

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Sunshine
Child Care Center LLC of the Order of
License Denial
License No. 1099623 (Child Care Center)

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

This matter came before Administrative Law Judge James LaFave for an evidentiary hearing on April 28, 2020, at the Office of Administrative Hearings in St. Paul, Minnesota. The record closed that day at the conclusion of the hearing.

Roger Yang, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Daniel L.M. Kennedy, Kennedy & Cain, PLLC, appeared on behalf of Sunshine Child Care Center, LLC (Appellant or Sunshine).

STATEMENT OF THE ISSUES

1. Did the Department properly deny Appellant's application for a license to provide childcare services?
2. If not, did the Appellant establish that the application should be approved, and a license granted?

SUMMARY OF RECOMMENDATION

The Department properly denied Appellant's license application and Appellant failed to prove by a preponderance of the evidence that it fully complied with all the requirements for the issuance of a license to provide childcare services. Therefore, the Administrative Law Judge recommends that the Commissioner of Human Services (Commissioner) **AFFIRM** the Order of License Denial.

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

FINDINGS OF FACT

I. Background

1. Ali K. Tahiro is the sole owner and operator of Sunshine.¹ Tahiro formed Sunshine on July 21, 2017.²

2. From July 2017 through August 2019, Tahiro worked full-time as a manager for another day care provider, called Century Child Care Center (Century).³

3. Century is owned by Jobey Guye, and it is operated at 417 University Avenue West in St. Paul, Minnesota.⁴ The Department licensed Century to provide childcare services in 2017.⁵

4. Tahiro did not have an ownership interest in Century and he was not listed as a controlling individual on Century's license application.⁶

II. Century's License Violations and Sanctions

A. Inspections in August 2018

5. On August 6, 2018, the Department conducted a licensing inspection and review of Century.⁷ During the inspection, the Department determined Century failed to initiate background studies for seven employees before the employees had direct contact with children being served by the program.⁸

6. The Department conducted another licensing inspection of Century later the same month, on August 27, 2018.⁹

7. Based on its August 2018 inspections, the Department found Century had committed numerous violations of licensing rules and regulations relating to health and safety including:

- failure to comply with background study requirements;
- failure to comply with staff qualification requirements;
- failure to comply with staff distribution requirements;
- failure to comply with behavior guidance requirements;

¹ Testimony (Test.) of Ali Tahiro; Exhibits (Ex.) 2, 3.

² Test. of A. Tahiro; Ex. 3.

³ Test. of A. Tahiro; Test. of Kerri Leuth; Exs. 6; 9, 14.

⁴ Test. of K. Leuth; Ex. 14.

⁵ Test. of K. Leuth; Ex. 14.

⁶ Test. of K. Leuth.

⁷ Ex. 10.

⁸ *Id.*

⁹ Ex. 11.

- failure to comply with staff training requirements including orientation, reducing the risk of sudden infant unexpected death and abusive head trauma, orientation to the risk reduction plan, and child passenger restraint training;
- failure to maintain staff personnel records;
- failure to maintain children's records;
- failure to comply with infant feeding requirements;
- failure to maintain equipment and furniture in good repair;
- failure to maintain facility in good repair;
- failure to keep children away from hazards and hazardous areas;
- failure to maintain cleanliness throughout the center;
- failure to maintain the required amount of equipment and supplies in all classrooms;
- failure to comply with child passenger restraints; and
- failure to maintain USDA nutritional guidelines.¹⁰

8. On January 4, 2019, the Department ordered Century to pay a fine of \$1,200 for failing to comply with background study requirements.¹¹

9. Based on the nature and the severity of the multiple violations found during the August 2018 licensing inspections, the Department placed Century's license on conditional status for two years beginning on January 16, 2019.¹²

10. The terms of the conditional license required Century to provide written notification of the conditional status of its license to all parents or guardians of the children served. Century was also required to complete daily maintenance, cleanliness and hazardous checks of the facility, and ensure that staff completed required training.¹³

11. Century did not appeal the Order of Conditional License.¹⁴

B. Inspection in March 2019

12. When a childcare center is placed on a conditional license, the Department inspects the business quarterly.¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Test. K. of Leuth.

