

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

In the Matter of the Temporary Immediate
Suspension of the License of Darcy Sime
To Provide Family Child Care.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 10:00 a.m. on August 12, 2002, at the offices of Swift County Human Services, 410 21st Street South, Benson, Minnesota 56215.

Robin Finke, Esq., Swift County Attorney, 114 14th Street North, Benson, Minnesota 56215, appeared on behalf of the Department of Human Services. Timothy J. Simonson, Esq., Anderson, Larson, Hanson and Saunders, PLLP, 331 Southwest Third Street, PO Box 130, Willmar, Minnesota 56201, appeared on behalf of Darcy Sime. The record closed on August 16, 2002, upon receipt of the licensee's post-hearing memorandum.

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 and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have ten days to file exceptions to this report.¹ The Commissioner's final order shall be issued within ten working days from receipt of the administrative law judge's recommendation.² Because of the timelines, the parties are requested to file any exceptions as soon as possible.

STATEMENT OF ISSUE

Is there reasonable cause to believe that the health or safety of children in the license holder's care are in imminent danger based on allegations that the license holder's husband sexually abused a relative?

The Administrative Law Judge concludes that there is reasonable cause for such a belief and that the Commissioner properly ordered a temporary immediate suspension of the license to provide child care.

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

¹ Minn. Stat. § 14.61.

² Minn. Stat. § 245A.07, subd. 2a(b).

FINDINGS OF FACT

1. Darcy Sime resides with her husband, David Sime, in Benson, Minnesota. Ms. Sime has been licensed to provide family child care since 1994; the Department of Human Services has received no complaints about her care since the time her license was granted. David Sime works at the Benson Golf Club.

2. The Simes have two sons, ages 18 and 12. When their older son was about to graduate from high school in June 2002, they planned an open house graduation party to celebrate the event. A number of family members came from out of town to attend the party over the weekend of June 1-2, 2002. On Saturday afternoon at approximately 1:00 p.m., David Sime's sister Karen Phelps and her daughters, H.P. (age 4) and G.P. (age 1) arrived with his brother, Robert Sime, and his wife and daughter, M.S. (age 3). Karen Phelps and her family live in Lake Ann, Michigan; Robert Sime and his family live in Richfield, Minnesota. The families had driven together from the Twin Cities in one vehicle.

3. Because of the distance between their homes, the families of Darcy and David Sime and Karen Phelps see each other infrequently. David Sime has seen his niece H.P. briefly at family events approximately once a year, or four times in all, since the child's birth.

4. As they finished a picnic lunch outside, Darcy Sime's parents, Ron and Lucy Johansen, and her sister, Andrea Taylor and her two sons (ages 5 and 4), arrived. Shortly thereafter, David Sime's parents, Dean and Kay Sime, and his grandmother, Hazel Sime, joined the group. Everyone was there by approximately 3:00 p.m. Andrea Taylor and her children were staying at Darcy Sime's home for the weekend, in the basement on a sofa; David Sime's grandmother, Hazel, was also staying at their home, upstairs in their younger son's bedroom. The remaining family members were staying at a hotel in town.

5. After everyone arrived, the adults were sitting in the shade under the trees, talking and looking at photographs; the children were playing outside on a swingset that included a sandbox and playhouse. Later David Sime set up a wading pool for the children in the yard. At some point during the afternoon, some of the children in the playhouse started crying, and David Sime, his brother, and his brother's wife all went over to the playhouse to remove the children, including H.P. David Sime lifted them out and handed them to his brother.

6. At approximately 5:00 p.m. the Phelps family and the Robert Sime family returned to the hotel in town so that the children could continue to swim at the hotel pool while Darcy Sime and her family attended a graduation event for a friend of their son's. Hazel Sime, David Sime's grandmother, went upstairs to

take a nap. At approximately 7:00 p.m., the entire family returned to the Sime home for an outdoor barbecue, at which David Sime grilled hotdogs. After eating, David Sime took his father, grandmother, sister Karen and her daughter G.P. to see the golf course where he works. H.P. remained at the Sime home with David Sime's mother and the other family members. Approximately 45 minutes later, the group returned from the golf course, and the visitors loaded up their cars and returned to the hotel in town.

