

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

In Re: The Immediate Suspension of
the License of

Jennifer Banks
4663 Cedar Avenue South
Minneapolis, MN 55407

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

to provide family day care under Minnesota
Rules, parts 9502.0300 to 9502.0445

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on Thursday, April 30, 1998, at the Office of Administrative Hearings, Suite 1700, 100 Washington Avenue South, Minneapolis, Minnesota.

Vicki Vial-Taylor, Assistant Hennepin County Attorney, Suite 1210 Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota 55415, appeared at the hearing as attorney for the Minnesota Department of Human Services and the Hennepin County Department of Children and Family Services. Jennifer Banks did not appear at the hearing, nor did anyone appear on her behalf. The record closed on May 5, 1998.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota Law^[1], the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument to him. Parties should contact the office of David S. Doth, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file objections or present argument.

STATEMENT OF THE ISSUE

Whether Ms. Banks violated program rules by her maltreatment of a minor, thereby justifying immediate suspension of her family day care license?

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 14, 1998, the Department served the Notice of and Order for Hearing that began this matter by sending it via U. S. Mail to Ms. Banks at her last known address, which is: 4663 Cedar Avenue South, Minneapolis, Minnesota 55407.

2. That Notice of and Order for Hearing contained the following statements:

11. A Notice of Appearance must be filed with the Administrative Law Judge within 20 days of service of the Notice of and Order for Hearing if a party intends to appear at the hearing.

12. Failure to appear at the hearing may result in the allegations of the Notice of and Order for Hearing and Exhibit A being taken as true. This means the action being appealed will be upheld.

3. As allowed by the rules of the Office of Administrative Hearings,^[2] on April 17, 1998, the County sent a discovery request to Ms. Banks seeking the identity of any prospective witnesses and disclosure of any relevant statements. Under the rules, a party receiving such a request must disclose the requested information within ten days after receiving the request. Ms. Banks has never responded to the County's request.

4. Ms. Banks has never filed a Notice of Appearance, as the Notice of and Order for Hearing instructed her to do. Furthermore, she did not appear at the April 30, 1998, hearing, nor did she make a prehearing request to the Administrative Law Judge to be excused from appearing at the hearing.

5. Because of these violations of this Office's rules, particularly because of Ms. Banks' failure to appear at the hearing, the facts alleged in the Notice of and Order for Hearing are taken as true, and the Administrative Law Judge incorporates those facts into these Findings by reference.

6. The Administrative Law Judge adopts as Findings any Conclusions which are more appropriately described as Findings.

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

CONCLUSIONS

1. Minnesota law^[3] gives the Administrative Law Judge and the Commissioner of the Department of Human Services authority to conduct this proceeding and to make findings, conclusions, and orders.

2. The Department and the County have complied with all the law's substantive and procedural requirements.

3. The Department and the County gave Ms. Banks proper and timely notice of the hearing in this matter.

4. Under the Office of Administrative Hearings' rules,^[4] Ms. Banks is in default because she failed to appear at the scheduled hearing without being excused by the Administrative Law Judge.

5. Under those rules, when a party defaults, the facts alleged in the Notice of and Order for Hearing may be taken as true and no longer in dispute.

6. Based upon the facts alleged in the Notice of and Order for Hearing, which the Administrative Law Judge has taken as true, Ms. Banks has violated Minnesota Rules, parts 9502.0341 and 9502.0395, and Minnesota law^[5] therefore allows the Commissioner to immediately suspend her family day care license.

7. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

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

RECOMMENDATION

The Administrative Law Judge recommends that the immediate suspension of Jennifer Bank's family day care license be AFFIRMED.

Dated this 6th day of May 1998.

BRUCE H. JOHNSON

Administrative Law Judge

NOTICE

Under Minnesota law,^[6] the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

^[1] Minn. Stat. § 14.61 (1996). (Unless otherwise specified, all references to Minnesota Statutes are to the 1996 edition.)

^[2] Minn. R. pt. 1400.6700 (1997). (Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.)

^[3] Minn. Stat. §§ 245A.01 to 245A.16, and 14.50.

^[4] Minn. R. 1400.6000.

^[5] Minn. Stat. § 245A.07.

^[6] Minn. Stat. § 14.62, subd. 1.