¹⁵ *Id.*

13. The Department conducted Century's first quarterly inspection under the terms of the conditional license on March 13, 2019.¹⁶ When the Department's licensor arrived at Century, Guye and Tahiro were not there. Century staff telephoned Guye and Tahiro and told them Department staff were at Century. Guye and Tahiro arrived shortly thereafter.¹⁷

14. The Department's licensor conducted a walk-through inspection of Century's facility and classrooms.¹⁸ Among other observations, she noted dirty carpet, sticky bathroom floors, sliding bolt locks on doors, and plastic bags accessible in classrooms.¹⁹ The licensor reviewed Century's personnel files, children's files, attendance records, and policies and procedures.²⁰ The licensor also checked Century's compliance with the terms of its conditional license.²¹

15. At one point during the inspection, the Department's licensor asked Guye to show her certain specific forms.²² Guye was unable to locate the forms and he told the licensor that Tahiro would know where the forms were kept.²³ Guye went down the hall to a classroom where Tahiro was alone looking after an infant.²⁴ Guye asked Tahiro to help him locate the requested forms. Both Tahiro and Guye left the infant unsupervised in the classroom while they went back to the front desk area to locate the requested forms.²⁵

16. Based on her review of Century, the Department's licensor determined that Century failed to comply with six of the seven terms of its conditional license. Specifically, the licensor found:

- Century failed to provide written notice to the parents or legal guardians of the children in its care that its license was on conditional status, as required by term #1;
- Century failed to ensure that all staff persons were trained with the requirements to reduce sudden unexpected infant death, as required by term #3;
- Century failed to ensure that all staff received training in orientation, child development and learning, first aid, cardiopulmonary resuscitation, abusive head trauma, child passenger restraint systems, annual in-service training, as well as training in the risk reduction plan, as required by term #4;

¹⁶ Ex. 12.

¹⁷ Test. of K. Leuth.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

- Century failed to document staffing patterns for February and March of 2019, as required by term #5;
- Century failed to document daily maintenance, cleanliness, and hazard checks of the facility, equipment and outdoor play areas for the months of February and March 2019, as required by term #6; and
- Century failed to provide the Department with a checklist to ensure Century maintained all the required information in the children's records, as required by term #7.²⁶

17. In addition, the Department's licensor found that Century had committed 32 violations of statutes and rules governing its childcare license.²⁷ These violations²⁸ included Century's failure to:

- maintain the required staff-to-child ratios;²⁹
- group children with other age categories;³⁰
- supervise children at all times;³¹
- have written dietary instructions from each infant's parents;³²
- have each infant's feeding schedule available in the food preparation area;³³
- label each infant's bottle with the child's first and last name;³⁴
- have documentation of brand names and model numbers for every crib that is used by or accessible to children in care;³⁵
- maintain documentation to verify that it annually checked all crib brand names and model numbers against the U.S. Consumer Product Safety Commission web site listing unsafe cribs;³⁶
- maintain documentation to verify that on a monthly basis it performed required safety inspections of every crib used by or accessible to children in care;³⁷
- comply with the requirements for reducing the risk of sudden unexpected infant death;³⁸

²⁶ *Id.*; Ex. 12.

²⁷ Test. of K. Leuth; Ex. 12.

²⁸ *Id.*

²⁹ Minn. R. 9503.0040, subps. 1, 2D (2019); Minn. R. 9503.0034, subp. 1 (2019).

³⁰ Minn. R. 9503.0040, subp. 3B (1), (2).

³¹ Minn. Stat. § 245A.02, subd. 18 (2018); Minn. R. 9503.0045, subp. 1A (2019).

³² Minn. R. 9503.0145, subp. 7A (2019).

³³ *Id.*, subp. 7B.

³⁴ *Id.*, subp. 7D.

³⁵ Minn. Stat. § 245A.146, subd. 2(a) (2018).

³⁶ *Id.*, subd. 3.

³⁷ *Id.*, subd. 4.

³⁸ Minn. Stat. § 245A.1435(b) (2018).

