

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

In the Matter of the Order of
Revocation of the License to Provide
Family Child Care of Joyce Arends

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Judge Raymond R. Krause (ALJ) on March 7, 2008, at the Wright County Human Services Office in Buffalo, Minnesota. The OAH record in this matter closed the same day.

Anne L. Mohaupt, Assistant Wright County Attorney appeared on behalf of Wright County and the Department of Human Services (the Department). Jeffery Jensen, Attorney at Law, appeared on behalf of Respondent, Joyce Arends.

The Department offered 14 exhibits, all of which were accepted into evidence without objection.

STATEMENT OF THE ISSUE

Should the Order of Revocation, pursuant to Minn. R. 9502.0335, dated December 13, 2007, be affirmed?

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

FINDINGS OF FACT

1. Respondent lives at the address indicated on the service list for this report. At that location, she operates a family home child care program which was, until December 13, 2007, licensed by the Department under the provisions of Minn. R. 9502.0300 to 9502.0445.¹

¹ Ex. 1.

2. On Sunday, April 29, 2007, Respondent's son, Trevor, was arrested by the Anoka County Sheriff's Office. Trevor was charged with Criminal Sexual Conduct in the First and Second Degrees.²

3. On the following day, April 30, 2007, Respondent called Wright County Human Services (the County) and notified them of Trevor's arrest.³ She requested information from the County regarding what she should do with respect to her child care program. She was told, among other things, that she would have to provide proof that her son was not living at the child care program address or risk revocation of her license.⁴

4. The address given to the Sheriff as Trevor's permanent address was the same as that of Respondent and her child care program.⁵

5. Trevor's parents refused to put up his bail money so as to ensure that he was not released to the home before they could make arrangements for him to live elsewhere.

6. Trevor was committed to the Anoka County jail while awaiting trial.⁶

7. On May 2, 2007, Respondent and her son were notified by the County that as a result of a background investigation stemming from his arrest, the Department was disqualifying the son from direct contact with or access to, persons served by the Respondent's child care program.⁷

8. On June 13, 2007, Respondent and her son were notified that since reconsideration of the disqualification was not requested, Trevor must be immediately removed from having direct contact with or access to Respondent's child care program.⁸

9. On July 2, 2007, the County again notified Trevor of the determination of disqualification and gave him another opportunity to request reconsideration since the first notice had not reached him in jail.⁹

10. On July 31, 2007, Trevor was convicted of Criminal Sexual Conduct in the Second Degree. He was sentenced and was granted a stay of his sentence, was put on probation for 25 years, and required to serve 180 days in the Anoka County jail. The conditions of the probation were that he have no

² Ex. 5.

³ Ex. 3 and Testimony of J. Arends.

⁴ Ex. 4.

⁵ Id.

⁶ Ex. 13.

⁷ Exs. 7 and 8.

⁸ Exs. 9 and 10.

⁹ Exs. 4 and 11.

contact with the victim and that he register as a predatory sex offender.¹⁰ His release date from the Anoka County jail was August 26, 2007.¹¹

11. On August 13, Trevor was notified that as a result of his failure to request reconsideration of the determination of disqualification, he was ordered to immediately be removed from contact with the Joyce Arends' child care program.¹²

12. On October 29, 2007, the County notified Respondent that it was recommending to the Department that her license be revoked. The reason given was that there was reasonable cause to believe that the County could not ensure the safety of the program. Because a household member (Trevor) was a disqualified individual who was no longer incarcerated and because the County had no knowledge of his living arrangements, the County felt the program was at risk.¹³

13. On December 13, 2007, the Department notified Respondent that her license to provide family child care was revoked.¹⁴

14. On December 27, 2007, the Department issued a Notice of and Order for Hearing in this matter, setting March 7, 2008, as the date for hearing.

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

CONCLUSIONS

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

3. The Department and Wright County have complied with all applicable procedural requirements of rule and law.

4. Minn. Stat. § 245A.07 and Minn. R. 9502.0335 authorize the Commissioner to revoke a license where a disqualified person lives in the daycare residence or is present during daycare hours.

