

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

In the Matter of the Denial of the  
Family Foster Care License of  
Mary F. Ham

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

This matter came on for Hearing before Administrative Law Judge Kathleen D. Sheehy on November 13, 2002, at the Renville County Office Building, Room 3B, 410 East Depue Avenue, Olivia, MN. The record was left open until November 27, 2002 at the request of David Torgelson, Renville County Attorney.

David J. Torgelson, Renville County Attorney, Commerce Building, P.O. Box D, Renville, MN 56277, appeared for the Minnesota Department of Human Services.

Mary F. Ham, P.O. Box 163, Sacred Heart, MN 56285, appeared pro se.

**NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under 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 the Report to file exceptions and present argument to the Commissioner. Parties should contact Wes Kooistra, Acting Commissioner, Department 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 comments, 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 ISSUE**

Should Mary Ham be licensed to provide family foster care despite an incident of maltreatment of her minor daughter in 1998?

The Administrative Law Judge concludes that the Commissioner should not deny Ms. Ham a license based on this incident.

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

### **FINDINGS OF FACT**

1. Mary Ham is a resident of Renville County who seeks a license to provide family foster care. Ms. Ham's family consists of her husband, Kelly Ham, and their four children from other marriages (three of whom are now adults). For approximately twenty years, Ms. Ham has worked with developmentally disabled adults and children, providing care in licensed facilities and respite care.

2. Mary Ham and her husband have had difficulty over the last several years in dealing with the behavioral problems of their daughter, A.H., who consistently refused to abide by reasonable house rules. The Hams attempted to discipline their daughter in many ways prior to August of 1998, none of which involved physical abuse and none of which were effective.

4. In August of 1998, when A.H. was 13 years old, Mary Ham told A.H. that any further violations of the household rules would result in a spanking with a belt. On August 24, 1998, after determining that A.H. had lied about her whereabouts that day, Mary Ham spanked A.H. six times with a belt. The next day she spanked A.H. four times, either with a belt or with her hand.<sup>[1]</sup>

5. Shortly thereafter, A.H. reported this spanking to a friend's parents, who in turn notified the county child protection authorities of possible child abuse.<sup>[2]</sup> In an interview with the police, Mary Ham admitted to spanking A.H. with a belt once and possibly twice; she was upset during the interview, and the record is not clear whether the second spanking involved a belt. Ms. Ham did not believe at that time, based on her own childhood experience, that this constituted physical abuse of a child.<sup>[3]</sup>

6. On September 24, 1998, Renville County Human Services notified Ms. Ham of its determination that maltreatment had occurred and that child protective services were needed. The County determined that A.H. had a visible mark or bruise on her right hip area as well as several small pinpoint marks on her tailbone that appeared to be consistent with being hit with a belt. The County believed that without intervention A.H. was at risk for continued maltreatment.<sup>[4]</sup> As she did not deny spanking A.H., Mary Ham did not seek reconsideration of the maltreatment determination.

7. After the maltreatment determination was made, child protection case manager Julie Brudellie set up intensive family therapy in the Hams' home. Initially the therapy took place once or twice per week and were gradually reduced over a six-month period to once a month. Ms. Brudellie stopped requiring unannounced monitoring visits by child protection authorities after six months because she believed it was no longer needed.<sup>[5]</sup>

8. Ms. Bruderie has continued to be involved with the Ham family's efforts to resolve A.H.'s behavioral problems. She was involved when the Hams decided voluntarily to place A.H. in a group home in McCloud County from September 1999 to July 2000, and she believed the family was cooperative and attended all required meetings. The family removed A.H. from the group home in July 2000 because of their conclusion that it was no longer helping.<sup>[6]</sup> After a runaway incident in March 2001 and other issues concerning chemical abuse, eating disorders, and depression, the Hams voluntarily placed A.H. in another group home/residential placement at St. Cloud Children's Home from May 31, 2001 to January 4, 2002. Again, the Hams cooperated with the facility and followed through with what they were asked to do. They brought A.H. home when they saw improvement in her behavior and when financial issues arose.<sup>[7]</sup> Ms. Bruderie has seen nothing, in her many contacts with the family over the past four to five years, to suggest that Mary Ham poses a risk of harm to children.

9. At the time of the 1998 maltreatment determination, Mary Ham was employed at Robert E. Milton Homes (R.E.M.) – Clear City/Prairieview as a Coordinator working with adults with developmental disabilities.<sup>[8]</sup> Ms. Ham also provided in-home care through R.E.M. for two juvenile developmentally disabled sisters, A.H. and N.H.<sup>[9]</sup> Ms. Ham contracted with Chippewa County to perform these respite services.<sup>[10]</sup> A.H., now age 17, and N.H., now age 12, are severely mentally handicapped. A.H. is somewhat able to talk, but N.H. cannot talk at all. The parents of these sisters have always found them to be happy and affectionate toward Mary Ham when they are in her care.<sup>[11]</sup> They believe A.H. and N.H. have made significant progress in terms of self-care and ability to communicate since Mary Ham has been providing care for them.

