

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

In the Matter of the Maltreatment Determination,
Disqualification, Fine, and Order of
Conditional Licensure of the License
of Chere Schroeder 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 September 20, 2005, at the Anoka County Courthouse, Room W320, 325 E. Main Street, Anoka, Minnesota. The OAH record closed at the end of the hearing that day.

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.

Chere Schroeder, 12520 Ibis Street NW, Coon Rapids, MN 55448, appeared on her own behalf without counsel.

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. By spanking her daughter with a spoon and leaving a bruise under one fingernail, is Chere Schroeder responsible for maltreatment?
2. If so, is Schroeder disqualified from providing child care services because the maltreatment was serious?
3. Should Schroeder's license be made conditional and a fine imposed pursuant to Minn. Stat. § 245A.07, subd. 3?

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

FINDINGS OF FACT

1. Chere Schroeder has been a licensed daycare provider in Anoka County since February 1997. She lives in Coon Rapids with her husband and four daughters, ages seven through 14.¹
2. On or about January 18, 2005, in the evening after daycare hours, Chere Schroeder was trying to study for a college class, and her two oldest daughters were talking loudly when they were supposed to be in bed for the night. Chere Schroeder went into their room and attempted to spank them on the buttocks with a plastic spaghetti spoon. Her oldest daughter (K.S.) put her hand behind her to block the spanking, and the spoon made contact with her daughter's fingernail, which started bleeding. Schroeder helped her put cold water on the injury, but it did leave a small bruise under the nail that lasted for about two weeks.²
3. K.S. told people at school about how she got the bruise, and school personnel contacted child protection authorities, who informed Schroeder's licensing worker about the incident. When interviewed by a child protection worker, K.S. stated that Schroeder spansks her with a cooking spoon or hits with her hand approximately twice a week for being disobedient. She said the other children were spanked occasionally, but not as much as her.³
4. K.S. also reported that on January 28, 2005, she and her sister were arguing about who should be holding one of the daycare children, a baby. Schroeder told them to stop arguing, and when they did not, Schroeder took the baby and slapped K.S. on the face. The slap did not cause a physical injury to K.S.⁴

¹ Ex. 1; Testimony of Lori Onstad.

² Ex. 1; Ex. 18.

³ Ex. 1.

⁴ Ex. 1; Testimony of Katey Zeleny.

5. In addition, K.S. reported that her father had spanked her with a belt on one occasion, after she had run away from home for three days in July 2004. Her parents eventually located her at a trailer park with an older boy. Chere Schroeder spanked her with a belt one other time for sneaking out of the house to be with a boy. These spankings did not cause any physical injuries to K.S.⁵

6. Schroeder confirmed the accuracy of these statements when interviewed by the child protection worker. She said that K.S. had become “boy crazy” in sixth grade and started failing to come home when she was supposed to, did not keep her parents informed of her whereabouts, and was defiant and physically aggressive toward her mother. She said K.S. also has attention deficit disorder, but that she refuses to take medication for it. She said that although they generally punish her by grounding her or taking privileges away, physical discipline was “somewhat” effective with K.S. They brought K.S. to a psychologist for some period of time, but did not find counseling to be useful.⁶

Procedural Findings

7. On February 9, 2005, Anoka County Human Services Department provided notice to Schroeder 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. Because the County believed Schroeder posed a risk of harm to daycare children, Schroeder was required to be within sight or hearing of another adult caregiver when daycare children were present.⁷

8. On March 7, 2005, Anoka County received Schroeder’s request for reconsideration. Attached to the request for reconsideration are many letters from daycare parents and other providers attesting to the quality of Schroeder’s daycare services and her efforts to deal with K.S. through counseling, grounding, and removal of privileges.⁸

9. On March 29, 2005, Anoka County notified Schroeder that it had upheld the maltreatment determination and disqualification and that the disqualification would not be set aside, but the County granted a variance to the disqualification under the following conditions: that Schroeder have no further disqualifying factors, no recurrence of similar incidents, and no other acts indicating that Schroeder poses a risk of harm to daycare children; and that

⁵ Ex. 1; Testimony of Katey Zeleny.

⁶ Ex. 1; Ex. 7.

⁷ Ex. 4.

⁸ Ex. 7.

Schroeder report any criminal or maltreatment activity concerning herself or household members to Anoka County Licensing.⁹

10. On April 1, 2005, Anoka County recommended to the Commissioner of Human Services that Schroeder's Family Child Care License be made conditional for one year.¹⁰ On May 13, 2005, the county further recommended a fine in the amount of \$1,000.¹¹

11. On June 7, 2005, the Department of Human Services ordered Schroeder to forfeit a fine in the amount of \$1,000 based on the maltreatment determination and placed her license on conditional status for one year, subject to the following conditions: (1) that Schroeder follow and comply with all parts of Minnesota Rules, parts 9502.0300 to 9502.0445; (2) no variances to age distribution or capacity would be given during the conditional period; (3) that Schroeder obtain ten additional hours of training in the area of positive behavior guidance, in addition to the annual training requirements; (4) that Schroeder complete a psychological evaluation to address whether counseling or an anger management program would be appropriate, and provide the results to Anoka County Social Services; and (5) that Schroeder provide a copy of the order of conditional license to parents of children in care.¹²

12. Schroeder timely appealed the order to forfeit a fine and the order of conditional licensure.¹³

13. 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.

