

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

In Re the Immediate Suspension
CONCLUSIONS

of the License of Theresa Read,
1457 Jansen Avenue SE,
Buffalo, MN 55313-4628,
to provide family child care under
Minn. Rules pts. 9502.0300 to 9502.0445.

FINDINGS OF FACT,

AND RECOMMENDATION

The above-entitled matter came on for hearing before George A. Beck, Administrative Law Judge, on April 11, 2000 at 9:30 a.m. at the Wright County Human Services Center in Buffalo, Minnesota. The record closed on May 8, 2000, upon receipt of the last written filing.

Terry Frazier, Assistant Wright County Attorney, Wright County Government Center, 10 Second Street Northwest, Room 150, Buffalo, Minnesota 55313-1189, appeared on behalf of the Wright County Human Services and the Department of Human Services. The Licensee, Theresa Read, 1457 Jansen Avenue Southeast, Buffalo, Minnesota 55313-4628, appeared representing herself with her husband, Charles Read.

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to 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. 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 Michael O'Keefe, Commissioner, Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF ISSUE

The issue in this case is whether or not the immediate suspension of the family child care license of Theresa Read should be affirmed.

Based upon all of the proceedings in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Theresa Read has been licensed as a family child care provider by Wright County since 1995. She provides child care at her home in Buffalo, Minnesota.

2. On December 22, 1999, Ms. Read was providing childcare for a nine month old boy, J.M. Shortly after Ms. Read gave J.M. his afternoon snack, he needed to have his diaper changed. Ms. Read changed J.M.'s diaper, after which J.M. began to cry. Ms. Read decided to pick J.M. up because he sometimes vomits when crying. Because her hands were dirty, Ms. Read picked up J.M. without using her hands by placing her arms under his upper and lower torso. She proceeded to the bathroom and washed her hands while continuing to hold J.M. As Ms. Read lowered her left hand to throw away a paper towel, J.M. squirmed and fell from her grasp. Ms. Read caught him again but she caught J.M., by his left leg. Ms. Read proceeded to check J.M. for injuries and noted that he cried when she touched his left thigh.^[1]

3. Ms. Read held J.M. until his father arrived at about 5:00 p.m. Ms. Read told J.M.'s father that she had scooped J.M. up quickly after changing his diaper and that something seemed to be wrong with his leg after that. Ms. Read did not mention J.M. slipping from her grasp in the bathroom and being caught by the leg.^[2] She repeated this explanation to the child's mother later that evening.^[3]

4. J.M.'s parents took him to their urgent care center that evening. A physician noted faint bruises on the outer left thigh with an obvious swelling of the mid-thigh and apparent discomfort when the thigh was examined. The x-ray showed a fractured femur. J.M. was subsequently placed in a cast. The physician concluded that the explanation of the injury did not seem to fit with the significance of the injury.^[4]

5. Ms. Read was interviewed by a Wright County Child Protection investigator and a detective from the Sheriff's Department on December 23, 1999. Ms. Read told them that J.M. was fine during the day. He was not yet walking but was pulling himself up on furniture. Ms. Read stated that she had changed J.M.'s diaper around 4:20 p.m. and that she then picked him up without using her hands and carried him into the bathroom and held him while washing her hands. She stated at that point that he began to cry. Ms. Read did not disclose that J.M. had fallen from her grasp.^[5] She denied knowing how the bruising had occurred.^[6]

6. The Child Protection investigator consulted with Laurel Edinburgh, a registered nurse at the Midwest Child Resource Center on December 27, 1999. Ms. Edinburgh stated that the explanation given by Ms. Read was not consistent with the injury in her opinion.^[7]

7. Later on December 27, 1999, Ms. Read called the Wright County detective and stated that she had remembered that when she went to change J.M.'s diaper, he was facing away from her and that she had bent down and went to turn him over on his back. Ms. Read stated that when she did this his left leg got caught between her torso and the right leg and that she twisted and pulled it out.^[8]

8. In an undated letter, Wright County Human Services recommended to the Department of Human Services that it immediately suspend Ms. Read's license because of an injury to a young child in her care that did not seem to fit the explanation she had provided. The request noted that Ms. Read's current list of children in her day care ranged in age from nine months to four years of age, and also noted a prior complaint concerning an injury to another child's foot while in Ms. Read's day care in May of 1999.^[9]

9. The May 1999 complaint was never substantiated by Wright County Human Services. The determination was that no action was required and that there was no maltreatment.^[10]

10. On December 28, 1999, the Department of Human Services issued an Order of Immediate Suspension to Ms. Read which prohibited her from operating as a child care provider. It advised her of her right to an appeal.^[11] The Order was served upon Ms. Read personally on December 28, 1999.^[12]

11. At the time of the December 23, 1999 interview, Ms. Read was embarrassed and scared. She felt intimidated by the investigator. She subsequently filed a written complaint about the investigator due to her "inappropriate attitude" and for being "too impersonal."^[13]

12. In a subsequent interview on January 28, 2000 at the Wright County Sheriff's Office, Ms. Read did disclose how J.M. was injured as set out in Finding of Fact No. 2.