10. In April 1999, the Department of Human Services conducted a background study and notified Ms. Ham and her employer that she was cleared to provide direct contact services.<sup>[12]</sup> Sometime in July of 2000, Mary Ham received a letter from Chippewa County Family Services notifying her that she "may" be disqualified from providing adult foster care and respite care. There is no evidence in the record that Ham was actually disqualified at that time, but she did submit a letter dated July 22, 2000, in which she requested reconsideration of the disqualification and asserted that she posed no threat or danger to the individuals in her care.<sup>[13]</sup>

11. In a letter dated August 24, 2000, Chippewa County notified Ms. Ham that due to recent changes in the procedure for background checks, Mary Ham would not be disqualified from performing adult foster care and respite care, and that Ham could continue in her current employment.<sup>[14]</sup>

12. In the summer of 2001, Mary Ham was promoted to Program Director of R.E.M. – Montevideo where she supervised two teen sites and one elderly adult site. Ham continued to provide respite care for A.H. and N.H. throughout this entire period. In May of 2002, the Department of Human Services again did a background study and cleared Mary Ham to provide direct contact services.<sup>[15]</sup>

13. At approximately that same time, in April or May of 2002, Mary Ham left her position at R.E.M. – Montevideo due to a personal conflict with a co-worker.<sup>[16]</sup> She then applied for her own license to provide family foster care through Renville County so that she could continue to provide respite care for A.H. and N.H.<sup>[17]</sup>

14. In a letter dated April 17, 2002, Renville County Human Services notified Ham that she was disqualified from providing foster care and/or respite care to juveniles based on the 1998 maltreatment determination.<sup>[18]</sup> The letter further informed Ham of her right to submit a written request for reconsideration of the disqualification within 30 days.

15. Mary Ham submitted a written request for reconsideration dated May 13, 2002.<sup>[19]</sup> She attached many letters from family members, the Hasbrook parents, and former co-workers attesting to her care-taking nature and her ability to perform her job well.

16. The Minnesota Department of Human Services issued a Notice of Disqualification Not Set Aside and Order of Denial dated August 23, 2002. The Department refused to set aside Mary Ham's disqualification due to "the age and vulnerability of the victim at the time of the event, the recency, and the nature of the event."<sup>[20]</sup> The Notice also cited A.H.'s time in residential treatment programs as another reason for denial of the license. The letter disqualified Mary Ham from any direct contact with persons served by DHS-licensed programs and notified her of her right to appeal the decision and the right to a contested case hearing.

17. No other complaints have ever been raised against Mary Ham regarding her care of developmentally disabled adults or juveniles. There is no evidence that either Ms. Ham or her husband ever physically disciplined A.H. again after the incident in 1998. At the hearing, the reason offered by the licensing social worker for permitting Ms. Ham to work in a licensed facility but precluding her from her own license to provide foster care in her home was that there is more supervision and oversight in a group home facility, and that providing care at one's home is more stressful than working with others in a facility.<sup>[21]</sup> There is nothing in the record to suggest that the Department relied on this rationale or interpreted the licensing rules in this manner.

18. Mary Ham appealed the denial of the license. The Department issued a Notice of and Order for Hearing on October 15, 2002, setting the hearing to take place on November 13, 2002.

## **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.08, subd. 2a, this is a consolidated contested case hearing regarding denial of a foster care license based upon a disqualification for serious maltreatment that was not set aside.

4. Maltreatment is defined in relevant part as “any physical injury, mental injury, or threatened injury inflicted by a person responsible for the child’s care other than by accidental means.” Minn. Stat. § 626.556, subd. 2(d). “Serious maltreatment” is, in relevant part, abuse resulting in serious injury and includes bruises and skin laceration or tissue damage.<sup>[22]</sup>

5. Mary Ham did not request reconsideration of the maltreatment determination, and therefore the Commissioner’s finding of maltreatment is final.

6. A person who is culpable of serious maltreatment of a minor shall be disqualified from receiving a family foster care license.<sup>[23]</sup>

7. The Commissioner may set aside a license disqualification if the Commissioner finds that the individual does not pose a risk of harm to any person served by the applicant.<sup>[24]</sup> 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 leading to the 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 of training and rehabilitation, and any other relevant information.<sup>[25]</sup> In reviewing a disqualification, the Commissioner shall give “preeminent weight” to the safety of each person to be served by the applicant.<sup>[26]</sup>

8. Ms. Ham has the burden of proving by a preponderance of the evidence that she does not pose a risk of harm to the clients she wishes to serve.<sup>[27]</sup> Ms. Ham has proved by a preponderance of the evidence that the disqualification should be set aside because she does not pose a risk of harm to the clients she wishes to serve.

9. The Commissioner shall not issue a family foster care license based on the residence of the applicant’s own children in a residential treatment center for emotional disturbance within the previous 12 months, if, in the judgment of the agency, the functioning of the family has been impaired.<sup>[28]</sup>

10. The Department’s order denying the license states only, in relevant part, that it was denied because one of Mary Ham’s children had been in residential treatment during the previous twelve months. There is no evidence in this record that the Department made any determination that the functioning of the Ham family has

been impaired, nor is there any evidence in this record upon which the Department could reasonably rely to find that the family's functioning has been impaired.