⁹ Exs. 9, 10A & 10B.

¹⁰ Ex. 11.

¹¹ Ex. 12.

¹² Ex. 13.

¹³ Ex. 14.

4. Pursuant to Minn. Stat. §§ 245A.06, subd. 4, 245A.08, subd. 2a(a), and 626.556, subd. 10i(f), this is a consolidated contested case hearing on the maltreatment determination, the disqualification, the order of conditional licensure, and the imposition of a fine.

5. Maltreatment of a child is defined, in relevant part, as “physical abuse.”¹⁴ Physical abuse means, in relevant part, any physical injury inflicted by a person responsible for the child’s care on a child other than by accidental means. Abuse does not include reasonable and moderate physical discipline of a child administered by a parent that does not result in an injury.¹⁵

6. The Department has proved by a preponderance of the evidence that Schroeder was responsible for maltreatment when she spanked her daughter with a spoon and caused a small bruise under one fingernail. The injury was not accidental because Schroeder intended to hit her daughter with the spoon, and her actions do not constitute reasonable or moderate physical discipline of a child because the discipline resulted in a physical injury.

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.¹⁶

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.¹⁷ “Abuse resulting in serious injury” means, among other things, a bruise.¹⁸

9. The maltreatment in this case was serious because it resulted in a small bruise.

10. Schroeder is disqualified because there is a preponderance of the evidence that maltreatment occurred and that she was responsible for it.

11. When the commissioner has not set aside a disqualification, and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to people receiving services, the commissioner may grant a time-limited variance to a license holder. The variance shall state the reason for the

¹⁴ Minn. Stat. § 626.556, subd. 10e(a)(1).

¹⁵ Minn. Stat. § 626.556, subd. 2(d).

¹⁶ Minn. Stat. § 245C.15, subd. 4(b)(2).

¹⁷ Minn. Stat. § 245C.02, subd. 18(a).

¹⁸ Minn. Stat. § 245C.02, subd. 18(c).

disqualification, the services that may be provided by the disqualified individual, and the conditions with which the license holder must comply for the variance to remain in effect.¹⁹

12. The variance granted in this case satisfies the statutory requirements.

13. If the Commissioner finds that a license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of persons served by the program, the commissioner may issue a correction order or an order of conditional licensure. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.²⁰

14. The record reflects that the commissioner considered the appropriate statutory factors in ordering the conditional licensure.

15. A license holder shall forfeit \$1,000 for each determination of maltreatment of a child under Minn. Stat. § 626.556.²¹

Based upon the foregoing Conclusions, and for the reasons stated in the Memorandum attached hereto, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services:

- (1) affirm the maltreatment determination against and disqualification of Chere Shroeder; and
- (2) affirm the order to forfeit a fine and order of conditional licensure.

Dated: October 14, 2005

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Taped (2 tapes); no transcript prepared.

¹⁹ Minn. Stat. § 245C.30, subd. 1(a) & (b).

²⁰ Minn. Stat. § 245A.06.

²¹ Minn. Stat. § 245A.07, subd. 3(b)(4).

MEMORANDUM

Although the physical injury sustained by Schroeder's daughter was minute,²² it was a bruise inflicted through use of physical discipline, and it is an injury sufficient to constitute serious maltreatment. The Administrative Law Judge believes that Schroeder's acknowledgment that she has resorted more frequently to physical discipline—hitting with objects, slapping and spanking with a belt—in response to her daughters' adolescent difficulties is of more concern to the Department than this tiny bruise on a fingernail. The combination of rebellious teenagers and a frustrated parent who is increasingly reliant on physical discipline may potentially result in much more serious harm than that reflected here, and those frustrations may well spill over into the daycare setting, as they did when Schroeder slapped her daughter while holding a daycare child.

In that light, the Administrative Law Judge encourages Schroeder to view the additional training and psychological evaluation requirements not as punishment but as a source of help to develop more effective methods of disciplining her own children, as well as daycare children. Training and additional insight cannot do any harm and might well improve what appears to be a difficult situation at home. The \$1,000 fine is large, but is mandatory under the statute, and the Administrative Law Judge has no authority to reduce it.

The Commissioner's order requires Schroeder to comply with Minn. R. 9502.0395, the rule concerning behavior guidance that prohibits the use of spanking, or any form of corporal punishment, as well as emotional abuse of daycare children. Certainly Schroeder is obligated to fully comply with the rule with regard to children in daycare, and there is no allegation that she has improperly disciplined daycare children. It is possible that the physical discipline of one of Schroeder's own children, if witnessed by a child in care, could frighten the daycare child so badly that it would constitute emotional abuse. The rule cannot be applied, however, to preclude Schroeder from using reasonable or moderate physical discipline, in a manner that does not cause injury, with her own children under other circumstances.²³

K.D.S.

²² When photographed, the bruise was about one-fourth of an inch in circumference. See Ex. 18.

²³ The rule is applicable to children in care who are ten years of age or younger. See Minn. R. 9502.0315, subp. 7.