

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

In the Matter of the Order to Forfeit a Fine
of the Childcare License of Connie
Moehlmann

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

This matter was scheduled to be heard on April 14, 2003, in Buffalo, Minnesota. The parties agreed that the matter would be decided by the Administrative Law Judge (ALJ) on written submissions of evidence and argument, without an in-person hearing. On April 25, 2003, a brief telephone hearing was held to resolve some questions from the ALJ that had arisen from his review of the submissions.

Anne L. Mohaupt, Assistant Wright County Attorney, Wright County Government Center, 10 Second Street NW, Buffalo, MN 55313, appeared on behalf of the Department of Human Services (the Department) and Wright County Human Services (the County). The Licensee, Connie Moehlmann, 9060 – 95th Street, Monticello, MN 55362, appeared on her own behalf.

The record in this matter closed on April 25, 2003.

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. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and 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 this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Human Services, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, MN 55155, telephone (651) 296-2701, for further information regarding the filing of exception or the presentation of 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.

FINDINGS OF FACT

1. Connie Moehlmann is licensed by the Department as a family daycare provider. She provides care out of her home on 95th Street NE in Monticello. Also residing in Ms. Moehlmann's home is her husband, Scott, and at least one daughter, Katie, who is 12 years old.

2. On the night of August 14 – 15, 2002, Katie had nine girls sleep over at the Moehlmann house, as well as a cousin named Meghan.^[1] These girls are school-aged children who are not considered as being present in the daycare for purposes of assessing appropriate supervision.

3. On the morning of August 15, 2002, Licensee was in St. Cloud to care for a relative. The Licensee's substitute caregiver, Danielle Haynes, was supervising the children in the daycare.

4. On the morning of August 15, 2002, Katie and her friends were playing in the front yard of the home, which abuts County Road 39. At one point, a ball they were playing with went out into the road and ended up on the other side of the road. Katie and some of her friends crossed the road to retrieve the ball. Then she and her friends on both sides of the road began doing cartwheels on the road shoulders. No daycare

children were on the far side of the road, nor were any daycare children on either shoulder of County Road 39. There were two younger children on the lawn in front of the house and one of them was a toddler named Bryce Haynes.^[2] Bryce was being held by Meghan, Katie's cousin.^[3]

5. At approximately 10:24 a.m., S.H. was driving his car along County Road 39 when he came upon the children doing cartwheels on both sides of the road. He also noticed a child holding a younger child that he thought was perhaps an infant. S.H. had to slow down his car in order to drive by the cartwheeling group and thought the scene was dangerous enough that he called the Wright County Human Services Agency to report it.^[4]

6. Within an hour of receiving S.H.'s call, County employees Keith Gilbertson and Shannon Coonan went to the Moehlmann facility to investigate. When they arrived there, they were greeted by Katie, who told them that her mother (Connie Moehlmann) had gone to the hospital in St. Cloud to care for Katie's great grandfather but that she would be home for lunch. This conversation occurred at approximately 11:30 a.m. Mr. Gilbertson indicated that he would wait for Connie to come home, and Katie went back into the house. Katie informed the substitute caregiver, Danielle Haynes, that the licensors were outside and Haynes went out to talk with them.

7. Haynes told Gilbertson and Coonan that she was Connie's backup and that Connie would schedule her appointments according to Haynes' days off.^[5] Gilbertson and Coonan asked about the children playing near the road, and Haynes told them that the kids playing there were school-aged kids, not daycare kids, and that no daycare kids had been outside. He asked about an infant or toddler, and Haynes said no daycare kids had been outside. The Administrative Law Judge finds that Haynes was in charge of the daycare children, and that she was the only adult watching the children.^[6]

8. While Haynes was talking with the licensors, Katie Moehlmann came back outside, carrying a wireless telephone, and Gilbertson was able to talk with Licensee directly. Moehlmann confirmed that she was not home at the time of the cartwheeling incident.

9. After asking Haynes once more about whether it was possible that a small toddler had been down by the road, which Haynes again said had not happened, the licensors left. They determined that there had never been a background study completed on Haynes. They decided that there had been two violations that morning: failing to supervise, and using a caregiver without a background study. They determined to issue a correction order.^[7]

10. On August 22, Coan issued a correction order to Moehlmann, directing her to submit information for a background study on caregivers, and citing her for a lack of supervision.^[8] This was sent to Moehlmann on August 27, with a return date of September 15.^[9]

11. On October 17, 2002, the County sent a letter to Commissioner Michael O'Keefe, recommending that Moehlmann's license be placed on conditional status for one year. The recommendation was based upon the failure to supervise on August 15, and, in addition, the use of a caregiver (Haynes) who had not been the subject of a background study. The county recommended a number of conditions for the license.^[10] On that same day, the county notified Moehlmann of its recommendation, and also notified the parents of the children in her care.^[11]

12. On January 16, 2003, the Department ordered Moehlmann to forfeit a fine of \$400. The fine consisted of two items, each \$200. The first was failure to supervise based on the August 15, 2002 incident of children playing near the road, while the second was failure to submit a background study on all substitutes and helpers, again based on the August 15, 2002 use of Haynes as a substitute.^[12] The notice informed Moehlmann of her right to a contested case hearing.

