

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

In the Matter of the Maltreatment,
Disqualification, and License Revocation
of Mary Yates

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:00 a.m. on January 28, 2002, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55904. The post-hearing briefs were received on February 7, 2002.

Kerri Stahlecker Hermann, Assistant Attorney General, 445 Minnesota Street, 900 NCL Tower, St. Paul, Minnesota 55101-2109, appeared on behalf of the Department of Human Services. Gary A. Debele, Esq., Walling & Berg, P.A., 121 South 8th Street, Suite 1100, Minneapolis, Minnesota 55402-2823, appeared on behalf of Mary Yates.

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] An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact the Commissioner of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Did Mary Yates commit maltreatment as defined by the Vulnerable Adults Act, Minn. Stat. § 626.557?

The Administrative Law Judge concludes that she did commit maltreatment.

2. Should Mary Yates be disqualified from providing services because the maltreatment was serious within the meaning of Minn. Stat. § 245A.04, subd. 3d(a)(4)?

The Administrative Law Judge concludes that she should be disqualified.

3. Should the adult foster care license held by Mary Yates be revoked because of her disqualification?

The Administrative Law Judge concludes that the license should be revoked.

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

FINDINGS OF FACT

1. Mary Yates has been a licensed provider of adult foster care since 1983. Her family has also been involved in the provision of foster care for many years: Yates' parents were foster parents for many persons with Down's Syndrome during the years that she was growing up; her sister is a foster parent for persons with Down's Syndrome; and her brother is a supervisor for case managers in Hennepin County who work with adults with developmental disabilities.

2. Yates has provided foster care for E.O., a 28-year-old woman with Down's Syndrome who is moderately mentally retarded, since September 1989.^[2] She has also provided adult foster care for a 32-year-old woman, M.J., since 1985.^[3] E.O. is higher functioning than M.J., is very social, and likes to be the center of attention. M.J. is more of a loner; she has limited verbal skills and uses sign language.^[4]

3. Both E.O. and M.J. work Monday through Friday in a day training program administered by Pillsbury United Communities. E.O.'s job is at the Country Kitchen restaurant in New Hope; M.J. works at another location. A Metro Mobility van picks them up at home between 7:35 and 7:45 a.m., drives them to work, and then picks them up at work and brings them home in the late afternoon. The morning routine is that Yates wakes them up at 6:45, they are to dress and come to the kitchen for breakfast, then be ready and waiting for the van at the front door by 7:20. As a reward for good behavior, E.O. is sometimes allowed on Fridays to take money to buy lunches or french fries at Country Kitchen. The rest of the week she packs a bag lunch.

4. E.O. enjoys her work at Country Kitchen and has a "network" of friends there who have had little if any interaction with the Yates family. Her job coach, George Christopher, is employed by Pillsbury United Communities; his job is to assist E.O. and others served through the program in doing their jobs and staying busy at the work site. He talks to Yates on the telephone and sees her occasionally when she comes to the job site to pick up E.O. early, and he sees her at annual meetings to discuss goals for E.O. A waitress, Jennifer Johnson, has worked with E.O. for more than three years and considers herself a friend of E.O.'s. She has never spoken to Yates. Based solely on information provided by E.O., Johnson and others at Country Kitchen developed concerns about E.O.'s home situation that center on the use of time outs in a corner to

discipline E.O. and the general feeling that the Yates family treats E.O. too much as a child and not enough as a 28-year-old woman.^[5]

5. On November 15, 2001, E.O. arrived at work, approached George Christopher, and told him that she needed to talk to him in private after jobs were assigned to the other participants. She appeared to be nervous or shaken up. She told Christopher that Mary Yates, that morning in E.O.'s bedroom, had grabbed her by the collar of her shirt and "swung her around." She told him that Yates was mad because E.O. was not moving fast enough. She pulled her shirt down and showed her neck to Christopher, who observed red marks around her neck a little lower than the collar.^[6] The marks were bright red and extended from one side of the neck around the back to the other side.^[7] Christopher observed that on one side of E.O.'s neck the marks were wider and had what looked like creases in the skin.

