

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

In the Matter of the Temporary Immediate
Suspension of the License of Laura
Ellingson To Provide Family Child Care.

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on May 25, 2004, at the Scott County Justice Center, 200 Fourth Avenue West, Shakopee, Minnesota. The record closed upon completion of the hearing that day.

Jeanne Anderson, Assistant Scott County Attorney, 200 Fourth Avenue West, Shakopee, Minnesota 55379, appeared on behalf of the Department of Human Services. Christopher S. Petros, Esq., Tuttle & Bergeson, 1275 Ramsey Street, Suite 300, Shakopee, Minnesota 55379, appeared on behalf of Laura Ellingson.

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] The Commissioner's final order shall be issued within ten working days from receipt of the administrative law judge's recommendation.^[2] Because of the timelines, the parties are requested to file any exceptions as soon as possible.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the license holder's family child care license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in the license holder's care?

The Administrative Law Judge concludes that there is reasonable cause for such a belief and that the immediate suspension of the child care license should remain in effect.

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

FINDINGS OF FACT

1. Laura Ellingson has been a licensed child care provider since September 2003. She is 26 years old and lives in Shakopee with her husband and 20-month-old son. She is expecting her second child this summer.^[3]

2. In April 2004 Ellingson was providing care to three other children. Two of the children, R. M., a 15-month old boy, and C.M., age 3, are siblings.^[4] The third child was just under two years of age.

3. On April 20, 2004, shortly after R.M. arrived at Ellingson's home, she noticed that he had a small healing scratch on the right side of his forehead. R.M. appeared to be tired that morning, so Ellingson put him down for an early nap at about 12:15. He awakened at about 2:30 p.m., about an hour after Ellingson had put the other children down for naps. When she was changing his diaper, the two-year-old woke up as well. She brought them both into the living room to play, then went into the kitchen to prepare a snack for them.^[5]

4. At approximately 3:00 p.m. that afternoon, Ellingson called R.M.'s father to tell him that R.M. had fallen while running into the kitchen and landed on the right side of his face. She suggested that he might want to take the child to a doctor because it started to "spread like a spider." When the father did not come to pick up the child by 3:50 p.m, Ellingson called the mother. She asked the mother if R.M. bruised easily. When the mother inquired as to why she was asking, Ellingson told her that R.M. had run into the kitchen, slipped on some water on the kitchen floor, landed on one side of his face, and had bruising and swelling as a result.^[6]

5. When the mother arrived about 45 minutes later, she noticed that there was bruising to the inside and behind both of his ears in addition to the bruising on the right side of the child's face.^[7]

6. The boy's parents took him to a pediatrician that evening. The pediatrician noted extensive bruising on both cheeks and ears. He believed the injuries were inconsistent with the provider's report of how the injury had occurred and notified child protection in Dakota County, where the parents reside.^[8]

7. The parents telephoned Ellingson that night to tell her that the physician had reported the injury to child protection and that the children would not be returning to her care until matters had settled down.^[9]

8. The next day, April 21, 2004, Ellingson telephoned Tristan Sprengeler, a licensing social worker in Scott County, to report the incident. She told Sprengeler that the child had run into the kitchen, slipped on some water, and landed on his face, cheek, and eyebrow without putting his hands out to break his fall. She said she had applied a cold washcloth to the side of his face, but it looked like the veins on his cheek on the right side "came to the surface." The social worker told Ellingson that she would send an injury report form to be completed and returned.^[10]

9. On April 22, 2004, R.M.'s parent took him to a well child examination with his pediatrician, who noted multiple petechiae (hemorrhagic spots in the skin) on both cheeks and bruises as noted on the previous visit. He agreed that the degree of bruising did not fit the story of a fall on one side.^[11]

10. On April 23, 2004, a Scott County child protection worker and Shakopee police officer interviewed the parents, photographed the child, and interviewed Ellingson. They arranged for the child to be seen at the Midwest Children's Resource Center (MCRC) at Children's Hospital in St. Paul.

