

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

In the Matter of the Immediate
Suspension of the License of
Angel Adams
3635 Aldrich Avenue
Minneapolis, MN 55412
To Provide Family Day Care under
Minn. R. pt. 9502.0300 to 9502.0445

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha commencing at 9:30 a.m. on January 20, 2000, at the Office of Administrative Hearings, 100 Washington Avenue S., Minneapolis, Minnesota 55401-2138. The record closed at the conclusion of the hearing.

Vicki Vial-Taylor, Assistant County Attorney, Juvenile Protection Division, Office of the Hennepin County Attorney, Suite 1210, 525 Portland Avenue, Minneapolis, Minnesota 55415, appeared on behalf of the Division of Licensing of the Minnesota Department of Human Services and Hennepin County. The Licensee, Angel Adams, 3635 Aldrich Avenue, Minneapolis, Minnesota 55412, appeared on her own behalf.

NOTICE

Notice is hereby given that, under Minn. Stat. § 14.61, 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, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Michael O'Keefe, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

The issue in this case is whether the Department of Human Services' order of immediate suspension of Angela Adam's family day care license should be affirmed.

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

FINDINGS OF FACT

1. Licensee obtained her license to provide family child care from the Department of Human Services in May, 1998. Her residence is the licensed day care

premises. She provides overnight care to three children (ages 10, 7, and 6) whose mother works the third shift (approximately midnight to 8:00 a.m.).

2. At approximately 1:45 a.m. on November 12, 1999, Minneapolis Police responded to an "alarm call" at 3635 Aldrich Avenue. Upon arriving at the residence, officers discovered the rear door unlocked and the alarm sounding loudly. The officers entered the home and found three children sleeping on cots. There were no adults present in the home. After waking the children, the officers discovered that they were daycare children, and they did not live in the premises. The officers observed that the kitchen sink was full of dirty dishes and pots with "old food" were on the stove.^[1] There were paper products piled atop the stove, directly on the burners. They also discovered drug paraphernalia, a substance believed to be marijuana, three shotgun shells, and four rifle rounds lying on a bedroom floor. The officers took photographs of these items and to record the general condition of the residence.

3. At 2:30 a.m., Licensee arrived at the daycare residence. The officers at the residence described the events as follows:

While officers were having the children dress themselves for transport to SOS, we heard a car (loud muffler) stop in front of the residence, a car door close and then the car speeding off.

A woman identified herself as ANGEL DIONNE ADAMS, one of the parties listed on the Day Care license. She said she had just left briefly, although she was dressed for an evening out, black turtleneck sweater, long gray skirt, heels, jewelry, and smelled strongly of an alcoholic beverage.^[2]

4. The daycare children were transported to Child Protection at the Fourth Precinct police station. At 2:55 a.m. the children arrived for intake. The children's' mother called shortly after their arrival and came to pick them up.^[3]

5. On November 12, 1999, the Hennepin County Children and Family Services Department recommended to the Commissioner of Human Services that the family day care license of Angela Adams be immediately suspended based on Minn. R. 9543.0100, subp. 3A; 9502.0315, subp. 29a; and 9502.0435, subps. 4 and 6; and Minn. Stat. § 245A.07, subd. 2.^[4] Hennepin County also made a determination that Licensee had committed maltreatment and informed Licensee of that determination by letter.^[5]

6. On November 12, 1999, the Department immediately suspended the daycare license of Licensee. The suspension letter referenced the report received that day and the investigation being conducted by the Minneapolis Police Department.^[6] The letter described the Licensee's right of appeal and how to initiate that process.

7. On November 15, 1999, the Licensee appealed the immediate suspension. The appeal letter indicated that Licensee had the parent's permission to leave the children alone for short periods of time, the oldest child was mature enough to be left alone, and the conduct was not neglect.^[7]

8. On November 29, 1999, Hennepin County Child Protection interviewed Ms. Adams. In the interview, Ms. Adams stated that she received a telephone call from a

friend who was attempting to leave a relationship due to domestic abuse.^[8] Licensee was to pick up this friend and her two children and be dropped off back at the daycare premises (since Licensee had the friend's car). Licensee indicates that she called the children's mother and the parent agreed to this. Licensee also acknowledged that the ammunition was present, but maintained that it was in an area inaccessible to the daycare children.

