OAH 10-1800-35684

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by LaDonna Mustin of the Order of Revocation of her Child Foster Care License	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Perry M. Wilson on January 17, 2019, at the Office of Administrative Hearings in St. Paul, Minnesota. The hearing record closed at the end of the evidentiary hearing.

Lauren Ryan, Assistant Ramsey County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). LaDonna Mustin (Licensee) appeared on her own behalf and without legal counsel.

STATEMENT OF ISSUES

1. Should the revocation by the Department of Licensee's child foster care license be affirmed?

2. Did Licensee demonstrate by a preponderance of the evidence that she was in full compliance with applicable law and rules at the times the Department alleges she failed to comply?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department demonstrated reasonable cause for revocation of Licensee's license for her failure to comply with applicable law or rule and that Licensee failed to demonstrate by a preponderance of the evidence that she was in full compliance with applicable law and rules pursuant to Minn. Stat. § 245A.08, subd. 3(a) (2018).

The Administrative Law Judge recommends the revocation of the Licensee's child foster care license be **AFFIRMED**.

Based upon the submissions of counsel and the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee operated a child foster care in her home, located in St. Paul, Minnesota.[1] Licensee received her license in December of 2016.[2] Licensee wanted a child foster care license so that she could continue to care for her two-year-old granddaughter.[3]

2. On August 29, 2016, the Ramsey County (County) licensing worker assigned to Licensee's license application visited Licensee's home.[4] While at the home, the worker learned that Licensee lived in the bottom floor of a duplex.[5] Licensee's son, the father of Licensee's two-year-old granddaughter, lived on the second floor of the duplex.[6] The licensing worker conducted a background study on Licensee, but mistakenly believed that no background study was needed for Licensee's son.[7] The licensing worker also learned that Licensee's granddaughter attended unlicensed day care provided by Licensee's friend.[8]

3. The licensing worker received questions from the Department in November of 2016.[9] The Department requested additional information on who lived in Licensee's home and who, besides Licensee, provided care to the two-year-old.[10]

4. On November 21, 2016, the licensing worker visited Licensee's home and determined that Licensee's son had daily supervised access to the two-year-old.[11] The worker provided this information to the Department.[12]

5. Licensee received her license in December of 2016 and continued to care for her granddaughter.[13] During the first six months that Licensee held her license, the licensing worker conducted monthly visits to Licensee's home.[14]

6. On August 11, 2017, the licensing worker learned from the Department that Licensee's son should have had a background study during the licensing process because he would have access to the child.[15] The licensing worker visited Licensee's

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[1] Testimony (Test.) of May Herr.
[2] *Id.*
[3] Exhibit (Ex.) 3.
[4] Ex. 19.
[5] *Id.*
[6] *Id.*
[7] Test. of M. Herr.
[8] *Id.*
[9] Ex. 19.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*

home that same day and informed Licensee that her son needed a background study.[16] Licensee informed the worker that her son had a conviction for a sex crime with a minor.[17]

7. During the meeting with the licensing worker on August 11, 2017, Licensee told the worker that her son would move out of the duplex and that he would not agree to complete a background study.[18]

8. On August 25, 2017, the Department advised the worker that the failure of Licensee's son to complete a background study would result in licensing action, but that after the study was complete, Licensee could request a variance.[19] The licensing worker informed Licensee of the Department's position that same day.[20] The licensing worker called Licensee's son to convince him to cooperate with the background study process, but he did not return her call.[21]

9. Licensee informed the licensing worker that her brother David would be moving into the upper floor of her home, and she later provided background study information for her brother.[22] The background study did not result in any adverse information regarding Licensee's brother David.[23]

10. On August 25, 2017, the licensing worker informed Licensee that her granddaughter could no longer be cared for during the day by Licensee's friend because the friend was not a licensed day care provider.[24] The licensing worker had previously advised Licensee that this day care arrangement was acceptable.[25]

11. During September and October 2017, the licensing worker and the Department attempted, without success, to obtain a background study on Licensee's son.[26] On November 14, 2017, the licensing worker learned from the son's probation officer that the son had given the probation officer Licensee's address as his home address and that the probation officer met with the son twice in October 2017 at Licensee's house.[27]

12. In December 2017, Licensee's brother David and a female renter moved into Licensee's house.[28]

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[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] Test. of M. Herr.

