

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

In the Matter of the Revocation of the  
Family Child Care License of  
Barbara Kidd

**FINDINGS OF FACT, CONCLUSIONS  
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge (ALJ) Kathleen D. Sheehy at 9:30 a.m. on April 9, 2007, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota. The hearing record closed on April 24, 2007, upon receipt of post-hearing memoranda from the parties.

David MacMillan, Assistant Ramsey County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102-1556, appeared on behalf of Ramsey County Community Human Services Department (Ramsey County) and the Department of Human Services (Department).

Peter B. Knapp, Supervising Attorney, Anne Loring and Rebecca Olson, Certified Student Attorneys, William Mitchell Law Clinic, 875 Summit Avenue, St. Paul, MN 55105-3076, appeared on behalf of Barbara Kidd (Licensee).

**STATEMENT OF ISSUE**

Has the Department established sufficient grounds to revoke the family child care license of Barbara Kidd?

The Administrative Law Judge concludes that the Department has established sufficient grounds to revoke the license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. In 1995, the Licensee applied for a family child care license under the name of Barbara Harris. She resided at 586 Central Avenue #203 in St. Paul, Minnesota. In information submitted to the Department at that time, she identified her maiden name or previous name as Barbara Addison.<sup>[1]</sup> In May

1996, she was licensed in the name of Barbara Addison, still living at 586 West Central #203 in St. Paul.<sup>[2]</sup> At that time, the Licensee had two children over the age of 14 (A.H. and C.H.) and a seven-month-old daughter, T.A. The Licensee submitted background study forms for her two older children, both of which came back showing no disqualifications.<sup>[3]</sup>

2. The Licensee told her licensing worker during a preliminary interview that the Licensee suffered from and was disabled by chronic arthritis.<sup>[4]</sup> The Licensee also maintains she has been diagnosed with fibromyalgia.<sup>[5]</sup>

3. On May 8, 1996, the Licensee signed a Family Day Care Provider Agreement in which she agreed to notify the agency within 30 days of any change in the regular membership of the household within the day-care residence or the addition of an employee who would regularly provide care.<sup>[6]</sup>

4. The Licensee submitted renewal information in 1997 and 1999.<sup>[7]</sup> In 1999, her older daughter submitted a background study form because she was 18 years old and living with the Licensee. The background study came back showing no disqualifications.<sup>[8]</sup>

5. On October 4, 2000, Licensee married Sekou Aboubacar Mansare, and she changed her name to Barbara Ann Mansare.<sup>[9]</sup> The Licensee did not report this change in status to Ramsey County.<sup>[10]</sup>

6. In January 2001, licensing worker Roslyn Davis received a complaint about Licensee's day care from one of the day-care parents. Based on that phone call, Ms. Davis attempted three unannounced visits to the Licensee's residence. Each time, the Licensee was not present at the home.<sup>[11]</sup>

7. During the third unannounced visit on January 25, 2001, Ms. Davis found Mr. Mansare and Licensee's 14-year-old daughter C.H. in charge of the day-care children. Ms. Davis issued a Correction Order to Licensee citing inadequate supervision, improper use of a substitute caregiver, delayed access to the home, and failure to report her new husband's presence in the home and to have a background check performed on him.<sup>[12]</sup> Ms. Davis returned to Licensee's home on February 1, 2001, and based on her observations, issued a second Correction Order for providing inadequate meals and allowing children to play with a toxic chemical (Clorox).<sup>[13]</sup>

8. Based on additional complaints from day-care parents, four unannounced visits and the Correction Orders noted above, Ramsey County recommended, in a letter dated February 13, 2001, that Licensee's family day care license be indefinitely suspended or revoked.<sup>[14]</sup>

9. In February and March 2001, Ramsey County conducted a child protection intake assessment and determined that the Licensee had committed maltreatment in the form of lack of supervision/neglect of daycare children when the Licensee left them without adult supervision. The scope of this investigation

was broader than the allegations made in the earlier correction order, and the finding of neglect was based on statements taken from two day-care children who said they were left without adult supervision.<sup>[15]</sup>

10. Ramsey County's records reflect that the Licensee was notified of the neglect determination on March 15, 2001. On April 3, 2001, the County provided her with information about how to request reconsideration.<sup>[16]</sup>

11. By letter to the Department in March 2001, Licensee disputed selected citations on each of the Correction Orders.<sup>[17]</sup> She disputed that the children were left home alone without adult supervision, that her husband watched day-care children when she was not there, and that she failed to provide nutritious meals to day-care children; she did not dispute that she had failed to notify the Department of her husband's presence in the home so that a background study could be completed.<sup>[18]</sup>

12. On September 19, 2001, the Department notified Ramsey County that it had not submitted sufficient information to support the disputed citations in the Correction Orders and requested that the County either withdraw or reissue the citations by October 1, 2001.<sup>[19]</sup> On October 4, 2001, the County notified the Licensee that it had to withdraw the disputed citations because the licensing worker who issued them was no longer available to support them.<sup>[20]</sup>

13. After the disputed citations were withdrawn, there is no record that the Department took any action on the recommendation to suspend or revoke the Licensee's child care license.

