

	Link to Final Agency Decision
	OAH Docket No. 12-1800-19731-1

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

In the Matter of the Temporary Immediate Suspension of the License of Maria Nickels and Bradley Nickels to Provide Family Child Care	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter was heard by Administrative Law Judge Steve M. Mihalchick on July 11, 2008, at the Aitkin County Courthouse, Sheriff’s Conference Room, in Aitkin, Minnesota. The Office of Administrative Hearings (OAH) record closed at the end of the hearing on July 11, 2008.

Sarah Winge, Assistant Aitkin County Attorney, appeared on behalf of Aitkin County Health and Human Services (the County) and the Minnesota Department of Human Services (the Department or DHS).

Maria Nickels and Brad Nickels (the Licensees) appeared on their own behalf.

STATEMENT OF THE ISSUES

Whether reasonable cause exists to believe that the Licensees pose an imminent risk of harm to the health, safety or rights of children in their care based upon a pattern of domestic violence in their home and a criminal complaint for domestic assault brought against Maria Nickels.

The Administrative Law Judge has concluded that such an imminent risk of harm exists and that the temporary immediate suspension should be affirmed.

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

FINDINGS OF FACT

1. Maria and Bradley Nickels are married and provide licensed family child care in their home in Hill City, Minnesota. The couple has been married for

approximately eight years and has three children, M.N.D. (age 12), K.M.N. (age 7), and K.B.N. (age 3). The oldest is Maria Nickels' child from a previous marriage.¹

2. Maria Nickels was first licensed to provide family child care in May of 2003.² Bradley Nickels was added to the child care license approximately 1 to 1 ½ years ago when Maria Nickels opted to increase the maximum number of children in her care to 14.³ Mr. Nickels is currently disabled and not working outside the home. His role in the daycare is to provide back-up when the number of children in care exceeds 12 and when otherwise necessary to assist Ms. Nickels.⁴ The daycare business has been the Nickels' only source of income. Ms. Nickels recently started working at a store.

3. Since July 1, 2006, Maria Nickels has partnered with Lakes and Pines Head Start program to provide a comprehensive child development curriculum daily in her child care setting.⁵ The Nickels' daycare has never had any complaints by parents or problems with the County.

4. On the afternoon of Sunday, June 1, 2008, Maria and Bradley Nickels had a disagreement about Ms. Nickels spending some social time at her neighbor Hanna Serino's house the night before.⁶ There were no daycare children in the home at that time, but all three of the Nickels' children were present. The couple began shouting at each other. Out of frustration, Maria Nickels approached her husband, who was sitting in a chair, and began slapping him on the head. In an attempt to create a record that he was not the aggressor, Bradley Nickels dialed 911. The couple was pushing and struggling, during which time Maria Nickels knocked the cordless phone out of her husband's hand. Bradley Nickels picked up the phone and dialed 911 again. In the struggle, the call was disconnected again.⁷ Maria Nickels attempted to leave the house with the youngest child, but Bradley Nickels stopped her at the door and put her back in a chair.

5. The 911 Operator traced the two 911 hang-up calls and dispatched Hill City Police Chief Jeff Madsen to the house. Within minutes, Chief Madsen arrived at the house, went inside, and observed Ms. Nickels seated in a chair surrounded by her children, all of whom were upset or crying. Mr. Nickels was seated in a chair by the front door and appeared calm.⁸

6. Chief Madsen spoke with Bradley Nickels outside. Mr. Nickels described the incident. Chief Madsen noticed some scratches on Bradley Nickels' arm and inquired about the injuries. The record is inconsistent about whether the scratches were

¹ Exhibit 1, Hill City Police Department Investigative Report. Testimony of Maria Nickels.

² Testimony of Deb Jensen.

³ Testimony of Deb Jensen and Maria Nickels.

⁴ Testimony of Bradley Nickels.

⁵ Ex. 3, letter of Becky Hanson dated July 10, 2008.

⁶ Ex. 1, Statement of Probable Cause and Hill City Police Department Investigative Report.

⁷ *Id.* Testimony of Bradley Nickels.