13. On January 16, 2018, the Department notified Licensee's son that he was disqualified from any contact with children receiving services in Licensee's home because of his failure to cooperate with a background study.[29]

14. On January 16, 2018, the Department notified Licensee that her son was disqualified from contact with children receiving services in her home and ordered that Licensee remove her son from any position allowing direct contact with children receiving services in her home.[30] The Department also issued a disqualification to Licensee for failure to cooperate with the background check process.[31] Licensee requested reconsideration of the disqualification on January 26, 2018.[32]

15. On February 9, 2018, the licensing worker recommended reconsideration of Licensee's disqualification.[33] On February 22, 2018, the licensing worker issued a correction order to Licensee based on the failure to have her son removed from the home, as demonstrated by the parole officer's visits with the son in the home, and for failure to cooperate with the background check process.[34] On February 27, 2018, the licensing worker recommended that the Department fine Licensee $200.00 for the same violations as described in the correction order.[35]

16. On March 26, 2018, the Department notified Licensee's son that he was disqualified from any contact with children in Licensee's program because he was convicted of third-degree criminal sexual conduct and gross misdemeanor theft.[36]

17. On March 26, 2018, the Department notified Licensee that her son was barred from access to the children served by her program and must be immediately removed from her home.[37]

18. On April 15, 2018, St. Paul Police officers were called to Licensee's home to investigate a fight between Licensee's son and her brother Donald.[38] Donald reported to the police that he had stayed at Licensee's home and been punched by Licensee's son.[39] Donald is a registered sex offender.[40] Licensee told the police that her son had not been in her home on April 15, 2018.[41] Licensee admitted that Donald had been in her

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[29] Ex. 6.
[30] Ex. 7.
[31] Test. of M. Herr.
[32] Ex. 8.
[33] Ex. 9.
[34] *Id.*
[35] Ex. 10.
[36] Ex. 11.
[37] Ex. 12.
[38] Ex. 16C.
[39] *Id.*
[40] *Id.*
[41] *Id.*

home to visit her brother David.[42] Licensee reported this police visit to her licensing worker on April 17, 2018.[43]

19. On April 18, 2018, Ramsey County Child Protection began an investigation into whether Licensee's granddaughter had been subjected to maltreatment by Licensee's brother Donald.[44]

20. On April 20, 2018, Licensee's granddaughter was removed from Licensee's home.[45]

21. During the course of the maltreatment investigation, child protection learned that St. Paul Police were called to Licensee's home on February 13, 2018, by Licensee's upstairs renter because Licensee's son and the mother of Licensee's granddaughter were in the home fighting.[46] The investigator was told by the renter that Licensee had given her son permission to enter the home to pick up some court papers.[47] Licensee did not report this police visit to her licensing worker.[48]

22. Licensee denied that she had given her son permission to enter her home.[49]

23. There was no maltreatment found by the child protection investigation.[50]

24. On August 13, 2018, the County recommended that the Department revoke Licensee's child foster care license because she allowed her son and her brother to have access to her home and both had been convicted of criminal sexual conduct.[51] The County concluded that Licensee showed poor judgment when she allowed both men access to her home.[52]

25. On October 2, 2018, the Department revoked Licensee's license based upon the recommendation of the County and on the additional ground that Licensee provided false or misleading information to the County in connection with its investigation.[53]

26. On October 11, 2018, Licensee appealed the revocation of her license.[54]

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[42] *Id.*
[43] Ex. 15.
[44] Test. of M. Herr.
[45] *Id.*
[46] Ex. 19; Test. of Heather Provo.
[47] Test. of H. Provo.
[48] *Id.*
[49] Test. of LaDonna Mustin.
[50] Test. of H. Provo.
[51] Ex. 16.
[52] *Id.*
[53] Ex. 1.
[54] Ex. 2.

