

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

In the Matter of the Maltreatment Determination,
Disqualification, and Revocation of the
License of Tiffany Ewy to Provide
Family Child Care

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

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on May 12 and May 19, 2005, at the Anoka County Courthouse, Room W320, 325 E. Main Street, Anoka, Minnesota. The OAH record closed June 6, 2005, upon receipt of written arguments.

Kristin Larson, Assistant Anoka County Attorney, 2100 Third Avenue, Anoka, MN 55303-2265, appeared on behalf of the Anoka County Social Services Department and the Minnesota Department of Human Services.

Cynthia Brown, Esq., Brown Law Offices, 11125 Zealand Avenue North, Champlin, MN 55316-3595, appeared on behalf of Tiffany Ewy (Licensee).

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, 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

1. Is Tiffany Ewy responsible for maltreatment of an infant in her care?
2. If so, is Tiffany Ewy disqualified from providing services because the maltreatment was serious or recurring?
3. Did Tiffany Ewy violate Minn. Stat. §245C.05, subd. 5, by refusing to allow Anoka County licensing authorities access to her home?
4. Should Ewy's child care license be revoked because of a disqualification and/or the refusal to permit access to her home?

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

FINDINGS OF FACT

1. Tiffany Ewy is a resident of Anoka County. She has been licensed as a child care provider since approximately 2000. She has provided childcare at her home in Andover, where she lives with her husband Terrance and her two children, ages three and one. Ewy also has a son from a previous marriage, age 14, who lives with his father but visits her home on a regular basis.^[1]
2. In November 2004, Ewy had six children in care: one aged four years; three aged three years; one aged one year; and six-month-old C.S.
3. C.S. is the child of Lynn and Alan Squires. C.S. began attending daycare at Ewy's home when he was about six weeks old in June 2004.^[2]
4. The Squires believed C.S. was adjusting to daycare but questioned the number of bruises he sustained there. He had small bruises on his arms, legs, and back, and some scrapes and bruises on his head. Ewy had reported to them that once another child threw a rattle and hit C.S. on the head, causing a bruise; once he hit his head on the doorframe while in a jump-up swing; once he hit his head on the metal frame on the changing table; and once Ewy said that scrapes on his head were from accidental contact with the prongs on her wedding ring.^[3]
5. At his six-month check-up, on October 15, 2004, the Squires reported to their pediatrician that C.S. seemed to come home from daycare with a lot of bumps and bruises. The pediatrician told them that older children in an in-home daycare sometimes play roughly with infants and that they should not be concerned.^[4] At this time C.S. was learning to sit up, but he was not yet able to crawl or pull himself up to a standing position.^[5]
6. On October 31, 2004, a Sunday, Lynn and Alan Squires separated. He moved to an apartment in Coon Rapids, which he had rented about two weeks before moving out. She remained at their home in Andover. Their separation was the result of

an extramarital affair. They agreed that because she was the primary caretaker of C.S., she would have physical custody and stay in their home. He would have visitation with C.S. on Tuesday evenings in the Andover home and every other weekend at his apartment.^[6]

7. That evening, Alan Squires returned to the home in Andover to pick up some more belongings and to see C.S. in his Halloween costume. Lynn Squires took several photographs of C.S. during the course of the evening. Although the costume has a loose hood, the baby's face and the sides of his head are clearly visible in the photographs. There is no apparent bruising or swelling of the baby's face or head.^[7]

8. At about 4:45 p.m. on Tuesday, November 2, 2004, Lynn Squires picked up her son from daycare. Ewy was holding him in the back yard while the other children played. The baby was wearing a jacket and hat. Ewy told Squires that the baby had been sitting on the floor in the living room and that he had tipped over and bumped his head on the wood base of the loveseat. Squires asked if he was okay, and Ewy said yes. Ewy said she kept him awake for a little while because she was concerned that he might have a concussion, but he appeared to be okay. She said he was fussy that day and might be hungry.^[8]

9. Lynn Squires left the daycare home and went to vote. She arrived at her own home at about 5:45, where she removed her son's jacket and hat. She then noticed that the baby's head was "mushy" on the right side above his ear and that he had bruises on the sides of his face, arms, and chest. Alan Squires arrived at about 6:00 p.m. for visitation and saw the swollen, spongy area on the right side of the baby's head. While giving the baby a bath, he also noticed bruising on the chest. They decided to bring the baby to the doctor in the morning if the swelling did not improve overnight.

