

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

In the Matter of the Indefinite Suspension
of the Family Child Care License of
Kenneth Cobb and Maureen LeBarron

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis, on August 22, 2000 at the Office of Administrative Hearings in Minneapolis.

David Turner, Certified Student Attorney, Ramsey County Attorney's Office, 50 W. Kellogg Boulevard, Suite 560, Saint Paul, Minnesota 55102-1657 appeared on behalf of the Ramsey County Community Human Services Department (County). Kenneth Cobb and Maureen LeBarron, 449 Aurora Avenue, Saint Paul, Minnesota 55103 appeared on their own behalf without the assistance of counsel.

The record in this matter closed at the conclusion of the hearing on August 22, 2000.

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 a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation. Under Minn. Stat. § 14.61 the final decision of the Commissioner may not be made until this Report has been made available to the parties to the proceedings for at least 10 days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions or present argument to the Commissioner. Parties should contact the office of Michael O'Keefe, Commissioner of Human Services, 444 Lafayette Road, Saint Paul, Minnesota 55155 for information regarding the filing of exceptions or presentation of argument.

STATEMENT OF ISSUE

Whether the indefinite suspension of the license of Kenneth Cobb and Maureen LeBarron should be affirmed because Ms. LeBarron has not established her verified abstinence from controlled substances or alcohol for a period of 12 months.

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

FINDINGS OF FACT

1. Kenneth Cobb and Maureen LeBarron (Licensees) are licensed to operate a Group Family Day Care Center out of their residence. Ms. LeBarron was licensed first in November, 1995 and Mr. Cobb was licensed first on January 1, 1999. They have a joint license from the Department of Human Services for the facility at 449 Aurora Avenue in Saint Paul.

2. On April 13, 1999, following her third conviction for Driving While Intoxicated (DWI) in 10 years, Ms. LeBarron was seen for a clinical assessment evaluation/intake interview at Twin Town-Eagan, a local treatment facility. Treatment had been ordered by a Dakota County District Judge for Ms. LeBarron following her conviction on DWI charges on October 3, 1998.

3. On April 20, 1999, a counselor in the Safe Streets program at Twin Town expressed concern to Gayle Carter, a licensing worker for the Ramsey County Community Human Services Department (County) who was assigned to Ms. LeBarron's file, as to whether Ms. LeBarron should be providing child care services because of her emotional state at that time. Safe Streets also sent Ms. Carter a copy of a laboratory analysis from a drug test LeBarron had taken on April 13, 1999, which reported that she had tested positive for marijuana on that date.

4. On April 21, 1999, Ms. Carter received a FAX from a consulting nurse at a Health Partners clinic. The nurse reported that Ms. LeBarron had admitted to her that "until 1-1/2 weeks ago [prior to mid-April, 1999] she had used marijuana two to three times a week." She had been convicted of misdemeanor possession of marijuana in 1992.

5. On May 7, 1999, Ms. Carter received a written report from a program manager at Twin Town-Eagan summarizing and updating the center's history with Ms. LeBarron. The report revealed that Ms. LeBarron acknowledged having smoked crack cocaine once per month until sometime in 1998, and that she used alcohol and marijuana regularly until April 10, 1999. Ms. LeBarron acknowledged also that she "felt depressed". The initial diagnosis at Twin Town, as reported in its May 7, 1999 letter to Ms. Carter, was that Ms. LeBarron was dependent on alcohol and was engaging in episodic abuse of cannabis (marijuana).

6. Sometime in the late spring or early summer of 1999, Ms. LeBarron began receiving treatment for chemical dependency. Part of the treatment program is periodic testing for the presence of controlled substances. In August, 1999 a testing laboratory reported to Twin Town-Eagan that Ms. LeBarron tested positive for cocaine. The test date was July 28, 1999. A sample drawn from Ms. LeBarron on September 28, 1999 also tested positive for cocaine.

7. In October, 1999, Ms. LeBarron began treatment for alcohol dependency at Twin Town-Eagan. She alleges that she has not used marijuana since May, 1999, that she has not used alcohol since before her formal treatment for it began in October, 1999 and that she has not used cocaine in over a year. The Licensees believe the September 28, 1999 test results may manifest a "false positive" result from another

substance. None of these allegations were supported by documentary evidence or testimony from witnesses other than the Licensees.