13. On March 21, 2000, Wright County Human Services issued a letter determining that maltreatment in the form of physical abuse had been determined to have occurred in regard to the injury to J.M.^[14]

14. In a letter dated April 10, 2000, Ms. Read requested a reconsideration of this determination and suggested that the injury was an unfortunate accident, but not physical abuse.^[15]

15. Five people commented favorably at the hearing on Ms. Read's ability as a day-care provider, including the mother of a two and one-half year old who was in Ms. Read's day care, neighbors who have been closely involved with Ms. Read's family and observed her day care, the Read's pastor, and Ms. Read's aunt, who has been at her house during day-care hours.

16. A county supervisor acknowledged at the hearing that if Ms. Read had told the full story initially, an immediate suspension likely would not have been requested.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter under Minn. Stat. §§ 14.50 and 245A.08.

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

3. The Department and Wright County have complied with all substantive and procedural requirements of law and rule.

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

If the license holder's failure to comply with the 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.

5. 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.

6. Minn. Rule pt. 9502.0395, subp. 2.A. provides in part:

No child shall be subject to corporal punishment or emotional abuse. "Corporal punishment" means the nonaccidental infliction of physical pain on a child by a caregiver.

7. Under Minn. Stat. § 245A.08, subd. 3, the Commissioner must demonstrate reasonable cause for the immediate suspension upon which the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules that the Commissioner alleges the license holder violated.

8. That Wright County did demonstrate "reasonable cause" to immediately suspend Ms. Read's child care license.

9. That Ms. Read demonstrated, by a preponderance of the evidence, that she was in full compliance with the laws or rules alleged violated.

Based upon the foregoing Conclusions and for the reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED:

1. That the Commissioner affirm the immediate suspension of the child care license of Theresa Read.
2. That the license be reinstated in light of the facts developed in this contested case proceeding.

Dated this 9th day of May, 2000.

s/ _____
GEORGE A. BECK
Administrative Law Judge

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.

Reported: Taped

Three Tapes/No Transcript Prepared.

MEMORANDUM

The Commissioner is required by statute to immediately suspend a child care license when a rule violation by a licensee has placed the safety of children in the program in imminent danger. "Imminent danger" includes immediate and present abuse that is likely to result in serious physical injury. Given the facts in the possession of Wright County and the Department in December of 1999, it is clear that an immediate suspension was required under the statute. At that point a nine month old boy had sustained a fracture of his leg, along with bruises on his mid-thigh, while in the care of the licensee. The licensee's explanation of how this injury occurred, namely that she scooped the child up quickly changing his diaper, was not consistent with the nature of the injury. The licensee then offered another explanation on December 27th which indicated that the child's leg was caught between her torso and the right leg.^[16] As a result, the county had two different explanations for a broken leg in a non-ambulatory child. Neither was consistent with the injury. The county also considered the fact that all but one of the children being cared for by this provider were under three years old.

These facts justified the immediate suspension. The county also relied upon what turned out to be an unsubstantiated injury in the licensing of daycare nine months earlier. However, the record indicates that no maltreatment occurred in that instance.

In a temporary suspension the Commissioner must show reasonable cause for the immediate suspension which he has clearly done. The burden of proof then shifts to the licensee to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules that the Commissioner alleges the licensee violated. In this case the county alleges that the licensee violated Minn. Rule pt. 9502.0395, subp. 2a which prohibits corporal punishment, including the non-accidental infliction of physical pain on a child by a caregiver. In January of this year the licensee finally gave an accurate description of how the injury occurred as set out in Finding of Fact No. 2. As she was washing her hands with the child in her arms the child fell from her grasp and she caught him by his left leg before he fell any further. This explanation is consistent with the nature of the injury to the child. Ms. Read acknowledges her mistake in failing to accurately describe how the injury occurred and was remorseful at the hearing. She did, however, indicate that some of the responsibility for her response should be placed upon the investigator. But it is clearly the licensee's full responsibility to disclose the truth concerning an injury. Nonetheless, the record does indicate at this point that the injury to the child was not intentional. Ms. Read does seem to be an able and caring provider. Five witnesses supported her ability as a daycare provider at the hearing.

It is therefore, recommended at this point, that since the record does not show a violation of the rule cited by the county concerning corporal punishment, that the license be reinstated. The county acknowledged at the hearing that had the actual facts of this injury been disclosed an immediate suspension likely would not have been requested. The licensee may still face permanent disciplinary action for the incident or her failure to disclose how the injury to the child occurred. However, at this point it appears that the factual basis for the immediate suspension is no longer viable.

G.A.B.

-
- [\[1\]](#) Exhibit D.
 - [\[2\]](#) Exhibit 2.
 - [\[3\]](#) Exhibit 6.
 - [\[4\]](#) Exhibit 1, 6.
 - [\[5\]](#) Exhibit 2.
 - [\[6\]](#) Exhibit 6.
 - [\[7\]](#) Exhibit 2.
 - [\[8\]](#) Exhibit 2, 6.
 - [\[9\]](#) Exhibit 3.
 - [\[10\]](#) Exhibit F.
 - [\[11\]](#) Exhibit 4.

[\[12\]](#) Exhibit 5.

[\[13\]](#) Exhibit C.

[\[14\]](#) Exhibit G.

[\[15\]](#) Exhibit E.

[\[16\]](#) Finding of Fact No. 7.