OAH 82-1800-38479

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Angel Adult Day Center LLC of the Order of License Denial License No. 1110266 (Adult Day Center Services)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came on for a contested case hearing before Administrative Law Judge Barbara Case on November 21, 2022. The record closed on December 5, 2022, with the filing of closing arguments.

Benjamin C. Johnson, Assistant Attorney General, appeared on behalf of the Minnesota Department of Human Services (Department). Steven R. Coon, Law Offices of Steven Coon, appeared on behalf of Angel Adult Day Center (Appellant).

ISSUE

Did the Department properly deny Appellant's application for a license to licensed adult day care services?

SUMMARY OF RECOMMENDATION

Appellant failed to prove by a preponderance of the evidence that it submitted a complete application or demonstrated competent knowledge of applicable licensing statutes and rules. Therefore, the Administrative Law Judge respectfully recommends that the Commissioner AFFIRM the license denial.

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

FINDINGS OF FACT

1. Jemal Hassen is the authorized agent for Appellant.[1] In July 2021, Appellant submitted license applications for a day services[2] license and for an adult day

[1] Exhibit (Ex.) 1.
[2] The Department witnesses refer to this as a "245D license" in reference to the statutes that authorize it.

center license. Adult Day Center licenses are issued to entities for providing functionally impaired vulnerable adults with nutrition, health and social services.[3]

2. Brittany Raddatz, a Senior Licensor with the Department, reviewed Appellant's applications.[4] On August 24, 2021, Ms. Raddatz spoke to Mr. Hassen and explained that adult day services and 245D services (day services) could not be provided in the same space without affecting the licensed capacities under both licenses. She asked Appellant to consider whether it would be finding a second space for the 245D application and whether it would proceed with one or both applications. She sent him additional information by email.[5] Mr. Hassen decided to withdraw the day services application and proceed with the adult day center application.[6] That application had been received by the Department on July 9, 2021.[7]

3. On September 22, 2021, the Department sent Appellant a Notice of Incomplete Application (Notice).[8] The Notice told Appellant which requirements had not been met, identified what documents were missing and provided an explanation of what was required to fulfill each item.[9] Information missing from the application included: background studies; identification of a compliance officer; nutrition and exercise programs; socialization activities; and abuse prevention plans. Required inspections had not been done and required policies were not submitted. There were inconsistencies and contradictions in the information submitted.[10] The Notice set a deadline of November 8, 2021, for Appellant to submit the required information.[11] The Notice also explained options for proceeding or withdrawing the application and the consequences of a license denial.[12]

4. On October 27, 2021, Ms. Raddatz emailed Mr. Hassen reminding him that the deadline for submitting the missing information was approaching and that if he did not take action his application "may be withdrawn."[13]

5. On November 5, 2021, Mr. Hassen submitted additional information.[14]

6. On November 17, Ms. Raddatz sent Mr. Hassen a detailed list of more than 25 items that were missing from his revised application.[15] The missing items

[3] Testimony (Test.) of Brittany Raddatz.
[4] Test. of B. Raddatz.
[5] Ex. 2; Test. of B. Raddatz.
[6] Ex. 3; Test. of B. Raddatz.
[7] Ex. 4. The license application (Ex. 2) is stamped received by the Department on June 11, 2021. Ms. Raddatz believed that date stamp was an error.
[8] Ex. 4.
[9] Ex. 4.
[10] Ex. 4.
[11] Ex. 4.
[12] Test. of B. Raddatz; Ex. 4. If a license if withdrawn, the license applicant may later reapply but must pay a new license application fee. Minn. Stat. § 245A.10, subd. 3(a) (2022). An applicant or controlling individual whose application was denied must not be granted a license for two years following a denial. Minn. Stat. § 245A.04, subd.7(d)(2) (2022).
[13] Ex. 6 at 189.
[14] Ex. 6.

included grievance procedures, an abuse prevention plan, a catering contract and menus, and required contracts with other professionals such as a registered nurse.[16] Ms. Raddatz explained that the application remained substantially incomplete.[17] The email reminded Mr. Hassen that the Notice had stated that "if you submit additional information and your application is still not substantially complete or does not meet licensing requirements, the commissioner may issue you an Order of License Denial as specified under Minnesota Statutes, section 245A.05, paragraph (a)."[18] The email requested Appellant review this "second request for information" and that Ms. Raddatz and Appellant schedule a phone call to discuss any questions Appellant might have regarding the information.[19]