10. The next morning, November 3, 2004, the swelling looked worse. Lynn Squires called Ewy at about 7:45 a.m., crying and upset. She demanded to know what really had happened to C.S. Ewy told her that nothing more had happened. Lynn Squires told her that she was bringing C.S. to see his pediatrician. Ewy asked her to call later and tell her what the doctor said.^[9]

11. A little later that morning, Ewy called her licensing social worker and reported that the day before, C.S. had been sitting on the living room floor when he "tipped over" and bumped his head on the wood base of a couch. She said C.S. had a bump on his head as a result, but he seemed all right. She reported that she had told the mother about the bump. She also said that C.S. had come to daycare with a bump on Monday, November 1, 2004. She said the bump was soft and squishy and that she had kept him awake for more than an hour as a precaution, but that he seemed fine. She also noticed a small yellow bruise on his back. Ewy said when he left the house, he had just the small soft bump on the head. She also reported to the licensing worker that the parents had recently separated and that the mother appeared to be very sad. The

licensing worker advised Ewy to write down everything she could recall about the last few days and any conversations she had had with the parents.^[10]

12. That same morning, Lynn Squires took C.S. to his pediatrician and reported to the doctor that C.S. had been injured at daycare the previous day. The physician's report notes that C.S. had boggy swelling on the right side of his head and multiple bruises on his trunk, arms, and lower back. The physician immediately referred the baby to the Midwest Children's Resource Center at Children's Hospital in Minneapolis for further evaluation.^[11]

13. At Children's Hospital, C.S. was examined and diagnosed with multiple injuries: a right parietal skull fracture and a subgaleal hematoma over the site of the skull fracture, causing the "bogginess" and swelling of the right side of his head. On the left side of his face, he had red linear petechial bruising of the upper left eyelid, a small circular bruise over his left eyebrow, two circular bruises on his left cheek, and a bruise in the corner of his left eye. On his right cheek, there was a small bruise above the right side of his upper lip and a faint bruise on the right upper cheek. There were two yellow-brown bruises on his sternum, and a large yellow-brown bruise on his back at the diaper line. There was a small bruise on his right upper arm, and a faint bruise on the left upper arm corresponding to the same location as the right arm. In addition, there were two small yellow bruises on the left lower forearm.^[12] Xrays, and a bone scan performed two weeks later, disclosed healing fractures of the right humerus (upper arm) and the distal right tibia (lower leg).^[13] The arm and leg fractures were at least two weeks old on November 3, 2004.

14. Only the small bruises and marks on the left side of C.S.'s face are consistent with the provider's report of C.S. "tipping over" and bumping his head on a wooden chair or sofa leg. These bruises could also be consistent with "grab marks or fingertip injuries."^[14] The remaining unexplained bruises in a child six months old are strong indicators of abusive trauma, or abusive or careless handling of the child. Children who are not yet crawling do not bruise as a result of accidental falls. The skull fracture and subgaleal hematoma on the right side of C.S.'s head were consistent with abusive trauma or a fall with "considerable impact." The skull fracture could have happened on Tuesday, November 2, or possibly a day earlier. It is difficult to date the injury but it would not have gone unnoticed for long by his caretakers because of the swelling.^[15] The fractures to the baby's arm and leg were healing, and were therefore older injuries. These types of fractures could be caused by grabbing the child by the arm or leg, or using the arm or leg as a handle.^[16]

15. On November 4, 2005, after receiving information about the extent of the baby's injuries, a detective from the Anoka County Sheriff's Department went to Children's Hospital and took statements, individually, from both Lynn Squires and Alan Squires.^[17] Their statements are consistent with each other and with the information provided to the health care providers.