14. Licensee apparently divorced Sekou Mansare sometime between 2001 and 2004.<sup>[21]</sup>

15. Licensee married Dwane Kidd on September 25, 2004, and her name was legally changed to Barbara Ann Kidd.<sup>[22]</sup> She did not report the marriage to Ramsey County.<sup>[23]</sup>

16. In September 2004, Robin Hanson of the Wilder Food Program visited Licensee's daycare, still located at 586 Central Avenue #203 in St. Paul. The Licensee's sister, Josephine Willis, was watching the day-care children; she declined to admit Ms. Hanson to the home and informed Hanson that the Licensee was on her honeymoon. In October 2004, Hanson stopped by again, and this time a man answered the door; he also denied Hanson entry because the Licensee was not there. Hanson left a message for the Licensee to call her when the Licensee returned, and she did so about half an hour later. The Licensee said her husband did not let Hanson into the apartment because he was not dressed. Based on these incidents, some of the Licensee's requests for reimbursement from the food program were denied. The Licensee appealed the penalty, and her appeal was denied.

17. On a Child Care Licensing Checklist that she completed on November 28, 2004, the Licensee identified herself as Barbara Ann Mansare. She indicated that she would be moving into a home located at 1733 Maryland Avenue in St. Paul on December 31, 2004. She indicated that her daughter Chermander Harris (now an adult) or Dwane Kidd would be working for her on a regular basis. Licensee indicated that Chermander Harris was already “BCA-approved” and that Dwane Kidd would start in 2005 if approved by the Department.<sup>[24]</sup> On the same form she indicated that there had been no changes in the regular membership of her household and that no one in the household had been charged with or convicted of a felony or misdemeanor or involved in court services for any reason since her last licensing visit.<sup>[25]</sup>

18. In December 2004, Ramsey County licensing workers noticed that a background study form submitted for Mr. Kidd was not an original. They asked her to provide a new original form, not a copy.<sup>[26]</sup>

19. On January 5, 2005, the Licensee completed a Ramsey County license renewal application in which she again referred to herself as Barbara Mansare, formerly known as Barbara Addison, and her address was listed as 1733 Maryland Avenue East in St. Paul. Licensee listed her daughter Chermander Harris as a person working in the home and her daughter T.A. as a child living in the home.<sup>[27]</sup> Because of the change in her address, Ramsey County assigned Peter Braam as Licensee’s new licensing worker.

20. On January 24, 2005, Mr. Braam went to 1733 Maryland Avenue East for a home inspection. Dwane Kidd was present, sleeping in the Licensee’s bedroom. The Licensee introduced him as her friend, further explaining that Mr. Kidd did not live in the house.<sup>[28]</sup> Licensee acknowledged to Mr. Braam that she knew Mr. Kidd could not live in the home or provide any child care until a background check was completed. No children were present in the home during this visit.<sup>[29]</sup>

21. On February 16, 2004, the Licensee submitted another background study form for Dwane Kidd. On the form, she continued to identify herself as Barbara Mansare, 1733 Maryland Avenue East. Dwane Kidd’s address is listed as 2463 Ariel Street North, Unit F, Maplewood.<sup>[30]</sup> The form indicates that Mr. Kidd was born in Ramsey, Minnesota, and that he had lived at the Maplewood address continuously for five or more years. The Licensee wrote in the margin that she did not yet employ Mr. Kidd, nor did he do volunteer work for her, as he was waiting approval by the BCA. A fact sheet attached to the background study form asks whether Mr. Kidd had ever been arrested, and this question was answered “No.”<sup>[31]</sup>

22. On February 28, 2005, Mr. Braam received a message from the Licensee to the effect that a disgruntled day-care parent might call him to complain about Dwane Kidd watching her child. The Licensee said that Mr. Kidd had watched day-care children once when she was ill.<sup>[32]</sup>