11. On April 26, 2004, the child was seen at MCRC. A physician there found linear bruising to the right side of the child's face, extending into his hairline over his right ear, as well as a small bruise to his lower left jaw line. He also reviewed the photographs taken April 23, 2004, which showed bruising and petechiae to the left side of his face, into his left ear and behind his left ear. There was also a small healing scratch on the child's right forehead.^[12]

12. The physician believed these injuries to be consistent with a slap mark to the right side of the child's face, with injury to the left ear perhaps explained by the left side of the head forcefully contacting a stationary object when he was slapped. The physician did not believe the injuries were consistent with a fall to the floor, hitting only the right side of the child's face.^[13]

13. On April 26, 2004, the child protection worker notified the licensing worker that child protection would be making a finding of maltreatment based on the physician opinions that the injuries were inconsistent with the presenting injuries.

Procedural Findings

14. On April 27, 2004, Scott County recommended a temporary immediate suspension of Ms. Ellingson's license to the Commissioner of Human Services.

15. On April 27, 2004, the Department of Human Services issued an order immediately suspending Ellingson's license to provide family child care.^[14]

16. Ms. Ellingson appealed the Order of Immediate Suspension on April 29, 2004.

17. The Department of Human Services requested the appointment of an Administrative Law Judge on May 3, 2004 and served the Notice and Order for Hearing by mail on May 11, 2004.

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

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, subds. 2 & 3, and 14.50.

2. The Commissioner, through Scott County Human Services, has complied with all substantive and procedural requirements.

3. If the commissioner finds that the health, safety, or rights of children in care are in imminent danger, the commissioner shall immediately suspend the license.^[15]

4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule.^[16]

5. If a license holder appeals an order immediately suspending a license, the commissioner must request an expedited hearing to take place within 30 calendar days of the request for assignment, unless an extension is requested and granted for good cause.^[17]

6. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings is limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.^[18]

7. The Commissioner has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health and/or safety of children served by the license holder, based on the reports of physicians that a serious injury to a child in her care was not consistent with the license holder's explanation for how the child was injured.

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 uphold the immediate suspension of Laura Ellingson's family child care license.

Dated: May 27, 2004

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape-recorded (three tapes)

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

In this proceeding the Commissioner has the burden of showing that there is reasonable cause to believe that the health, safety, or rights of the children in care are in imminent danger. This is a modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination.

The County, acting for the Commissioner, must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. Reasonable cause to suspend a license is not specifically defined in the statute, but is analogous to the probable cause standard in a criminal proceeding.^[19] In both cases the state is entitled to rely on hearsay evidence linking the license holder to an act that puts children in care at risk of imminent harm. “Imminent harm” is not defined in the statute or rules, but the Commissioner has defined “imminent danger” to mean that a child is threatened with immediate or present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.^[20] While this definition of imminent danger is not binding, it is instructive. At a minimum, “imminent harm” means harm that is impending or about to occur.^[21]

In this case the Department of Human Services based its decision to immediately suspend the license on the reports of three physicians, all of whom indicated that the injuries were not consistent with the provider’s report. The report from MCRC further indicates that the injury was likely caused by a slap to the right side of the child’s face, which caused the child’s head to hit a stationary object on the left. If this indeed happened, the fair inference can be drawn that Ms. Ellingson’s response to the stressful situations inherent in providing day care did, and could in the future, pose a danger to those children. Ms. Ellingson denies that the injury happened this way, and she intends

to challenge this conclusion on the merits. For purposes of this proceeding, however, the evidence is sufficient to support the Commissioner's preliminary determination that the children in care are at risk of imminent harm. The immediate suspension should be continued until a final decision is made on the merits.

K.D.S.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 245A.07, subd. 2a(b).

^[3] Testimony of Laura Ellingson.

^[4] *Id.*

^[5] Testimony of Laura Ellingson.

^[6] Testimony of Laura Ellingson; Ex. 1; Ex. 6.

^[7] Ex. 6.

^[8] Ex. 8.

^[9] Ex. 1; Testimony of Laura Ellingson.

^[10] Ex. 1; Testimony of Tristan Sprengeler.

^[11] Ex. 9.

^[12] Ex. 6.

^[13] *Id.*

^[14] Ex. 10.

^[15] Minn. Stat. § 245A.07, subd. 2; Minn. R. 9502.0341, subp. 9.

^[16] Minn. Stat. § 245A.08, subd. 3.

^[17] Minn. Stat. § 245A.07, subd. 2a.

^[18] Minn. Stat. § 245A.07, subd. 2a.

^[19] See *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 902 (1976).

^[20] Minn. R. 9543.1010, subp. 8.

^[21] See *American Heritage College Dictionary* (3d ed.); *Black's Law Dictionary*.