7. The next morning, all family members returned to the Sime home for breakfast after attending church. After eating, they cleaned up and began preparing for the graduation party, preparing food and setting up chairs inside and out. When these preparations were completed, everyone left to attend the graduation ceremony except for Karen Phelps and her daughters and Robert Sime and his family, who stayed at the Sime home to watch it on television. After the ceremony, everyone who had attended the graduation returned, and the open house party began. Approximately 100 friends and classmates attended the party over the course of the afternoon. At about 6:00 p.m., two hours before the party ended, Karen Phelps and her daughters and Robert Sime and his family left to return to the Twin Cities.³

8. Four days later, on June 6, 2002, Karen Phelps called the police department in Benson to report a possible sexual assault of H.P. She informed the police that while driving back to Michigan, H.P. had asked her if she wanted to touch her "nancy," which is the word H.P. uses to describe her vaginal area. The next day while H.P. was taking a bath, she said that her "nancy" was dirty and needed to be washed. Karen Phelps started questioning the child and H.P. indicated to her that David Sime had touched H.P.'s "nancy" and that he had taken his clothes off and made H.P. touch his penis. Officers at the Benson Police Department advised her to contact the local human services department to have H.P. interviewed.⁴

9. The police department notified the Swift County Social Services Supervisor that same day about the allegations, and subsequently provided a copy of the police report. Based on the advice of David Bradshaw at the Department of Human Services, the supervisor contacted Karen Phelps to notify her that H.P. would have to see a physician and psychologist. Social services also reviewed Darcy Sime's licensing file to determine which children she was providing care for; the children in care were mostly girls between 3 and 10 years old.

10. On June 7 and June 10, 2002, Lynn Feeter, MSW, at Lakeview Counseling in Traverse City, Michigan, interviewed H.P. The interviews were not recorded on videotape.

³ See Testimony of Darcy Sime and David Sime. None of the above facts were disputed during the hearing.

⁴ Ex. 5.

11. On June 10, 2002, a pediatrician in Traverse City, Michigan examined H.P. He found no physical evidence of sexual abuse. During this examination the child indicated on stick figures that her uncle had touched her in the vaginal area with his hand, but she denied that he had exposed himself to her and denied any contact with his genitals.⁵

12. On June 11, 2002, Lynn Feeter sent a letter to Swift County Human Services with preliminary information regarding the sexual abuse allegations. Her letter provides that in both individual sessions on June 7 and June 10, H.P. disclosed that her Uncle Dave had (on more than one occasion), put his hand down inside her underpants and rubbed her vaginal area. She also indicated that he had removed his clothing and rubbed himself against her, and that these incidents occurred in her uncle's bedroom and in her cousin's bedroom [the room where Hazel Sime was staying]. She also spoke of a playhouse where some additional touching may have taken place. In addition, she reported that on more than one occasion, she observed her uncle touching her cousin M.S. in a similar manner. She reported that her uncle put his hand over her mouth and told her not to tell what happened.⁶

13. There was no corroborative evidence in this proceeding that David Sime was ever alone with the two girls, or that the two girls were ever upstairs in any of the bedrooms either by themselves, together, or with anyone else.

14. On June 12, 2002, the Department of Human Services issued an order immediately suspending Darcy Sime's license to provide family child care. The order provides:

On June 11, 2002, Swift County Human Services received a report regarding possible maltreatment of a minor(s) in your home. Because this incident remains under investigation, it is confidential data under the Minnesota Government Data Practices Act and cannot be released in this letter.

Due to the serious nature of the violation under investigation, Swift County Human Services cannot ensure the safety of the persons served in your program. The Commissioner of the Department of Human Services finds that the health, safety, and rights of children in your care are in imminent danger. Therefore, the Commissioner is immediately suspending your license to provide Family Child Care.⁷

15. The Benson Police Department served the Order of Temporary Immediate Suspension on Darcy Sime at approximately 1:00 p.m. on June 12,

⁵ Ex. 3.

⁶ Ex. 1.

⁷ Ex. 4.

2002. Shortly thereafter the police interviewed David Sime at the police department. He denied any sexual contact with the children.⁸

16. On June 17, 2002, Lynn Feeter attempted to interview H.P. again on videotape. The child became upset and refused to make any statements.⁹

17. On July 1, 2002, Lynn Feeter completed her Sexual Abuse Evaluation Report. It contains more detail about the forensic interview and the child's vocabulary, grasp of actual and relational time, and ability to tell the truth. The allegations of sexual abuse are essentially the same as indicated in her preliminary report. There is no way to determine from the report itself whether the child's responses were elicited by leading questions or otherwise.

18. Robert Sime, David Sime's brother, brought his daughter M.S. to be interviewed at CornerHouse in Minneapolis. CornerHouse personnel concluded that M.S. was not ready to be interviewed and that attempts to interview her would do more harm than good at that time.¹⁰

19. Darcy Sime appealed the Order of Immediate Suspension, and the Department of Human Services issued a Notice and Order for Hearing providing that a hearing would be held on July 18, 2002.

20. On June 24, 2002, the county attorney requested an extension of the 30-day requirement for hearing, on the basis that the Benson Police Department had not completed its investigation, which was taking longer than anticipated because the alleged victim lived in Michigan. Darcy Sime objected to the continuance. The Chief Administrative Law Judge found good cause for the continuance and rescheduled the hearing for August 12, 2002.

