

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

In the Matter of the Appeal by Ines Vargas of the Order of License Denial, License No. 1101226 (Family Childcare) (in Application)

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

The above-entitled matter came before Administrative Law Judge Kimberly Middendorf for a hearing on September 4, 2020. The record closed at the conclusion of the hearing on September 4, 2020.

G. Paul Beaumaster, Assistant Dakota County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Derek P. Chrysler, Derek P. Chrysler, PLLC, appeared on behalf of Ines Vargas (Appellant).

STATEMENT OF THE ISSUE

Did the Department properly deny Appellant's application to provide family childcare under Minn. Stat. § 245A.04, subd. 6 (2020), and 245A.05 (a) (2020)?

SUMMARY OF RECOMMENDATION

Because Ms. Vargas knowingly provided false information in her application for a family childcare license, and conditions in the program may present a risk of harm to children, the Administrative Law Judge respectfully recommends the Commissioner of the Department of Human Services (Commissioner) affirm the denial of Ms. Vargas' application and decline to grant her a childcare license.

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

FINDINGS OF FACT

1. On June 6, 2019, Appellant submitted an application to operate a family childcare program at 3213 Sunset Lake Drive, Burnsville, MN, 55337 (2019 Application), under License Number 1101226 (In Application).¹

2. Ms. Vargas was educated as a teacher in Mexico, where she obtained a technical degree to teach kindergarten. Ms. Vargas was a teacher at Woodpark

¹ Notice and Order for Hearing; Testimony (Test.) of Jolene Swan; Exhibit (Ex.) 8 at 5.

Montessori in Burnsville for approximately fifteen years.² Woodpark Montessori's director described Ms. Vargas as a "compassionate" and "amazing" teacher possessed of "patience" and "kindness" who "truly cares about her students."³

3. Appellant primarily speaks Spanish. English is Appellant's second language.⁴

4. Ms. Vargas previously applied for a license to operate a family childcare program in Prior Lake, in 2015 (2015 Application).⁵

5. On August 13, 2015, Ms. Vargas and her family, including her husband, Baldomero Valenzo, and children, Antonio David Valenzo, Ashley Bonillo Rangel, and Joab Bonilla Rangel, moved to Pennsylvania.⁶

6. The 2015 Application was denied on August 19, 2015, based on the disqualification of two individuals in Appellant's home – her husband, and her son Joab.⁷

7. Mr. Valenzo's disqualification was for his misdemeanor conviction for malicious punishment of a child in 2008. He punched his teenaged son, Joab, in the face after becoming angry that his son was playing computer games instead of shoveling snow. The disqualification period for this offense expired on July 27, 2017.⁸

8. Ms. Vargas' son Joab was disqualified as a result of being charged with, and pleading guilty to, third-degree assault following an altercation with a student in 2010, when he was about 15 years old. The Department determined a second disqualification was warranted based upon a preponderance of evidence that Joab was guilty of fifth-degree possession of a controlled substance. In 2011, Prior Lake Police Department's drug sniffing dog led them to Joab's car outside of school, where they found a small amount of marijuana, a marijuana pipe, and one blue pill later identified as Adderall.⁹

9. By letter dated November 3, 2014, Ms. Vargas received notice that Mr. Valenzo was disqualified.¹⁰

10. Ms. Vargas received the 2015 Application denial letter on October 17, 2015, by certified mail.¹¹

11. Appellant did not appeal the denial of the 2015 Application.¹²

² Test. of Ines Vargas; Ex. 6 at 5.

³ Ex. 6 at 5.

⁴ *Id.* at 8; Test. of I. Vargas.

⁵ Ex. 6.

⁶ Ex. 101; Test. of I. Vargas.

⁷ Ex. 8 at 14.

⁸ Ex. 5 at 5; Ex. 7 at 1.

⁹ Ex. 7 at 2.

¹⁰ Ex. 8 at 24, 28.

¹¹ *Id.* at 19.

¹² *Id.* at 21.

