

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

In the Revocation of the License of Melissa Milligan to Provide Family Child Care	FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION
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The above entitled matter came on for hearing before Administrative Law Judge Scott Newman commencing at 1:00 p.m., on July 28, 2008, at 530 Fir Avenue West, Fergus Falls, Minnesota 56537. The OAH record was closed at the end of the hearing on July 28, 2008.

Nicole S. C. Hansen, Assistant Otter Tail County Attorney, appeared on behalf of the Department of Human Services. Appellant, Melissa Milligan appeared pro se.

STATEMENT OF ISSUE

Whether the Order of Revocation revoking the family child care license of Melissa Milligan should be affirmed?

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

FINDINGS OF FACT

1. Melissa Milligan (hereafter Appellant) was licensed as a family child care provider under License No. 224260¹
2. On November 12, 2003 the Minnesota Department of Human Services (hereafter Department) documented the following licensing violations:
 - a) Personal care products and razors were accessible to children in care in upstairs bedroom.
 - b) Laundry chute in upstairs bathroom was accessible to children in care and was not protected to prevent children from falling down it.
 - c) Wading pool was used by children in care, but there was only one completed permission form on file.²

¹ Ex. 3, Testimony Shelly Bartels.

² Ex. 3.

3. On November 10, 2005 the Department documented the following licensing violations:

- a) Providers helpers and substitutes were not trained in the alcohol and drug policy.
- b) The programs grievance procedure had not been given to all of the parents of children in care.³

4. On December 28, 2005 the Department documented the following licensing violations:

- a) Toy room to the left of entry way was too cold.
- b) There was no documentation of any fire or storm drills run in November 2005 or December 2005.
- c) No address/premise identification visible and legible from street fronting property.⁴

5. On March 23, 2006 the Department documented the following licensing violations:

- a) Three-year-old child in care was bitten by the Appellant's dog. Dog and child were not adequately separated and supervised to prevent serious injury to child.
- b) Appellant took quarantined dog outside on a leash in front driveway while under school age children were watching videos in the very back part of the house unsupervised.
- c) Appellant did not notify Board of Health immediately of the dog bite to child in care.
- d) Appellant did not immediately notify licensor of serious injury to child.
- e) Appellant did not have any of the required forms on file for two children enrolled in care on March 3, 2006.
- f) Lack of required gates, depending on where the children were located.⁵

³ Ex. 3.
⁴ Ex. 3.
⁵ Ex. 3.

6. On the basis of the correction orders outlined at paragraphs 3-5 hereof, the Department issued an Order dated October 17, 2006, taking two negative actions against the Appellant's license as follows:

- a) Order to forfeit a \$200.00 fine.
- b) Order of conditional license placing the Appellant's license to provide family child care services on a conditional status for two years.⁶

7. The terms of the conditional license which allow the Appellant to continue to operate was issued subject to the following stipulations:

- a) The Appellant must follow and comply with all applicable Minnesota rules and laws.
- b) No variances to age distribution or capacity would be granted during the conditional period.
- c) The Appellant must obtain a minimum of six hours of additional training in the areas of health and safety by January 31, 2007. Said training is in addition to the required annual training, and such additional training must be approved by the Otter Tail County Social Services Department.
- d) The Appellant must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order of Conditional License. Further, the Appellant must obtain parent signatures for each child currently enrolled and provide that documentation to Otter Tail County Department of Social Services by November 5, 2006.⁷

8. On December 12, 2007, the Otter Tail County Human Services Department issued a recommendation to the Department recommending the Appellant's current conditional license be revoked.⁸

9. The recommendation for revocation described at paragraph 8 hereof was made on the basis of the following correction orders:

- a) January 4, 2007, which outlined a sofa in the toy room that had holes in the fabric with wires exposed.
- b) February 1, 2007, reflected many long used trim boards, each with many long nails protruding from them, which were leaning up against a wall in

⁶ Ex. 4.
⁷ Ex. 4.
⁸ Ex. 2.

close proximity to three children watching a video in the living room. The children were reported to be ages 2, 3 and 4 years. old.

c) November 15, 2007 relating the following:

1. The conditional license and correction orders had not been posted;
2. Admission and arrangement forms for two children in care were incomplete;
3. Required immunization form was not completed for one child in care;
4. There was no documentation of fire or storm drill being run for October 2007;
5. One full sized crib set up in the toy room did not have any crib safety verification for October 2007;
6. There was no documentation that the helpers and substitutes had training on the Appellant's drug and alcohol use policy;
7. There was no verification that all of the parents had read the Order of Conditional License, as required;
8. Two adult children had moved into and out of the licensed facility without providing notice to the Department.