6. George Christopher filed an incident report with Pillsbury United Communities on November 15, 2001. The incident report provides that:

Ellen came in to work a little shook up with a red ring around her neck. She told coach she needs to talk. About her problem. She said her foster mom grab[b]ed her by the collar of he[r] shirt and told her she was not doing what she should be doing and moving to[o] slow.^[8]

7. On December 10, 2001, an investigator with the Department of Human Services interviewed E.O. at Country Kitchen. When asked about the injuries on November 14, the investigator's notes indicate that E.O. said:

Sitting in room on floor. Mary Yates picked me up with her hands--grabbing my shirt--off the floor. Mary wanted me to check the time on the microwave. [M.J.] my older sister lives with me. I checked microwave and then I told Melanie, "It's time to go." Melanie goes with me.

. . .

. . . Mary grabbed work shirt. [Where were you:] sitting on floor [p]laying cards with Melanie. Mary grabbed me up and said "not listening to me. Check the time you have to leave." Mary had long nails and she scratched my neck. [M.J.] swore at me and we both were sent to corner. Mary said: Ellen Check the time" on microwave. [What time was it?] 7:20.^[9] [E.O. demonstrated to the investigators: Mary grabbed shirt with left hand nails scratched neck (Left hand)] When got to work, saw red marks on neck. George saw red marks.^[10]

8. On the same date the investigator interviewed George Christopher. He repeated the information provided in the incident report, and the investigator's notes reflect that when asked to describe the sequence of the incident as reported by E.O., he said:

[E.O.] was sitting or lying down and Mary told her that she was running late. Mary grabbed and swung her around. No mention of standing in the corner that day. The redness went completely around her neck and one side was a little thicker than the rest. The red mark was definitely from her collar (1/4 of an inch).^[11]

He further described the marks as “clear marks, very, beet red.”^[12]

9. On December 14, 2001, Mary and Jeff Yates received a copy of the incident report filed by George Christopher concerning the incident. The Yates family was on the way to a hockey game; the incident report was read out loud in the vehicle as the family was driving, and there was some discussion about whether E.O. had been truthful in her statements.

10. On December 17, 2001, the Department investigator interviewed two other workers from the Country Kitchen, both of whom stated that they saw red marks on E.O.’s neck on November 16, 2001, the day after the incident.^[13] Jennifer Johnson also reported that when she asked E.O. about the marks on November 16, E.O. told her that Mary Yates had grabbed her by the collar because she was running late. Johnson also reported that when E.O. had arrived at work that day, December 17, she had told them that she was in trouble because a note came to the house and Mary Yates had told her she shouldn’t be lying to people about what had happened.^[14]

11. On December 20, 2001, the Department investigator interviewed Mary Yates and Jeff Yates. Mary Yates told the investigator that during the week leading up to November 15, 2001, E.O. would not do her normal chores (taking out the garbage and vacuuming) and was generally in a “transition mode” because she was planning to visit her mother for Thanksgiving the next week.^[15] As a consequence, Mary Yates had told E.O. that she could not take money for lunch on Friday.^[16]

12. When she entered E.O.’s room to wake her up on the morning of November 15, Mary Yates said she turned on the light and E.O. sat up in bed. Yates said she saw a light red mark about one inch long on E.O.’s neck and immediately asked her what it was. E.O. answered that she had slept on it wrong. E.O. then asked whether she could have money for Friday. Yates told the investigator she said no, and left to fix breakfast. When E.O. was not in the kitchen by 7:10, Yates said she went to E.O.’s room and found her dressed but sitting on the floor. E.O. asked again about money for Friday. Yates said she reached down with her left hand and grasped E.O.’s upper right arm to help her get up. Yates said that E.O. was very mad, fixated on the money for Friday, and was yelling and banging things around near the front door until the van came to pick her up.^[17]

13. With regard to the conversation after receipt of the incident report, Mary Yates told the investigator that after reading the report out loud in the car she had asked E.O. “Did I really do this?” and E.O. had said “No.”^[18] When asked how she thought the marks had appeared on E.O.’s neck, Mary Yates said she thought E.O. did it to herself

after leaving that morning because she was mad at Yates about the lunch money. Yates indicated that E.O. “wipes away at herself like she is dispersing her anger.”^[19]