16. The detective set up an appointment with Tiffany Ewy for that afternoon, so that he and Jodi Nelson, a child protection social worker, could take a statement from her. After consulting with her attorney, Ewy cancelled the appointment. Ewy never provided any statements to the Sheriff's Department or to child protection authorities.^[18]

17. On November 5, 2004, the licensing social worker and child protection social worker went to Ewy's home and knocked on the door. No one answered the door, so the licensing social worker left her business card and they returned to their offices. A short time later Ewy telephoned the licensing worker and said that she had been home but didn't answer the door because she did not know who was there and did not want to deal with anything. There were no children in care that day. They agreed to meet that afternoon at 1:30 p.m. When the licensing worker and child protection worker returned to Ewy's home for the meeting, there was a note on the door stating "Debbie, I had something come up. Please contact Cynthia Brown [Ewy's attorney] at (763) 323-6555 with any further questions."^[19]

18. The licensing worker called Brown, and Brown told her that she had advised Ewy not to meet with anyone. The licensing worker advised Brown that Ewy had to cooperate with licensing authorities or risk negative action on her license. Brown agreed to review licensing statutes.

19. That afternoon Ewy agreed to meet with licensing authorities. They met at 4:00 p.m. in Brown's office. At that meeting Ewy provided the following account. She said that at about 7:15 a.m. on Tuesday when she was removing his hat and coat after Lynn Squires had dropped him off, she noticed that C.S. had a large bump on the top left of his head that was "smooshy" but not discolored. She said the area was three or four inches round and was slightly raised. She sat with C.S. in front of the couch while the other kids were running up and down the hall between the living room and the bedroom. He was sitting to her left on a blanket with some toys, facing away from the couch. Ewy said he tipped over and bumped his head on the wood part of the couch at about 7:30 or so. She picked him up and put ice on it, and he started to cry. He had bumped the eye/cheek area on the *left* side of his head. She said she placed ice on the injury but that C.S. seemed fine, and she did not call his parents. As a precaution, she did not let him nap for about an hour. No other adults were present although the food program representative stopped by around noon.^[20]

20. Bridget McCarthy, the food program representative who was at Ewy's home at noon, did not see anything unusual about C.S.'s appearance or behavior. She was only in the home for about 15-20 minutes and did not pay much attention to him.^[21]

21. On November 9, 2004, Nancy Sackett, the supervisor in the family child care licensing division, attempted to visit Ewy's daycare home with another licensing worker. There were children in care at Ewy's home on this date. After being allowed inside by Ewy's husband, Sackett advised Ewy that they were there to investigate licensing issues. Ewy called her attorney, who advised her not to speak to them without her attorney being present. Sackett then spoke by telephone with Ewy's attorney, who

told Sackett to leave immediately and demanded advance notice of any visits. The social workers left.^[22]

22. After separately interviewing Lynn Squires and Alan Squires, who denied that C.S. had any bumps on his head in the days before November 2, 2004, Anoka County Social Services recommended an immediate suspension of Ewy's child care license.

23. On November 12, 2004, the licensing social worker and her supervisor interviewed Ewy at Ewy's home. Ewy gave another account of the November 2 incident in which she repeated that C.S. had tipped over and bumped the *left* side of his head, and she showed them how it had occurred. She said that the marks on the *left* side of his cheek/eye area "blended" together with the pre-existing bump. She again claimed that she had noticed the "smooshy" spot on Monday but did not mention it at all to Lynn Squires.^[23] In this meeting Ewy also gave the licensing worker a written account of the November 2, 2004, incident, which is dated November 3, 2004. In this handwritten statement, Ewy states that C.S. had a pre-existing bump on the top *left* of his head and fell over and injured the *left* side of his face.^[24]

24. Ewy testified at the hearing that the "smooshy" spot was actually on the top right of C.S.'s head, not the left. She said she has a tendency to mix up left and right.^[25]