7. On November 24, 2021, Ms. Raddatz held a phone conference with Mr. Hassen. She went over the application and explained issues she had found with the application.[20] She explained that the application continued to be substantially incomplete, referred him to the Notice for the specific deficiencies and stated that if his next submission was not complete the Department might deny the application.[21] She set a deadline of December 2, 2021, to supplement the incomplete application.[22]

8. On December 2, 2021, Mr. Hassen submitted additional information, attempting to submit a complete application.[23]

9. On January 12, 2022, Ms. Raddatz sent Mr. Hassen another email detailing the information that was missing from his application.[24] The email reminded Mr. Hassen of the possible consequences of failing to submit a complete application.[25]

10. On January 13, 2022, Ms. Raddatz held a phone conference with Mr. Hassen. He asked for an explanation of what was missing item by item and Ms. Raddatz explained that the Notice listed with specificity each item that was missing. She also explained that the Notice detailed any issues with the documents he had submitted and pointed out some of the problems that the notice identified.[26] Ms. Raddatz asked Mr. Hassen to submit a complete application by January 31, 2022. Ms. Raddatz agreed that inspections that had to be completed by other agencies could be submitted later because the timing of those inspections was not entirely within Mr. Hassen's control.[27]

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[15] Ex. 6.
[16] Ex. 6 at 186-87.
[17] Ex. 6.
[18] Ex. 6.
[19] Ex. 6; Test. of B. Raddatz.
[20] Exs. 12, 13.
[21] Exs. 12, 13.
[22] Exs. 12, 13.
[23] Ex. 7.
[24] Ex. 10; Ex. 2; Test. of B. Raddatz.
[25] Ex. 10; Ex. 2; Test. of B. Raddatz.
[26] Ex. 14.
[27] Ex. 14; Test. of B. Raddatz.

11. On January 31, 2022, Mr. Hassen submitted additional information.[28] The application continued to be substantially incomplete.[29] Among other things, the application lacked: background studies for controlling individuals; policies and procedures for fire and weather emergencies; complete personnel files; a contract with a registered nurse; complete participant records; and mandatory program documentation, such as a contract with a food service provider ensuring menus approved by the registered dietician could be followed, a structured exercise program developed in consultation with physical therapist, and a monthly plan for diversified program activities, including all hours/days of operation.[30]

12. On February 25, 2022, the Department received Appellant's state fire marshal inspection form and, on March 4, 2022, the Anoka County health license.[31]

13. Appellant failed to demonstrate competent knowledge of applicable licensing statutes and rules when it was unable to complete the application process over the course of six months, and after receiving extensive technical assistance from the Department on September 22, 2021 (letter), November 17, 2021 (email), November 24, 2021 (phone), January 12, 2022 (email), and January 13, 2022 (phone).[32]

14. On April 25, 2022, the Department issued an Order of License Denial (Order) to Appellant.[33] The Order listed over fifteen items that were missing from the application. The Order listed the incomplete application, Appellant's failure to exhibit knowledge of applicable licensing statutes and rules and the Commissioner's evaluation of the program as reasons for the license denial.[34]

15. Appellant timely appealed the Order by correspondence dated May 25, 2022, and received by the Department on June 3, 2022.[35]

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 14.50 and 245A.05 (2022).

[28] Ex. 9; Ex. 2; Test. of B. Raddatz.
[29] Ex. 9; Ex. 2; Test. of B. Raddatz.
[30] Ex. 2; Test. of B. Raddatz.
[31] Ex. 9; Ex. 2; Test. of B. Raddatz.
[32] Test. of B. Raddatz; *see generally* Exs. 1-14.
[33] Ex. 1.
[34] Ex. 1.
[35] Notice and Order for Prehearing Conference and Hearing (June 30, 2022).

2. The Department gave proper and timely notice of the hearing in this matter.

3. Before denying a license, the Department shall evaluate and consider the applicable requirements of statutes and rules for the program or services for which the applicant seeks a license, . . . and shall evaluate facts, conditions, or circumstances concerning:

- the program's operation;
- the well-being of persons served by the program;
- available evaluations of the program by persons receiving services;
- information about the qualifications of the personnel employed by the applicant;
- the applicant's ability to demonstrate competent knowledge of the applicable requirements of statutes and rules for which the applicant seeks a license or the license holder is licensed; and
- the results of background studies of those having or proposed to have direct contact with individuals served in the facility.[36]

4. The Department provided Appellant written notice that its application was incomplete and substantially deficient. In the written notice the Department identified the documents that were missing or deficient and give the applicant more than 45 days to resubmit a substantially complete application.[37]

5. An applicant's failure to submit a substantially complete application after receiving notice from the Department is a basis for license denial.[38]

6. An applicant's failure to demonstrate competent knowledge of the applicable requirements of statutes and rules if a basis for a license denial.[39]

7. The Appellant bears the burden of proof to demonstrate by a preponderance of the evidence that the Appellant has complied fully with Chapter 245A and other applicable law or rule and that the application should be approved and a license granted.[40]

8. The Appellant failed to demonstrate by a preponderance of the evidence that it submitted a substantially complete application or that it had a competent knowledge of the laws and rules related to the license sought.

