

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

In re the Temporary Immediate
Suspension of the License of Terrie
Hegna to Provide Family Child Care

**FINDINGS OF FACT, CONCLUSIONS
and RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Raymond R. Krause commencing at 10:00 a.m. on August 17, 2006 at the Mower County Family Services Office, Austin, Minnesota. The Office of Administrative Hearings record closed on the same day.

Kristen Nelsen, Assistant County Attorney, 201 1st Street NE, Austin, Minnesota 55912, appeared representing the Department of Human Services. Terrie Hegna, 1001 2nd Ave. SW, Austin, Minnesota 55912, appeared representing herself without the benefit of counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.¹ Parties should contact the office of Cal Ludeman, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, 651-296-2701 to find out how to file exceptions. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision,² the parties are requested to file any exceptions as soon as possible.

STATEMENT OF THE ISSUE

Whether there is reasonable cause to believe that there is an imminent risk of harm for the health, safety, or rights of children in the care of Terrie Hegna

¹ Minn. Stat. § 14.61

² Minn. Stat. § 245A.07, subd. 2a(b)

so as to require the temporary immediate suspension of her family child care license.

Based upon the evidence and the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Terrie Hegna is licensed as a family child care provider and provided care at her residence at 1001 2nd Ave. SW, in Austin, Minnesota.

2. The Department of Human Services issued an order to Ms. Hegna temporarily suspending her license. The violation alleged is conduct that caused injury to a child in her care.

3. Ms. Hegna requested a hearing to contest the order.

4. A hearing on the matter was conducted on August 17, 2006.

5. Ms. Hegna operates a licensed day care facility in her home. On July 14, 2006 she had several children in her care during the day.

6. One of the children in her care on July 14, 2006 was C.E., the one-year old son of Debra Edge (the Mother). The child was dropped off at the home day care by his mother around 8:30-8:45 a.m. on that day. The child had, at that time, no injuries. When the Mother returned to pick up the child in the afternoon, the child's back was pink or bright red. The child subsequently developed blisters and was "uncomfortable and sick". The Mother took the child to the emergency room and he was seen by Dr. Wei Lin Jung, MD.³

7. Dr. Jung examined the child and diagnosed the condition as sunburn resulting in 2nd degree burns on the top of both shoulders with blisters on each side, 1st degree burns on the top of the head, entire back and upper chest and arms.⁴

8. Ms. Hegna states that she had received written permission from the Mother for the child to play in the pool. She requires all parents to provide swimwear and sunscreen when the pool is to be used. She also states that she contacted all parents in advance of the 14th to remind them that she anticipated using the pool and that swimwear and sunscreen would be needed. On July 14, 2006 the Mother dropped off her three children. C.E.'s siblings had swimsuits but C.E. had only a diaper. No sunscreen was provided by the Mother for any of her children. Ms. Hegna did not apply sunscreen to C.E. or his siblings. Ms. Hegna states that the day was sunny and quite warm and it was too hot to stay indoors since she has no air conditioning. She therefore let the children play in the pool from about 12:00 until 2:30 p.m. She also states that C.E. was intermittently in the pool and yard during that period. Ms. Hegna did not require C.E. to stay in a shaded area which was available or to wear a t-shirt or other covering.

³ Exs. 3 and 4.

⁴ Ex. 4.

9. Ms. Hegna did keep another child in her care that day out of the sun to avoid overexposure and applied sunscreen to other children whose parents provided it.

Based upon these 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 under Minnesota law.⁵

2. The Department of Human Services gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. Under Minnesota law, if a “license holder’s action for failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.”⁶

4. At a hearing appealing an Order of Temporary Immediate Suspension, the burden of proof is on the Department to demonstrate that “reasonable cause exists to believe that the license holder’s action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.”⁷ The Department is authorized to demonstrate reasonable cause by submitting statements, reports or affidavits.⁸

5. The Administrative Law Judge is directed by statute to determine “whether the immediate suspension should remain in effect pending the Commissioner’s final order...regarding a final licensing sanction.”⁹

6. The Department has demonstrated reasonable cause to believe that violations of the child care licensing rules relating to supervision, physical or emotional abuse have occurred.

7. The Department has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the licensee.

8. The Memorandum that follows explains the reasons for these Conclusions.

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

⁵ Minn. Stat. §§ 245A.01-245A.16 and 14.50.

⁶ Minn. Stat. § 245A.07, subd. 2.

⁷ Minn. Stat. § 245A.07, subd. 2a(a).

⁸ Minn. Stat. § 245A.08, subd. 3.

⁹ Minn. Stat. § 245A.08, subd. 3.

RECOMMENDATION

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension suspending the family child care license of Terrie Hegna be AFFIRMED.

Dated this 21st day of August, 2006.

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

Taped Recorded:

(One Tape) No Transcript Prepared

MEMORANDUM

In a proceeding to temporarily immediately suspend a child care license, the Department only has to show that *reasonable cause* exists to believe the Licensee failed to comply with the law. The legislature presumably established a low threshold for this determination to assure that children will be safe until there can be a full hearing on whether or not the child care license should be permanently revoked or otherwise subject to discipline.

A finding of “reasonable cause to believe” in a child care license proceeding has been compared to a finding of “probable cause” in a criminal proceeding.¹⁰ Probable cause has commonly been defined to mean “a reasonable ground in fact and circumstance for belief in the existence of certain circumstances.”¹¹ In both cases the state is entitled to rely on hearsay evidence. The statute specifically allows the Department to demonstrate reasonable cause by submitting “statements, reports, or affidavits.”

The written exhibits and testimony offered by the Department at the hearing in this matter are sufficient to show a reasonable ground in fact for a belief that the violations alleged occurred. The Department was able to show that the sunburn of the child was caused by overexposure to the sun while in the care of Ms. Hegna. Ms. Hegna admits that the child was exposed too long but partially faults the Mother for forgetting to bring sunscreen. Ms. Hegna, however, had alternatives to overexposing the child to the sun. She could have covered the child in some manner such as a shirt or towel or kept the child out of the sun

¹⁰ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

¹¹ Merriam Webster Dictionary of Law (1996).

and in a shaded area as she did with another child. The Mother's forgetfulness may have contributed to the incident occurring but does not excuse the neglect of a child in Ms. Hegna's care resulting in serious second degree burns. The ALJ therefore recommends that the temporary immediate suspension be affirmed.

R. R. K.