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

CONCLUSIONS

1. Any of the foregoing Findings of Fact more properly considered Conclusions are hereby adopted as such.

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

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

4. The Department and Ramsey County have complied with all substantive and procedural requirements of law and rule.

5. Minn. Rule 9502.0335 provides, at subp. 6.A.:

“Disqualification factors ... the license shall be revoked, not renewed, or suspended if the applicant, provider or any other person living in the day care residence or present during the hours children are in care, or working with children ... abuses prescription drugs or uses controlled substances as specified in Minnesota Statutes, Chapter 152, or alcohol, to the extent that the use or abuse has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care. Caregivers who have abused prescription drugs or have been dependent on controlled substances as specified in Minnesota Statutes, Chapter 152, or alcohol, such that the use, abuse, or dependency has had a negative effect on the ability to give care, was apparent during the hours that children are in care, or required treatment or therapy, must have 12 months of verified abstinence before licensure.”

6. The County has shown reasonable cause for the indefinite suspension of the license of Kenneth Cobb and Maureen LeBarron. It has established that Ms. LeBarron is dependent on alcohol and controlled substances to the extent that she has required treatment or therapy.

7. The Licensees have not established by a preponderance of the evidence that Ms. LeBarron has had 12 months of verified abstinence from marijuana, cocaine, or alcohol within the meaning of Minn. Rule 9502.0335, subp. 6A.

8. It is appropriate to continue the Indefinite Suspension of the Group Family Day Care License of Kenneth Cobb and Maureen LeBarron until the Licensees

establish a verified 12 month period of abstinence by Ms. LeBarron from the use of alcohol and controlled substances.

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

RECOMMENDATION

IT IS RECOMMENDED that the Indefinite Suspension of the Group Family Day Care License of Kenneth Cobb and Maureen LeBarron be CONTINUED until the Licensees verify properly that Ms. LeBarron has abstained from alcohol and controlled substances for a period of 12 months.

Dated this 14th day of September, 2000.

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped, No Transcript Prepared.

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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 raised the issue of whether Mr. Cobb can continue to operate a licensed facility if disciplinary action is taken only against the license of Ms. LeBarron. Assuming Ms. LeBarron's situation merits a negative licensing action such as continuing the indefinite suspension, the negative action operates against the license, not the individual licensee(s), so that Mr. Cobb could not continue to operate the facility under the current license even if Ms. LeBarron moved out. He would have to re-apply for licensure of the facility in his name only and could not operate in the interim.

The Licensee's allegations regarding Ms. LeBarron's being drug and alcohol free for a minimum of 10 months (as of the date of the hearing) were not supported by testimony by any witness other than Ms. LeBarron or by any documentation tending to support her claims of abstinence. It is the opinion of the Administrative Law Judge that the requirement in the above-quoted rule requiring 12 months of "verified" abstinence means that the sworn testimony of a licensee as to her abstinence is not sufficient proof. To "verify" her abstinence, Ms. LeBarron needed an independent, uninterested (not Mr. Cobb) witness to that fact, or at least documentary proof such as written test results. Since the Licensees produced no other witnesses or documents establishing Ms. LeBarron's abstinence, the Licensees failed to meet their burden of proof and it is appropriate for the indefinite suspension to continue.

Ms. Carolyn Reynolds, a Child Care Licensure Supervisor for Ramsey County, testified at the hearing as to what the Licensees should do, at a minimum, to persuade the County to recommend a lifting of the suspension by the State Department of Human Services. Upon receiving a release from Ms. LeBarron, the County would obtain the documents (presumably establishing negative tests for alcohol, marijuana and cocaine) from the appropriate treatment professionals. If the documentary evidence establishes abstinence for the requisite period of time, and the County is satisfied with the schedule/program for continuing treatment or follow-up monitoring, it will re-assess the situation and may recommend that the state office lift the suspension and reinstate the license. Ms. Reynolds also noted that the County may already have some negative UA (urinalysis) reports from Twin Town-Eagan. If the recommendation to continue the suspension at this time is upheld, the Administrative Law Judge encourages Ms. LeBarron to work with Ms. Reynolds and follow her instructions to produce the appropriate sufficient proof.

R.C.L.