OAH 21-1800-36677

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Bridges, MN of the Order to Pay a Fine

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

The above-entitled matter came before Administrative Law Judge Kimberly Middendorf for a hearing on June 3, 2020. The record closed that same day, at the conclusion of the hearing.

Gail A. Feichtinger, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Katie Elliot, General Counsel, appeared on behalf of Bridges, MN (Appellant).

STATEMENT OF THE ISSUES

1. Did the Department properly determine that Appellant's supervisory staff member failed to report an incident of maltreatment in violation of Minn. Stat. § 626.557, subd. 3 (2018)?

2. Did the Department properly issue a fine to Appellant?

SUMMARY OF RECOMMENDATION

The Department properly determined that Appellant's staff member failed to report an incident of maltreatment and properly issued a fine to Appellant for a violation of a health and safety law. Therefore, the Administrative Law Judge respectfully recommends that the Commissioner **AFFIRM** the Department's December 27, 2019 Order.

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

FINDINGS OF FACT

1. Appellant is licensed by the Department to provide home and community-based services for vulnerable adults in Saint Paul.[1]

2. K.D. is a vulnerable adult, who was a resident of Appellant's facility at all times relevant to this matter.[2]

[1] Testimony (Test.) of Scott Broady.

3. On the evening of October 31, 2019, a staff person (S.P.) took K.D. to a party. When S.P. observed alcohol at the party, she informed K.D. that they would have to leave the party because K.D. was not allowed to be around or consume alcohol. K.D. became upset. S.P. contacted her supervisor, E.Z., who instructed S.P. to contact Appellant's emergency response team to help calm K.D. S.P. contacted the emergency response team and, with the team's assistance, was able to calm K.D. S.P. and K.D. then left the party.[3]

4. While S.P. was driving K.D. back to the residence in a facility van after the party, K.D. turned on the radio and turned up the volume over S.P.'s objections. S.P. and K.D. began a physical altercation in the van, while it was in motion. S.P. brought the van to a stop, exited the vehicle, and pulled K.D. from the van. K.D. had visible scratches on her chest and a split lip as a result of the interaction.[4]

5. Later that night, K.D. reported the altercation to E.Z. K.D. told E.Z. that S.P. had scratched her and dragged K.D. out of the van by her hair. K.D. texted E.Z. a photograph of hair that K.D. said was pulled from her head by S.P. K.D. reported that the S.P. dragged her from the van by her hair; S.P. claimed that K.D.'s hair may have been pulled accidentally when S.P. pulled her from the van.[5]

6. E.Z. did not report the altercation as suspected maltreatment because he considered K.D. to have a history of false allegations against staff persons, and because he could not determine whether the hair shown in the photo belonged to K.D. or the staff person.[6]

7. The example of K.D.'s history of false allegations given by E.Z. was that on one occasion, K.D. claimed that a staff person purchased alcohol for her. The staff person was under the legal age to purchase alcohol and did not purchase alcohol for K.D.[7]

8. On November 1, 2019, E.Z. reported the altercation, and provided some documentation, to Appellant's Quality Assurance and Compliance Manager, Kelsey Traynor. E.Z.'s documentation of the incident omits that S.P. pulled K.D. from the van.[8] Ms. Traynor did not investigate the altercation or report suspected maltreatment. Ms. Traynor investigates on Appellant's behalf when suspected maltreatment has been externally reported or there is "serious injury."[9]

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[2] *Id.*; Test. of Kelsey Traynor.
[3] Test. of S. Broady; Ex. 5.
[4] Test. of S. Broady; Ex. 5 at 27-9.
[5] Test. of S. Broady; Ex. 5.
[6] Test. of S. Broady; Ex. 5 at 30.
[7] Ex. 5 at 30.
[8] Ex. 5 at 29; Test. of K. Traynor.
[9] Test. of K. Traynor.

9. No one reported the maltreatment of K.D. until November 4, 2019.[10] The reporter was not a member of Appellant's staff.

10. The Department substantiated that S.P. maltreated K.D. during the incident by pulling her from the van, after the alleged safety concerns had been addressed.[11]

11. E.Z. was acting on behalf of Appellant when he failed to report the alleged maltreatment.[12]

12. Appellant trained E.Z. in reporting maltreatment of a vulnerable adult under Minn. Stat. § 626.557 (2018).[13]

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 Human Services (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08 (2018).

2. Appellant received proper and timely notice of the hearing and the Department complied with all procedural requirements of statute and rule.

3. At a hearing on sanctions to be imposed for a licensing violation, the Commissioner of Human Services may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holders failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holders to demonstrate by a preponderance of the evidence that they were in full compliance with those laws and rules at the relevant times.[14]

4. Pursuant to Minn. Stat. § 626.5572, subd. 16(4) (2018), a "mandated reporter" is a professional or professional's delegate while engaged in the care of vulnerable adults.

5. A mandated reporter who has reason to believe that a vulnerable adult is being or has been maltreated shall immediately report the information to the common

[10] Test. of S. Broady; Test. of K. Traynor; Ex. 1.
[11] Test. of S. Broady; Exs. 4-6.
[12] Exs. 101, 102.
[13] Joint Stipulation of Facts, May 26, 2020.
[14] Minn. Stat. § 245A.08, subd. 3(a).

entry point.[15] "Immediately" means "as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received."[16]

6. The Department met its burden of establishing that E.Z. was a mandated reporter who had reason to believe that K.D. had been maltreated and failed to report the maltreatment.

