

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Melissa Sorenson.

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 10:00 a.m. on November 1, 2007, in the offices of Mower County Human Services, 1301 18th Avenue NW, Suite A, Austin, MN 55912. The record closed at the conclusion of the hearing that day.

Aaron Jones, Assistant Mower County Attorney, 201 1st Street NE, Austin, MN 55912, appeared for the Department of Human Services (Department) and the Mower County Human Services Department (County).

Melissa Sorenson (Licensee), 107 N. Mill Street, Brownsdale, MN 55918, 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 Recommendations. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten working days from the close of the record.^[1] The Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail pursuant to Minn. Stat. § 14.62, subd. 1 (2006).

STATEMENT OF ISSUE

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

The Administrative Law Judge concludes the temporary immediate suspension should remain in effect pending a final decision by the Commissioner.

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

FINDINGS OF FACT

1. Melissa Sorenson lives with her husband, David Sorenson, and their three children (a four-year-old and 15-month-old twins) in Brownsdale, Minnesota. Sorenson became a licensed daycare provider on July 16, 2007.^[2]

2. James Wempner is a 25-year-old resident of Austin, Minnesota. In November or December of 2005, he met and became friends with Melissa and David Sorenson, when all three were working for the same employer.^[3]

3. In February or March 2006, the relationship between Melissa Sorenson and James Wempner became intimate. David Sorenson was not aware of this development.^[4]

4. When the Sorensens met Wempner, he was on supervised release for a 2002 conviction for second-degree criminal sexual conduct involving sexual contact with his two younger sisters. The Department of Corrections had classified him as a Level 1 sex offender.^[5] The terms of his supervised release prohibited Wempner from having any contact with children.^[6] It is unclear when the Sorensens became aware of Wempner's criminal history or the terms of his supervised release.

5. In or about August 2006, Wempner told his therapist that he had on occasion given Melissa Sorenson a ride to work and that she had brought her oldest son along in the car. As a result of this disclosure, Wempner was found to have violated the terms of his release, and he was returned to prison. He was incarcerated from August 2006 to April 30, 2007, when he was released from the Minnesota Correctional Facility in St. Cloud. While Wempner was in prison, the Sorensens stored many of his belongings in their home and used his truck.^[7]

6. Shortly before Wempner's release, Melissa Sorenson obtained a power of attorney from Wempner and rented an apartment for him in Austin. On the day of his release, she drove his truck to St. Cloud to pick him up and brought him to her home to pick up some of his belongings.^[8] It is unclear whether Wempner had any sort of contact with children at this time.

7. In late September 2007, Wempner disclosed to his therapist that he had had contacts with Melissa Sorenson, her children, and possibly daycare children.^[9]

8. On September 27, 2007, Wempner's therapist notified child protection authorities, who in turn notified licensing authorities, of Wempner's possible contact with daycare children. Mower County Human Services requested a temporary immediate suspension of Sorenson's daycare license, which was issued on October 1, 2007.

9. On October 1, 2007, the licensing social worker and child protection social worker, accompanied by deputies from the Mower County Sheriff's Department, went to the Sorenson home to serve the temporary immediate suspension order. They interviewed Melissa Sorenson at that time. According to the sheriff's incident report, Sorenson admitted that Wempner had supervised contact with her own children, and further admitted that on one occasion daycare children were in her car when she stopped the car to speak to Wempner in the parking lot at his place of employment.^[10]

10. On October 1, 2007, Mower County Human Services removed the Sorensons' children from their home and placed them in the home of Melissa Sorenson's parents. The children were returned to Melissa Sorenson's home after approximately ten days.

11. The child protection investigation into Wempner's contacts with Sorenson's children and daycare children has not been concluded.

12. In a letter dated October 3, 2007, Melissa Sorenson requested a hearing on the temporary immediate suspension.^[11]

13. When David Sorenson was interviewed in the second week of October, he indicated to child protection authorities that he had just learned of Melissa Sorenson's intimate relationship with Wempner. He said they had believed Wempner was a decent person who deserved a chance to overcome his mistakes, and they felt they could trust him around their children. He did not know whether Wempner had had any contact with daycare children.^[12]

14. When Wempner was interviewed at about the same time, he admitted the Sorenson children were in the car on two occasions when he spoke to Melissa Sorenson, but he apparently denied that daycare children were there.^[13]

15. On October 19, 2007, Wempner failed a polygraph examination regarding these incidents.^[14] On October 29, 2007, Wempner was taken into custody for violating the terms of his release.^[15] Many of Wempner's belongings are still in storage at the Sorenson residence.^[16]

16. On October 19, 2007, the County requested the appointment of an Administrative Law Judge for a hearing on the temporary immediate suspension.