13. Moehlmann did request a contested case hearing, and on February 3, 2003, the Department issued its Notice of and Order for Hearing, setting the hearing in this matter for April 14, 2003, in Buffalo.^[13] No in-person hearing was held. Instead, the parties submitted evidence and argument to the Administrative Law Judge in writing. On April 25, a telephone conference was held to answer certain questions which were

not fully addressed by the written submissions. The record closed for all purposes on April 25.

Based on the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction over this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all substantive and procedural requirements of law and rule.

4. Minn. Stat. § 245A.04, subd. 3(c)(3) requires background studies of “current employees or contractors of the applicant who will have direct contact with persons served by the facility, agency or program.” Moehlmann did violate this statute by failing to submit materials for a background study of Danielle Haynes.

5. Minn. R. part 9502.0365, subpart 5, requires that children in care be supervised by a caregiver. Minn. R. part 9502.0315, subpart 29A, defines “supervision” to mean “a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the health and safety of the child.”

6. The Department has failed to demonstrate that any “children in care” were not supervised in accordance with Minn. R. part 9502.0315, subpart 29A. The Department has not shown that the toddler identified as being on the lawn was a child in the Licensee’s daycare. There is no evidence in the record of this proceeding that any of the Licensee’s daycare children was not properly supervised.

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

RECOMMENDATION

It is respectfully recommended that the Commissioner affirm the \$200 fine for Moehlmann's failure to obtain a background check, but that the \$200 fine for failure to supervise be dismissed.

Dated this 29th day of July, 2003

/s/Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

There are two issues to be decided in this proceeding. The first is whether or not Moehlmann must pay a fine for failure to initiate a background study on her substitute caregiver, Danielle Haynes. That is relatively easy to decide – Moehlmann is in violation of the rule. As a defense, she suggests that because her husband was at home, there was no need for a background study on Haynes. That is an incorrect assumption. The husband was asleep, Haynes was the sole person in charge of the daycare children, she had served as a substitute before, and Moehlmann scheduled outside appointments around Haynes's days off her regular job. The statutory requirement for a background study applies to adult caregivers. Under the circumstances, Moehlmann was obligated to obtain a background study on Haynes.

The failure to supervise issue is more complex. As an initial matter, the school age children were not daycare children. They were Moehlmann's 12-year-old daughter and her school-aged friends. There is no supervision requirement applicable to the daycare that governs their conduct. In addition to the school age children, two of the

caregiver's children (Haynes' four-year-old daughter and two and one-half year old son) were in the vicinity. Neither of these children is enrolled in the Licensee's daycare. The supervision standard, by its own terms, is limited to children in care.^[14]

Licensee failed to obtain a background check of a caregiver used on a number of occasions in her daycare. A fine for that violation is appropriate. But the Licensee did not fail to supervise children in care when school age children who were not in her daycare were playing outside the daycare residence. Licensee did not fail to supervise the caregiver's own two children, who are not enrolled in the Licensee's daycare. Therefore, the Administrative Law Judge has recommended that that fine for a failure to supervise be dismissed.

A.W.K.

^[1] Exs. 9 and 12 (see attached Exhibit List for references).

^[2] Bryce Haynes was a 27-month old toddler. His sister, Deeniesha, was four years old. Both are children of Danielle Haynes, the Licensee's substitute caregiver. See Finding 6, below.

^[3] Ex. 12.

^[4] Ex. 2.

^[5] Ex. 2.

^[6] Scott Moehlmann, Connie's husband, was at home, but he was asleep throughout this incident. He worked at a job away from home on the second shift from 2:30 P.M. to 2:00 A.M. Ex. 11.

^[7] Ex.2.

^[8] Ex.1.

^[9] Ex.4.

^[10] Ex.7.

^[11] Ex.5 and 6 respectively.

^[12] Ex.8.

^[13] Exhibit A to the Notice confirmed that the two issues for the hearing were the failure to supervise and failure to obtain a background check.

^[14] Minn. Rule 9502.0325, subpart 18, defines "licensed capacity" to be measured as including, "all children of any caregiver when the children are present in the residence." But there is no rule provision that extends the supervision requirements of these rules to a caregiver's own children.