

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

In the Matter of the Denial of the  
License of Debbie Pantekoek.

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

A hearing in this matter was held on January 23, 2003, in Pipestone, Minnesota, before Allan W. Klein, Administrative Law Judge.

Appearing on behalf of the Department of Human Services and the Pipestone County Family Service Agency was Damain D. Sandy, Assistant Pipestone County Attorney, 114 North Hiawatha, P. O. Box 128, Pipestone, Minnesota 56164.

Debbie K. Pantekoek, 316 Second Street Southwest, Pipestone, Minnesota, 56164 appeared on her own behalf, without benefit of counsel.

The hearing record closed at the end of the hearing on January 23.

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. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations made by the Administrative Law Judge. Pursuant to 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 this Report to file exceptions and present argument to the Commissioner. Persons should contact the office of the Commissioner, Minnesota Department of Human Services, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155, telephone (651) 296-2701, for further information regarding the filing of exceptions or the presentation of argument.

Pursuant to 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. If the Commissioner fails to issue a final decision within 90 days of the close of the record before him, this recommended order will constitute the final agency decision pursuant to Minn. Stat. § 14.62, subd. 2a. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the judge to determine the discipline to be imposed. The record before the Commissioner closes upon the filing of any exceptions to the Findings of Fact, Conclusions of Law, and Recommendation and the presentation or 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**

The issue in this case is whether or not the Department properly disqualified Debbie Pantekoek from any position allowing direct contact with person served by licensed program, reconsidered and did not set it aside nor grant a variance, and, whether the Department properly denied her application for a family child care license.

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

### **FINDINGS OF FACT**

1. Between 1990 and 1993, Debbie Pantekoek (then named Debbie Hamann) was licensed to provide family child care. At that time she was living in Rock County. She does not recall that there were any complaints filed against her or her daycare operation.

2. Pantekoek has four children. Her oldest, Brandie, is now 15 years old, almost 16. Her second oldest, Kaila, is 11 years old. Next comes Torri, age 5, and finally Jamie, age 1.

3. In 1996, when Brandie was 9 years old, she and her mother began having difficulties over Brandie's behavior. Her mother slapped her once, and spanked her often. On April 3, 1996, Brandie was evaluated at Charter Hospital, in Sioux Falls, South Dakota. During the course of her evaluation, Brandie told the evaluator that she and her mother fought every night, and that from time to time her mother hit her. The evaluator did not check for any bruises, but did report the situation to Pipestone County Family Service Agency. The Agency interviewed Brandie and her mother. Debbie Pantekoek admitted slapping Brandie in the face on one occasion, and spanking her at least once. The Agency also learned that the two of them were involved in family counseling through Charter, which did last for eight to nine months in 1996. The Agency decided not to open up a case, but to make sure that they were, in fact, attending counseling sessions. The Agency also did not substantiate any abuse.<sup>[1]</sup>

4. On April 26, 1998, following a bout of rebellious behavior by Brandie, Debbie arranged to take Brandie back to Charter for more counseling. When arranging the intervention, personnel at Charter told Debbie to "pack an overnight bag" so that Brandie could spend the night at Charter, if Charter believed it appropriate. While driving to Charter, Brandie jumped out of the car and ran away. She was ultimately apprehended by Pipestone Police. She told the police that her mother had recently slapped her, and that she did not want to go home again. This led to an investigation, and, on May 4, 1998, Pipestone County Family Service Agency sent Debbie a "Notice of Final Determination of Maltreatment". This Notice informed that Debbie that the Agency had determined that maltreatment did occur, and that child protective services

are needed. The letter also informed her that she could contest the final determination of maltreatment by requesting reconsideration. The letter went on to indicate that if the Agency denies the request for reconsideration, or fails to act upon it, she could appeal the Agency's determination to the Commissioner of Human Services.<sup>[2]</sup>

5. Debbie Pantekoek did not request reconsideration or further appeal the maltreatment determination.

6. No criminal actions were taken against Debbie Pantekoek in connection with the incidents with Brandie, but homebound counseling was instituted and was successful in improving the relations between Debbie and Brandie.

