

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation
of the Child Foster Care License of
Dennis and Merlene Henry

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 9:30 a.m. on July 18, 2000, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. At the hearing, Vicki Vial-Taylor, Assistant Hennepin County Attorney, 12th floor, 525 Portland Avenue, Minneapolis, Minnesota 55415, represented the Minnesota Department of Human Services (“DHS” or the “Department”) and the Hennepin County Children and Family Services Department (the “County”). Dennis and Merlene Henry, 2643 Morgan Avenue North, Minneapolis, Minnesota 55411, represented themselves. The record closed at the end of the hearing.

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 administrative record. The Commissioner may adopt, reject or modify the contents of this report. 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 exceptions and present argument to him. Parties should contact the office of Michael O’Keefe, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

STATEMENT OF ISSUE

Whether the Commissioner should revoke Mr. and Mrs. Henry's license to provide child foster care because they have been disqualified from being child foster care providers for physically abusing a foster child in their care.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 14, 1998, the County's Child Protection Investigations Unit received a report that possible abuse or neglect of a foster child might have occurred in the Henry's home.^[2]

2. The County's investigation determined that Mrs. Henry had physically abused a foster child in her care by striking the child.^[3] On the basis of that finding, on August 21, 1998, the County determined that Mrs. Henry had committed maltreatment of a child by physically abusing the child and, therefore, had seriously endangered the child's health or welfare in violation of the law.^[4]

3. On August 25, 1998, Mr. and Mrs. Henry filed a written request for the County to reconsider its decision. After reconsidering the matter, the County affirmed its original maltreatment determination in a letter dated September 15, 1998.^[5]

4. Minnesota law allows persons whom a county social service agency determines to have committed maltreatment of a child to appeal that determination to the Commissioner of Human Services.^[6] On September 23, 1998, the Henrys filed an appeal of the County's maltreatment decision with the Commissioner. On February 4 and March 25, 1999, one of the Department's appeals referees conducted an evidentiary hearing as part of the Henrys' appeal. The issue that the appeals referee considered was whether the County had properly found that Mrs. Henry had maltreated a child in her care. Before, during, and after that evidentiary hearing, the Henrys were represented by counsel, who presented evidence and legal argument on their behalf.^[7]

5. On June 30, 1999, on recommendation of the appeals referee, the Commissioner of Human Services' delegate issued findings of fact, conclusions of law, and an order on his behalf affirming the County's determination that Mrs. Henry had committed serious or recurring maltreatment of a foster child in her care.^[8]

6. On August 18, 1999, the County notified Mr. and Mrs. Henry that they were disqualified from continuing to provide child foster care services because the Commissioner of Human Services had determined that Mrs. Henry had committed serious or recurring maltreatment of a foster child in their care. The notice indicated to the Henrys that they had the right to request reconsideration of the disqualification.^[9] On August 27, 1999, the Henrys did request reconsideration of the disqualification and provided the County with a detailed two-page statement of facts to support their request

that the County remove the disqualification.^[10] After considering their request, the County forwarded it to the Commissioner of Human Services, along with a recommendation that the Commissioner not set aside the disqualification.^[11] After considering the Henrys' request, the Commissioner's delegate made a final decision on December 3, 1999, not to set aside their disqualification or to grant them a variance from it.^[12]

7. Since Minnesota law provides that disqualification of foster care licensees from having direct contact with foster children is grounds for revoking their child foster care license,^[13] the County recommended by a letter dated February 1, 2000, that the Commissioner revoke the Henrys' foster care license.^[14] And on January 26, 1998, the Commissioner's delegate did issue a revocation order.^[15]

8. Mr. and Mrs. Henry subsequently appealed the order of revocation and this contested case proceeding ensued. A hearing in this matter was scheduled for July 18, 2000.

9. Prior to the hearing, Mr. and Mrs. Henry expressed their intention to challenge the County's original maltreatment determination. So on June 21, 2000, the County filed a motion *in limine* requesting the Administrative Law Judge to make several rulings prior to the hearing. Among the County's requests was a motion to limit the scope of the hearing to what the law prescribes in Minnesota Statutes, section 245A.04, subdivision 3b(e) — in other words, to exclude any reconsideration of whether Mrs. Henry committed maltreatment of any of the foster children under her care. On June 27, 2000, Mr. and Mrs. Henry filed a response to the County's motion requesting that the Administrative Law Judge review the merits of the charges of child maltreatment that formed the basis for the Department's decision to their child foster care license. On July 11, 2000, the Administrative Law Judge issued an order granting the part of the County's motion that sought exclusion of any evidence relating to whether or not maltreatment had actually occurred.

10. At the hearing, the County introduced evidence of the administrative proceedings that had already occurred in the Henrys' case.^[16] Both the County and the Henrys then agreed that there were no genuine disputes about the facts that were material to the issues that the Administrative Law Judge has the legal authority to consider in this contested case proceeding. Accordingly, the Administrative Law Judge closed the evidentiary record in this proceeding, and both parties presented argument in support of their respective legal positions.

11. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

12. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

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

CONCLUSIONS OF LAW

1. Minnesota law^[17] gives the Administrative Law Judge and the Commissioner of Human Services authority to consider and rule on the issues in this contested case proceeding.

2. The Notice of and Order for Hearing was proper in all respects, and the County and DHS have complied with all of the law's other substantive and procedural requirements.

3. Minnesota law^[18] establishes the parties' burdens of proof and of producing evidence in proceedings to appeal revocations of family foster care licenses:

[T]he commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings . . . shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

4. Minnesota law^[19] requires DHS to disqualify any person who has been determined administratively to have maltreated a child from having any further direct contact with foster children.^[20] And under child foster care program rules, disqualification of the licensee is grounds for revoking his or her license.^[21]

5. Furthermore, Minnesota law states that a final decision of the Commissioner concerning whether a licensee committed maltreatment is conclusive in a subsequent proceeding to revoke that individual's foster care license.^[22] Since the Commissioner has issued a final decision that Mrs. Henry maltreated a foster child under her care, she must be considered to have committed maltreatment for purposes of this appeal.

