

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Revocation of Family Childcare License of Melissa S. Hudson and In the Matter of the Revocation of the Child Foster Care License of Melissa S. Hudson and William Hudson	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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The above matter came on for hearing before Administrative Law Judge Scott Newman on January 6, 2009 at the Clay County Courthouse, 807 North 11th Street, Moorhead, MN 56560. The OAH record was closed at the end of the hearing on January 6, 2009.

Michelle Winkis, Assistant Clay County Attorney appeared on behalf of the Department of Human Services. Melissa S. Hudson and William Hudson, Licensees, appeared without counsel.

STATEMENT OF THE ISSUES

Whether the Commissioner of Human Services should revoke the family childcare license of Melissa S. Hudson?

Whether the Commissioner of Human Services should revoke the child foster care license of Melissa S. Hudson and William Hudson?

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

FINDINGS OF FACT

1. At all times material herein, Melissa S. Hudson (hereafter M. Hudson) was licensed to provide family childcare services pursuant to Childcare License No. 1037847.¹

¹ Testimony of Karen Hellem, Melissa S. Hudson, William Hudson; Exs. 2 and 3.

2. At all times material herein, M. Hudson and William Hudson (hereafter W. Hudson) were licensed to provide child foster care pursuant to Child Foster Care License No. 1043033.²

3. M. Hudson conducts her child daycare business at her private home.³

4. Debra Nagle, hereafter Nagle, is the Child Protection Investigator for Clay County Social Services; Karen Hellum, hereafter Hellum, is the Family Childcare licenser for Clay County Social Services; Sara Rossow, hereafter Rossow, is the Child Foster Care Licenser for Clay County Social Services.⁴

5. On or about the 23rd day of June, 2008, Nagle initiated an investigation into an allegation of child maltreatment by M. Hudson consisting of the lack of supervision of a minor child at M. Hudson's daycare facility on Friday, June 20, 2008.⁵

6. Nagle coordinated the investigation with Licensors Hellum and Rossow because M. Hudson was licensed as a childcare provider, and M. Hudson and W. Hudson were licensed as child foster care providers.⁶

7. The investigation conducted by Nagle, Rossow and Hellum established the following facts:

a. On June 20, 2008 M. Hudson was at home alone at her daycare with one child, "T.," date of birth: 12/10/04.⁷ At that time, W. Hudson was at work.⁸

b. M. Hudson placed T. on the floor in the living room to watch TV while she proceeded to vacuum a back bedroom and hall. During the time she was vacuuming, she could not see T. in the living room.⁹

c. Sometime after M. Hudson began vacuuming, T.'s father arrived to pick him up. At that time, M. Hudson realized that T. was no longer in the living room. She began searching the main floor of her home and her basement without finding him. M. Hudson and T.'s father then searched and found T. alone in the backyard. When T. was found, he was standing on the steps leading into an above ground pool located in the backyard of M. Hudson's home.¹⁰

d. The swimming pool in question is located approximately 60 feet from the backdoor of M. Hudson's home and is surrounded by a fence. The gate on the fence which provides access to the swimming pool area was not locked on June 20,

² Test. of Sara Rossow, M. Hudson, W. Hudson; Ex. 3.

³ Test. of M. Hudson, W. Hudson, K. Hellem and S. Rossow.

⁴ Test. of Debra Nagle, K. Hellem and S. Rossow.

⁵ Test. of D. Nagle; Ex. 7.

⁶ Test. of D. Nagle, S. Rossow and K. Hellem.

⁷ Test. of M. Hudson and D. Nagle.

⁸ Test. of W. Hudson.

⁹ Test. of M. Hudson, D. Nagle; Exs. 4 and 5.

¹⁰ Test. of M. Hudson, S. Rossow, K. Hellem, D. Nagle; Exs. 4 and 5.

2008. Earlier in the day on June 20, 2008, W. Hudson had been working on the lock in question but was unable to complete the job prior to leaving for work that day.¹¹

e. At the time T. was found standing on the steps which lead into the swimming pool, the swimming pool was not covered.¹²

f. Earlier on June 20, 2008, T. had gotten out of the house through an unlocked door that provided access to the backyard. M. Hudson had found the child and had returned him to her home, but she did not subsequently lock the door. It is likely that T. had later gained access to the pool area through that same unlocked door.¹³

8. A Correction Order was issued to M. Hudson on July 1, 2008 citing three violations relating to the June 20, 2008, incident:

a. Failing to keep the minor child within sight and hearing while M. Hudson was vacuuming.

b. Failure to supervise the minor child by allowing him to be alone in the backyard of M. Hudson's home.

c. Failing to have a lock on the gate which provided access to the pool by the minor child and failure to have a cover on the pool.¹⁴

9. On or about July 22, 2008, Nagle determined a child in M. Hudson's daycare facility had been neglected on June 20, 2008, and made a maltreatment determination.¹⁵

10. As a result of the incident of June 20, 2008, the childcare license of M. Hudson was temporarily and immediately suspended by the Minnesota Department of Human Services. M. Hudson did not appeal the Order of Temporary Immediate Suspension.¹⁶

11. Rossow did not join in on the recommendation for temporary immediate suspension of the foster care license because during the applicable time period no children had been placed in foster care with M. Hudson and W. Hudson. Therefore, there was no imminent threat to the safety of any foster children.¹⁷

12. M. Hudson was investigated for an incident regarding her childcare license which occurred on August 23, 2007. On that date, a minor child in the care of

¹¹ Test. of M. Hudson and W. Hudson; Exs. 4 and 5.