9. On November 30, 1999, Jerry Kerber, Director, Division of Licensing, Minnesota Department of Human Services, executed a Notice of and Order for Hearing scheduling a contested case hearing on January 20, 2000, in Minneapolis before the undersigned Administrative Law Judge.

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

CONCLUSIONS

1. The Minnesota Department of Human Services gave proper notice of the hearing in this matter and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

2. Minn. Stat. § 245A.07, subd. 2, provides in pertinent part, as follows:

If the license holder's failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger, the Commissioner shall act immediately to suspend the license.

3. Minn. Rule pt. 9543.1010, subp. 8 provides:

"Imminent danger" means a child or vulnerable adult is threatened with immediate and present abuse or neglect that is life threatening or likely to result in abandonment, sexual abuse, or serious physical injury.

4. "Supervision" is defined in the rules governing day care licensees as:

Subp. 29a. **Supervision.** "Supervision" means a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety is protected.^[9]

5. Minn. Rule 9502.0435, subps. 4 and 5, require that ammunition and toxic substances be kept inaccessible from daycare children. Ammunition must be kept in a locked area.^[10]

6. Angela Adams violated the supervision, toxic substance, and ammunition requirements of Minn. Rule Chapter 9502. The duration and distance of her absence from the day care premises, with the premises unsecured and with a significant fire risk present constitute "imminent danger" to children within the meaning of Minn. Rule pt. 9543.1010, subp. 8.

7. The Department's evidence demonstrated the "reasonable cause" required to sustain the immediate suspension of Ms. Adams' day care license. This caused the burden of proof to shift to Ms. Adams pursuant to Minn. Stat. § 245A.08, subd. 3.

8. Ms. Adams did not demonstrate, by a preponderance of the evidence, that she was in full compliance with the laws or rules governing her day care facility.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner AFFIRM the Department's order of immediate suspension of Angela Adams' family day care license No. 231622.

Dated this 22nd day of February 2000.

PHYLLIS A. REHA
Administrative Law Judge

Reported: Taped, No Transcript Prepared.

NOTICE

Under 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 or as otherwise provided by law.

MEMORANDUM

The Licensee does not dispute her absence from the daycare premises for at least ninety minutes while daycare children were present and without having any adult present. The explanation given for her absence does not justify leaving the children alone in violation of her clear obligation to the children and in violation of Minn. Rules pts. 9543.1010, subp. 8 and 9502.0315, subp. 29a.

The Licensee maintains that her conduct does not constitute maltreatment. There was no adult present on the licensed premises for over one hour. The back door to the premises was unlocked. Flammable materials were piled atop a gas stove in the

premises. Live ammunition was located in a bedroom that the oldest daycare child could enter. Marijuana was present in the daycare premises where the oldest child could enter. This conduct rises to the level of neglect since children were left alone in circumstances that put them at imminent risk of harm. This conduct is contrary to any licensee's obligation to properly supervise and care for children, and it supports immediate disciplinary action.

The conduct complained of is described by the Licensee as a "mistake" that should not result in suspension of her daycare license. By her own admission, the Licensee left the daycare premises knowing that the conduct was improper. The reason for imposing standards on licensees is to ensure the safety and welfare of children. The Licensee's action was not a mistake, but a conscience choice that had the result of placing children at significant risk of harm. This conduct is ample reason to immediately suspend Ms. Adams' license to provide daycare.

P.A.R.

^[1] Exhibit 1, at 2 (identified as page 1 of the supplement and page 3 as faxed); Exhibit 2 at 2.

^[2] Exhibit 1, at 2.

^[3] Exhibit 2, at 2.

^[4] Exhibit 5.

^[5] Exhibit 4.

^[6] Exhibit 6.

^[7] Exhibit 7.

^[8] Exhibit 3, at 2.

^[9] Minn. Rule 9502.0315, subpart 29a.

^[10] Minn. Rule 9502.0435, subp. 5.