23. On March 1, 2005, Peter Braam received a complaint from the mother of one of Licensee's day-care children that on February 16, 2005, she arrived to pick up her daughter, and a man unknown to her answered the door. He identified himself as the Licensee's friend and said he was helping out because the Licensee was at an appointment. When the parent telephoned the Licensee to ask who the man was, the Licensee told her the man was her boyfriend and a Christian, and they were waiting for licensing approval. On February 18, 2005, the Licensee's nine-year-old daughter T.A. had greeted the parent at the door and told her the Licensee was sleeping. The nine-year-old then brought the parent to a back room, where several day-care children were playing and jumping off the couch. The parent's daughter was sitting on the floor by the couch, drinking a bottle. Finally, on February 28, 2005, the Licensee's nine-year-old daughter answered the door again and said her mother was sleeping and she (the nine-year-old) was in the process of feeding the baby. The parent walked back to retrieve her daughter and found Mr. Kidd in the back room with the children. He had just taken a shower and was dressed in a robe. The parent subsequently discovered the baby's diaper was soaking wet and had not been changed in some time, and it appeared that the baby was drinking formula instead of the milk provided by the mother.<sup>[33]</sup>

24. Based on that complaint, Mr. Braam visited Licensee's home on March 3, 2005. He asked to see her enrollment forms, and he discovered that Licensee did not have the admissions and arrangements forms for a child who had been in care for two weeks and did not have immunization forms for that same child as well as four other children who had been in her care for more than one year.<sup>[34]</sup> Licensee also told Mr. Braam that she had called Dwane Kidd to come over to watch the children when she was ill. She also said he had been alone with day-care children in the past, but said she had an informal background check done by a relative who is a police officer. Based on his observations, Mr. Braam issued a Correction Order citing failure to maintain immunization and admission and agreement forms on file for all children in care. Licensee corrected the citations by March 10, 2005, and so informed Ramsey County.<sup>[35]</sup>

25. On March 14, 2005, Mr. Braam called the Licensee to confirm he would be there for an appointment the next day. During this discussion, the Licensee told Mr. Braam that she and Mr. Kidd had been married the previous weekend.<sup>[36]</sup>

26. On March 15, 2005, Mr. Braam and a supervisor visited the Licensee's home to follow up on the complaint from the parent and the March 3 visit. During this visit or shortly afterward, he issued five correction orders, citing violations relating to using her nine-year-old daughter as a helper; failure to adequately supervise daycare children on February 18, 2005, and February 28, 2005; failure to change diapers as needed; and failure to have an immunization form on file.<sup>[37]</sup>

27. On March 23, 2005, the Licensee requested reconsideration of the Correction Orders dated March 3 and 15, 2005.<sup>[38]</sup>

28. Meanwhile, information obtained by Ramsey County contradicted the information on Mr. Kidd's background study form, and the Licensee agreed to submit the form again. The new form, dated March 21, 2005, provides that Mr. Kidd was born in Chicago, Illinois; that Mr. Kidd was Ms. Kidd's husband, and he currently resided at 1733 Maryland Avenue East; and that he had lived at four different addresses in Ramsey County in the past five years.<sup>[39]</sup> A Fact Sheet attached to the form discloses that he had received some form of welfare assistance to go to North Carolina in 2004, and the question asking whether he had ever been arrested was checked "No."<sup>[40]</sup>

29. Ramsey County then obtained a copy of employment information Mr. Kidd had submitted to the County in July 2004 in connection with an application for welfare benefits. On that form, Mr. Kidd disclosed that he had worked in Milwaukee, Wisconsin, at various jobs in 2002-2003. In addition, he disclosed that he had been discharged from the U.S. Marine Corps in North Carolina in 1995.<sup>[41]</sup>

30. On April 6, 2005, Mr. Braam requested that Mr. Kidd provide comparison fingerprints so the County could determine whether criminal history information in another state belonged to him.<sup>[42]</sup> In response, the Licensee left a message for Mr. Braam saying they would not comply with this request. She then left another message saying they would comply, but did not do so until sometime after mid-May 2005, when Mr. Braam warned her that her failure to cooperate could result in negative licensing action.<sup>[43]</sup>

31. On April 11, 2005, Mr. Braam notified the Licensee that the County needed more time to complete the background study for Mr. Kidd.<sup>[44]</sup>

32. On April 12, 2005, Mr. Braam issued a Correction Order to Licensee, citing her failure to report her marriage to Mr. Kidd and his status as a member of the household; her use of Mr. Kidd on a regular basis to provide child care; the failure to have a physical examination of Mr. Kidd on file with Ramsey County; and his provision of care without a completed background study on file.<sup>[45]</sup>

33. The Ramsey County Attorney's Office investigated further and found that in October 2000, Dwane Kidd had been convicted of battery in Wisconsin, a charge equivalent to a fifth degree assault in Minnesota.<sup>[46]</sup>

34. On April 25, 2005, the County notified Licensee and Mr. Kidd that Mr. Kidd was disqualified from providing direct care to the children in Licensee's daycare.<sup>[47]</sup> Dwane Kidd's continued presence in Licensee's home was conditioned upon a timely request for reconsideration by Mr. Kidd and continuous supervision (within sight and hearing) of Mr. Kidd by another adult caregiver at all

times when in the presence of the day-care children. The letter informed Mr. Kidd of his right to request reconsideration within 30 calendar days.