14. Jeff Yates had been busy with work and not home much the week before November 15. By that date, his busy period at work had ended and he was at home that morning trying to sleep in. He is not aware of any disputes that week between Mary Yates and E.O., and he remembers nothing significant happening the morning of November 15. He has never seen his wife use physical discipline with their children or foster children. He has observed E.O. pick at sores on her arm, scratch her head, and brush at her neck and believes these are tics associated with Down’s Syndrome.^[20]

15. In the past E.O. has reported to others that Jeff Yates has pushed and hit her (in 2000) and another vulnerable adult living in the Yates home (in 1987). Neither allegation was found to be substantiated. When interviewed by the police about the incident in 2000, E.O. told officers that Yates did not push or hit her and that she was “playing games” when she told her teacher about it.^[21]

16. On March 29, 2002, the Department notified Mary Yates that based on its investigation it had concluded that Mary Yates was responsible for maltreating E.O. in the Yates’s adult foster home. The Department also concluded that Mary Yates was disqualified from providing care because this incident constituted serious maltreatment under Minn. Stat. §245A.04, subd. 3d(a)(4). The Department informed Mary Yates that if she failed to request reconsideration of the disqualification, she could jeopardize her ability to provide adult foster care.^[22]

17. Mary Yates sought reconsideration of the maltreatment determination and the disqualification in correspondence dated April 3, 2002 and received by the Department on April 12, 2002.^[23]

18. On May 29, 2002, the Department notified Mary Yates that it had reviewed her request for reconsideration and concluded that the maltreatment determination was appropriate. The Department also declined to rescind or set aside the disqualification.^[24]

19. On June 18, 2002, Wright County Human Services recommended to the Department that Mary Yates’s Adult Foster Care License be revoked based on the maltreatment determination and disqualification.^[25]

20. On July 3, 2002, the Minnesota Department of Human Services issued an Order revoking the foster care license.^[26]

21. Mary Yates requested a contested case hearing consolidating the maltreatment determination, disqualification, and revocation.

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, subd. 2 & 3, and 14.50.

2. The Department gave proper and timely notice of the hearing and has complied with all substantive and procedural requirements.

3. This is a consolidated contested case hearing for licensing sanctions based on a maltreatment determination, disqualification for which reconsideration was requested but not set aside or rescinded, and license revocation pursuant to Minn. Stat. § 245A.08, subd. 2a.

4. “Maltreatment” or “abuse” of a vulnerable adult means, among other things, conduct that is not accidental or therapeutic which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following: hitting, slapping, kicking, pinching, biting, or corporal punishment.^[27]

5. An individual who has committed an act that results in a determination of substantiated serious maltreatment of a vulnerable adult under section 626.5572 subd. 2(b)(1), shall be disqualified from access to a person receiving services.^[28] Serious maltreatment is abuse resulting in serious injury, which is defined in part as “bruises, bites, skin laceration, or tissue damage.”^[29]

6. The Department has proved by a preponderance of the evidence that Mary Yates was culpable of maltreatment of E.O. on November 15, 2001.

7. The Department has proved by a preponderance of the evidence that Mary Yates should be disqualified because the maltreatment of E.O. on November 15, 2001, constituted serious maltreatment.

8. Mary Yates has failed to show by a preponderance of the evidence that the disqualification should be set aside because she does not pose a risk of harm to the vulnerable adults receiving services from her.

9. The Commissioner shall revoke a license if the applicant, provider, or any person living in the adult foster care residence has a disqualification under Minn. Stat. § 245A.04, subd. 3d.^[30]

10. Any Findings of Fact that are more appropriately considered Conclusions of Law should be so considered, and vice versa. The Memorandum attached hereto is incorporated by reference.

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:

- (1) Affirm the finding of maltreatment;
- (2) Disqualify Mary Yates from contact with persons receiving services; and
- (3) Revoke Mary Yates's Adult Foster Care License.

Dated: March 11, 2003

Sheehy

/s/ Kathleen D.