25. Child protection authorities filed a CHIPS (Child in Need of Protective Services) Petition in juvenile court, for the purpose of protecting Ewy's own young children. The CHIPS Petition was continued for dismissal, and juvenile court jurisdiction will automatically terminate on August 3, 2005 unless specified conditions remain unmet. Ewy has met all of the conditions of dismissal, which included obtaining a psychological evaluation, attending anger management counseling, and having a bone scan performed on her youngest child.^[26]

26. The psychologist to whom Ewy was referred administered the Minnesota Multiphasic Personality Inventory (MMPI) and the State Trait Anger Expression Inventory (STAXI-2). Based on these results, the psychologist concluded it was unlikely that Ewy would act out on her anger by being aggressive or hostile toward other people or objects and that she was not in need of anger management counseling.^[27]

27. Several daycare parents, past co-workers, and family members vouched for Ewy's calm and patient temperament. No one has ever seen her strike a child or use any form of physical punishment.^[28]

28. Ewy typically telephoned parents at work whenever there were any injuries or issues of concern regarding their children, no matter how small or trivial those issues seemed. She also made a habit of mentioning to parents any injuries she noticed on children when they were dropped off in the mornings.^[29]

Procedural Findings

29. On November 10, 2004, the Department of Human Services ordered the temporary immediate suspension of Ewy's child care license.^[30] Ewy appealed the order of temporary suspension, then later withdrew the appeal.^[31]

30. On November 24, 2004, Anoka County Human Services Department provided notice to Ewy that it had determined that maltreatment had occurred for which she was responsible, and that because the maltreatment was serious and recurring, she was disqualified from any position allowing direct contact with the daycare children. The letter further informed Ewy of her right to request reconsideration.^[32]

31. On December 23, 2004, Anoka County received Ewy's request for reconsideration.

32. On January 18, 2005, Anoka County notified Ewy that it had upheld the maltreatment determination and disqualification and that the disqualification was not set aside, nor was a variance granted.

33. On January 20, 2005, Anoka County recommended to the Commissioner of Human Services that Licensee's Family Child Care License be revoked based on the disqualification.

34. On February 1, 2005, the Department of Human Services revoked Ewy's family child care license.

35. Ewy timely appealed the revocation order.

36. On March 24, 2005, the Commissioner served a Notice and Order for Hearing, setting the hearing to commence on May 12, 2005. The hearing was held as scheduled.

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

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to 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 and Anoka County have complied with all procedural requirements of law and rule.

4. The Commissioner of Human Services may revoke a license if the license holder fails to comply fully with applicable laws or rules.^[33]

5. Pursuant to Minn. Stat. §245A.08, subd. 2a, and Minn. Stat. § 626.556, subd. 10i(f), this is a consolidated contested case hearing on the maltreatment determination, the disqualification, and the revocation of the child care license.

6. Maltreatment of a child is defined, in relevant part, as “physical abuse.”^[34] Physical abuse means, in relevant part, any physical or mental injury that cannot reasonably be explained by the child's history of injuries.^[35]

7. A person is disqualified from contact with persons receiving daycare services if less than seven years has passed since a substantiated determination of serious or recurring maltreatment, when there is a preponderance of the evidence that maltreatment occurred and that the person was responsible for the maltreatment.^[36]

8. “Serious maltreatment” is, in relevant part, maltreatment resulting in serious injury which reasonably requires the care of a physician, or abuse resulting in serious injury.^[37] “Abuse resulting in serious injury” means, among other things, bruises and fractures.^[38]

9. The Department has proved by a preponderance of the evidence that C.S. was physically abused, because he sustained physical injuries that cannot reasonably be explained by the child's history of injuries.^[39]

10. The maltreatment was serious because it resulted in bruises and a skull fracture.

11. The Licensee is disqualified because there is a preponderance of the evidence that maltreatment occurred and that the Licensee was responsible for it.

12. The disqualification should not be set aside because the Licensee has failed to demonstrate that the information relied upon in the disqualification decision was incorrect, and the Licensee failed to demonstrate that she did not pose a risk of harm to children in care.