35. By letter dated April 28, 2005, Licensee indicated that her daughter, Chermander Harris, would be providing substitute care from that time forward and that Mr. Kidd would be requesting reconsideration.<sup>[48]</sup>

36. On April 14, 2005, and May 12, 2005, Ramsey County summarized and provided supporting evidence for the Correction Orders issued to Licensee on March 3 and 15, 2005, and April 12, 2005.<sup>[49]</sup>

37. On May 11, 2005, Mr. Braam received information from one of Licensee's day-care parents that on two occasions, back in September and October 2004, her toddler and preschooler were transported in a car by Licensee without car seats.<sup>[50]</sup> According to this parent, the Licensee was rarely up and ready to begin the day at 6:00 a.m. when the children were dropped off. Often T.A. would greet the parent at the door. In addition, the parent was uncomfortable that the Licensee left day-care children with Mr. Kidd when the Licensee stepped out. Based on this information, Mr. Braam issued a Correction Order to Licensee for failure to use a car seat in transporting children dated May 12, 2005.<sup>[51]</sup> The Licensee requested reconsideration of this Correction Order on June 3, 2005.

38. On May 19, 2005, Ramsey County recommended to the Department that the Licensee's family day-care license be revoked based upon the conduct cited in the above correction orders. At that time, the background study of Mr. Kidd was still incomplete.<sup>[52]</sup>

39. In August 2005, Ramsey County received a complaint from a parent that the Licensee had her husband watch day-care children in July 2005, when the Licensee was out of town. The parent also complained that day-care children were not properly fed and that other day-care children and T.A. changed her baby's diapers, not the Licensee.<sup>[53]</sup>

40. On August 23, 2005, the Department affirmed the Correction Orders issued on March 3 and 15, 2005, and April 12, 2005.<sup>[54]</sup> It also affirmed the Correction Order issued on May 12, 2005.<sup>[55]</sup>

41. On August 24, 2005, Ramsey County informed Licensee that Mr. Kidd posed an imminent risk of harm to children served by her program and that he was disqualified from direct contact with those children.<sup>[56]</sup> The letter notified Licensee of Mr. Kidd's right to request reconsideration, and advised her that failure to remove Mr. Kidd from the house may result in a negative licensing action against her. This disqualification was based on information that in January 1995, Mr. Kidd had been charged with second-degree murder, second-degree assault, and aggravated robbery in North Carolina. The charges of murder and

aggravated assault were dismissed before trial, and at trial Mr. Kidd was acquitted of charges of assault with a deadly weapon and armed robbery.<sup>[57]</sup>

42. On September 26, 2005, the Department issued an Order of Revocation based on (1) the disqualifications of Mr. Kidd (the assault conviction in Milwaukee and the criminal charges in North Carolina, which the Department deemed proved by a preponderance of the evidence); (2) the violations listed in the Correction Orders of March 3 and 15, 2005, April 12, 2005, and May 12, 2005, as well as the Licensee's failure to ensure that Mr. Kidd was under the continuous supervision of another adult caregiver in July and August 2005; and (3) the maltreatment determination of March 15, 2001, for inadequate supervision.<sup>[58]</sup> The Order of Revocation notified Licensee of her right to appeal.

43. In October 2005, Dwane Kidd appealed the Department's refusal to set aside the disqualifications. The hearing was continued several times.<sup>[59]</sup>

44. On December 22, 2005, the Department served a Notice of and Order for Hearing (dated October 10, 2005) on the Licensee, setting a hearing date for January 30, 2006, before the undersigned Administrative Law Judge.

45. On January 25, 2006, the Licensee requested a continuance of the hearing so that she could attempt to find an attorney to represent her. The continuance was granted, and the Administrative law Judge requested that the Licensee advise the ALJ when new counsel was obtained.<sup>[60]</sup>

46. On March 23, 2006, a Human Services Judge conducted a hearing on Mr. Kidd's disqualifications.<sup>[61]</sup>

47. At the end of April 2006, Licensee closed her daycare business.

48. On June 1, 2006, the ALJ contacted the parties requesting that they advise her as to the status of the matter. Ms. Kidd telephoned the ALJ and notified her that she would be moving to the Atlanta area within the week but still wanted to pursue the appeal of the revocation order. She indicated that she could receive mail at 300 Arundel St. #316, St. Paul, MN 55103, while she was in Atlanta.<sup>[62]</sup>

49. On June 6, 2006, the Human Services Judge issued a decision on the disqualification issue. The Judge concluded the Wisconsin conviction for battery was equivalent to a fifth-degree assault in Minnesota; that this is a ten-year-disqualification under Minn. Stat. § 245C.15, subd. 3; and that the disqualification should not be set aside because Mr. Kidd was not forthcoming when the County was conducting the background study, did not admit his guilt despite the conviction, did not take responsibility for his actions, and did not show that he had been rehabilitated. With regard to the charges in North Carolina, the Human Services Judge concluded the Department had failed to prove by a preponderance of the evidence that Mr. Kidd had committed the crimes of second-degree murder, second-degree assault, or aggravated robbery.<sup>[63]</sup> The

Commissioner adopted these recommendations as the final decision on June 6, 2006.

