnerable adult.

9. Recurring maltreatment means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment.⁶⁵

10. The Department proved by a preponderance of the evidence that the maltreatment was recurring.

11. Appellants are disqualified under Minn. Stat. § 245C.14 because less than 15 years have passed since the date of the incident of financial exploitation of a vulnerable adult that the Appellants were shown by a preponderance of the evidence to have committed.⁶⁶

12. Appellants failed to demonstrate that their application for a foster care license should be approved and a license granted.

⁶² Minn. Stat. § 609.2335, subd. (1) (2017).

⁶³ Minn. Stat. § 609.015, subd. (1), (2) (2017).

⁶⁴ Minn. Stat. § 609.52, subd. 3(1) (2017).

⁶⁵ Minn. Stat. § 245C.02, subd. 16 (2017).

⁶⁶ Minn. Stat. § 245C.15, subd. 2(a), (f) (2017).

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

RECOMMENDATION

That the Department's determination that Appellants committed maltreatment which was recurring and which met the definition of financial exploitation of a vulnerable adult be **AFFIRMED**.

Dated: May 1, 2018



BARBARA J. CASE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

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 (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, P.O. Box 64254, St. Paul, MN 55164-0254, (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

It is undisputed that Appellants cared for Mr. Leeks' mother, O.L., in their home for many years and that they received no payment for that care beyond what O.L. contributed to the household. Terry Leeks had been O.L.'s power of attorney since 2014.⁶⁷

Problems arose when O.L. moved into Good Shepard, an assistive living facility, on December 29, 2015. Although the County and Good Shepard explained to Appellants that almost all of O.L.'s social security income would be needed to pay for her room and board at Good Shepard, Appellants treated O.L.'s social security income as if it were their own money. Appellants relied on O.L.'s social security income to, at least in part, support the family household. Appellants did not foresee the impact that the absence of her financial contribution would have on the household.

Appellants' reliance on O.L.'s income is apparent from the way they used it during the months O.L. was in Good Shepard before Good Shepard became the representative payee for O.L. Appellants were not credible when they said that all of the expenditures from O.L.'s social security income benefited O.L. Appellants could not explain how the relatively large amounts that were spent at Home Depot and Walmart benefited O.L. Appellants attempted to argue that O.L. benefited from money spent at Foxy Nails and restaurants, but their testimony was not credible. O.L.'s need for food and her personal care needs were provided by Good Shepard and not by the money spent from her social security funds by Appellants. That Good Shepard was providing for all of O.L.'s essential needs was why, practically if not legally, it was crucial that Appellant's use O.L.'s social security money to pay her bill at Good Shepard. Appellants failed to use O.L.'s money for her benefit.

Appellants admitted that they borrowed a substantial amount of O.L.'s social security payments to prevent Mr. Leek's truck from being repossessed. From Appellants' perspective, using O.L.'s funds in order that Mr. Leeks not lose his vehicle to repossession was simply a logical course of action. However logical it seemed at the time, the law is clear that they did not have the right to divert O.L.'s funds from her needs to their personal use, no matter how crucial their own needs were.

Appellants used O.L.'s money for themselves and did not use it to meet O.L.'s needs. They did this over a number of months and in an amount that exceeded \$1,000.00. Therefore, their use of O.L.'s social security payments for themselves amounted to recurring maltreatment. Although Appellants were never charged with a crime, their behavior met the definition of the crime of felony financial exploitation.

B.J.C.

⁶⁷ Exs. 21 and 22 (Letter and Power of Attorney form).