12. On November 17, 2015, the Department sent a letter to Appellant's Prior Lake address, regarding the prohibition against providing legally unlicensed childcare pursuant to Minn. Stat. § 245A.03, subd. 2b(1) (2020).¹³ Appellant did not receive this letter.¹⁴

13. Ms. Vargas moved back to Minnesota and, on June 6, 2019, applied for a family childcare license (2019 Application). When Ms. Vargas applied, she and her husband were separated and did not reside together. Ms. Vargas obtained a restraining order against her husband during their separation. Ms. Vargas resided with only her daughter, Ashley, at this time.¹⁵

14. In the 2019 Application, Ms. Vargas listed herself and Ashley as the members of her household. Ms. Vargas also checked "no" in answer to the question: "have you ever had a DHS license denied or revoked?"¹⁶ Ms. Vargas checked "no" in response.¹⁷

15. Department background studies include criminal histories and prior licensing actions, including application denials.¹⁸

16. When Ms. Vargas' background study revealed that she had been denied a license in 2015, Jolene Swan, a county licensor, questioned Ms. Vargas about it. Ms. Vargas denied previously applying for licensure, until Ms. Swan revealed that the prior denial had come to light in the background study.¹⁹

17. Ms. Vargas and her husband subsequently reconciled and began to reside together again during the application process. Ms. Vargas did not update her application to reflect this change in her household.²⁰ She did not inform Ms. Swan of the change in her household.²¹

18. Ms. Vargas' son Joab is now 26 years old.²² Joab does not reside with her and has not resided with her during the timeframe relevant to the 2019 Application.²³

19. Ms. Vargas operated an unlicensed daycare in Burnsville and provided childcare to two unrelated children from September 3, 2019 to October 25, 2019. Ms. Vargas' daycare was open Mondays through Fridays, approximately 39 days, during this period.²⁴

¹³ *Id.*

¹⁴ Test. of I. Vargas.

¹⁵ *Id.*; Test. of J. Swan; Ex. 8 at 6.

¹⁶ Ex. 8 at 5.

¹⁷ Test. of I. Vargas.

¹⁸ Test. of J. Swan.

¹⁹ *Id.*

²⁰ Test. of I. Vargas.

²¹ Test. of J. Swan.

²² Ex. 5 at 13.

²³ Test. of I. Vargas.

²⁴ Exs. 103, 104; Test. of I. Vargas.

20. On October 4, 2019, Dakota County notified Ms. Vargas that it had received information that she was operating an unlicensed childcare. Dakota County informed Ms. Vargas that she was only allowed to provide unlicensed care to family members, as a result of the denial of the 2015 Application.²⁵

21. On October 31, 2019, the Department completed and cleared Ms. Vargas' and her daughter's background studies. No concerns were noted.²⁶

22. On December 5, 2019, Dakota County recommended that the Department deny Appellant's application for a family childcare license based on allegations that:

- a. She had a previous license denial based on the disqualification of two individuals in Appellant's home;
- b. Appellant indicated on the family childcare license application that she had never had a family childcare license application denied; and
- c. In 2019 she operated an unlicensed daycare.²⁷

23. The mother of one of the children in Ms. Vargas' daycare is a teacher in the St. Paul School District. She wrote a letter of support for Ms. Vargas' childcare. In it, she praised Ms. Vargas' professionalism and her candor about her licensing status. This mother described Ms. Vargas' care as "excellent," her facilities as "conducive to learning," and the daycare itself as "very well maintained and clean." She urged that the application be approved because Ms. Vargas "seems to genuinely love working with kids" and "is really good at it."²⁸

24. The mother of the second child in Ms. Vargas' daycare also wrote a letter of support for Ms. Vargas' application. She reported that she and her husband "were very pleased with the care" of their daughter and were "devastated" when Ms. Vargas closed her daycare. She noted that Ms. Vargas "has a desire and passion to teach" and does it with patience and love.²⁹

25. On April 16, 2020, based on the County's recommendation, the Department issued an Order of License Denial (Order) of Appellant's 2019 Application based on the following:

- a. The Commissioner's evaluation of the program, under Minnesota Statutes, section 245A.04, subdivision 6;
- b. Appellant provided false and misleading information or knowingly withheld relevant information, under Minnesota

²⁵ Test. of J. Swan; Test. of I. Vargas; Ex. 8 at 30.