13. In addition, the Commissioner may not set aside the disqualification of an individual in connection with a license to provide family child care if within seven years the individual has committed an act that constitutes maltreatment, and the maltreatment resulted in substantial bodily harm as defined in section 609.02, subd. 7a.^[40]

14. Minn. Stat. §609.02, subd. 7a, defines substantial bodily harm, in relevant part, as a fracture of any bodily member.

15. Licensee's disqualification may not be set aside pursuant to Minn. Stat. § 245C.24, subd. 4(1), because the skull fracture sustained by C.S. constitutes "substantial bodily harm."

16. A family childcare license shall be revoked, not renewed, or suspended if the provider, or any other person residing in the daycare residence, has a disqualification under Minn. Stat. §245C.14.^[41]

17. Because the head injury suffered by C.S. constitutes both substantial bodily harm and serious maltreatment, revocation of the license is appropriate.

18. Minn. Stat. §245A.04, subd. 5 provides, in part, that the commissioner must be given access to the physical plant and grounds where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the commissioner. The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. Failure or refusal of an applicant or license holder to fully comply with this subdivision is reasonable cause for the commissioner to immediately suspend or revoke the license.

19. On November 9, 2005, the Licensee improperly denied the Commissioner access to the physical plant and grounds where her daycare program operated, in violation of Minn. Stat. §245A.04, subd. 5.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the maltreatment determination against Tiffany Ewy; disqualify her from contact with persons receiving services; and revoke her license to provide family child care.

Dated: July 5, 2005

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Taped (12 tapes); no transcript prepared.

MEMORANDUM

With the exception of the bruising to the baby's face, it is not possible to precisely date the injuries to C.S. The skull fracture could have occurred Monday or Tuesday; the arm and leg fractures occurred at least two weeks before C.S. was seen at Children's Hospital. Although Dr. Levitt thought the bruises might have been different ages considering their different coloration, the parents and the provider agree that C.S. did not have extensive bruising on Tuesday when he was dropped off at Ewy's house. The mother said he had one small bruise on his upper arm, which she had noticed over the weekend; Ewy said she noticed a small bruise on his back when she changed his diaper. Other than that, Ewy maintained the baby had only a small, soft bump on his head when he left her house Tuesday evening.^[42]

This testimony compels the conclusion that whatever caused the extensive bruising to the baby's face, chest, back, and extremities happened between the time the mother dropped him off at 7:15 Tuesday morning and about 9:00 a.m. Wednesday morning, when the baby was seen by his pediatrician and admitted to the hospital.

On Tuesday during the day, the baby was in Ewy's care. On Tuesday night the baby was with both Lynn Squires and Alan Squires. To accept that the bruising happened at their home that night, one would have to believe that they both testified untruthfully as to the events of that evening, and the Administrative Law Judge does not believe this to be the case. Furthermore, they had reported their concerns about excessive bruising in daycare to their pediatrician two weeks before. The Squires had personal problems, but the Administrative Law Judge does not believe them to be capable of conspiring weeks in advance to blame Ewy for bruises later inflicted on their child. The parents were separated; they knew they were likely to divorce; they had (and still have) outstanding issues concerning custody and child support; and they had no motive to cover up for one another.

The parents' version of events regarding the discovery of the baby's injuries was consistently reported to physicians, police, and child protection authorities.^[43] Ewy's version of events changed, and her versions were also inconsistent with the way other parents have described her typical behavior.

In her first contact with the licensing worker on November 3, 2004, Ewy said C.S. had a "bump," in an unspecified location, when he came to day care on Monday morning.^[44] In her interview by licensing workers on November 5, 2004, Ewy said he arrived Tuesday with a large, three- to four-inch bump on the top left of his head.^[45] In this interview, there is no mention of any bump being there on Monday.

