

88-1800-10536-2

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION

In Re: the Suspension of the License of
LaVonne Eckstein
400 8th Avenue North
St. James, 56081-1122
to provide Family Day Care under Minnesota Rules, parts 9502.0300 to 9502.0445.

The above-entitled matter came on for hearing before Administrative Law Judge Julia Craig on July 25, 1996, at the Watonwan County Courthouse in St. James, Minnesota.

LaVonne Eckstein appeared personally and was not represented by an attorney. Todd L. Kosovich, Assistant Watonwan County Attorney, appeared on behalf of the Watonwan County Department of Human Services. Sandra Hogenson, the licensing social worker for Watonwan County, was also present.

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.6 1, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Maria R. Gomez, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, (612) 296-2701, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF THE ISSUE

Whether a thirty-day suspension of the Family Day Care License of LaVonne Eckstein is appropriate under Minnesota Statute §245A.07, subd. 3, by reason of a failure of LaVonne Eckstein to comply with applicable law or rule.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1 LaVonne Eckstein resides at 400 8th Avenue North in St. James, Minnesota and is a resident of Watonwan County. Ms. Eckstein is licensed to provide Group Family Day Care under the provisions of Minnesota Rules, parts 9502.0300 to 9502.0445.

2. The Commissioner of the Minnesota Department of Human Services is responsible for issuing and regulating day care licenses in the state of Minnesota. Watonwan County Human Services is the local agency designated by the Commissioner to carry out licensing tasks in Watonwan County.

3. This is an administrative proceeding conducted pursuant to the provisions of Minn. Stat. § 245A.01 to determine whether Ms. Eckstein's license to provide group family day care should be suspended for a period of thirty days for failure to follow state law and rules governing day care licenses, and for failure to comply with the terms of her probationary license status.

4. The Commissioner of the Department of Human Services has previously taken a negative licensing action against Ms. Eckstein. On March 17, 1995, the Commissioner placed Ms. Eckstein's license on probationary status for a period of one (1) year, after determining that Ms. Eckstein:

- a. Subjected children in her care to corporal punishment in violation of Minnesota Rule, part 9502.0395 by slapping them on the fingers-
- b. Seriously exceeded the capacity and age restrictions of Minnesota Rules, part 9502.0365 by having five children under the age of thirty months in her care when she was only permitted to have two children under the age of thirty months in her care;
- c. Neglected a child by leaving a child under the age of thirty months unsupervised in a basement for forty-five minutes in order to hide the presence of the child in the home during an unannounced inspection of the home;
- d. Used a basement which had not been approved for day care use and which did not meet the physical environment requirements of Minnesota Rules, part 9502.0425, Subp. 1 for day care purposes; and
- e. Smoked in the home while caring for children, in violation of Minnesota Statute § 144.414.

5. The terms of Ms. Eckstein's probation included, in relevant part:

- (1) Following and complying with all parts of Minnesota Rules, Parts 9502.0300 to 9502.0445.
- (2) No variance to capacity or age distribution will be granted during the probationary period.
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- (5) Obtaining approval by the licensor for all new enrollments prior to admission.
- (6) Operating within the licensed capacity and age distribution requirements at all times.
- (7) Keeping daily attendance records with the names, birth dates, and hours of care for all children and submitting them to the licensor on the first of every month during the probationary period.