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-Recorded (six tapes)

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1 (2000), the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.62, subd. 2a, this Report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

MEMORANDUM

The Administrative Law Judge has upheld the Department's finding of maltreatment in this case because the physical injury (the red marks around E.O.'s neck) was consistent with the way E.O. reported the incident happening; because E.O. reported the incident consistently several times for up to three weeks after the incident; and because several people saw the red marks and independently described them in the same way. E.O.'s statements to George Christopher on the morning of November, 15, 2001, her statements to Jennifer Johnson on November 16, 2001, and her statements to Department investigators on December 10, 2001, all indicate that Mary

Yates got mad at E.O. for running late that morning and grabbed her collar, causing red marks on her neck.^[31]

E.O.'s story only began to change when Mary Yates confronted her on December 14, 2001, after receiving the incident report. Yates told E.O. that she was hurt by these statements and made it clear that she was unhappy about the incident report. Whether or not it was appropriate to have these discussions, it is clear that at this point E.O.'s statements about the incident began to change and became less reliable because she knew that people who were important to her were unhappy and concerned about the allegations.^[32]

Mary Yates contends that the Department's reliance on George Christopher's statements is unsupported because Christopher's description of E.O.'s injuries "dramatically increased" in severity during the time the investigation was occurring. In fact, George Christopher's description of E.O.'s injury has been consistent. His incident report dated November 15, 2001 describes the injury as a "red ring around her neck." On December 10, 2001, with DHS investigators interviewing him, Mr. Christopher was able to offer more details about the red ring around E.O.'s neck. He described the marks as "clear marks, very, beet red" and "the redness went completely around her neck and one side was a little thicker than the rest." He also told investigators that the red mark was definitely from her collar. Finally, DHS contacted Christopher on March 15, 2002, to obtain additional information on the appearance of the marks on E.O.'s neck. He described the marks as looking like they were "caused by a twisted collar" and that diagonal line on one side of E.O.'s neck "looked like twisted fabric." Mr. Christopher's last comment was that the side that looked like twisted fabric was "... bigger, and the rest looked like a rope burn."

The Administrative Law Judge finds that Christopher's description of E.O.'s injuries was consistent, and the increasing detail of those descriptions is a result of the Department's requests for more detail during the course of the investigation, and is not the result of fabrication or embellishment.^[33]

Mary Yates also contends that the investigation was flawed because the Department failed to interview the person who drove E.O. to work the morning of November 15, 2001. Three different people at Country Kitchen gave credible accounts of having seen red marks around E.O.'s neck on November 15 and November 16, 2001.^[34] Mary Yates reported seeing a light color mark, about an inch long, on E.O.'s neck before she left for work that morning. Nothing in the record supports Mary Yates' argument that E.O. could have injured herself during the van ride, either intentionally (for the purpose of blaming Mary Yates for an injury) or unintentionally (through "brushing" at her neck). There is no evidence that E.O. has ever before injured herself and blamed someone else for it, or that she typically engages in self-injurious behavior of this type. It seems less likely that E.O.'s habit of "wiping" or "brushing" at her neck, described by Mary and Jeff Yates, could have produced the red ring around E.O.'s neck than that the injury was produced as reported by E.O., when Mary Yates grabbed her by the collar.

Mary Yates also contends that the investigation was flawed because the Department failed to contact Mary Buck, E.O.'s long-time social worker in Pine County. This investigation involved a specific incident of abuse of a vulnerable adult. Mary Buck's knowledge of E.O.'s past behaviors is not determinative of whether or not Mary Yates grabbed E.O.'s collar. Mary Buck did not see E.O. on November 15, 2001, nor did she ever witness the red marks on E.O.'s neck. The Department's failure to contact Buck during the investigation does not undermine the support for the conclusions reached during the investigation.

Finally, Mary Yates argues that the Department improperly failed to consider E.O.'s past allegations of abuse. The fact that E.O.'s previous allegations were not substantiated does not mean that the Department should conclude that all allegations by E.O. are untruthful. Here, unlike both earlier incidents, there was a physical injury that was observed and consistently described by three witnesses.

Mary Yates testified that immediately after turning on the light in E.O.'s room, she saw a red mark on E.O.'s neck and asked her how she got it. She maintains that E.O. said she must have slept on it wrong, without looking in the mirror or saying "What mark?" or anything of the sort. In addition, Mary Yates' recollection during the hearing that E.O. was wearing a turtleneck on the morning of November 15, 2001, undermines her credibility as a witness. When she was interviewed, she said that she did not know how long the red mark lasted because E.O.'s uniform collar covered it, and she never saw the mark after that morning.^[35] George Christopher testified that he observed the red mark lying just beneath the level of her collar, and a waiter at Country Kitchen said he was able to observe the marks when E.O. turned her head.