¹² Test. of M. Hudson, D. Nagle, K. Hellem, S. Rossow; Exs. 4, 5, 6, 7 and 8.

¹³ Test. of M. Hudson; Ex. 7.

¹⁴ Test. of K. Hellem; Ex. 6.

¹⁵ Test. of D. Nagle; Ex. 9.

¹⁶ Test. of K. Hellem, M. Hudson; Exs. 10 and 11.

¹⁷ Test. of S. Rossow.

M. Hudson suffered a chipped and broken tooth which required surgery by a dentist¹⁸. The investigation into that incident resulted in the following findings:

a. No determination of maltreatment was made nor any neglect or inadequate supervision because M. Hudson was present at the time the minor child's tooth was broken.¹⁹

b. M. Hudson did not report the injury to the minor child for a period of approximately one month. Clay County Social Services did not issue a Correction Order as a result of this incident, but Hellem did speak to M. Hudson about her responsibility to report such incidents.²⁰

13. On September 20, 2007, Clay County Social Services investigated an incident involving an allegation that M. Hudson had spanked a foster child, DOB: 3/11/05.²¹ M. Hudson admitted spanking a minor foster child in her care on August 18, 2007. M. Hudson stated that she "lost it" due to having a particularly "stressful" day.²² A Correction Order was issued to M. Hudson on September 21, 2007, requiring counseling and training.²³

14. In September 2007, Rossow met with W. Hudson regarding an ongoing concern of W. Hudson "yelling and swearing" in the presence of foster children. On that occasion W. Hudson denied such conduct. Rossow had confronted W. Hudson concerning this issue on at least three prior occasions wherein he had admitted such conduct. No Correction Order was issued in September 2007 as Rossow felt it was best to encourage counseling and training to control W. Hudson's anger issues.²⁴

15. On September 25, 2007, a home visit was conducted at the home of M. Hudson and W. Hudson by Rossow and Hellem. As a result of that home visit, M. Hudson was issued Correction Orders concerning the following issues:

a. Numerous piles of dog excrement were observed in the children's outdoor play area.

b. The backyard of the daycare facility backs up against railroad tracks. The fence between the backyard and the railroad tracks was down and required fixing.

c. M. Hudson and W. Hudson utilized the services of a substitute helper on September 21, 2007, who had not had a background check completed.²⁵

¹⁸ Ex. 12.

¹⁹ Test. of D. Nagle; Ex. 12.

²⁰ Test. of K. Hellem.

²¹ Test. of S. Rossow.

²² Test. of M. Hudson; Ex. 13.

²³ Test. of S. Rossow; Ex. 13.

²⁴ Test. of S. Rossow.

²⁵ Test. of K. Hellem; Exs. 14, 15.

16. As a result of the June 20, 2008, swimming pool incident and on the basis of the past history of licensing violations, Clay County Social Services issued a written recommendation to the Minnesota Department of Human Services recommending that the family childcare license of M. Hudson and the child foster care license of W. Hudson and M. Hudson be revoked.²⁶

17. On October 1, 2008, the Minnesota Department of Human Services issued an Order of Revocation revoking License No. 1037847, the family childcare license of M. Hudson.²⁷

18. The record failed to establish whether or not the Minnesota Department of Human Services issued an Order of Revocation regarding License No. 1043033, the child foster care license, and the Notice of Hearing in this proceeding did not allege any violations of applicable child foster care statutes and rules.

19. W. Hudson and M. Hudson appealed the “decision to revoke our foster care and daycare licenses.”²⁸

20. W. Hudson testified as a defense to the revocation of the child foster care license that the “pool issue” of June 20, 2008, was unrelated to the foster care license because no children were in foster care on that date.²⁹

21. M. Hudson offered as a defense to the revocation of the childcare license the following facts:

M. Hudson’s grandmother was very ill, in the hospital and dying. That she was vacuuming the home and not supervising T. because she wanted to get her housework done so she could get to the hospital and visit with her grandmother. One of the foster children was in the process of being adopted. There had been two family funerals. The combination of these family events were extremely traumatic to her and her family and she was under extreme “stress.”³⁰

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

²⁶ Test. of K. Hellem, S. Rossow; Ex. 3.

²⁷ Ex. 2.

²⁸ Ex. 1.