⁸ Ex. 5.

⁹ Ex. 2.

¹⁰ Testimony of Jim Crace. Robert Sime also informed the police of two incidents that occurred when David Sime was a teenager. The Administrative Law Judge overruled a preliminary relevance objection to this evidence based on the County's assertion that they related to "similar allegations in the past." The incidents involved David Sime spying on his sister in the bathroom and taking photographs of her undressing. These allegations are not similar to any incidents at issue in this proceeding, and the Administrative Law Judge specifically finds that they are not relevant. In addition, Robert Sime suggested that David Sime had a previous conviction for a sexual offense in another county. In fact, David Sime pleaded guilty in 1986 to a misdemeanor charge of disorderly conduct for looking at an adult woman through the window of her trailer home. Darcy Sime disclosed this conviction on her application for a child care license in 1994. The Department of Human Services viewed it as a disqualifying factor but granted a variance for it. The Administrative Law Judge finds that this offense is not relevant to any issue in this proceeding.

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subds. 2 & 3, and 14.50.
2. The Commissioner, through Swift County Human Services, has complied with all substantive and procedural requirements.
3. If the commissioner finds that the health, safety, or rights of the children in care are in imminent danger, the commissioner shall immediately suspend the license. Minn. R. 9502.0341, subp. 9; see *also* Minn. Stat. § 235A.07, subd. 2. (if the license holder's actions pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license).
4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the 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. Minn. Stat. § 245A.08, subd. 3.
5. If a license holder appeals an order immediately suspending a license, the commissioner must request an expedited hearing to take place within 30 calendar days of the request for assignment, unless an extension is requested and granted for good cause. Minn. Stat. § 245A.07, subd. 2a.
6. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings is limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program. Minn. Stat. § 245A.07, subd. 2a.
7. The Commissioner has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health and/or safety of children served by the license holder, based on the allegations of sexual abuse by the license holder's husband, which required a temporary immediate suspension of the license to provide family child care.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services uphold the immediate suspension of Darcy Sime's family child care license.

Dated: August 26, 2002

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (two tapes)

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2000), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Commissioner was not required to prove in this proceeding that David Sime sexually abused H.P.¹¹ The Commissioner has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. This is a modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination.

The County, acting for the Commissioner, must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. Reasonable cause to suspend a license is not specifically defined in the statute, but is analogous to the probable cause standard in a criminal proceeding.¹² In both cases the state is entitled to rely on hearsay evidence linking the license holder (or someone who resides with her) to an act that puts children in care at risk of imminent harm. The judge's function at this stage of the process is not to assess the credibility of conflicting testimony, but to determine whether there is enough evidence to proceed. Unless the respondent submits evidence that makes the alleged violation "inherently incredible," or

¹¹ The Commissioner of Human Services has not yet made a determination whether David Sime has a disqualification factor that would support another licensing sanction, such as indefinite suspension or revocation. In that case the Commissioner would have the burden of proving, by a preponderance of the evidence, that Mr. Sime committed the violation alleged.

¹² See *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 902 (1976).

"seemingly impossible under the circumstances," evidence offered by the respondent will not overcome a probable cause determination.¹³

In this case the Department of Human Services based its decision to immediately suspend the license solely on the preliminary evaluation of H.P. conducted by a social worker trained to conduct forensic interviews in cases of suspected child abuse. The social worker did not testify at the hearing; both her preliminary report and later report were received over the licensee's hearsay objection. Her reports indicate that she spoke with the child on two occasions, on June 7 and June 10, 2002, and that in both sessions the child stated that her uncle, on more than one occasion over the weekend in question, had put his hand inside her underpants and rubbed her vaginal area. Apparently during the forensic interview, which was her second contact with the child, the child provided more details and said she saw her uncle touch her three-year old cousin, M.S., in the same manner.

The administrative law judge received these reports over the licensee's hearsay objection because Minn. Stat. § 245A.08, subd. 3, allows the Commissioner to demonstrate reasonable cause for action taken by submitting "statements, reports, or affidavits." For purposes of this licensing proceeding, the report is sufficiently reliable hearsay evidence of the child's statements. The Commissioner was entitled to make a preliminary determination, based on the report, that the children in care were at risk of harm, requiring an immediate temporary suspension of the child care license.

The evidence offered by the Simes, which includes David Simes' denial that he had any sexual contact with his niece and other evidence that it would have been difficult for anyone to sexually abuse this child in the manner described, given the limited opportunities and the number of people in and out of the home on the weekend in question, does not make the alleged violation inherently incredible. This evidence will require another finder of fact to make credibility determinations that are beyond the scope of this hearing.

K.D.S.

¹³ *Id.*, 239 N.W.2d at 903 & n.24.