Based upon 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) are authorized to consider an appeal of the revocation of a child foster care license pursuant to Minn. Stat. §§ 14.50; 245A.08 (2018).

2. Licensee received due, proper, and timely notice of the basis for the agency's decision, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has demonstrated reasonable cause that Licensee violated Minn. Stat. § 245C.14, subd. 2 (2018) when she allowed two disqualified persons to have access to her foster care home.

4. The Department failed to show reasonable cause to believe that Licensee violated applicable law or rule when she provided false or misleading information to an investigator.

5. The Department has demonstrated reasonable cause for revocation of Licensee's family child care license by showing that Licensee failed to fully comply with applicable law or rule pursuant to Minn. Stat. § 245A.07, subd. 3(a) (2018).

6. Licensee failed to show by a preponderance of the evidence that she was in full compliance with those laws and rules the Department alleges were violated, at the time the Department alleges the violations of law or rule occurred, pursuant to Minn. Stat. § 245A.08, subd. 3(a).

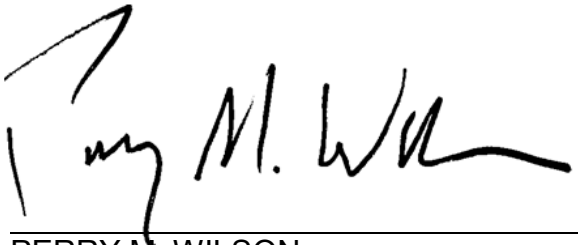
7. These conclusions are reached for the reasons set forth in the attached memorandum, which is hereby incorporated in these conclusions by reference.

Based upon these Conclusions of Law, and for the reasons set forth in the accompanying memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Department should **AFFIRM** the revocation of Licensee's child foster care license.

Dated: February 13, 2018



PERRY M. WILSON
Administrative Law Judge

Digitally Recorded; No Transcript Prepared.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (the Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2018), 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 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 (2018). 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 (2018), 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

The Department argues that there is reasonable cause to believe that Licensee violated law and rules when she allowed her son and her brother, both convicted sex offenders, to have access to her foster care home. This is undisputed by Licensee. Licensee testified that she did not understand that she could not allow these relatives in

her home. This may be so, but the Department clearly communicated the rules and that Licensee's son, a convicted sex offender, was not allowed access to her home. Licensee knew her brother was also a convicted sex offender, and she should have known that he could not have access to her home.

The Department also argues that Licensee provided false and misleading evidence during the course of the investigation. The County, which conducted the investigation, did not include this violation in its revocation recommendation.[55] This allegation was added by the Department.[56] The evidence showed that Licensee was confused about the rules and how they applied to her family.[57] There were differences between Licensee's statements about whether she gave her son permission to enter her home and the statement of her renter to the investigators. There was no evidence showing that Licensee intended to provide false or misleading information in the investigation. Therefore, the Administrative Law Judge finds that this allegation was not supported by evidence showing reasonable cause.

When Licensee applied for her foster care license, the licensing worker told Licensee that her son did not need to have a background study because he lived in a separate apartment on the second floor of Licensee's home. This was incorrect. The licensing worker also told Licensee that her granddaughter could continue to go to unlicensed day care provided by Licensee's friend. This was also incorrect. This confusion about the law and rules is disappointing and was a source of confusion and disruption to Licensee's care for her granddaughter.

Licensee intended to provide a safe and protective home for her granddaughter. Unfortunately, she was defeated in this goal by her own family, by her own failure to comprehend fully the meaning of the disqualification rules, and, to a lesser extent, by inaccurate information given to her by her licensing worker.

For these reasons, the Administrative Law Judge determined to recommend that the license revocation be affirmed.

P. M. W.

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[55] Ex. 16.
[56] Ex. 1.
[57] Ex. 100.