²⁶ Ex. 9.

²⁷ Ex. 8 at 1-4.

²⁸ Ex. 103.

²⁹ Ex. 104.

Statutes, section 245A.05, paragraph (a), subparagraph (3), when she told Dakota County in connection with her application that she had never had a license denied;

- c. Appellant failed to comply with licensing laws and rules, under Minnesota Statutes, section 245A.05, paragraph (a), subparagraph (2), when she provided unlicensed childcare; and
- d. Appellant had a previous denial of a license.³⁰

26. Appellant timely appealed the Order via certified mail through counsel in a letter dated May 1, 2020, and received by the Department on May 4, 2020.³¹

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 (2020).

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

3. Ms. Vargas bears the burden of proof to demonstrate by a preponderance of the evidence that she fully complied with applicable laws and rules, that the application should be approved, and a license should be granted.³²

4. Pursuant to Minn. Stat. § 245A.04, subd. 7(a) (2020), “If the commissioner determines that the program complies with all applicable rules and laws, the commissioner shall issue a license consistent with this section[.]”

5. Pursuant to Minn. Stat. § 245A.04, subd. 6(a), before issuing a license, the Commissioner must perform an evaluation of the information gathered in the licensing process, which:

shall consider the applicable requirements of statutes and rules for the program or services for which the applicant seeks a license, including the disqualification standards set forth in chapter 245C, and shall evaluate facts, conditions, or circumstances concerning: (1) the program's operation; (2) the well-being of persons served by the program; (3) available evaluations of the program by persons receiving services; (4) information about the qualifications of the personnel employed by the applicant or license holder; and (5) the applicant's or license holder's ability to

³⁰ Notice and Order for Hearing at Ex. 1; Test. of J. Swan.

³¹ Notice and Order for Hearing.

³² Minn. Stat. § 245A.08, subd. 3(b).

demonstrate competent knowledge of the applicable requirements of statutes and rules, including this chapter and chapter 245C, for which the applicant seeks a license or the license holder is licensed.

6. The commissioner shall also evaluate the results of background studies and determine whether a risk of harm to the persons served by the program exists.³³

7. Under Minn. Stat. § 245A.05 (2020), the Commissioner may deny a license if the Applicant:

- (1) fails to submit a substantially complete application after receiving notice from the commissioner under § 245A.04, subd. 1;
- (2) fails to comply with applicable laws or rules;
- (3) knowingly withholds relevant information from or gives false or misleading information to the Commissioner in connection with an application for license or during an investigation;
- (4) has a disqualification that has not been set aside under § 245C.22 and no variance has been granted;
- (5) has an individual living in the household who received a background study under § 245C.03, subd. 1(a)(2), who has a disqualification that has not been set aside under § 245C.22 and no variance has been granted;
- (6) is associated with an individual who received a background study under § 245C.03, subd. 1(a)(6), who may have unsupervised access to children and who has a disqualification that has not been set aside under § 245C.22 and no variance has been granted; or,
- (7) fails to comply with § 245A.04, subd. 1(f) or 1(g).

8. Under Minn. Stat. § 245A.03, subd. 2(a) (2020), childcare may be provided without a license under certain circumstances, including care provided by an unrelated individual to children from a single related family and for children for a cumulative total of less than 30 days in any 12-month period.³⁴

³³ Minn. Stat. § 245A.04, subd. 6(b) (2020).

³⁴ Minn. Stat. § 245A.03, subd. 2(a)(2), (15) (2020).

9. Under Minn. Stat. § 245A.03, subd. 2b (2020), an applicant for licensure who has received a license denial that has not been reversed on appeal may not operate as a legally unlicensed childcare provider.

