

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

In the Matter of the Denial of Family Child  
Care License of Cynthia Frisco

ORDER GRANTING  
SUMMARY DISPOSITION  
AND RECOMMENDATION

The Department of Human Services filed a Motion for Summary Disposition on December 12, 2002. Vicki Vial-Taylor, Assistant Hennepin County Attorney, Health Services Building, 525 Portland Ave., 12<sup>th</sup> Floor, Minneapolis, MN 55415, appeared on behalf of the Department of Human Services. The Applicant, Cynthia Frisco did not file a response to the motion.

NOTICE

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 Recommendation. Under Minn. Stat. § 14.61 (2002), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn 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. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, 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

Was the Applicant's license application properly denied because of the disqualification of a household member?

Based upon all of the proceedings herein, and for the reasons set forth in the Memorandum, attached hereto and incorporated by reference, the Administrative Law Judge makes the following:

## ORDER AND RECOMMENDATION

IT IS HEREBY ORDERED that the Department's Motion for Summary Disposition is GRANTED. There are no additional issues in dispute.

IT IS HEREBY RECOMMENDED: that the Commissioner of Human Services deny the Applicant's license application.

Dated this 10<sup>th</sup> day of January 2003.

S/ Beverly Jones Heydinger  

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

## NOTICE

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

## MEMORANDUM

The Department's request for summary disposition is analogous to a motion for summary judgment under Rule 56.02 of the Minnesota Rules of Civil Procedure. Summary disposition of a claim is appropriate when there is no genuine issue as to any material fact and one party is entitled to a favorable decision as a matter of law.<sup>[1]</sup> A material fact is one that is substantial and will affect the result or outcome of the proceeding, depending upon the determination of that fact.<sup>[2]</sup> In considering the Motion for Summary Disposition, an Administrative Law Judge must view the evidence in the light most favorable to the nonmoving party.<sup>[3]</sup>

To obtain a summary disposition, the moving party must establish that there is no genuine issue of material fact. The initial burden is on the moving party to establish a prima facie case for the absence of material facts at issue.<sup>[4]</sup> Once the moving party has established a prima facie case, the burden shifts to the nonmoving party.<sup>[5]</sup> To defeat a motion for summary judgment successfully, the nonmoving party must show that there are disputed facts that have a bearing on the outcome of the case.<sup>[6]</sup> The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden.<sup>[7]</sup>

There are no material facts in dispute. The Applicant has not presented any evidence that would refute the facts alleged and documented by the Department.

Cynthia Frisco applied to Hennepin County Children and Family Services Department for a child care license. As required, the Applicant listed the family members living in her household on the application. She included her husband, Michael

Frisco.<sup>[8]</sup> As required by law, the Department of Human Services conducted a background check for each adult in the household, including Mr. Frisco. By letter dated June 5, 2002, the County notified Mr. Frisco that he was disqualified because of a Fifth Degree Assault in 1996. He was notified of his right to request reconsideration of the disqualification.<sup>[9]</sup> Ms. Frisco was also notified of the disqualification. The notice clearly stated that the husband could present information about why disqualification was inappropriate in his case.<sup>[10]</sup>

There is no evidence that Mr. Frisco requested reconsideration of his disqualification. Accordingly, the disqualification was final. By letter dated September 12, 2002, the Applicant was notified that her license was denied because a person living in the residence was disqualified.<sup>[11]</sup> The Applicant appealed the denial, and offered some reasons why disqualification might not be warranted, but the time for appealing the disqualification had run. The Applicant did not file any opposition to the Department's motion for summary disposition.

The Commissioner and Administrative Law Judge have jurisdiction to consider this matter.<sup>[12]</sup>

Applicants for a child care license must submit background study forms for "persons age 13 and over living in the household where the license program will be provided".<sup>[13]</sup> Each person's criminal history is checked, and certain offenses are the basis for disqualification. In this instance, Mr. Frisco was disqualified because of a misdemeanor fifth degree criminal assault in 1996. A person is disqualified if "less than seven years have passed since the discharge of the sentence imposed for the offense; and the individual has received a misdemeanor conviction for a violation of any of the following offenses: ... section 609.224 (assault in the fifth degree); ... ." <sup>[14]</sup>

Because of this conviction, Hennepin County notified Mr. Frisco of his disqualification and the basis for it, and gave him the opportunity to request reconsideration.<sup>[15]</sup> A request for reconsideration must be made within 30 calendar days from receipt of the notice of disqualification.<sup>[16]</sup> There is no evidence that the Applicant or Mr. Frisco made such a request, nor does the Applicant dispute the Department's assertion that no such request was made.<sup>[17]</sup> The Department denied the Applicant's license because of the husband's disqualification. Its rule states:

An applicant ... shall not be issued a license ... if the applicant ... or any other person living in the day care residence or present during the hours children are in care, or working with children: ... D. Has a disqualification under Minnesota statutes, section 245A.04, subd. 3d.<sup>[18]</sup>

Under certain circumstances, the disqualification and the licensing action can be consolidated for hearing.<sup>[19]</sup> However, none of the bases for requesting a consolidated hearing apply to this case.

The Department's motion for summary disposition is granted. There are no remaining issues.

Although it is not entirely clear from the material submitted, it appears that Mr. Frisco's offense may not be a basis for disqualification for much longer. The Applicant may want to discuss with Hennepin County whether to reapply for a license once seven years have passed from the discharge of the sentence imposed for her husband's offense. See Minn. Stat. § 245A.04, subd. 3d (4).

**BJH**

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<sup>[1]</sup> Minnesota Rules of Civil Procedure, Rule 56.03.

<sup>[2]</sup> Highland Chateau v. Minnesota Dep't. of Public Welfare, 356 N.W.2d 804 (Minn. App. 1984).

<sup>[3]</sup> Grandahl v. Bulluck, 318 N.W.2d 240 (Minn. 1982); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981); American Druggists Insurance v. Thompson Lumber Co., 349 N.W.2d 569 (Minn. 1989).

<sup>[4]</sup> Thiele v. Stich, 425 N.W.2d 580, 583 (Minn. 1988).

<sup>[5]</sup> Minnesota Mutual Fire & Casualty Co. v. Retrum, 456 N.W.2d 719, 723 (Minn. App. 1990).

<sup>[6]</sup> Hunt v. IBM Mid America Employees Federal Credit Union, 384 N.W.2d 853, 855 (Minn. 1986).

<sup>[7]</sup> Id.; Murphy v. Country House, Inc., 307 Minn. 344, 351-52, 240 N.W. 2d 507, 512 (1976); Carlisle v. City of Minneapolis, 437 N.W.2d 712, 715 (Minn. App. 1988).

<sup>[8]</sup> Department Ex. 2.

<sup>[9]</sup> Department Ex. 1.

<sup>[10]</sup> Department Ex. 3.

<sup>[11]</sup> Department Ex. 4.

<sup>[12]</sup> Minn. Stat. § § 14.50, 245A.05, 245A.08 (2002).

<sup>[13]</sup> Minn. Stat. § 245A.04, subd. 3 (a) (1) and (c) (2).

<sup>[14]</sup> Minn. Stat. § 245A.04, subd. 3d (4).

<sup>[15]</sup> Ex. 1; See Minn. Stat. § 245A.04, subd. 3b.

<sup>[16]</sup> Minn. Stat. § 245A.04, subd. 3b.

<sup>[17]</sup> Ex. 5.

<sup>[18]</sup> Minn. R. 9502.0335, subp. 6.

<sup>[19]</sup> Minn. Stat. § 245A.04, subd. 3c (a) – (d).