6. On March 18, 1996, Ms. Eckstein called Sandra Hogenson, the licensing social worker, to make arrangements for Ms. Hogenson to visit her home. During the course of the conversation, Ms. Eckstein mentioned that a child in her care named Dylan Gates had been involved in a high speed chase over the weekend.
7. Following the March 18, 1996 phone call, Ms. Hogenson checked the list of children enrolled in Ms. Eckstein's care with County approval. She discovered that Dylan Gates was a new child and that the County had not approved his enrollment. Ms. Hogenson then called Dylan Gates' mother and was told by the mother that Ms. Eckstein had been providing occasional day care for Dylan since May 1995. During her testimony, Ms. Eckstein admitted that she had provided care to Dylan Gates for a period of about four months.
8. Dylan Gates' name does not appear on any of the daily attendance logs prepared by Ms. Eckstein and submitted to the County for the period of May 1995 through March 15, 1996.
9. Ms. Eckstein violated the terms of her probationary license status by enrolling a new child in her day care during the probationary period without obtaining prior approval from the licensing social worker. She further violated the terms of probation by failing to list Dylan Gates' name on her daily attendance logs.
10. On March 18, 1996, the licensing worker visited Ms. Eckstein's home during regular day care hours, at Ms. Eckstein's request. The licensing worker smelled cigarette smoke in the home and asked Ms. Eckstein if she had been smoking. Ms. Eckstein admitted that she had been smoking and that day care children were present in the home when she smoked.
11. The terms of Ms. Eckstein's prior probation did not include smoking restrictions. However, Ms. Eckstein was previously notified by the Commissioner in the March 18, 1995 letter notifying Ms. Eckstein of the prior negative licensing action that state law prohibits smoking in a day care home during the hours of operation. Ms. Eckstein admitted in her testimony that she knew it was wrong to smoke in her home when day care children were present.
12. Ms. Eckstein had four children in her care when Ms. Hogenson arrived at her home on March 18, 1996. Two of the children were under thirty months of age. During the visit, two more children arrived and were left in Ms. Eckstein's care. These children were four months and twenty eight months of age. Ms. Eckstein then had a total of four children under the age of thirty months in her care. She was licensed to have only three children under the age of thirty months in her care.
13. Ms. Eckstein knew that she was exceeding state rules governing age capacity restrictions by accepting a fourth child under the age of thirty months in her care on March 18, 1996. She believes that the age capacity restriction rules are wrong, that she should not be required to turn children away, that it's acceptable to exceed the age capacity restrictions for short periods of time or for children who are not regularly in her care, and that she should not have a negative licensing action taken against her because other day care providers also violate the age capacity and distribution rules.
14. During the March 18, 1996 visit, the licensing worker observed that two children were napping in mesh sided cribs, in violation of Minnesota Rules, part 9502.0425, Subp. 9. Ms. Eckstein had not requested a variance for use of the cribs. The cribs were new and in good condition. Ms. Eckstein was using mesh sided cribs during several prior visits by licensing social workers and was not told by the licensing workers that their use was inappropriate. Ms. Eckstein immediately completed a variance request on March 19, 1996, upon being informed by the licensing worker that mesh sided cribs could not be used without a variance. The licensing social worker granted the variance the same day.

15. On March 19, 1996, the County issued a correction order, citing the following violations: smoking in the home during day care hours, exceeding the age capacity and distribution restrictions, use of infant and newborn sleeping space not meeting licensing requirements, and violations of the conditions of probation. The licensing worker reviewed the correction orders with Ms. Eckstein and both orders were signed by Ms. Eckstein on March 19, 1996.

16. On March 20, 1996, the County recommended to the Commissioner of Human Services that negative licensing action be taken against Ms. Eckstein, based on the correction orders. The County notified Ms. Eckstein that it was recommending negative licensing action on March 20, 1996.

17. On April 11, 1996, Laura Plummer Zrust, a supervisor with the licensing division of the Department of Human Services, notified Ms. Eckstein that two negative licensing actions would be taken. First, Ms. Eckstein's license would be suspended for a period of thirty calendar days. Secondly, Ms. Eckstein was again to be placed on probation for a period of one year following the suspension, with specified conditions of probation.

18. Ms. Eckstein made a timely appeal of the Commissioner's decision to suspend her license for a period of thirty calendar days. She did not appeal the Commissioner's decision to place her on probation for a period of one year.

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over the subject matter of this hearing pursuant to Minn. Stats. §§14.50, 245A.07 and 245A.08.