- keep the indoor space clean;³⁹
- keep the areas used by children in good repair;⁴⁰
- keep certain electrical outlets tamper-proof or shielded;⁴¹
- keep hazardous objects from being accessible to children;⁴²
- keep the kitchen inaccessible to children (where licenser observed bottle of Quat cleaning chemical being stored on floor);⁴³
- document compliance with applicable fire and safety codes;⁴⁴
- make single use paper towels accessible to children;⁴⁵
- keep equipment and furniture in good repair;⁴⁶
- ensure each child's record contains all required information;⁴⁷
- document children's current physical examinations;⁴⁸
- document in every instance an updated physical examination for children advancing to a new age category;⁴⁹
- maintain current immunization records or signed notarized statement of parental objection to immunization or medical exemption;⁵⁰
- document that parent conferences were planned or offered;⁵¹
- maintain complete attendance records for each child;⁵²
- evaluate the risk reduction plan annually.⁵³

18. The Department found that 18 of the 32 violations cited during the March 13, 2019 inspection were repeat violations because Century had been cited for similar violations in the Order of Conditional License.⁵⁴

19. When the Department's licenser completed her inspection, she sat down with both Guye and Tahiro and conducted an "exit interview."⁵⁵ During the exit interview, she discussed with both Guye and Tahiro the violations she observed and her concerns.⁵⁶

³⁹ Minn. R. 9503.0140, subp. 9 (2019).

⁴⁰ *Id.*, subp. 20.

⁴¹ Minn. R. 9503.0155, subp. 11 (2019).

⁴² Minn. Stat. § 245A.66, subd. 2(e) (2018); Minn. R. 9503.0140, subp. 17.

⁴³ Minn. R. 9503.0155, subd. 15 (2019).

⁴⁴ Minn. Stat. § 245A.04, subd. 2(a) (2018).

⁴⁵ Minn. R. 9503.0140, subp. 15 (2019).

⁴⁶ *Id.*, subp. 19.

⁴⁷ Minn. R. 9503.0125 A - K, M (2019).

⁴⁸ *Id.* G; Minn. R. 9503.0140, subp. 4 (2019).

⁴⁹ Minn. R. 9503.0125 G; .0140, subp. 4.

⁵⁰ Minn. R. 9503.0125 G; .0140, subp. 5.

⁵¹ Minn. R. 9503.0090, subp. 2B (2019).

⁵² Minn. Stat. § 245A.14, subd. 14(a) (2018).

⁵³ Minn. Stat. § 245A.66, subd. 3(b) (2018).

⁵⁴ Ex. 12.

⁵⁵ Test. of K. Leuth.

⁵⁶ *Id.*

20. On March 29, 2019, the Department issued Century a Correction Order and Notice of Noncompliance with Terms of Conditional License based on the multiple violations found during the March 13, 2019 inspection.⁵⁷

C. Inspection in May 2019

21. The afternoon of May 9, 2019, two Department licensors went to Century to conduct another site visit.⁵⁸ When the Department's licensors arrived, only one staff person was present at Century, and school-age children were in a classroom unsupervised.⁵⁹

22. The Century staff person on duty contacted Guye and Tahiro and informed them that Department licensors had arrived at Century. Both Guye and Tahiro came to Century shortly after being contacted by the staff person.⁶⁰

23. During the site inspection, one licensor primarily spoke with Guye, while the other primarily spoke with Tahiro.⁶¹

24. Tahiro introduced himself to the licensors as a manager of Century.⁶²

25. The Department licensors were overwhelmed by the number and severity of violations of health and safety standards they observed during the site visit.⁶³ The violations included:

- multiple children without supervision;
- inadequate staff distributions;
- unsanitary conditions throughout the center, including:
 - Significant amounts of mouse droppings in areas accessible to children;
 - An unclean bathroom with sticky floor and foul odor;
- multiple hazards, including:
 - Sliding locks on the inside of classroom doors preventing children from an ability to exit through the classroom doors which were identified as emergency exits, a leaky ceiling tile in a facility hallway that appeared to be at risk of collapsing and resulted in the floor being wet;

⁵⁷ Ex. 12.

⁵⁸ Test. of K. Leuth; Ex. 13.