50. Counsel for Ramsey County then contacted the ALJ to request a continuance until after the expiration of the appeal period on July 6, 2006.<sup>[64]</sup>

51. On August 10, 2006, the ALJ again contacted the parties seeking a status update. On August 19, 2006, the Licensee telephoned the ALJ and left a message that she had returned to St. Paul and was living at 514 Thomas Avenue. On August 21, 2006, the ALJ provided this contact information to Mr. MacMillan. The ALJ heard nothing from either party regarding the status of this matter until February 2007.

52. On February 2, 2007, the Licensee contacted the ALJ with the information that she was now living at 1131 Payne Avenue, St. Paul 55130. She requested that a hearing date be set as soon as possible.

53. On February 9, 2007, the ALJ wrote to the parties scheduling the hearing to take place March 14, 2007.<sup>[65]</sup>

54. On March 5, 2007, the Licensee requested that the hearing be rescheduled to take place on April 9, 2007, so that she could obtain counsel. The request was granted.<sup>[66]</sup>

55. The hearing was held as scheduled on April 9, 2007.

56. The Licensee testified that she is currently separated from Dwane Kidd and that he now lives at 627 Aurora #434 in St. Paul.

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

## **CONCLUSIONS**

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

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

3. The Department has complied with all relevant procedural requirements.

4. A licensed provider must inform the agency "within 30 days of any change in the regular membership of the household within the day care residence or the addition of an employee who will regularly be providing care."<sup>[67]</sup>

5. The Commissioner must conduct a background study on all individuals, ages 13 and over, living in the residence. Volunteers and current or

prospective employees having direct contact with the children in care must also undergo background checks.<sup>[68]</sup> The subject of the background study must submit completed forms to the Commissioner before having direct contact with the children in care.<sup>[69]</sup>

6. The Licensee was aware of these requirements but failed to inform the agency with 30 days of changes in the regular membership of the household so that a background study could be performed on Dwane Kidd. Mr. Kidd was a member of the household and had direct contact with children in care before submission of completed background forms.

7. If a background study reveals by a preponderance of the evidence that the subject of the study has committed an act or acts that constitute a violation of any of the crimes listed in Minn. Stat. § 245C.15, the Commissioner shall disqualify the individual from direct contact with the daycare children.<sup>[70]</sup> Furthermore, the provider's license shall be revoked, not renewed, or suspended if the provider or any other person living in the day care residence or present during the hours children are in care has a disqualification under Minn. Stat. § 245C.14.

8. Supervision is defined as "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."<sup>[71]</sup> A "caregiver" is the provider, a substitute, helper, or another *adult* giving care in the residence.<sup>[72]</sup> A "helper" is a person, at least 13 years of age and less than 18 years of age, who assists the licensed provider with the care of the children.<sup>[73]</sup> The licensed provider must be the primary caregiver in the residence, and the children must be supervised at all times.<sup>[74]</sup>

9. The Licensee regularly and improperly allowed her nine-year-old daughter to be a helper in the daycare.

10. On February 18, 2005, and February 28, 2005, the Licensee failed to properly supervise children in care when she allowed her nine-year-old daughter to assist with the care of children when no adult was within sight or hearing of day-care children.

11. On February 28, 2005, the Licensee failed to properly supervise children in care when she allowed Dwane Kidd to act as a substitute provider who was not in sight or hearing of daycare children when he took a shower.

12. Licensed providers are required to maintain on file in the home signed and completed admission and arrangement forms and immunization records for all children in their care.<sup>[75]</sup>

13. The Licensee failed to maintain admission and arrangement forms and immunization records for all children in care.

14. The use of a substitute caregiver must be limited to a cumulative total of not more than 30 days in any 12-month period, as long as the substitute caregiver is qualified.<sup>[76]</sup> All adult caregivers who assist with care on a regular

basis must have documentation of a physical examination within the past 12 months.<sup>[77]</sup>

15. The record is insufficient to conclude the Licensee used Mr. Kidd as a substitute caregiver for more than 30 days in a 12-month period without having the required documentation of a physical examination.