2. Minn. Stat. §245A.03, subd. 1 provides that all individuals or organizations that operate a residential or a nonresidential program or that receive a child or adult for care, supervision, or placement in foster care or adoption must be licensed by the Commissioner of Human Services. The provision of Group Family Day Care is an activity that must be licensed.

3. To obtain and maintain a Family Day Care or Family Foster Care license, the Licensee must comply with applicable Minnesota laws and rules, including Minnesota Rules, parts 9543.0010 et seq., concerning Family Day Care, and Minnesota Rules, parts 9502.0300 et seq., concerning the Licensing of Day Care Facilities.

4. Minnesota Statute § 144.414, subd. 2 prohibits smoking in a family home or in a group family day care provider home licensed under Minnesota Rules, parts 9502.0300 to 9502.0445, during its hours of operation. The Licensee violated state law by smoking in her home while providing day care to children.

5. Pursuant to Minnesota Rules, parts 9502.0365 and 9500.0367, a group family day care provider may have no more than three infants and toddlers in attendance at any time. Of this total, no more than two shall be infants. An infant is defined as a child who is at least six weeks of age but less than twelve months of age. Minnesota Rules, part 9502.0315, Subp. 16. A "Toddler" means a child at least 12 months of age but less than 30 months of age. Minnesota Rules, part 9502.0315, Subp. 30. The Licensee violated this rule by having four children under the age of thirty months in her home on March 18, 1996.

6. Minnesota Rules, part 9502.0425, Subp. 9 provides that there must be a safe, comfortable sleeping space for each infant and newborn. A crib, portable crib, or playpen with a

waterproof mattress or pad must be provided for each infant or newborn in care. The equipment must be of safe and sturdy construction that conforms to volume 16, parts 1508 to 1508.7 and parts 1509 to 1509.9 of the Code of Federal Regulations, its successor, or have a bar or rail pattern such that a 2-3/8 inch diameter sphere cannot pass through. Play pens with mesh sidings must not be used for the care or sleeping of infants or newborns. The Licensee violated this rule by using two mesh sided cribs for infant sleeping space without first obtaining a variance.

7. The Commissioner of Human Services may suspend, revoke, or make probationary the license if a license holder fails to comply fully with applicable laws or rules. When applying the sanctions of suspension or revocation, the commissioner shall consider the nature, chronicity, or severity of the violations of law or rule and the effect of the violation on the health, safety or rights of persons served by the program. Minn. Stat. §245A.07, subd. 1, Minnesota Rules, part 9543.0100, Subp. 2.

8. Ms. Eckstein's action of smoking in the home during day care hours after previously being cited by the Commissioner for violating the no smoking law and at a time that she knew the licensing worker would be visiting her home shows a continuing disregard by Ms. Eckstein of the state law prohibiting smoking in a day care home during day care hours.

9. Ms. Eckstein's action of caring for four children under the age of thirty on March 18, 1996, the day after her probation ended for seriously exceeding the age capacity limit on children under thirty months of age and at a time that the day care licensing worker was present in the home, shows a continuing disregard of the age capacity and distribution restrictions contained in Minnesota Rules, part 9502.0365.

10. A thirty day suspension of Ms. Eckstein's license to provide Group Family Day Care is an appropriate sanction. A negative licensing action short of suspension is not likely to induce the Licensee's compliance with the no smoking law and age capacity and distribution rules.

II. Negative licensing action is not required to correct the mesh sided crib violation. The County waived the violation by failing to object to the use of mesh sided cribs during prior, recent inspections and by approving a variance for use of the mesh sided cribs immediately upon discovery of the violation.

12. Any Finding of Fact more properly termed a Conclusion and any Conclusion more properly termed a Finding of Fact is hereby adopted as such.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services suspend LaVonne Eckstein's license to provide family day care under the provisions of Minnesota Rules, parts 9502.0300 to 9502.0445 for a period of thirty (30) calendar days.

Dated
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded
Eckstein Tapes Nos. 1 and 2
No transcript prepared