

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

In the Matter of the Revocation of
the Family Day Care License of
Shelly Armstrong

PREHEARING ORDER

On June 21, 2000, the Minnesota Department of Human Services (through the Ramsey County Attorney's Office) filed a Motion with the undersigned. The Motion sought a prehearing determination that the Department had demonstrated reasonable cause for revoking Shelly Armstrong's day care license. Pursuant to Minn. Stat. § 245A.08, subd. 3(a) (1998), such a determination would have the effect of shifting the burden of proof to Ms. Armstrong to demonstrate, by a preponderance of the evidence, that she was in full compliance with those laws or rules that the Commissioner alleged had been violated. The Motion was accompanied by an affidavit of the licensing worker, Diane M. Phillippi, and supporting documentation.

Ms. Armstrong was mailed copies of the Notice of Motion and Motion and other documents on June 21, 2000. The Administrative Law Judge has been informed by the County that Ms. Armstrong returned the mailing, unopened.

On June 26, 2000, the Administrative Law Judge wrote to Ms. Armstrong indicating that if she wanted to oppose the Motion, she must respond to it promptly.

As of the date of this Order, no response has been received.

Based upon all of the files and proceedings herein, the Administrative Law Judge makes the following:

ORDER

The Department's Motion for a finding of reasonable cause is GRANTED.

Dated this 14th day of July, _____ 2000.

ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

Minn. Stat. § 245A.08, subd. 3(a) sets forth a unique procedure for allocating the burden of proof in cases such as this. It provides that the Department may demonstrate reasonable cause for its action by submitting statements, reports, or affidavits to substantiate the allegations that the licensee failed to comply fully with laws or rules. It goes on to state, "If the Commissioner demonstrates that reasonable cause existed, the burden of proof . . . shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance"

Along with its Motion, the County submitted the affidavit of Diane Phillippi, adopting the facts contained in a letter which she sent to the Department back in July of 1999. The affidavit states that facts in the letter are true and accurate to the best of her belief. Attached to the letter, in turn, are police reports of an incident back in May of 1999 which form the basis for some, but not all, of the grounds for revocation.

The Administrative Law Judge has granted the Motion because he believes that this evidence presents a *prima facie* showing of reasonable cause for revocation, assuming that the documents do, in fact, come into evidence at the hearing. There is no reason to believe that they will not be admitted into evidence, and thus the County would be entitled to make its motion at that time. By making its motion early, the County has eliminated some uncertainty and reduced the amount of time it would take during the hearing to present its case.

In addition to requesting the prehearing determination of reasonable cause, the County also requested that the Administrative Law Judge order Armstrong to present her evidence first. The Administrative Law Judge has not granted that request, because it appears that Ms. Armstrong is unrepresented, and the Administrative Law Judge believes that it is unlikely that an orderly record would be created by having Ms. Armstrong proceed first. It is more likely that an orderly record will be created by having the County proceed first. Minn. Rule pt. 1400.7800(E) provides that the party with the burden of proof shall begin the presentation of evidence "unless . . . the administrative law judge determines that requiring another party to proceed first would be more expeditious and would not jeopardize the rights of any other party." In this case, the Administrative Law Judge believes that it would be more expeditious for the County to go first and introduce its documents. This procedure will not prejudice any party.

It is possible that Ms. Armstrong may not appear at the hearing at all. She has indicated to the Administrative Law Judge in a letter, dated June 22, 2000, that she has resigned her position as a day care provider and just wants this matter dropped. The Administrative Law Judge responded to her letter on June 26, indicating that she did not have to appear, but that if she did not, a default order would be issued that would

accept, as true, the allegations contained in the Notice for Hearing. The granting of this Motion does not change that advice. In other words, Ms. Armstrong does not have to appear, but if she does not appear, then the allegations will be taken as true and the Administrative Law Judge will recommend that the revocation order be affirmed. Today's Order does not alter that advice.

AWK