Furthermore, other parents testified that Ewy was vigilant about pointing out bumps or scrapes when they dropped off their children, and that she frequently called them at work to report even minor scrapes. Ewy admits she did not ever mention to the mother what she described as the three- to four-inch large, squishy bump on the left top part of the baby's head, which she said he had arrived with Tuesday morning. And

although she thought that the baby might have sustained a concussion when he tipped over a few minutes later, and she took the precaution of not letting him sleep right away, she never called the parents during the day to report it.^[46]

On November 5, 2004, Ewy said when she told Lynn Squires about the slight bump by the left eye, she recalled Squires mentioning something about him getting a bump when he was trying to reach over a pillow and probably when he bumped his head today that may have irritated it.^[47] Ewy did not say on November 5 that she showed Lynn Squires the bump. In the written account provided to authorities on November 12, Ewy said for the first time that she removed the hat and *showed* Lynn Squires the bump and that Squires said it looked like the same spot or around the same spot that he bumped his head over the weekend.^[48]

The Administrative Law Judge has not credited the testimony of Stacy Haak, a daycare parent who said she saw Ewy remove the hat and show Lynn Squires the bump on Tuesday evening. Haak testified that she overheard Ewy telling Lynn Squires that she was concerned about the bump and thought C.S. should be seen by a physician. This is inconsistent with the testimony of both Ewy and Squires, neither of whom said Ewy ever suggested bringing C.S. to the doctor. In addition, Ewy's husband testified that he did not recall his wife expressing any concern about the bump Tuesday evening. The Administrative Law Judge concludes that Haak likes and trusts Ewy, but that she did not recall accurately what happened that afternoon.

Finally, Ewy consistently told authorities that C.S. fell onto his left side and injured the left eye/cheek area.^[49] On November 12, the licensing workers questioned Ewy closely about this, and she demonstrated how it happened:

We asked Tiffany to describe the head bumping accident. She said he bumped the left side of his head. That he had tipped over sideways towards the couch. I asked her to be more specific. Which direction did he fall? She had indicated he had fallen to his right. So I pointed to the couch, motioned from the right side of the couch to the center and asked did he fall towards the center of the couch. She said yes. (Debbie and I may have heard this differently) I asked about how he would have bumped the left side of his head if he had fallen the direction she indicated. We then walked over to the couch and I asked her to show us. She described that [C.S.] was sitting, facing out from the couch, at a slight angle and tipped to his left, thus bumping the side of his face (high cheek bone/temple) area. She said the "smooshy" spot and the bump from tipping over were located next to each other on his face/head and afterwards looked as if they were "blended together."^[50]

At the hearing, however, Ewy testified that he fell onto his right side and that she was mistaken in her previous versions of events because she had a tendency to mix up left and right on other people. No other witness verified that she has this tendency.

The photographs taken Sunday night show no bruises or bumps on the baby's head or face. Based on the photographs and the above inconsistencies in Ewy's version of events, the Administrative Law Judge concludes it is unlikely that C.S. arrived at daycare on either Monday or Tuesday with any kind of bump on his head, and that it is more likely than not that the bruising and skull fracture were sustained at the same time on Tuesday while C.S. was in Ewy's care. At minimum, these injuries are inconsistent with the history of injuries provided by Ewy to the parents and licensing authorities.

The Administrative Law Judge acknowledges that the evidence of Ewy's character and demeanor with children are completely at odds with this conclusion, but this evidence is not adequate to rebut the evidence described above. Something more than tipping over from a sitting position happened to cause the injuries to this child, and it more likely than not happened in Ewy's home. After a careful review of the record, the Administrative Law Judge has concluded that Tiffany Ewy was responsible for maltreatment of C.S. on November 2, 2004. The maltreatment was serious, and it disqualifies her from having contact with children in care. The disqualification may not be set aside because it meets the definition of substantial bodily harm. Even if it could be set aside, it should not be set aside because Ewy has denied it happened and cannot show that she does not pose a risk of harm.

The Administrative Law Judge has not concluded that Ewy was responsible for the healing fractures of the baby's arm and leg. It is not possible to date those injuries with any precision, and they cannot be attributed to Tiffany Ewy on this record.

K.D.S.

^[1] Testimony of Tiffany Ewy; Testimony of Terrance Ewy; Testimony of Jeff Sibinski.

^[2] Testimony of Lynn Squires.