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[36] Minn. Stat. § 245A.04, subd. 6(a) & (b) (2022).
[37] Minn. Stat. § 245A.04, subd. 1 (2022).
[38] Minn. Stat. § 245A.04, subd. 1(a).
[39] Minn. Stat. § 245A.05(a)(8); Minn. Stat. § 245A.04, subd. 6(a)(5).
[40] Minn. Stat. § 245A.08, subd. 3(b) (2022); Minn. R. 1400.7300, subp. 5 (2021).

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

RECOMMENDATION

Appellant failed to prove by a preponderance of the evidence that it submitted a substantially complete application or that it had a competent knowledge of the laws and rules related to the license sought. Therefore, the Administrative Law Judge respectfully recommends that the Department uphold the license denial.

Dated: March 14, 2023

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 the Department of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2022), 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 Administrative Law Office staff at DHS_AdminLaw@state.mn.us 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 (2022). 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 to be imposed.

Under Minn. Stat. § 14.62, subd. 1 (2022), the Commissioner is required to serve a final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Background

Adult day care facilities are licensed by the Department to provide nutrition, health, exercise, socialization, and engagement activities to vulnerable adults who are typically elderly and frail.[41] Because of the vulnerabilities of the population to be served, adult day care centers must be able to recognize the needs of their participants and assist them to access relevant social services.[42]

Appellant, through its authorized agent, Mr. Hassen, applied for a license to operate an adult day center. The Department denied Appellant's application because it was not substantially complete and because, throughout the application process, Mr. Hassen did not demonstrate competent knowledge of the applicable requirements of statutes and rules.[43]

Credibility

Both Department witnesses testified in a direct and thorough manner. Most importantly for a credibility determination, their testimony was supported by contemporaneous documentation. In addition, recording of the conferences held with Mr. Hassen further supported their testimony.

While Mr. Hassen testified to what he believed to be true, that he is competent to run an adult day care, his opinion was unsupported by the evidence and lacked specificity.

Arguments

The parties agree Appellant has the burden to demonstrate that it complied with all applicable laws and applicable rules.[44] The applicable rules are found at Minn. R. 9555.9600-.9730 (2021).

Appellant argues that it ultimately submitted a substantially complete application for an adult day care services license.[45] Appellant argues though there was some problem connecting Mr. Hassen's background study to his application, a background clearance letter was ultimately submitted.[46] Appellant also argues that it ultimately submitted: written policies and procedures including an emergency plan, personnel files, documentation of a registered nurse available to work for it if the license was granted, and a contract with a licensed physical therapist. Appellant asserts that participant

[41] Test. of Jill Slaikeu.
[42] *Id.*
[43] Ex. 1; Test. of B. Raddatz; Test. of Jill Slaikeu.
[44] Minnesota Department of Human Services' Written Closing (Dec. 5, 2022) at 1; Appellant's Written Closing Argument (Dec. 6, 2022) at 1.
[45] Appellant's Written Closing Argument at 1.
[46] *Id.*; Ex. 5 at 121.

records contain all of the missing information: incident report, self-preservation determination, initial screening, attendance records and progress notes. Finally, Appellant argues that it provided a contract with a food service vendor, a sample menu, a contract with a dietician, and a structured recreational activity schedule. Therefore, Appellant contends that it submitted everything that had been requested and demonstrated that Mr. Hassen had the knowledge and experience to operate an adult day care center.[47]

The Department argues that, after giving Appellant multiple opportunities to submit a complete application over a period of more than six months, with considerable technical assistance from Ms. Raddatz. Despite this guidance, the application continued to be incomplete and was properly denied. The Department also argues that Appellant, through Mr. Hassen's attempts to supplement the application, continued to demonstrate a lack of competent knowledge of the applicable requirements of statutes and rules and so was also properly denied on that basis.[48]