7. Roughly four years after the maltreatment determination, in the summer of 2002, Debbie applied for a family child care license. A background check disclosed Debbie's maltreatment determination based on the 1998 slapping incident.<sup>[3]</sup> On August 8, 2002, the County notified Debbie that she was disqualified due to serious or recurring maltreatment of a minor.<sup>[4]</sup> The notice indicated that she had the right to request reconsideration of the disqualification. On August 13, 2002, Debbie filed a request for reconsideration, along with letters of support from Brandie and Kaila. In the request, Debbie admitted to having slapped Brandie once, and detailed the difficulty between the two of them in the 1996-1998 time period. Debbie also detailed the successful homebound counseling and her ongoing positive relationship with Brandie and the other children.<sup>[5]</sup> However, on that same day, the County decided to recommend that the disqualification not be set aside, and filed documents with the Commissioner to that effect.<sup>[6]</sup>

8. On September 20, 2002, the Department notified Pantekoek that the disqualification had not been set aside, nor had a variance been granted, and that, as a result of the disqualification, the Department was denying her application for a family child care license. The notice described Pantekoek's right to appeal and request a contested case hearing.<sup>[7]</sup> Pantekoek did appeal, and on October 14, 2002, the Department issued a Notice of and Order for Hearing, setting the hearing for January 23 in Pipestone.

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.04, subd. 3c, and 245A.08.

2. Pipestone County and the Department of Human Services have complied with all substantive and procedural requirements of law and rule.

3. Pursuant to Minn. Stat. § 245A.08, subd. 2a, this hearing is a consolidated contested case hearing encompassing both the disqualification and the denial of the application for licensure.

4. Pursuant to Minn. Rule Part 1400.7300, subp. 5, the Department bears the burden of proof to establish by a preponderance of the evidence that the disqualification of Debbie Pantekoek is consistent with Minn. Stat. § 245A.04, subd. 3, and the

Department's decision not to set aside the disqualification based upon the risk of harm she presents is consistent with Minn. Stat. § 245A.04, subd. 3.

5. Pursuant to Minn. Stat. § 245A.08, subd. 3(b), an applicant for licensure bears the burden of proof, at a hearing on the denial of the application, to demonstrate by a preponderance of the evidence that she has complied fully with Minn. Stat. §§ 245A.01 through 245A.15 and other applicable laws or rules and that the application should be approved and a license granted.

6. Minn. Stat. § 245A.04, subd. 3(c) requires that background studies be conducted with respect to applicants where programs licensed by the Department of Human Services will be provided.

7. Pursuant to Minn. Stat. § 245A.04, subd. 3d, if a background study shows that less than seven years have passed since a determination of substantiated serious or recurring maltreatment of a minor under Section 626.556 for which there is a preponderance of evidence that the maltreatment occurred, and that the subject was responsible for the maltreatment, then the individual shall be disqualified from any position allowing direct contact with persons receiving services. A later paragraph goes on to provide that for purposes of the section, "recurring maltreatment" means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred, and that the subject was responsible for the maltreatment.

8. In the case of Debbie Pantekoek, the determination of maltreatment related to the incident in April of 1998, which is within seven years. It also includes her admission that, in 1996, she slapped her daughter. It was, therefore, a determination or disposition of recurring maltreatment of a minor. The preponderance of evidence demonstrates that both incidents of maltreatment did, in fact, occur and that Debbie Pantekoek was responsible for them.

9. The Department's Decision to disqualify Debbie Pantekoek is consistent with Minn. Stat. § 245A.04, subd. 3d.

10. Minn. Stat. § 245A.04, subd. 3b, (2)(b) sets forth the standards for the Commissioner to use to determine that an individual does not pose a risk of harm. However, that subparagraph ends up with the following admonition:

"In reviewing a disqualification under this section, the Commissioner shall give preeminent weight to the safety of each person to be served by the...applicant...over the interests of the...applicant."

11. Given all of the facts in this matter, the Administrative Law Judge concludes that the Department's decision not to set aside the disqualification is consistent with Minn. Stat. § 245A.04, subd. 3d.

12. In this case, Debbie Pantekoek has not borne her burden to show full compliance with the laws, and accordingly, her application cannot be approved.

13. Any Finding of Fact more properly termed a Conclusion is adopted as such.

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

**RECOMMENDATION**

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner's denial of the application of Debbie Pantekoek for a family child care license be AFFIRMED.

Dated this 24th day of March, 2003

/s/ Allan W. Klein

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ALLAN W. KLEIN  
Administrative Law Judge

Reported: Taped Recorded (not transcribed).

**MEMORANDUM**

The question of whether or not Debbie Pantekoek ought to be allowed to be licensed despite her difficulties in 1996-1998 is a judgment call. However, the statute sets limits on the Commissioner's discretion when it directs the Commissioner to give "preeminent weight" to the safety of the children who would be in care over the interests of the applicant. Because of that weighting, the Commissioner did not act unreasonably in deciding not to set aside the disqualification.

**A.W.K.**

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<sup>[1]</sup> Ex. 1. The Administrative Law Judge finds that Brandie greatly exaggerated the facts in her initial report to the Charter evaluator and that Debbie's statements are more accurate.

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

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

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

<sup>[5]</sup> Ex. 7.

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

<sup>[7]</sup> Ex. 6.