^[3] Testimony of Lynn Squires; Testimony of Alan Squires; Testimony of Tiffany Ewy.

^[4] Ex. 19 at visit dated 10/15/04; Testimony of Lynn Squires.

^[5] Testimony of Lynn Squires; Ex. 20, Midwest Children's Resource Center Report 11/3/04 at p. 2.

^[6] Testimony of Lynn Squires and Alan Squires.

^[7] Exs. 22A-R.

^[8] Testimony of Lynn Squires.

^[9] Testimony of Lynn Squires.

^[10] Ex. 1 at 11/3/04; Testimony of Debbie Hambleton.

^[11] Ex. 19, visit dated 11/3/04.

^[12] Ex. 20, Midwest Children's Resource Center Report 11/3/04.

^[13] Ex. 20, Minneapolis Children's Resource Center Follow-Up Report dated Nov. 9, 2005; Second Follow-Up Report dated November 19, 2005; Testimony of Carolyn Levitt, MD.

^[14] *Id.*

^[15] Testimony of Carolyn Levitt, MD.

^[16] *Id.*

^[17] Testimony of Kurt Klosterman; Exs. 4 & 5.

^[18] Testimony of Kurt Klosterman; Testimony of Jodi Nelson.

^[19] Ex. 12, Child Protection Case Notes 11/5/04; Testimony of Debbie Hambleton; Ex. 2.

^[20] Ex. 6 (emphasis added).

- [\[21\]](#) Testimony of Bridget McCarthy; Ex. 65.
- [\[22\]](#) Testimony of Nancy Sackett.
- [\[23\]](#) Ex. 11 (emphasis added).
- [\[24\]](#) Testimony of Debbie Hambleton; Ex. 3; Ex. 11 (emphasis added).
- [\[25\]](#) Testimony of Tiffany Ewy.
- [\[26\]](#) Testimony of Jodi Nelson; Testimony of Sarah Squires; Ex. 57. The bone scan on Ewy's youngest child was normal. See Ex. 63.
- [\[27\]](#) Testimony of Mark Thelen; Ex. 58.
- [\[28\]](#) Testimony of Stacy Haak and Jeremy Haak; Testimony of Lisa Groothausen and Tom Groothausen; Testimony of Janeen Bjugstad; Testimony of Terrance Ewy; Testimony of Jeffrey Sibinski.
- [\[29\]](#) Testimony of Lisa Groothausen.
- [\[30\]](#) Ex. 9.
- [\[31\]](#) Ewy withdrew the appeal on February 7, 2005, and the Department of Human Services affirmed the temporary immediate suspension on February 15, 2005. See Ex. 10.
- [\[32\]](#) Ex. 14.
- [\[33\]](#) Minn. Stat. §245A.07, subd. 3.
- [\[34\]](#) Minn. Stat. § 626.556, subd. 10e(a)(1).
- [\[35\]](#) Minn. Stat. §626.556, subd. 2(d).
- [\[36\]](#) Minn. Stat. §§ 245C.14, subd. 1(3); 245C.15, subd. 4(b)(2); Minn. R. 9502.0335, subp. 6, item D.
- [\[37\]](#) Minn. Stat. § 245C.02, subd. 18(a).
- [\[38\]](#) Minn. Stat. §245C.02, subd. 18(c).
- [\[39\]](#) Minn. Stat. §626.556, subd. 2(d).
- [\[40\]](#) Minn. Stat. §245C.24, subd. 4(1).
- [\[41\]](#) Minn. R. 9502.0335, subp. 6, item D.
- [\[42\]](#) Ex. 1.
- [\[43\]](#) Exs. 4 & 5, Ex. 12; Exs. 19 & 20.
- [\[44\]](#) Ex. 1.
- [\[45\]](#) Ex. 6.
- [\[46\]](#) Testimony of Tiffany Ewy.
- [\[47\]](#) Ex. 6.
- [\[48\]](#) Ex. 3.
- [\[49\]](#) Ex. 3; Ex. 6; Ex. 11.
- [\[50\]](#) Ex. 11 at p. 1.