10. On May 8, 2008, on the basis of the violations outlined at paragraph 9 hereof the Department issued an Order of Revocation revoking the Appellant's license to provide family child care.⁹

11. The Appellant properly appealed the Order of Revocation dated May 8, 2008.¹⁰

12. The Department provided notice of an Order for Hearing and a contested hearing was held.

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 245A.07 and 245A.08.

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

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

⁹ Ex. 1.

¹⁰ Ex. 5.

4. The burden of proof requires that the Department demonstrate “reasonable cause” for taking a negative licensing action by submitting evidence to substantiate the allegations that the license holder failed to comply fully with applicable laws or rules.¹¹

5. The Commissioner has demonstrated reasonable cause for revoking the Appellant’s license on the basis that the Appellant has failed to fully comply with applicable rule and law¹²

6. Because the Department has demonstrated reasonable cause, the burden of proof shifts to the Appellant to demonstrate by a preponderance of the evidence that the Appellant was in full compliance with the laws and rules which the Department alleges the Appellant violated.¹³

7. The Appellant has failed to sustain her burden of proof by a preponderance of the evidence that she fully complied with applicable laws and rules with respect to her license.¹⁴

8. These conclusions are reached for the reasons set forth in the Memorandum below, which is incorporated by reference into these conclusions.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

Based upon these conclusions, the Administrative Law Judge RECOMMENDS to the Commissioner of Human Services that the family child care license of Melissa Milligan be REVOKED.

Dated: August 27, 2008

s/Scott J. Newman

SCOTT J. NEWMAN
Administrative Law Judge

Reported: Digitally recorded

¹¹ Minn. Stat. § 245A.08 Subd. 3.
¹² Exs. 1, 2, 3, 4 and test. of S. Bartels.
¹³ Minn. Stat. § 245A.08, subd. 3.
¹⁴ Ex. 5 and testimony of Melissa Milligan.

NOTICES

This report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a(b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact 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.

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

Prior to the issuance of the conditional license to Ms. Milligan in October 2006, the Appellant had numerous serious safety violations with respect to her daycare facility. Once the conditional license was issued to the Appellant in October 2006, it was very clearly outlined to the Appellant that she must comply with all applicable rules and laws. Despite the verbal warnings, letters and correction orders, the Appellant failed to comply with the terms of her conditional license.¹⁵ Just as troubling are the habitual excuses that the Appellant has lodged in an effort to deflect her responsibility for complying with the laws and rules which govern her license.¹⁶

In addition to the correction orders identified in the conclusions, the record reveals two incident reports from the Pelican Rapids Police Department and one citation all relating to allowing her dogs to run at large.¹⁷ This is further evidence of the Appellant's habit of failing or refusing to comply with laws that govern her conduct.

It is the conclusion of the undersigned that the Appellant's regular response to mandatory compliance with daycare license rules and statutes is to ignore them, and if caught in a violation proffer excuses as to why she has not complied. Minnesota Rules of Evidence 406 provides that habit can be relevant and that if the trial court determines that a habit exists, the habit is "highly probative."¹⁸ In this case, the Department has

¹⁵ Test. S. Bartels and Exs. 2, 3 and 4.

¹⁶ Ex. Appellant, Exs. 4 and 5.

¹⁷ Ex. 3.

¹⁸ *Department of Employment Security v. Minnesota Drug Products, Inc.*, 104 N.W.2d 540 (1960).

proven the Appellant did not fully comply with the applicable rules and laws in the State of Minnesota, as was her habit. Therefore, the revocation of her license is appropriate.

The Administrative Law Judge recommends that the Appellant's license to provide family daycare be revoked.

S. J. N.