The Administrative Law Judge has accepted the testimony concerning the appearance of the injury by the Country Kitchen employees, and their reporting of E.O.'s statements, despite their propensity to be critical of Yates' care of E.O., because their testimony is consistent and because they are independent witnesses and have nothing at stake in this proceeding. The Administrative Law Judge also finds their testimony more credible than the testimony of Mary Yates, in part because the Administrative Law Judge believes Yates was not being truthful in her testimony about the turtleneck. In addition, based on the record as a whole, it simply seems more likely than not that the incident happened in the way that E.O. reported it.

In reviewing a request for reconsideration, the commissioner shall rescind the disqualification if the commissioner finds that the information relied on to disqualify the subject is incorrect. The commissioner may set aside the disqualification under this section if the commissioner finds that the individual does not pose a risk of harm to any person served by the license holder. In determining that an individual does not pose a risk of harm, the commissioner shall consider the nature, severity, and consequences of the event or events that lead to disqualification, whether there is more than one disqualifying event, the age and vulnerability of the victim at the time of the event, the harm suffered by the victim, the similarity between the victim and persons served by the

program, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event, and any other information relevant to reconsideration. When considering these factors, the Commissioner is required to give preeminent weight to the safety of each person to be served by the program over the interest of the license holder. ^[36]

The Administrative Law Judge is aware that Mary Yates has provided many years of care for E.O. and that this is the first time that there has been any contention that her care was not appropriate. Given the conclusion that she caused this injury, however, the Administrative Law Judge has no choice but to conclude that she has failed to demonstrate that the disqualification should be set aside because she poses no risk of harm to those she seeks to serve. Yates denied all responsibility for injuring E.O., and accordingly cannot demonstrate that she understands what was wrong about her conduct or how she might act differently in the future.

K.D.S.

^[1] Minn. Stat. § 14.61.

^[2] Ex. 50 at 1.

^[3] Before coming to live with Mary Yates, M.J. lived in foster care with Yates' parents.

^[4] Testimony of Mary Yates.

^[5] See *generally* Testimony of Jennifer Johnson.

^[6] E.O.'s uniform shirt buttons up the front and has a polo-type collar. See Ex. 5.

^[7] Testimony of George Christopher; Ex. 2 at 10-12.

^[8] Ex. 55.

^[9] Ex. 2.

^[10] *Id.*

^[11] Ex. 2 at 10.

^[12] *Id.*

^[13] Ex. 2 at 13-14 (Statement of Jeff Follett); *id.* at 14-15 (Statement of Jennifer Johnson).

^[14] Ex. 2 at 14-15; Testimony of Jennifer Johnson.

^[15] At the hearing Yates testified that E.O. had also taken a coin purse belonging to M.J. and a compact disc belong to Yates' daughter without permission that week.

^[16] Ex. 2 at 16-17; Testimony of Mary Yates.

^[17] *Id.*

^[18] Ex. 2 at 17.

^[19] Ex. 2 at 18.

^[20] Ex. 62.

^[21] Ex. 62; Ex. 57.

^[22] Ex. 6 at 57-58.

^[23] Ex. 9 at 107; Exs. 7, 8.

^[24] Ex. 9 at 107-109.

^[25] Ex. 10 at 110-111.

^[26] Ex. 11 at 112-113.

^[27] Minn. Stat. § 626.5572, subd. 15; Minn. Stat. § subd. 2(b)(1).

^[28] Minn. Stat. § 245A.04, subd. 3d(a)(4).

^[29] *Id.*

^[30] Minn. R. 9555.6125, subp. 4(D).

^[31] Testimony of George Christopher, Jennifer Johnson, Mary Kelsey; Ex. 2 at 8, 10-12, 14-15.

^[32] In conversations with Renee Duke and Mary Buck, E.O. later denied that the incident occurred.

[\[33\]](#) Testimony of George Christopher; Ex. 1 at 2; Ex. 2 at 10-11, 24; and Ex. 55.

[\[34\]](#) See Ex. 1 and Ex. 2.

[\[35\]](#) Ex. 3 at 29.

[\[36\]](#) Minn. Stat. § 245A.04, subd. 3b(b).