17. On October 26, 2007, the County issued a Notice and Order for Hearing scheduling a hearing to take place on November 1, 2007.

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a and 14.50 (2006).

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose 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.^[17]

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment. The commissioner shall issue a notice of hearing by certified mail or personal service at least ten working days before the hearing.^[18]

4. It does not appear that the County requested assignment of an administrative law judge within five working days of receiving the Licensee's request for hearing, nor did the County issue the notice of hearing at least ten working days before the hearing. At the outset of the hearing, the parties discussed the timing of the notice and the Licensee indicated she needed no additional time to prepare and wished to proceed with the hearing. The hearing was held within 30 calendar days of the request for assignment.

5. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.^[19]

6. The Commissioner demonstrated that reasonable cause exists to believe that the license holder's actions pose an imminent risk of harm to the health, safety, or rights of persons served by the day care program.

7. The Memorandum attached hereto is incorporated herein by reference.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the temporary immediate suspension of Melissa Sorenson's family child care license.

Dated: November 13, 2007.

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

MEMORANDUM

The Commissioner has the burden of showing that there is reasonable cause to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program. This is a modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination of any possible licensing sanction under Minn. Stat. § 245A.08.

The testimony at the hearing focused on "contacts" between Wempner, the Licensee, and her children and daycare children. The County argued that Wempner was prohibited from having contact with children, that he nonetheless had contact with Sorenson's children, and that both he and Melissa Sorenson admitted he had visual contact with daycare children. The Licensee maintained that she was not aware that Wempner could have no contact with children, whether supervised or not, under the terms of his release. She acknowledged that Wempner had supervised contact with her own children, but denied that he had any sort of contact with daycare children. She maintained she spoke to Wempner twice when she had children in her car, but said they were not daycare children. She testified that Wempner has never seen any of her daycare children and has not been present in her home since she became licensed. She argued that he is presently incarcerated, that he cannot possibly pose a danger to children while he is in custody, and that she and her husband are now fully cognizant of the danger he posed to their children in the past.

While the issue of "contact" may be important to corrections authorities in determining whether Wempner violated the terms of his supervised release, the issue from a child protection perspective is whether the Licensee failed to protect

daycare children from conditions that seriously endanger their health or failed to provide necessary supervision.^[20] From a licensing perspective, the issue is whether the Licensee's actions pose an imminent risk of harm to daycare children. It is important to know what the people involved actually did and said, where the children were, and how the children may have been impacted by the behavior of the adults. It is not enough to know that "contact" took place.

There are many unanswered questions in this matter, and the child protection investigation is still on-going. It is still unclear when the Licensee learned of any restrictions on Wempner's contact with children; what the nature of those contacts was; and whether any daycare children were involved. The fact that Wempner is now in custody for violating the terms of his release does not answer these questions. Although the factual record is somewhat sparse, it provides an adequate basis to conclude that concerns about Sorenson's judgment are sufficiently well-founded that her license should remain suspended while the child protection investigation is completed and a final decision is made on the propriety of any licensing sanction.

K.D.S.

^[1] Minn. Stat. § 245A.07, subd. 2a(b).

^[2] Testimony of Melissa Sorenson.

^[3] Test. of M. Sorenson.

^[4] *Id.*

^[5] Ex. 1.

^[6] Testimony of Gayle Loverink.

^[7] Testimony of Sherry Bibus; Test. of M. Sorenson.

^[8] Test. of M. Sorenson.

^[9] Test. of S. Bibus.

^[10] Ex. 2.

^[11] Ex. 4.

^[12] Test. of G. Loverink.

^[13] Test. of G. Loverink; Test. of S. Bibus.

^[14] Test. of G. Loverink.

^[15] Ex. 3.

^[16] Test. of M. Sorenson.

^[17] Minn. Stat. § 245A.07, subd. 2

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

^[19] *Id.*

^[20] Minn. Stat. § 626.556, subd. 2(f).