⁸ Ex. A, Statement of Probable Cause.

inflicted by Maria Nickels.⁹ While they were talking, neighbor Hanna Serino came outside; she was upset and attempted to get involved in the conversation. Chief Madsen instructed her to leave the yard.¹⁰

7. Chief Madsen then questioned Maria Nickels, whose statements about the incident were consistent with those of Mr. Nickels. She wanted to talk about past incidents with her husband, but Chief Madsen told her to contact County advocates regarding past problems and redirected her to the incident at hand.¹¹ Maria Nickels admitted that she hit Mr. Nickels on the head and knocked the phone away from him when he called 911. She stated that Bradley Nickels pushed her and that he prevented her from leaving the house. Chief Madsen also spoke with the oldest child, M.N.D., who confirmed her mother's statements.

8. Chief Madsen proceeded to arrest Maria Nickels for domestic assault. On the drive to the Aitkin County Jail, Maria Nickels used her cell phone to call her mother. Ms. Nickels was very upset, and in an attempt to keep her composure, she joked to her mother that she was going to jail because she had just nearly killed her husband.¹² Ms. Nickels was in police custody for two days, from Sunday afternoon to Tuesday afternoon.

9. Bradley Nickels never feared for his safety during the incident. He was not hurt and does not wish to pursue the charges against his wife.¹³

10. On June 3, 2008, Chief Madsen filed an Order of Detention in Aitkin County District Court charging Maria Nickels with Gross Misdemeanor Interference with a 911 Call under Minn. Stat. § 609.78, subd. 2, and Misdemeanor Domestic Assault and Intent to Inflict/Attempt to Inflict Bodily Harm under Minn. Stat. § 609.2242, subd. 1(2).¹⁴

11. Aitkin County Health and Human Services received a report regarding Licensees' home on June 3, 2008. Based on that report, the Department issued an Order of Temporary Immediate Suspension to Bradley and Maria Nickels on June 4, 2008. The Order informed Licensees of their right to appeal the Department's decision within five calendar days of receipt of the Order. The Order stated that due to the serious nature of the report under investigation, the County could not ensure the safety of the children served by the Nickels' daycare program.

12. By letter dated June 4, 2008, Maria Nickels appealed the Order of Temporary Immediate Suspension.¹⁵ In her appeal letter, she explained that the in-home daycare, coupled with the constant contact with her husband and the children, is very stressful for her. Maria Nickels stated that she does not have an outlet for that

⁹ Chief Madsen's Police Report states that Mr. Nickels stated the scratches were from the incident with his wife. At the hearing, Bradley Nickels testified that he got the scratches while working in his workshop.

¹⁰ Ex. 1, Statement of Probable Cause and Hill City Police Department Investigative Report.

¹¹ Ex. 1, Hill City Police Department Investigative Report.

¹² Testimony of Maria Nickels.

¹³ Testimony of Bradley Nickels.

¹⁴ Ex. 1, Order of Detention.

¹⁵ Ex. 2.

stress because Bradley Nickels does not like it when she goes out to spend time alone or with friends. She noted that she suffers from depression and that she is the sole income for the family. Maria Nickels accepted responsibility for her actions, but stressed that she would never harm her own children or the daycare children.

13. On June 10, 2008, Maria Nickels attended an appointment with her primary care physician and was referred for psychiatric services with a therapist and a marriage counselor.¹⁶ The couple had their first marriage counseling session on July 10, 2008.¹⁷ They currently have two future appointments scheduled.¹⁸ Maria Nickels has six future appointments set up with a therapist.

14. On June 20, 2008, Maria Nickels signed an application for social services in Aitkin County.¹⁹ Ms. Nickels was seeking help from the County in finding ways to deal with stress and to relax.

15. On June 23, 2008, the Notice of and Order for Hearing was served on the Licensees setting the hearing to take place on July 11, 2008.

16. Maria Nickels enjoys working with children, as is evident from the 12 letters submitted by daycare families, neighbors, and others in the community in support of her and her daycare program.²⁰

17. The criminal charges against Maria Nickels are pending, and her next court appearance is set for August 4, 2008.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.50 and 245A.07, subds. 2 and 2a.