6. The Commissioner has therefore demonstrated reasonable cause for revoking the Henrys' child foster care license based on his earlier decision concerning maltreatment by Mrs. Henry. And under Minnesota law^[23] the Henrys then have the burden of proof to demonstrate, by a preponderance of the evidence, that they have complied fully with the statutes and rules that apply to the child foster care program. But here the Commissioner has made final decisions concluding that Mrs. Henry committed maltreatment and that they are therefore disqualified from being child foster care providers. They have therefore failed to meet their burden of proof, and DHS was therefore justified in revoking their child foster care license.

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

8. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge therefore respectfully recommends that the decision to revoke license of Dennis and Merlene Henry to provide child foster care be UPHELD because Mrs. Henry has been found to have committed maltreatment of a foster child under her care, and they are therefore disqualified from holding a child foster care license.

Dated this 25th day of July 2000.

s/ Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (one tape); No Transcript Prepared.

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NOTICE

Under Minnesota law,^[24] the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The underlying reason for revoking the Henrys' license to provide child foster care was that the County had found that Mrs. Henry had committed serious or recurring maltreatment of a foster child under her care. Minnesota law does not allow a foster care licensee to challenge a finding of maltreatment in a proceeding to appeal revocation of a foster care license. Rather, the legislature has provided licensees with the opportunity for a separate hearing on that issue before one of DHS's appeals referees. The Henrys, with the assistance of an attorney, did pursue that other opportunity to appeal the County's maltreatment finding, and both the appeals referee and the Commissioner ruled against them. They then exercised their right to have the Commissioner reconsider the County's decision to disqualify them as child foster care providers because of that maltreatment. But the Commissioner ruled against them a second time. Their rights to have those decisions reconsidered or to appeal them have therefore all been exhausted.

Despite adverse rulings in their earlier appeals, the Henrys still wished to argue in this proceeding that both the appeals referee and the Commissioner were wrong about what actually happened to the foster children under their care. But the legislature effectively limited appeals of child maltreatment determinations to the processes that Mr. and Mrs. Henry have already pursued by enacting Minnesota Statutes, section 245A.04, subdivision 3b(e):

Except as provided in subdivision 3c, the commissioner's decision to disqualify an individual, including the decision to grant or deny a rescission or set aside a disqualification under this section, is the final administrative agency action and *shall not be subject to further review in a contested case under chapter 14 involving a negative licensing appeal taken in response to the disqualification* or involving an accuracy and completeness appeal under section 13.04. [Emphasis supplied.]

In other words, the legislature has concluded that two opportunities to have a maltreatment determination set aside are enough. So, this Administrative Law Judge is bound by the Commissioner's earlier decisions about maltreatment and disqualification, and the law does not allow him to hear evidence and come to different conclusions.

As a matter of law, maltreatment of a child is against the law^[25] and is grounds for disqualifying a foster care provider from having any further contact with foster children. That kind of disqualification, in turn, is grounds for revoking a foster care provider's license.^[26] Mr. and Mrs. Henry have therefore failed to meet their burden of proof to demonstrate, by a preponderance of the evidence, that they have complied fully with the statutes and rules that apply to the child foster care program. And the Administrative Law Judge has no choice but to recommend to the Commissioner that revocation of their child foster care licenses be upheld.

B. H. J.

^[1] Minnesota Statutes, section 14.61 (1998). (Unless otherwise specified, citations to Minnesota Statutes refer to the 1998 edition.)

^[2] Attachment 1 to the Affidavit of Vicki Vial-Taylor dated June 21, 2000, and filed to support the County's motion *in limine* of the same date. At the hearing the County tendered all of the attachments to the Affidavit as hearing exhibits, and the Administrative Law Judge received them as such. To avoid confusion, the Administrative Law Judge refers to those hearing exhibits in this report as Attachment 1 through Attachment 9. Attachment 1 constitutes findings of fact, conclusions and an order of the Commissioner of Human Services dated June 30, 1999.

^[3] Exhibit 4.

^[4] Attachment 1.

^[5] Attachment 1.

^[6] See Minnesota Statutes, section 256.045, subdivision 3(a)(8).

^[7] Attachment 1.

^[8] Attachment 1.

^[9] Attachments 2 and 3.

^[10] Attachment 4. Minnesota Statutes, section 245A.04, subdivision 3b, gave the Henrys the right to have the disqualification reconsidered first by the County and ultimately by the Commissioner of Human Services.

^[11] Attachment 5.

^[12] Attachment 7.

^[13] Minnesota Rules, part 9543.1060, subpart 4B. Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.

^[14] Attachment 8.

^[15] Attachment 9.

^[16] Attachments 1 through 9.

^[17] Minnesota Statutes, sections 14.50, 14.57, 14.69, and 245A.01 through 245A.16.

^[18] Minnesota Statutes, section 245A.08, subdivision 3(a).

^[19] Minnesota Statutes, section 245A.04, subdivision 3d.

^[20] Minnesota Statutes, section 245A.04, subdivision 3(f).

^[21] Minnesota Rules, part 9543.1060, subpart 4B.

^[22] Minnesota Statutes, section 256.045, subdivision 3b.

^[23] Minnesota Statutes, section 245A.08, subdivision 3(b).

^[24] Minnesota Statutes, section 14.62, subdivision 1.

^[25] Minnesota Statutes, section 626.556.

^[26] Minnesota Rules part 9543.1060 , subpart 4.