16. A child under the age of four may be transported in a motor vehicle only if the child is securely fastened in a child passenger restraint system which meets the federal motor vehicle safety standards contained in Code of Federal Regulations, title 49, section 571.213 or its successor.<sup>[78]</sup>

17. In September and October 2004, the Licensee transported children in care in her vehicle without using an approved car seat.

18. Diapers and clothing must be changed by the licensed provider when wet or soiled to reduce the spread of disease.<sup>[79]</sup>

19. On February 28, 2005, the Licensee failed to change the wet and soiled diaper of a child.

20. Minn. Stat. § 245A.06, subd. 1 states:

(a) If the commissioner finds that the . . . 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 the persons served by the program, the commissioner may issue a correction order and an order of conditional license to . . . the license holder. 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. . . .

(b) Nothing in this section prohibits the commissioner from proposing a sanction as specified in section 245A.07, prior to issuing a correction order or conditional license.

21. Failure to comply with a correction order or conditional license allows the Commissioner to impose a fine and order other licensing sanctions pursuant to Minn. Stat. § 245A.07.<sup>[80]</sup>

22. Before suspending, revoking, or making conditional a license, Minn. Stat. § 245A.04, subd. 6, requires the Commissioner to consider the facts, conditions, and circumstances concerning the program's operation and the well-being of persons served by the program. Furthermore, a risk of harm analysis must be performed based upon the results of any statutorily required background studies.

23. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to 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 in a licensee’s program before applying sanctions under Minn. Stat. § 245A.07.

24. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules.

25. The burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the licensees failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the licensee to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.<sup>[81]</sup>

26. Ramsey County and the Department have shown that the Licensee has failed to comply fully with the law and rules cited above. The Licensee has not demonstrated that she was in full compliance with those statutes and rules at the time the Commissioner alleges the violations occurred.

Based on these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner AFFIRM the revocation of the family child care license of Barbara Kidd.

Dated: May 31, 2007

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Taped, five tapes  
No transcript prepared

### **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 these 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 Cal Ludeman, Commissioner, Appeals and Regulations Division, PO Box 64941, St. Paul, MN 55164-0941, 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.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

The Licensee argues first that because Mr. Kidd did not ever live at any address where she provided day care, a background study was not required of him, although she initiated the background study process because she wanted him to assist her in the future. She further argues that when informed of his disqualification, she complied with directives to limit and ultimately prohibit his presence at the day care facility. Finally, because she maintains that she and Mr. Kidd are separated, she contends there is no basis for revoking her license due to his disqualification for the assault conviction.

It is not disputed that in 2004, the Licensee's daycare was located at 586 Central Avenue West #203 in St. Paul. The Licensee testified that, although she and Dwane Kidd were married on September 24, 2004, neither she nor Mr. Kidd lived at 586 Central Avenue West #203 between July 2004 and March 1995; she contends that she, Mr. Kidd, and her daughter, T.A., really lived at 2463 Ariel, Apt. F, in Maplewood, during this timeframe, and that she and her daughter commuted to 586 Central Avenue West each day to operate the daycare, while her daughter continued to attend school near the Central Avenue address. She further contends that although she started paying rent at 1733 Maryland on December 31, 2004, she did not move there until March 2005, at approximately the time when she disclosed to her licensing worker that she and Mr. Kidd were married.<sup>[82]</sup>

This testimony is inconsistent with virtually all the licensing documentation submitted to the County in this timeframe. For example, in November 2004 the Licensee completed a Child Care Licensing Checklist indicating that she would be moving into the home at 1733 Maryland Avenue on December 31, 2004. On

January 5, 2005, she listed her address on a license renewal application as 1733 Maryland Avenue East.<sup>[83]</sup> Her licensing worker met with her there on January 24, 2005, for a home inspection, and she submitted a background study form for Mr. Kidd in February 2005 in which she identified her address as 1733 Maryland Avenue East.

In addition, it is simply highly unlikely that the Licensee had one apartment for the daycare business, another for a future daycare business, and a third for her residence, all at the same time. She was certainly sleeping at 1733 Maryland Avenue East when daycare children were present in February 2005, and Mr. Kidd was sleeping, bathing, and caring for daycare children there in January through March 2005.<sup>[84]</sup> For all of these reasons, the Administrative Law Judge has concluded that the Licensee's testimony about where she lived and when is untruthful.<sup>[85]</sup>

Nor is the Licensee's failure to report the marriage, along with Mr. Kidd's disqualification, irrelevant now that the Licensee is allegedly separated from Mr. Kidd. The statutes and rules require providers to initiate the required disclosures regarding household membership so the agency can conduct background studies and determine whether children in care will be safe. The agency has to rely on licensed providers to disclose this information, because it does not have the resources to monitor all daycare homes 365 days a year to ensure that only qualified persons are providing care. The Licensee was plainly aware of the background study requirement, because her older children had to have background studies performed; and she knew the importance of notifying her licensing worker of changes in household membership, because she failed to comply with this requirement when she married Sekou Mansare and faced negative action as a consequence.