⁵⁹ Test. of K. Leuth.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

- no food or drink provided to children during the licensing visit which lasted from 4:00 p.m. to 8:00 p.m.;
- staff unable to provide the full names of four out of nine children in care; and
- installation of a wall between the hallway and the school age classroom without prior Department approval.⁶⁴

26. One Department licensor reviewed personnel files and observed an employee disciplinary letter issued and signed by Tahiro.⁶⁵ The letter stated that Century had received a complaint about the employee, and it directed the employee not to return to work until the investigation was completed.⁶⁶

27. At the conclusion of the site visit, the Department licensors held an exit interview with Guye and Tahiro.⁶⁷ The licensors discussed the violations they observed with both Guye and Tahiro.⁶⁸ The licensors told Guye and Tahiro that they had significant concerns regarding the health and safety of children served by Century.⁶⁹

D. Sanctions Resulting from Inspection on May 9, 2019

28. As a result of the multiple, serious violations overserved on May 9, 2019, the Department issued Century an Order of Temporary Immediate Suspension.⁷⁰ The Order immediately suspended Century's license to provide childcare services based on a determination that children served by the program were at imminent risk of harm.⁷¹

29. Century did not appeal the Order of Temporary Immediate Suspension.⁷²

30. Following the issuance of the Temporary Immediate Suspension, the Department continued its investigation of Century. On August 6, 2019, the Department issued Century an Order of License Revocation.⁷³

31. The Order of Revocation was based on Century's:

- conditional license violations;
- failure to comply with licensing laws and rules;
- licensing violations determined on May 9, 2019;
- repeat failure of supervision violations;
- repeat infant care violations;

⁶⁴ *Id.*; Ex. 13.

⁶⁵ Ex. 9.

⁶⁶ *Id.*

⁶⁷ Test. of K. Leuth.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Ex. 13.

⁷¹ *Id.*

⁷² Ex. 14.

⁷³ *Id.*

- repeat physical environment violations;
- repeat hazard violations;
- repeat health and safety violations;
- repeat equipment and supply violations;
- repeat violations of maintain children's records; and
- repeat violations of maintaining policies and administrative records.⁷⁴

32. Century did not appeal the Order of Revocation.⁷⁵

III. Sunshine's Child Care Center License Application

33. On April 18, 2019, the Department received Sunshine's application for a license to provide childcare services.⁷⁶

34. The license application listed 417 University Avenue West, St. Paul, MN 55103, as the proposed location for Sunshine's childcare center,⁷⁷ the same address of the facility operated by Century.⁷⁸

35. Tahiro proposed operating at the same address as Century because he understood that Guye planned to get out of the childcare business.⁷⁹

36. Tahiro identified himself on the application as the controlling individual for Sunshine.⁸⁰

37. When the Department received Sunshine's application, its staff ran two background reports. One report checked whether the applicant was associated with any other day care licenses, and the other provided information on the associated address.⁸¹

38. The reports documented that Tahiro had undergone a background study as part of his employment with Century and that the proposed address for Sunshine was identical to that of Century's program.⁸²

39. As a result of these reports, the Department reviewed the history of negative licensing actions involving Century and Tahiro's involvement with Century.⁸³

40. The Department asked Century's licensors about Tahiro's role at Century's center.⁸⁴ The licensors reported that Tahiro identified himself as a manager during their

⁷⁴ *Id.*

⁷⁵ Test. of K. Leuth.

⁷⁶ Test. of Donna Gainor, Ex. 2.

⁷⁷ Ex. 2.

⁷⁸ Test. of D. Gainor, Ex. 2.

⁷⁹ Test. of A. Tahiro.

⁸⁰ Test. of D. Gainor, Ex. 2.