¹⁰ Exs. 13 and 14.

¹¹ Ex. 13.

¹² Ex. 12.

¹³ Ex. 2.

¹⁴ Ex. 1.

5. Under Minn. Stat. § 245A.07, subd. 3, if the Department demonstrates that a reasonable cause exists to take action, the burden of proof shifts, in a hearing on a license revocation, to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with the laws and rules allegedly violated.

6. Minn. R. 9502.0335, subp. 6 provides as follows:

Subp. 6. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

D. Has a disqualification under Minn. Stat. § 245C.15, that is not set aside under Minn. Stat. § 245C.22, or for which a variance has not been granted under Minn. Stat. § 245C.30.

7. The Department has demonstrated reasonable cause to believe that the license holder may have a disqualified individual living in the daycare residence or present during daycare hours.

8. The Respondent has not shown by a preponderance of the evidence that her son, who is a disqualified person, is not living in the daycare residence or present during daycare hours.

9. A decision to revoke a license must take into account “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,” and “the facts, conditional or circumstances concerning the program’s operation, the well-being of persons served by the program, [and] available consumer evaluations, of the program...” as required by Minn. Stat. §§ 245A.04, subd. 6, and 245A.07, subd. 1.

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

RECOMMENDATION

The Administrative Law Judge recommends that: the Commissioner of Human Services **affirm** the Order of Revocation of the license of Joyce Arends to provide family child care.

Dated: March 14, 2008

s/Raymond R. Krause

RAYMOND R. KRAUSE

Administrative Law Judge

Reported: Recorded
 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 the 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 the office of the Commissioner 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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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. § 14.62, 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

Respondent operates a daycare program in her residence. Her son, who is 20, was convicted of Criminal Sexual Conduct in the Second Degree. Prior to his conviction, he was living at home with his parents at the residence in which the daycare operates.

Following his arrest, the Department conducted a background check and determined that he should be considered a "disqualified person" for purposes of the daycare laws and regulations. The son did not contest this disqualification.

At the hearing, statements were made, some under oath by Respondent and some simply as part of her counsel's closing argument that the son is living "up north." No evidence of where "up north" is was offered or even discussed. No evidence of how long he may have been "up north" was offered. The only evidence available indicates that, as of his arrest, his residence was with his family at the licensed facility. That was his last known address and the one that the County was using in its communications with him as late as August of 2007. Respondent did little or nothing to controvert the reasonable assumption that he still resides there. No evidence of an address for him was offered. No testimony from third parties about his living arrangements was offered. In short, one is left to conclude that he must still be living at home.

Also, counsel for Respondent alleged in his closing, that the son's terms of probation required him to stay away from the home. There is no evidence in the record to support this claim. Exhibit 14 only states two conditions; one, that he stay away from the victim, and two, that he register as a predatory offender.

Respondent herself has done nothing wrong, indeed she is to be commended for promptly reporting the incident, seeking advice from the proper authorities and doing those things she could to ensure the safety of the children in her care. However, she has not proven by a preponderance of the evidence that the legitimate danger posed by her son is no longer a risk to her program.

With regard to the penalty to be imposed, certainly revocation is a harsh result for someone who was doing all the right things. We look, therefore, to the factors which, by law, we are required to consider. There is no chronicity of this or other violations to point to. Presumably, in other respects, this is a lawfully and well run program. The risk to the children of the program is, however, severe if the son is residing at home with young children about. A violation of the rule regarding disqualified persons could have a devastating consequence for one or more of the children in the program. The safety of the children is, and must be, paramount. Finally, there was no testimony from parents of the daycare program's children as to the presence or absence of the disqualified person, nor in general, regarding the safety of the program. On the whole, therefore, it is reasonable to conclude that an analysis of the factors indicates that revocation is warranted under these circumstances.

If the Respondent were to conclusively demonstrate to the Commissioner that the son is not living at home and is somehow prevented from doing so, the Commissioner may wish to consider a conditional license or some other lesser penalty. Based on the record before this ALJ, however, the Order of Revocation should be affirmed.

R. R. K.