2. The Department, through Aitkin County Health and Human Services, gave proper and timely notice of the hearing and has complied with all procedural requirements of law and rule.

3. Under Minn. Stat. § 245A.07, subd. 2, if a license holder's actions or violations, or the actions of others, pose an imminent risk of harm to the health, safety, or rights of persons served by the license holder's program, the Commissioner must act immediately to temporarily suspend the license and inform the licensee by personal service.

¹⁶ Ex. 3.

¹⁷ Testimony of Bradley Nickels and Maria Nickels.

¹⁸ Testimony of Maria Nickels. Ex. 3.

¹⁹ Ex. 3, Application for Social Services dated June 20, 2008.

²⁰ Ex. 2.

4. If a license holder appeals an order immediately suspending a license, the scope of the resulting expedited hearing is limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order under Minn. Stat. § 245A.07, subd. 3, following the immediate suspension. The burden of proof in temporary immediate suspension hearings is 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.

5. The Administrative Law Judge shall recommend "whether the immediate suspension should remain in effect pending the Commissioner's final order regarding a final licensing sanction."²¹

6. The Department has demonstrated that reasonable cause exists to believe that the Nickels' strained relationship and the incident of domestic assault on June 3, 2008, pose an imminent risk of harm to the health, safety, or rights of the children served by the Nickels' daycare program.

7. The Order of Temporary Immediate Suspension should remain in effect pending the Commissioner's final order regarding a final licensing sanction.

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

RECOMMENDATION

IT IS RECOMMENDED that the Order of the Commissioner of Human Services temporarily immediately suspending the family child care license of Maria Nickels and Bradley Nickels be AFFIRMED.

Dated: July 22nd, 2008

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally Recorded

²¹ Minn. Stat. § 245A.07, subd. 2a(a).

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, (651) 296-2701, 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

The sole issue in this case is whether the Licensees pose an imminent risk of harm to the health, safety, or rights of the children served by their daycare.

The Department believes that domestic violence between joint license holders, which occurred in front of minor children living in the home of the license holders, poses an imminent risk of harm to the health, safety, and rights of the children served by the program. The case put forth by the County on behalf of the Department was brief and relied almost completely on the criminal complaint and the investigative report of Chief Madsen.

The Licensees argue that neither of them has ever had any trouble with the law and that there are no issues of physical abuse in their relationship. The couple insists that any problems in their relationship are manageable, and they have agreed to attend marriage counseling in an attempt to work through those issues. The Nickels also argued that the content of the criminal complaint was incorrect or exaggerated by Chief Madsen and that what occurred between them did not constitute domestic violence. Maria Nickels knows that what she did was wrong and insists that nothing like this will ever happen again. She is adamant that she would never hurt a child.

The families of the Licensees' daycare children are clearly supportive of the program and trust the Licensees with their children on a daily basis. Letters supporting Maria Nickels called her patient, understanding, and caring. Those who know her say she has a "special gift of patience with children" and that she is "in tune to young children's emotional needs." One individual called the Licensees an asset to the community.

The Administrative Law Judge understands that this is a difficult situation for the Licensees. The daycare business is their only source of income and many families in

the community rely on the Licensees for the care of their children. But of great concern to the Administrative Law Judge is the strained, perhaps abusive relationship between Bradley and Maria Nickels. The couple clearly has some issues to resolve regarding stress and relaxation. The incident on June 3, 2008, demonstrates that Maria Nickels was pushed to the point where she finally felt the need to release her frustrations on her husband by hitting him. Two of the third-party statements set forth a history of conflict between the Licensees, resulting from antagonization or a lack of understanding and communication between Bradley and Maria Nickels. There is also some evidence in Mr. Nickel's own testimony and manner at the hearing that he may be overly controlling and emotionally abusive in the relationship. There is little evidence that Ms. Nickels is abusive.

Accordingly, the Administrative Law Judge finds that there is a risk of imminent harm to the daycare children and recommends that the temporary immediate suspension remain in effect pending a final licensing decision from the Department.

S. M. M.