11. There is no basis in the record to deny Ms. Ham's application for a foster care license.

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

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED: that the Commissioner set aside the disqualification and issue the family foster care license if Ms. Ham's application otherwise demonstrates that the license should be granted.

Dated: December 30, 2002

/s/ Kathleen D. Sheehy\_\_\_\_\_  
KATHLEEN D. SHEEHY  
Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 14.62, subd. 1, the Minnesota Department of Health is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded. No transcript prepared.

### **MEMORANDUM**

The issue in this hearing is whether Ms. Ham poses a risk of harm to the clients she wishes to serve with a foster care license. In declining to set aside the disqualification, the Department relied, without any factual elaboration, on "the age and vulnerability of the victim at the time of the event, the recency, and the nature of the event." It is not clear what materials were available to the Department in making this determination.<sup>[29]</sup>

In the view of the Administrative Law Judge based on the record in this hearing, A.H. was a troubled, defiant 13-year-old who was undisputedly engaging in unacceptable behaviors, including stealing, sneaking out of the house at night, lying about her whereabouts, and riding around in a stolen vehicle. She was not vulnerable in the sense that she was physically or mentally disabled or dependent on institutional

services.<sup>[30]</sup> Nor was the incident recent, having occurred four and one-half years ago. Afterward, Ms. Ham continued to provide care for vulnerable adults and children, at work and in her home, through August 2002, with no complaints from anyone about her care and with the clearance of the Department of Human Services.

With regard to the nature of the event, the record substantiates that it resulted in a single bruise on the right hip and small “pinpoint” marks on A.H.’s tailbone. There is no credible evidence that Mary Ham had used excessive physical discipline before this incident, and there is not even a claim that it ever happened afterward. In fact, the social worker most familiar with this family, who was responsible for monitoring the family therapy and was involved in the out-of-home placements of A.H. over the following four years, testified that she had seen nothing to suggest that Mary Ham posed a risk of harm to children.

The record establishes that the August 1998 incident was an isolated use of physical discipline by a parent. It would not have been considered “serious maltreatment” had it occurred four months earlier.<sup>[31]</sup> The Commissioner should set aside the disqualification and permit Mary Ham to continue providing care under her own foster care license if the application otherwise demonstrates that the license should be granted.

K.D.S.

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<sup>[1]</sup> Exs. 5, 6. There is some disagreement about whether Mary Ham used the belt both times.

<sup>[2]</sup> Ex. 6.

<sup>[3]</sup> Exs. 5, 6.

<sup>[4]</sup> Exs. 3, 4.

<sup>[5]</sup> Ex. 6.

<sup>[6]</sup> Testimony of Julie Brudellie.

<sup>[7]</sup> Testimony of Patti Hemingsen.

<sup>[8]</sup> Testimony of Mary Ham and Mary Sietsema.

<sup>[9]</sup> Testimony of Mary Ham.

<sup>[10]</sup> *Id.*

<sup>[11]</sup> Testimony of Butch and Rhonda Hasbrook.

<sup>[12]</sup> Ex. 10.

<sup>[13]</sup> Ex. 6.

<sup>[14]</sup> Ex. 7.

<sup>[15]</sup> Ex. 9.

<sup>[16]</sup> Testimony of Mary Ham.

<sup>[17]</sup> Licensure is required for any family providing foster care for 30 days or more in any 12-month period.

See Minn. R. 9545.0020, subp. 1(B).

<sup>[18]</sup> Ex. 1.

<sup>[19]</sup> Ex. 8.

<sup>[20]</sup> Ex. 2.

<sup>[21]</sup> Testimony of P. Hemingsen.

<sup>[22]</sup> Minn. Stat. § 245A.04, subd. 3d(a)(4).

<sup>[23]</sup> Minn. Stat. § 245A.04, subd. 3d(a)(4); Minn. R. 9545.0090(A)(1).

<sup>[24]</sup> Minn. Stat. § 245A.04, subd. 3b(b).

<sup>[25]</sup> *Id.*

<sup>[26]</sup> *Id.*

<sup>[27]</sup> Minn. Stat. § 245A.08, subd. 3(b).

<sup>[28]</sup> Minn. R. 9545.0090(a)(3).

<sup>[29]</sup> The Notice of Disqualification – Not Set Aside and Order of Denial states that Ms. Ham’s request for reconsideration, accompanying information, and “the information used to disqualify” her had been reviewed.

<sup>[30]</sup> See Minn. Stat. § 626.557, subd. 1 (definition of a vulnerable adult).

<sup>[31]</sup> Before April 21, 1998, “serious maltreatment” was defined as abuse resulting in serious injury reasonably requiring the care of a physician. See Minn. Stat. § 245A.04, subd. 3d(4)(1997). In 1998 the statute was amended to define serious maltreatment as abuse resulting in serious injury, which was itself defined to include a bruise or tissue damage. See Minn. Laws ch. 406, Art. I, §7.