Analysis

A license application must be made on the forms and in the manner prescribed by the Department.[49] The Department may deny a license for any of the eleven reasons set forth in Minn. Stat. § 245A.05. Relevant here, those reasons include where an applicant or controlling individual: fails to submit a substantially complete application after receiving notice from the commissioner under Minn. Stat. § 245A.04, subd. 1; or "fails to demonstrate competent knowledge as required" by Minn. Stat. § 245A.04, subd. 6 (2021).[50] The Department must provide an applicant with written notice that an application is incomplete or substantially deficient, identify documents that are missing or deficient, and provide the applicant 45 days in which "to resubmit a second application that is substantially complete."[51]

The Department gave Appellant written notice that identified numerous documents and information that were missing from the application, and as required by statute gave it 45 days in which to submit additional information to bring the application into compliance.[52] The notice letter provided a detailed list of the unmet application requirements.[53] The Department tried to help Mr. Hassen remedy the deficiencies in the application.[54] The Department licensor assisted Mr. Hassen over a period of months, far longer than the statutory requirement of 45 days. Appellant received detailed lists of the application requirements that remained incomplete following each of its additional submissions.[55] The licensor also offered and held telephone conferences with

[47] Appellant's Written Closing Argument at 2.
[48] Minnesota Department of Human Services' Written Closing (Dec. 5, 2022) at 2-3.
[49] Minn. Stat. § 245A.04, subd. 1.
[50] Minn. Stat. § 245A.05, subd. (a).
[51] Minn. Stat. § 245A.04, subd. 1(a).
[52] Ex. 4; Test. of B. Raddatz.
[53] Ex. 4 at 103-19.
[54] Test. of B. Raddatz.
[55] Test. of B. Raddatz; Ex, 6 at 186-88; Ex. 10 at 409-11.

Mr. Hassen to discuss his questions regarding the requested information.[56] A review of those conversations reveals that Mr. Hassen did not ask questions about any specific missing documentation but, instead, repeatedly asked Ms. Raddatz to go over what was missing "one-by-one." Ms. Raddatz explained that the Notice detailed the specific missing items and that the purpose of the phone conferences was to answer his questions about what was lacking or problematic with the various parts of the application.

Nonetheless, Ms. Raddatz did reiterate specifics of issues she found in the application. For example, while a caterer's menu was provided in the application, it did not list foods that corresponded with the proposed menus on the application. This may seem like a trivial point to an applicant, but it is not for at least two reasons. First, one of the primary purposes of adult day centers is to provide nutrition to vulnerable adults.[57] Accordingly, the Department must make sure through the application process that a licensee will provide nutritious meals. It cannot make that determination if the proposed menu does not align with the capabilities of the proposed caterer. Second, the applicant's failure to provide sufficient and reliable detail indicates a lack of understanding of the requirements and purpose of the program.

Further, as Ms. Raddatz was questioned at the hearing about documentation that had been submitted by Appellant, she pointed out portions of the submissions that continued to be incomplete. Also, regarding the background study, while Mr. Hassen argued that the Department had a background study on him, that study was affiliated with a different program and the roster was no longer active. In short, the background study was not current and could not serve as the background study for his application. While Appellant attempts to depict the Department as overly concerned about details as opposed to substance, in this case the two things are synonymous. While the Department provides assistance to license applicants, its paramount responsibility is to the vulnerable people served by its programs. It has no other way to fulfill its responsibility but through the details of the licensing process. In addition, it has a responsibility to assist many applicants and license holders and so must make reasonable decisions to limit the time over which it continues to assist an applicant. This timing is reflected in the statutory authority to deny an application that is not substantially complete withing 45 days.

Despite Appellant's three additional attempts to submit a complete application after the initial application and despite responsive communication listing in detail the items that were missing, the application remained substantially incomplete.[58] Furthermore, through conversations with Ms. Raddatz and through the application itself, Appellant demonstrated a lack of understanding of the various licensing requirements applicable to the proposed adult day program.[59]

[56] Test. of B. Raddatz; Exs. 12-14.
[57] Minn. R. 9555.9710, subp. 1.
[58] Test. of B. Raddatz; Test. of J. Slaikeu.
[59] Test. of B. Raddatz.

Conclusion

The weight of the evidence establishes that Appellant failed to submit a substantially complete application or to demonstrate competent knowledge of applicable licensing statutes and rules. Therefore, the Administrative Law Judge respectfully recommends that the denial of Appellant's adult day care license be upheld.

B. J. C.