⁸¹ Test. of D. Gainor.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

site visits, participated in exit interviews following completion of the visits, and was listed as a manager on documents filed by Century with the Department.⁸⁵ They also noted that Tahiro had signed an employee complaint investigation letter found in a Century staff personnel file.⁸⁶

41. In late April or early May of 2019, Donna Gainor, a Department childcare licensing supervisor, called Tahiro to discuss his work at Century.⁸⁷ Tahiro told Gainor that his job duties at Century consisted primarily of working at the front desk, preparing staff schedules, and working as a classroom aide.⁸⁸ Tahiro acknowledged the building's long-standing maintenance problems, and he told Gainor that he was trying to "fix things."⁸⁹

42. The Department concluded Tahiro was a "managerial official" of Century.⁹⁰ It reached this conclusion based on Century's licensing history and records, the information provided by Century's licensors, including Tahiro's self-identification as a manager and his signature on the employee complaint investigation letter, and the telephone conversation with Tahiro.⁹¹

43. The Department determined that, as a "managerial official," Tahiro was a "controlling individual" and was barred from obtaining licensure for five years based on Century's license revocation.⁹² The Department also found that Tahiro's actions in connection with his managerial role with Century demonstrated that he was not competent to operate a childcare center in compliance with the governing laws and rules. Therefore, the Department decided that further investigation of Sunshine's license application, including a site inspection, was not necessary.⁹³

44. The Department waited until Century's license was revoked and the time for appeal expired before issuing its denial of Sunshine's license application.⁹⁴

45. On September 20, 2019, the Department issued an Order of License Denial to Sunshine.⁹⁵ The Order stated that the denial was based on failure to comply with licensing laws and rules and a previous revocation of a license.⁹⁶

46. By letter dated October 3, 2019, Sunshine timely appealed the Order of License Denial.⁹⁷

⁸⁵ *Id.*; Ex. 6.

⁸⁶ Test. of D. Gainor.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*; Ex. 1. See Minn. Stat. § 245A.04, subd. 7(d).

⁹³ Test. of D. Gainor.

⁹⁴ *Id.*

⁹⁵ Ex. 1.

⁹⁶ *Id.*

⁹⁷ Ex. 15.

47. Any finding of fact contained in the Memorandum of Law is hereby adopted as such.

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.08 (2018).

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

3. In a hearing on the denial of a license application, the burden of proof is on the applicant to demonstrate by a preponderance of the evidence that he has complied with all applicable rules and laws and that the application should be approved, and a license granted.⁹⁸

4. Before issuing a license, the Commissioner must evaluate the information gathered in the application process pursuant to Minn. Stat. § 245A.04.⁹⁹ This evaluation includes evaluating the facts, conditions, or circumstances concerning the well-being of persons served by the program and the applicant's knowledge of the applicable requirements of statutes and rules governing the program.¹⁰⁰

5. The Commissioner shall not issue a license if the applicant, license holder, or controlling individual has had a licensed revoked under chapter 245A within the past five years.¹⁰¹

6. The definition of "controlling individual" includes a "managerial official whose responsibilities include the direction of the management or policies of a program."¹⁰² A "managerial official" means an individual who has decision-making authority related to the operation of the program, and the responsibility for the ongoing management or direction of the policies, services, or employees of a program."¹⁰³ A "site director who has no ownership interest in the program" would not qualify as a "managerial official."¹⁰⁴

7. Tahiro was not a controlling individual of Century because he lacked decision-making authority for Century's operation and did not direct Century's policies or services.

⁹⁸ Minn. Stat. § 245A.08, subd. 3(b).

⁹⁹ Minn. Stat. § 245A.04, subd. 6.

¹⁰⁰ *Id.*

¹⁰¹ Minn. Stat. § 245A.04, subd. 7(d)(3).

¹⁰² Minn. Stat. § 245A.02, subd. 5a(a)(4) (2018).

¹⁰³ *Id.* subd. 5a(c).

¹⁰⁴ *Id.*

8. As a manager, of Century, Tahiro was a site director of the facility who did not have an ownership interest.

9. Tahiro managed a childcare program that significantly and repeatedly failed to comply with childcare licensing laws and rules, and as such, Sunshine failed to demonstrate compliance with all applicable rules and laws governing childcare licensing and that his license should be approved.

10. Sunshine failed to demonstrate competent knowledge of the applicable laws and rules governing licensed childcare programs and failed to demonstrate an ability to operate a childcare center in compliance with applicable laws and rules, because Tahiro is its owner and controlling individual and he managed a program with repeated and significant violations of child care laws and rules.¹⁰⁵

11. Sunshine failed to establish that its Child Care Center License Application should be approved, and a license granted.

