

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Order of Conditional
License, Order to Forfeit a Fine, and Order of
Revocation of the Family Child Care License
of Angeleta Bratton

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on April 30, 2008, at the Hennepin County Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415.

Michael Q. Lynch, Assistant County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, MN 55415, appeared for the Minnesota Department of Human Services (Department) and the Hennepin County Human Services Department, Child Care Licensing (County). Angeleta Bratton (Licensee), [**street address redacted**], Crystal, MN 55428-4305, did not appear in person or by counsel. The OAH hearing record closed on May 5, 2008, upon receipt of a letter from the County.

STATEMENT OF ISSUES

1. Did the Department properly order the Licensee to pay a fine pursuant to Minn. Stat. § 245A.07, subd. 3 (2006), because she failed to submit a background study for an adult member of her household and failed to ensure that a substitute caregiver had completed training on sudden infant death syndrome and shaken baby syndrome?

2. Did the Department properly place the Licensee's family child care license on conditional status for one year pursuant to Minn. Stat. § 245A.06, subd. 1 (2006), because she had violated rules requiring completion of background studies, operated over capacity and out of ratio, failed to adequately supervise children in care, allowed a child to provide care to another child in care, failed to complete required training, and failed to comply with numerous licensing rules concerning environmental health and safety?

3. Did the Department properly revoke the Licensee's family child care license pursuant to Minn. Stat. § 245A.07, subd. 3 (2006), because she had failed to comply with the conditional license and continued to operate in violation of Minnesota statutes and rules regarding family child care?

The Administrative Law Judge concludes the Department's orders in this matter should be affirmed.

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

FINDINGS OF FACT

1. On November 2, 2007, the Department sent the Notice and Order for Hearing on the propriety of the Order of Conditional License and Order to Forfeit a Fine (dated August 30, 2007) by first-class mail to the Licensee at 6511 50th Avenue North, Crystal, MN 55428-4305.¹

2. On February 12, 2008, the Department sent the Notice and Order for Hearing on the propriety of the Order of Revocation (dated December 13, 2007) by first-class mail to the Licensee at 6511 50th Avenue North, Crystal, MN 55428-4305.² The Notice and Order for Hearing scheduled a hearing to take place at 9:30 a.m. on March 21, 2008, at the Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415.

3. On March 21, 2008, the Licensee failed to appear for the hearing. A few minutes before the hearing was to commence, the Licensee telephoned the Assistant County Attorney to request a continuance because her sister had gone into labor and the Licensee needed to be with her. At the Licensee's request, the Administrative Law Judge rescheduled the hearing to take place at 9:30 a.m. on April 30, 2008, at the Health Services Building in Minneapolis. The Administrative Law Judge also confirmed that the appeals of the Order of Conditional License and Order to Forfeit a Fine (dated Aug. 30, 2007) and the Order of Revocation (dated Dec. 13, 2007) had been consolidated in OAH Docket No. 3-1800-19471-2, and that the rescheduled hearing would address both orders.³

4. On April 30, 2008, the Licensee failed to appear for the hearing. The ALJ initiated a conference call that morning with the Licensee, the Assistant County Attorney, and the County's director of Child Care Licensing. During that conference call, the Licensee stated that she had decided to withdraw her appeals because she did not intend to provide licensed daycare any longer but would be returning to school. She specifically stated that she did not want a continuance, and she did not seek to reschedule the hearing. The Licensee agreed to write the ALJ a letter confirming her intent to withdraw her appeals, but no such letter has been received to date.

¹ Affidavit of Service by Mail (Nov. 2, 2007).

² Affidavit of Service by Mail (Feb. 12, 2008).

³ Letter from ALJ to parties (Mar. 21, 2008).

5. The County's director of Child Care Licensing confirmed these discussions with the Licensee in a letter dated April 30, 2008. The Licensee did not respond to the letter.

6. The Notice and Order for Hearing mailed on November 2, 2007, and on February 12, 2008, contained the following provision:

Failure to appear at the hearing or prehearing conference will result in the allegations of the Notice of and order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld.

7. The Licensee did not appear at the April 30, 2008, hearing, and she subsequently informed the ALJ and the Assistant County Attorney that she wished to withdraw her appeals. She did not request a continuance or any other relief.

8. Because Respondent failed to appear for the hearing, she is in default.

9. When a party is in default, Minn. R. 1400.6000 (2007) provides that the allegations contained in the notice of and order for hearing may be taken as true. The allegations contained in the Notice and Order for Hearing mailed November 2, 2007, and February 12, 2008, including the incorporated Orders, are all taken as true and incorporated by reference into these Findings of Fact.

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

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.⁴

2. The Department gave proper and timely notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

⁴ Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.

4. The Licensee is in default as a result of her failure to appear at the hearing.

5. On August 30, 2007, the Department properly ordered the Licensee to pay a fine pursuant to Minn. Stat. § 245A.07, subd. 3 (2006), because she failed to submit a background study for an adult member of her household and failed to ensure that a substitute caregiver had completed training on sudden infant death syndrome and shaken baby syndrome.

6. On August 30, 2007, the Department properly placed the Licensee's family child care license on conditional status for one year pursuant to Minn. Stat. § 245A.06, subd. 1 (2006), because she had violated rules requiring completion of background studies, operated over capacity and out of ratio, failed to adequately supervise children in care, allowed a child to provide care to another child in care, failed to complete required training, and failed to comply with numerous licensing rules concerning environmental health and safety.

7. On December 13, 2007, the Department properly revoked the Licensee's family child care license because she had failed to comply with the conditional license and continued to operate in violation of Minnesota statutes and rules regarding family child care.

8. Minn. Stat. § 245A.07 (2006) empowers the Commissioner to revoke a license if a license holder fails to comply fully with applicable laws or rules.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner AFFIRM the August 30, 2007, Order to Forfeit a Fine and Order of Conditional Licensure and the December 13, 2007, Order of Revocation.

Dated: May 21, 2008

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (no tapes)
No transcript prepared

NOTICES

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.⁵ Parties should contact the office of Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651)431-2907 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 Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

⁵ Minn. Stat. § 14.61.