10. A preponderance of the evidence establishes that Ms. Vargas provided unlicensed childcare in violation of Minn. Stat. § 245A.03 (2020).

11. A preponderance of the evidence establishes that Ms. Vargas provided false information in the 2019 Application when she denied that she had ever had a license denied.

12. Ms. Vargas failed to establish, by a preponderance of the evidence, that she fully complied with Chapter 245A in the application process and that her application should be approved and a license granted.

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

RECOMMENDATION

The Administrative Law Judge respectfully recommends the Commissioner affirm the denial of Ms. Vargas' application and decline to grant Ms. Vargas a conditional license.

Dated: December 2, 2020



KIMBERLY MIDDENDORF
Administrative Law Judge

Reported: Digitally Recorded
No Transcript Prepared

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 (2020), 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 (2020). 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 (2020), 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 set forth four bases for denial of the 2019 Application. First, the Department determined that the evaluation of the program under Minn. Stat. § 245A.04, subd. 6, required that the 2019 Application be denied. Second, the Department concluded that Ms. Vargas failed to demonstrate competent knowledge of applicable statutes and rules, because she operated an unlicensed childcare while the application was in process. Third, the Department found that Ms. Vargas provided false and misleading information in her 2019 Application because she represented that she had never been denied a license. Fourth, the Department denied the 2019 Application because Ms. Vargas had been denied a license in 2015.

Before deciding whether to grant or deny a license application, Minn. Stat. § 245A.04, subd. 6, requires the Commissioner to evaluate facts, conditions, or circumstances concerning: (1) the program's operation; (2) the well-being of persons served by the program; (3) available evaluations of the program by persons receiving services; (4) information about the qualifications of the personnel employed by the applicant or license holder; and (5) the applicant's or license holder's ability to demonstrate competent knowledge of the applicable requirements of statutes and rules, including this chapter and chapter 245C, for which the applicant seeks a license or the license holder is licensed. The Commissioner must also consider the results of required background studies to determine whether there is an unacceptable risk of harm to persons served by the program.

First, the Department's evaluation of the program was based upon Ms. Vargas' representation that she had never been denied for a license, and her operation of an unlicensed daycare for about six weeks during the application process. The Department also found that Mr. Valenzo's residence in the home presented risk in the program operation because he had previously been disqualified and had not been disclosed as a resident of the home by Ms. Vargas.

Weighing against these concerns is credible evidence that Ms. Vargas is extremely well-qualified to provide childcare by virtue of her training and experience. Ms. Vargas was employed by a preschool for 15 years, a mandated reporter working with other mandated reporters, without any indication of risk to children. The school's director wrote a glowing letter of support for Ms. Vargas' application. The mothers of the two children who attended her unlicensed childcare highlight many laudable qualities of the care Ms. Vargas provided to their children. Her program has valuable qualities in addition to ensuring the safety of children in it, such as a focus on education and bilingual language development. The Department completed and cleared her background study.

Second, the Department questioned Ms. Vargas' ability to comply with requirements applicable to childcare programs and pointed to her operation of an unlicensed program in violation of Minn. Stat. § 245A.03, subd. 2. Ms. Vargas admits that she operated an unlicensed daycare, and because of the 2015 Application denial, now understands she is prohibited from doing so. This prohibition is important because it prevents potential harm to children until the Commissioner is afforded a subsequent opportunity to review a prospective daycare provider's program. The Department argues that by providing unlicensed childcare, Ms. Vargas proved that she does not follow applicable law. Ms. Vargas testified credibly that she believed she could provide limited services while her application was being processed. She made the parents aware that her license application had not been approved yet. When she was made to understand that the law does not allow this because of her past application denial, she ceased providing care to unrelated children. This demonstrates that Ms. Vargas complies with orders and is open to direction from the Department. Viewed on its own, this is an insufficient basis to deny the application.