²⁹ Test. of W. Hudson.

³⁰ Test. of M. Hudson.

CONCLUSIONS

1. The Department gave proper and timely notice of the hearing and has complied with all procedural requirements of law and rule with respect to the allegation that the Licensees violated statutes and rules applicable to their family childcare license. The Department did not give proper and timely notice of the hearing and has not complied with all procedural requirements of law and rule with respect to the allegation that the Respondents violated statutes and rules applicable to their child foster care license.³¹

2. The Commissioner and the Administrative Law Judge therefore have jurisdiction over the appeal by the Licensees of revocation of their family childcare license pursuant to Minn. Stat. §§ 14.50; 245A.07, subd. 3; and 245A.08, subd. 1. The Commissioner and the Administrative Law Judge do not have jurisdiction over the appeal by the Licensees of revocation of their child foster care license.

3. The Commissioner shall consider 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 in determining whether to revoke a license.³²

5. On September 25, 2007, M. Hudson was in violation of Minnesota rules in failing to keep play areas free of animal excrement.³³

6. On September 25, 2007, M. Hudson was in violation of Minnesota rules which required the outdoor play space be enclosed to provide protection from rail hazard.³⁴

7. On September 21, 2007, M. Hudson was in violation of Minnesota statutes which require background checks for all substitute helpers.³⁵

8. On August 18, 2007 M. Hudson violated Minnesota rules by spanking a minor foster child in her care.³⁶

³¹ Notice of and Order for Hearing dated October 16, 2008; Ex. 2.

³² Minn. Stat. § 245A.07, subd. 1.

³³ Minn. R. 9502.0435, subp. 12e.

³⁴ Minn. R. 9502.0435, subp. 2.

³⁵ Minn. Stat. § 345A.04.

³⁶ Minn. R. 2960.3080, subp. 8A1.

9. On August 23, 2007, M. Hudson violated Minnesota rules by failing to immediately notify Clay County Social Services of a serious injury to a minor child in her care.³⁷

10. On June 20, 2008, M. Hudson was in violation of Minnesota rules by failing to keep a preschooler in her care within sight and hearing at all times.³⁸

11. On June 20, 2008, M. Hudson violated Minnesota rules by allowing a water hazard to be accessible to a preschooler in her care.³⁹

12. On June 20, 2008, M. Hudson violated Minnesota statutes which require a license holder to protect a child from conditions or actions that seriously endanger the child's physical health when she failed to reasonably prevent the preschooler in her care from access to a swimming pool in her backyard.⁴⁰

13. M. Hudson has chronically failed and refused to comply with the laws and rules which govern her license and that such violations severely affect the health, safety and rights of the persons served by her daycare facility.

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

15. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

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 to the Commissioner of Human Services that:

The order of revocation of the family daycare license of M. Hudson be affirmed.

Dated: January 29, 2009

s/Scott J. Newman

SCOTT J. NEWMAN
Administrative Law Judge

Reported: Digitally recorded

³⁷ Minn. R. 9502.0375, subp. 2D.
³⁸ Minn. R. 9502.0315, subps. 22 and 29A.
³⁹ Minn. R. 9502.0425, subp. 3.
⁴⁰ Minn. Stat. § 626.556, subd. 2F.

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

The evidence in this case reveals a series of statutory and rule violations by the license holder, M. Hudson, beginning in August 2007. Those prior violations include the failure to report a serious injury to a child, spanking a minor child, failure to provide a clean play area for children and failing to protect children from access to railroad tracks. The most recent violations which led to the revocation of her family childcare license occurred on June 20 2008, when she allowed a three-and-one-half-year-old child in her care to leave her home on two different occasions. On the second occasion, the child in question was found on the steps leading into an above ground swimming pool. Had it not been for the fact that the parent of the child had come to the daycare facility for the purpose of picking him up, this incident may have ended in tragic consequences because M. Hudson was unaware of the fact that the child was in the area of the pool.

The nature, chronicity and severity of the violations are matters which the Commissioner must take into consideration in determining whether the violations have placed the health and safety of the children the licensee serves in jeopardy.⁴¹ In this case, the above statutory and rule violations reflect a pattern of conduct by the Licensee which seriously jeopardize the health and safety of the children in her care.

M. Hudson raised as a defense the fact that she was under a great deal of “stress” and that was the reason for violations revolving around the June 20, 2008 incident. Stress is not a legal defense, reason or excuse for failing to abide by statutes and rules which are designed to protect the children that she serves.

⁴¹ Minn. Stat. § 245A.07, subd. 1.

The most troubling aspect of M. Hudson's demeanor in this case is the apparent lack of understanding of the danger her actions had in placing the subject child in a position of imminent risk of harm or death. Rather, she chose to not accept responsibility for her actions and offer in lieu thereof a defense which in reality was nothing more than an excuse for her failure to fulfill her responsibilities. Under these circumstances, the Commissioner's revocation is appropriate.

S. J. N.