Furthermore, the record reflects that not only did the Licensee fail to report her marriage to Mr. Kidd, she actively concealed it by misrepresenting her name and marital status on licensing documents, misrepresenting Mr. Kidd's status as a future employee or volunteer, and denying changes in the membership of her household. She outright lied to her licensing worker about her marital status in January and March 2005 when he questioned her about it.<sup>[86]</sup> In addition, she and Mr. Kidd actively obstructed the conduct of the background study by providing inaccurate information as to Mr. Kidd's birthplace and previous residences, failing to mention that he had lived and worked in Wisconsin in the previous five years, and denying on multiple occasions that he had ever been arrested. When the County nonetheless persisted in tracking down his criminal history and requested his fingerprints, the Licensee and Mr. Kidd delayed their cooperation for at least six weeks. This conduct was clearly aimed at preventing the agency from discovering the assault conviction in Wisconsin and the murder, assault, and aggravated robbery charges in North Carolina.

On this basis alone, the Commissioner would be fully justified in revoking the Licensee's family day care license. The agency can no longer trust her to be

truthful in her statements concerning persons who reside in her home and have direct contact with daycare children.

### **Correction Orders**

The Licensee is correct that some of the violations cited in the correction orders issued in March and April 2005 are insufficient, in and of themselves, to justify revocation of the license. For example, it does not appear that the Licensee habitually failed to maintain admissions or immunization records, or habitually failed to change diapers, or transported children without car seats after she received the citation for it. Other violations provide support, however, for the revocation decision. The correction orders relating to her practice of permitting her nine-year-old daughter to be a day-care helper, while the Licensee was sleeping and no other adults were present, are serious. Young children were left without adult supervision. The Licensee testified, in fact, that her young daughter “started doing day care as a baby,” which suggests this had been her practice for many years.<sup>[87]</sup> It is inappropriate, on a number of different levels, for the Licensee to permit or require her child to take responsibility for the care of day-care children.

In addition, the Licensee’s practice of allowing her husband to care for day-care children, as he did in the fall of 2004<sup>[88]</sup> and in February 2005,<sup>[89]</sup> is a serious violation. Although she did submit a background study form on February 16, 2005 (the day a parent first voiced objection to Mr. Kidd providing care for her child) the form contained so many untruthful statements that it cannot be deemed a good-faith effort to comply with the requirement. The correction orders issued in April 2005 pertain to the Licensee’s failure to report the change in household membership after she married Dwane Kidd, and as noted above, those violations are very serious and persisted over the course of five months. When combined with her undisputed failure to notify the agency of her marriage to Sekou Mansare, this conduct can fairly be characterized as a serious and chronic disregard of an important licensing requirement.

### **Maltreatment Determination**

The Licensee further contends that the maltreatment determination of April 2001 cannot serve as a basis for revocation because (1) she did not receive notice of the determination, and (2) the same conduct was cited in correction orders that were subsequently withdrawn.

The record suggests that the Licensee did receive notice of the maltreatment determination, because it appears she followed up and asked the County for information on how to seek reconsideration of it.<sup>[90]</sup> The specific information the County provided regarding the reconsideration process, however, is not in the record. The Administrative Law Judge believes that, given the Licensee’s history of seeking reconsideration of every correction order ever issued to her, it is unlikely she would have failed to seek reconsideration of the

maltreatment determination if she had understood the consequences. The legal distinction between a maltreatment determination for lack of supervision, and the correction orders issued for similar conduct, is not obvious to those unfamiliar with the statutory process. Given the vagueness of the record concerning the notice given to the Licensee about her rights to reconsideration and appeal, and the Department's decision not to take any negative licensing action at the time, the Administrative Law Judge does not believe the maltreatment determination should be used as a basis for revocation.

Even absent the maltreatment determination, however, the Department has fulfilled its burden to show that the Licensee did not comply fully with the law and rules regarding operation of a day-care business. The Licensee has failed to demonstrate that she was in full compliance with those laws and rules at the time the Commissioner alleges the violations occurred. And the Commissioner has fully considered the nature, chronicity, and severity of these violations, as well as the effect of those violations on children in care. The Commissioner's decision to revoke this day care license should be affirmed.

K. D. S.

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<sup>[1]</sup> Ex. 1.

<sup>[2]</sup> Exs. 2, 3.

<sup>[3]</sup> Ex. 2.

<sup>[4]</sup> Ex. 2 at 8.

<sup>[5]</sup> Testimony of Barbara Kidd.

<sup>[6]</sup> Ex. 3.

<sup>[7]</sup> Exs. 4-8.