12. The Department properly denied Sunshine's childcare license application.

Based upon these conclusions of law, and for the reasons explained in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Commissioner should **AFFIRM** the denial of Sunshine's application for a childcare center license.

Dated: June 3, 2020


JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

¹⁰⁵ Minn. Stat. § 245A.04, subd. 6.

NOTICE

This report is a recommendation, not a final decision. 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, 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 (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 his final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

I. Introduction

The Department denied Sunshine's application for two reasons. First, the Department claims Tahiro was a controlling individual of Century, the license for which was revoked in August of 2019. The Department maintains it is prohibited by law from issuing Sunshine a license for five years, because Tahiro is the owner and controlling individual of Sunshine.¹⁰⁶ Second, the Department contends that because Tahiro was a manager of Century, he was responsible for the multiple and repeated licensing violations at that facility. As such, the Department argues that Tahiro does not have competent knowledge of and ability to comply with the laws and rules governing the operation of a childcare facility.¹⁰⁷ Each basis for the license denial will be discussed in turn.

II. Controlling Individual

The term "controlling individual" is defined in Minn. Stat. § 245A.02, subd. 5a (2018), as:

¹⁰⁶ See Minn. Stat. § 245A.04, subd. 7(d)(3).

¹⁰⁷ See *Id.*, subd. 6.

[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.***¹⁰⁸

Under Minnesota law, the Commissioner is barred from issuing or reissuing 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.¹⁰⁹

The relevant governing statute 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.¹¹⁰

The Department claims that Tahiro was a controlling individual of Century because he was a managerial official. The Department notes that, in addition to being listed as a manager in documentation filed with the Department,¹¹¹ he introduced himself as a manager to licensing officials, participated in licensing exit interviews, developed staffing schedules, and was involved with disciplining employees.¹¹² Based upon Tahiro's status with Century, the Department asserts Sunshine's license application must be denied.

¹⁰⁸ *Id.* (emphasis added).

¹⁰⁹ Minn. Stat. § 245A.04, subd. 7(d).

¹¹⁰ *Id.* (emphasis added).

¹¹¹ Ex. 6.

¹¹² Test. of D. Gainor; Ex. 6; Ex. 9.

Sunshine and Tahiro dispute the Department's characterization of Tahiro's role with Century. Tahiro maintains he was not a manager and not responsible for Century's multiple licensing violations.¹¹³ Tahiro insists his duties at Century were limited to working at the front desk and as a classroom aide.¹¹⁴ He maintains that he only participated in the two exit interviews with Department licensors because they were conducted within his presence, and he could not help but overhear the licensors' conversation with Guye.¹¹⁵

The Administrative Law Judge does not find Tahiro's testimony credible. Instead, the evidence presented overwhelmingly supports finding that Tahiro was a manager of Century. The record demonstrates that Tahiro was listed as a manager on documentation filed with the Department by Century, that he identified himself as a manager to Department licensors, that he oversaw staff scheduling, issued employee disciplinary letters, informed Department staff that he was working on correcting the building's maintenance issues, participated in Department licensing exit interviews, and was called by Century staff, along with Guye, to come to the facility when Department licensors arrived for site visits. The question presented, however, is whether Tahiro was a managerial official and controlling individual, or just a site manager.

The statute defines a "managerial official" as one "who has decision-making authority related to the operation of the program, and the responsibility for the ongoing management or direction of the policies, services or employees of the program."¹¹⁶ There is insufficient evidence in the record to support finding that Tahiro had decision-making authority for Century's operation. There is also no evidence in the record that Tahiro had any direction over the policies or services at Century. Each of these are necessary elements in finding that Tahiro was a managerial official. Tahiro had some management responsibilities, but without having a larger degree of responsibility regarding the facility's overall operations. The statute does not provide a definition for "site manager," but based upon the evidence, the term "site manager" is the best description of Tahiro's role at Century.¹¹⁷

As a "site manager" of Century, Tahiro can only be found to be a controlling individual if he has an ownership interest in that entity. Tahiro denied he was an owner of Century,¹¹⁸ and no evidence in the record contradicts his assertion. The Department submitted no documentary evidence that demonstrated, or even implied, that Tahiro was an owner of Century. The Department suggested that because of his management position Tahiro must be an owner,¹¹⁹ but that testimony was not persuasive.