Third, the Department concluded that Ms. Vargas' 2019 Application should be denied because she provided false and misleading information. The Administrative Law Judge agrees that this constitutes a serious concern about the proposed program. Ms. Vargas admits that she provided incorrect information in her 2019 Application but denies that she did so knowingly. It is worth noting that English is Ms. Vargas' second language and that, as Ms. Swan testified, she exhibited some confusion regarding the application process. According to Ms. Vargas, she threw away the letter without reading it because she was no longer planning to open a daycare as a result of her move to Pennsylvania. Ms. Vargas explained that she believed she had abandoned the 2015 Application before a final decision was made.³⁵ Yet Ms. Vargas was certainly aware, by virtue of Scott County's November 3, 2014, letter and phone call, that her husband and her son each had a disqualification, which, without a variance, would unquestionably result in denial of the 2015 Application. While Ms. Vargas was generally credible in her testimony, her explanation for her purported lack of knowledge of the 2015 Application denial did not ring true. In any event, mail that is received is presumed to be read.

In its recommendation to the Department, the County correctly observed that there "is a risk to children in care if the applicant is dishonest or misleading about important

³⁵ Test. of I. Vargas.

information in the licensing process. Further false and misleading information has potential impact that could range from minor to great harm to children in care.”³⁶ The County’s and Department’s concerns have merit. The Commissioner must be able to trust that childcare providers will be candid in providing all pertinent information about program conditions, even when that information is not favorable. Providing false and misleading information constitutes grounds to deny an application pursuant to Minn. Stat. § 245A.05.

The Department’s fourth basis for denial – the 2015 Application denial – is a consideration outside of the statutory bases for denial. Minn. Stat. § 245A.04, subd. 7 (2020), makes a prior denial a bar to licensure for two years. As such, the law expressly contemplates subsequent applications, in recognition that conditions can change over time. Such is the case here. Ms. Vargas’ 2015 Application was denied because two household members were subject to disqualification. Ms. Vargas’ husband’s disqualification expired in 2017, and her son no longer resides with her. Since four years passed before Ms. Vargas reapplied for licensure, the 2015 Application denial is not a bar to licensure.

Although the prior denial is not an independent basis for denial under Minn. Stat. § 245A.04 (2020), it is still relevant, because Ms. Vargas’ lack of candor frustrated the Department’s ability to fully evaluate all conditions in the program. Ms. Vargas did not disclose the prior denial, and because she did not disclose her husband’s return to her home, the Department has not been able to evaluate what risk of harm might be present in her program. While her husband’s disqualification for malicious punishment of their son has expired, he has not undergone a current background study. A background study would permit the Commissioner to determine whether that incident was an isolated one brought on by a parent’s worst moment of frustration with a difficult teenager, or whether there have been subsequent episodes of violence that may reflect on the safety of children in Ms. Vargas’ care. Indeed, there is some indication in the record that Mr. Valero may present recent or ongoing safety concerns, as during their separation, Ms. Vargas herself was sufficiently concerned to obtain a restraining order against him.

It is with considerable regret that the Administrative Law Judge makes this recommendation. The record is replete with evidence that Ms. Vargas is an excellent caregiver and teacher. There is concern, however, that she may conceal unfavorable information about her program from the Commissioner, as she did by representing that she had not been denied a license and that her husband had returned to the home. Under Minn. Stat. § 245A.05, the Commissioner may deny a license if an applicant provides false or misleading information. Because Ms. Vargas has failed to establish that she was fully in compliance with applicable law, the Commissioner is not obligated by virtue of the statute to issue a license to her. The grant of Ms. Vargas’ 2019 Application is a matter of the Commissioner’s discretion. A complete evaluation of the program does not clearly weigh against granting the 2019 Application, as there is much to recommend it. Yet, as the safety of children in care must be the paramount concern here, and the risks

³⁶ Ex. 8 at 3.

associated with the program have not been fully evaluated, the Administrative Law Judge respectfully recommends that the Commissioner not grant the application.

K. J. M.