<sup>[8]</sup> Ex. 6.

<sup>[9]</sup> Ex. 9.

<sup>[10]</sup> Test. of B. Kidd; Ex. 10.

<sup>[11]</sup> Ex. 15.

<sup>[12]</sup> Ex. 10. Subsequently, a background study was conducted of Mr. Mansare, and he was cleared by the Bureau of Criminal Apprehension (BCA). See Ex. 13.

<sup>[13]</sup> Ex. 10 at 3.

<sup>[14]</sup> Ex. 15.

<sup>[15]</sup> Exs. 14, 16.

<sup>[16]</sup> Ex. 16.

<sup>[17]</sup> There are references to this letter in Ex. 11. No such letter is a part of the hearing record.

<sup>[18]</sup> Ex. 11.

<sup>[19]</sup> *Id.*

<sup>[20]</sup> Ex. 12.

<sup>[21]</sup> Test. of B. Kidd.

<sup>[22]</sup> Ex. 29.

<sup>[23]</sup> Test. of B. Kidd.

<sup>[24]</sup> Ex. 19 at 1, 6.

<sup>[25]</sup> *Id.* at 8.

<sup>[26]</sup> Testimony of Peter Braam.

<sup>[27]</sup> Exs. 18 and 19.

<sup>[28]</sup> Testimony of Peter Braam.

[29] *Id.*  
[30] Ex. 22.  
[31] Ex. 22.  
[32] Test. of P. Braam.  
[33] Ex. 23; Test. of P. Braam.  
[34] Ex. 37.  
[35] Exs. 21, 54.  
[36] Test. of P. Braam.  
[37] Exs. 31-36.  
[38] Ex. 38.  
[39] Ex. 42.  
[40] Ex. 47 at Attachment 8.  
[41] *Id.* at Attachment 9.  
[42] *Id.* at Attachment 10.  
[43] *Id.* at Attachment 16.  
[44] *Id.* at Attachment 11.  
[45] Exs. 48-50.  
[46] Ex. 47 at Attachment 12.  
[47] Ex. 45; Ex. 47 at Attachments 13, 14.  
[48] Ex. 46.  
[49] Exs. 37, 43; Ex. 47 at Attachments 17, 18.  
[50] Ex. 24.  
[51] Ex. 64.  
[52] Ex. 47.  
[53] Ex. 27.  
[54] Exs. 38, 40.  
[55] See Ex. 41 at 7.  
[56] Ex. 53.  
[57] Ex. 44.  
[58] Ex. 41.  
[59] Ex. 44.  
[60] Letter from ALJ to parties (Jan. 25, 2006).  
[61] *Id.*  
[62] Letter from ALJ to parties (June 1, 2006).  
[63] Ex. 44.  
[64] Letter from David F. MacMillan to ALJ (June 16, 2006).  
[65] Letter from ALJ to parties (Feb. 9, 2007).  
[66] Letter from ALJ to parties (Mar. 5, 2007).  
[67] Minn. R. 9502.0375, subp. 2.A.  
[68] Minn. Stat. § 245C.03, subd. 1.  
[69] Minn. Stat. § 245C.04, subd. 1.  
[70] Minn. Stat. § 245C.14, subd. 1.  
[71] Minn. R. 9502.0315, subp. 29a.  
[72] *Id.*, subp. 6 (emphasis added).  
[73] *Id.*, subp. 14.  
[74] Minn. R. 9502.0365, subp. 5.  
[75] Minn. R. 9502.0405, subp. 4.A and 4.C.  
[76] Minn. R. 9502.0365, subp. 5.  
[77] Minn. R. 9502.0355, subp. 2.  
[78] Minn. R. 9502.0435, subp. 9 B.  
[79] Minn. R. 9502.0435, subp. 13 B.  
[80] Minn. Stat. § 245A.06, subd. 3.  
[81] Minn. Stat. § 245A.08, subd. 3(a).  
[82] Test. of B. Kidd.  
[83] Exs. 18 and 19.  
[84] Test. of P. Braam; Test. of B. Kidd; Ex. 23.

<sup>[85]</sup> The Licensee also contends that, after receiving notice of Dwane Kidd's second disqualification in August 24, 2005, she and Mr. Kidd both moved to her adult daughter's residence at 320 Aurora, and her adult daughter moved to 1733 Maryland Avenue East, where the day-care operation continued through April 2006. There is nothing in the record that specifically contradicts this testimony, but it seems unlikely that she would live one place and provide 24-hour day care in another.

<sup>[86]</sup> Ex. 19

<sup>[87]</sup> Test. of B. Kidd.

<sup>[88]</sup> Ex. 24.

<sup>[89]</sup> Ex. 23.

<sup>[90]</sup> Ex. 16.