The Administrative Law Judge finds that Tahiro was a manager of Century, but not a managerial official. Tahiro did not have an ownership interest in Century and, under the law, he was not a controlling individual of Century. Therefore, the Department's Order of

¹¹³ Test. of A. Tahiro.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Minn. Stat. §245A.02, subd. 5a (c).

¹¹⁷ See Minn. Stat. § 245A.02.

¹¹⁸ Test. of A. Tahiro.

¹¹⁹ Test. of D. Gainor.

License Denial incorrectly denied Sunshine licensure based on the five-year bar in Minn. Stat. § 245A.04, subd. 7(d).

III. Compliance with Laws and Rules Governing Childcare Facilities

The Department's second reason for denying Sunshine's application is Sunshine's failure to demonstrate an ability to comply with the laws and rules governing the operation of a childcare facility. The Department asserts that because Tahiro was a manager of Century when Century had numerous serious and repeat licensing violations, Tahiro is not qualified or competent to operate a childcare facility. The Department also points out that during one licensing site visit, Tahiro left an infant unattended to retrieve documents on behalf of Guye.¹²⁰

Sunshine vehemently disputes that Tahiro should be found responsible for Century's licensing violations and compliance failures. It maintains that Tahiro's duties at Century were limited to working at the front desk, preparing staff schedules, and working as a classroom aide. Sunshine argues that these job responsibilities are unrelated to the violations cited by the Department. Sunshine also emphasizes that Tahiro has a degree in social work, and it maintains that his experience at Century should make him more qualified to operate a childcare facility, rather than less qualified. Sunshine contends that the Department is unfairly imputing the sins of Century to Tahiro, rather than making a specific determination as to Tahiro's ability to comply with governing statutes and rules.

Sunshine raises a good argument. It is clear from the testimony and evidence in the record that the Department focused on Tahiro's responsibilities at Century to the virtual exclusion of any other inquiry. The Department was convinced that Tahiro was a controlling individual of Century and that was its primary basis for denying Sunshine's license application. This is evidenced by the fact that the Department waited until Century's license was revoked before denying Sunshine's application, which would trigger the five-year bar had Tahiro qualified as a controlling individual. It is also evidenced by the fact that the Department failed to conduct a site visit of Sunshine's proposed location or to do any other portion of the investigation it typically would do when reviewing an application. The Department could have issued a denial to Sunshine much earlier had the Department relied solely on Tahiro's alleged failure to demonstrate an ability to comply with licensing laws and rules.

Although the claim that Tahiro failed to demonstrate an ability to comply with the licensing law and rules may have been secondary, it is still a valid basis for denying Sunshine's application. While Tahiro was not a managerial official as that term is defined in the law, the evidence in the record established that he was a manager of Century. Contrary to Sunshine's contention, one may look beyond Tahiro's stated job responsibilities when judging his competence and responsibility.

"The designation of 'manager' implies general power and permits reasonable inferences that the employee so designated is invested with the general conduct and

¹²⁰ Test. K. of Leuth.

control of his employer's business."¹²¹ That Department's licensors were shocked by the number and severity of the licensing violations found at Century.¹²² Century's repeated failure to address the multiple and serious licensing violations may be fairly attributed to Tahiro because of his role as a manager of that facility. In addition, Tahiro's conduct in leaving an infant unsupervised during a Department licensing site visit is concerning and further demonstrates a lack of competency and understanding of licensing rules and regulations. The Department properly found that Sunshine, through Tahiro, does not have competent knowledge of and an ability to comply with licensing laws and rules and, therefore, the Department properly denied Sunshine's license application.

IV. Conclusion

Based upon the record in this case, the Commissioner should **AFFIRM** the Order of License Denial.

J. E. L.

¹²¹ Black's Law Dictionary 865 (5th Ed 1979).

¹²² Test. K. of Leuth.