7. A license holder means "an individual, organization, or government entity that is legally responsible for the operation of the program or service, and has been granted a license by the commissioner" under Minn. Stat. ch. 245A (2018) and the rules of the commissioner.[17]

8. Appellant is an organization that meets the definition of a "license holder," as defined by Minn. Stat. § 245A.02, subd. 9. Appellant's supervisory staff persons, including E.Z., are part of the organization and act on its behalf.

9. The Commissioner may impose a fine against a license holder that "fails to comply fully with applicable laws or rules[.]"[18]

10. Under Minn. Stat. § 245A.07, subd. 3(c)(4)(iv) "the license holder shall forfeit $200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision[.]"

11. For purposes of Minn. Stat. § 245A.07, "occurrence" means "each violation identified in the commissioner's fine order."[19]

12. The failure to report suspected maltreatment is a violation of a law governing matters of health, safety or supervision within the meaning of Minn. Stat. § 245A.07, subd. 3(c)(4)(iv).

13. Appellant failed to meet its burden of establishing that it was in full compliance with applicable laws or rules.

14. The Department properly imposed a fine of $200 against Appellant.

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

[15] Minn. Stat. § 626.557, subd. 3(a).
[16] Minn. Stat. § 626.5572, subd. 10 (2018).
[17] Minn. Stat. § 245A.02, subd. 9.
[18] Minn. Stat. § 245A.07, subd. 3(a)(1).
[19] Minn. Stat. § 245A.07, subd. 3(c)(4).

RECOMMENDATION

The Commissioner should **AFFIRM** the December 27, 2019 order.

Dated: August 6, 2020

KIMBERLY MIDDENDORF
Administrative Law Judge

\Reported: 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 parties' dispute is more legal than factual. There is no real dispute that S.P. maltreated K.D. by pulling her out of the van, that K.D. reported the maltreatment to

E.Z., and that E.Z. did not report the maltreatment. The suspected maltreatment was substantiated in a separate matter.[20]

The Department seeks to impose a fine against Appellant for its supervisory staff's failure to report suspected maltreatment, as a violation of a law regarding the health, safety, or supervision of a vulnerable adult. Appellant contends that it is not subject to a fine for its staff's failure to report, because Appellant itself is not a mandated reporter.

Remedial statutes are generally entitled to liberal construction in favor of the remedy the statutes provide or the class they benefit.[21] Minn. Stat. §§ 626.557 and 245A.07 are remedial statutes that must be read together to further the important public purpose of protecting vulnerable adults from maltreatment.

The Commissioner may impose a fine against a license holder that fails to comply fully with applicable laws or rules. Appellant is a license holder. A license holder is an organization that is "legally responsible" for the operation of a program licensed by the Department.[22] Thus, while it is true that Appellant is not itself a mandated reporter, it does not follow that it is not subject to sanctions when its staff member, who is a mandated reporter, fails to comply with a health and safety obligation like reporting alleged maltreatment. While the specific duty to report is imposed upon individual mandated reporters, the license holder nevertheless is obligated to fully comply with applicable laws or rules. Acting on Appellant's behalf, as a part of the organization, E.Z. failed to report suspected maltreatment. Failure to report maltreatment is a violation of a health and safety obligation for which the license holder can be sanctioned under Minn. Stat. § 245A.07.

The interpretation urged by Appellant is inconsistent with the policy to ensure safety and wellbeing of vulnerable adults. Arguments like the one made by Appellant has been considered and rejected in the context of the Maltreatment Against Minors Act, which has similar reporting requirements.[23] To conclude otherwise would absolve an organization of its responsibility, as a license holder, to ensure that its staff comply with health and safety regulations meant to protect the same vulnerable individuals the organization is licensed to serve.

Moreover, the facts of this case highlight the sound policy inherent in a licensed organization's responsibility under Minn. Stat. § 245A.07 for the unlawful acts or omissions of its staff. Appellant's witness, Ms. Traynor, testified that she conducts an investigation only if an incident is reported externally as maltreatment, or if there is a "serious injury." The flaw in this approach is readily apparent, as an injury need not be "serious" to constitute suspected maltreatment, which must be reported. E.Z.'s omission of the important fact of S.P. pulling K.D. from the van does not relieve Appellant of its

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[20] *See* Ex. 6.
[21] *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010).
[22] *See* Minn. Stat. § 245A.07.
[23] *See In the Matter of the Appeal by Playschool Child Care of the Order to Pay a Fine*, No. 65-1800-35829, 2018 WL 3586888 (Minn. Office Admin. Hearings. June 5, 2018).

obligation to ensure its organization follows health and safety regulations. Furthermore, one of the issues the Act is intended to address is an organization conducting its own "investigation" before and rather than submitting suspected maltreatment to the neutral fact-finding of the outside licensing authority. Appellant was clearly aware that an altercation had occurred between a staff member and a vulnerable adult that left the vulnerable adult with scratches and a split lip. Appellant must take care to ensure that it not only trains staff on mandatory reporting requirements but also that it fosters a culture that promotes reporting.

K. J. M.