

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

In the Matter of the Proposed Revocation of the Child Foster Care License of Elsie Mayard	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came before Administrative Law Judge Manuel J. Cervantes (“ALJ”) pursuant to a Notice of hearing signed November 19, 2008 upon Ms. Mayard’s (“Licensee”) appeal from an Order of Revocation proposing to revoke her license to provide child foster care. The hearing in this matter was held on February 18, 2009, at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102. The record in this matter closed upon receipt of Licensee’s submission on March 23, 2009.

David MacMillan, Assistant Ramsey County Attorney, appeared on behalf of Ramsey County Community Human Services (“County”) and the Minnesota Department of Human Services (Department). Licensee, appeared on her own behalf.

STATEMENT OF ISSUES

Is it appropriate to revoke the child foster care license of Elsie Mayard based on her failure to comply with the requirements of the applicable licensing rules and laws?

The Administrative Law Judge concludes the revocation order should be **AFFIRMED**.

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

FINDINGS OF FACT

1. Licensee is licensed by the Department to provide child foster care at her residence at 755 W. Minnehaha Avenue in St. Paul, MN. She was initially licensed to provide relative foster care since 2005 and has been licensed to provide general foster care since 2007.¹

2. Catherine MacDonald–Porthan, is a licensing worker employed by the County’s Children Foster Care Licensing Division, to monitor and review licensee compliance with the laws and regulations governing a license.

¹ Testimony (“Test.”) of Catherine MacDonald-Porthan.

3. In approximately January or February, 2007, Ms. MacDonald-Porthan was assigned as to Licensee.²

4. In April 2007, Ms. MacDonald-Porthan visited Licensee's home for the purpose of introducing herself as Licensee's foster care license worker. No formal home inspection was conducted at that time.³

5. In June of 2008, Ms. MacDonald-Porthan visited Licensee as part of the County's annual licensee review. At approximately the same time, Ms. MacDonald-Porthan received a referral from an intern at the Child Protection Division, of A.C., a child of about 16 years of age and her infant, who were in need of foster care home placement. Ms. MacDonald-Porthan recommended Licensee's home as well as others. Child Protection then selected Licensee's home for placement.⁴

6. On June 6, 2008, and prior to placement, Ms. MacDonald-Porthan conducted an inspection of Licensee's home. Coincidentally, on that same date, the Child Protection worker and A.C. arrived at Licensee's home during Ms. MacDonald-Porthan's inspection. The house was clean. The only concern on the first floor unit at the time pertained to a stand on which the television was placed. The second floor unit, Unit 2, which was to be occupied by A.C. and her child, had a bedroom, bath, living room, and kitchen, constituting a small apartment. The only concerns about Unit 2 were 1) the steep stairs rising to the second floor and the fact that A.C. would have to carry her small infant up and down those stairs and 2), the fact that the windows appeared to be low to the floor which might present a danger to the infant in the future when the child became a toddler.⁵

7. During that visit when Ms. MacDonald-Porthan and Licensee were discussing problems with Unit 2, Licensee said that there was a problem with a light fixture in that unit. Ms. MacDonald-Porthan didn't think much about it. She didn't attach much significance to that disclosure at the time. No mention was made by Licensee that the gas and electricity had been shut off from Unit 2 and that there was no hot water. Nor was there any mention by Licensee of outstanding housing code violations written by a St. Paul Housing inspector relative to Unit 2.⁶

8. During the June 6, 2008 inspection, Ms. MacDonald-Porthan, Licensee, and A.C. discussed some of the rules of foster care, i.e., that A.C. could not sleep with her child but rather had to place her in a crib and that when transporting the child by car, that the child would need to be placed properly in a car seat. Licensee said she had no concerns about using A.C.'s car seat.⁷ Placement was made on June 6, 2008.⁸

² Test. of MacDonald-Porthan.

³ Test. of MacDonald-Porthan.

⁴ Test. of MacDonald-Porthan.

⁵ Test. of MacDonald-Porthan.

⁶ Test. of MacDonald-Porthan.

⁷ Test. of MacDonald-Porthan.

⁸ Test. of MacDonald-Porthan.

9. On June 23, 2008, Ms. MacDonald-Porthan received a telephone call from A.C.'s Child Protection worker. The Child Protection worker reported that A.C. had complained to her that she was very upset because she had no electricity or hot water, had only one light in her unit, and was required to go downstairs to take a shower.⁹

10. After learning of A.C.'s complaint, Ms. MacDonald-Porthan scheduled an appointment for June 25, 2008 to see Licensee. When she arrived for that visit, Ms. MacDonald-Porthan saw Licensee, A.C. and the infant in the car ready to leave. Ms. MacDonald-Porthan also observed that the infant was strapped into its car seat but the seat was not properly affixed to its base and, therefore, was not functional.

11. An inspection of Unit 2 revealed that there was no hot water, there were several dirty baby bottles in the sink, extension cords were running throughout the apartment connected to a single fixture, and no other electricity was available. The refrigerator was not operating.¹⁰

12. When asked about this by Ms. MacDonald-Porthan, Licensee explained that she was having difficulty with the electrical box and she was waiting for her electrical contractor to make the repairs. Ms. MacDonald-Porthan requested the name of her contractor so she could call him but Licensee did not reveal the name or number. Ms. MacDonald-Porthan advised Licensee that she would be writing a correction order for failing to utilize a properly installed car seat and failing to provide electricity or hot water to the living unit where A.C. and her infant were staying, and would be recommending that A.C. and her infant move immediately.¹¹

13. Upon returning to her office on June 25, 2008, Ms. MacDonald-Porthan called Child Protection to advise what she had seen and to recommend that the placement be terminated. Ms. MacDonald-Porthan also called a city fire inspector to obtain additional information. The fire inspector advised that the electricity had been shut off in Unit 2 since April 2008 and that the gas was scheduled to be turned off the next day, June 26, 2008. Because of this status, Unit 2 was condemned as unfit for human habitation on June 17, 2009 by a St. Paul fire Inspector.¹² The fire inspector advised that Ms. MacDonald-Porthan call Excel Energy, Licensee's utility provider.¹³

14. On June 27, 2008, Ms. MacDonald-Porthan spoke with a representative from Excel Energy. He confirmed that the electricity had been turned off since April 2008 and that they suspected that someone at the home had tampered with the meter to obtain electricity illegally. Based on this information, Ms. MacDonald-Porthan prepared a recommendation for revocation of Licensee's foster care license on July 2.¹⁴

⁹ Test. of MacDonald-Porthan.

¹⁰ Test. of MacDonald-Porthan.

¹¹ Test. of MacDonald-Porthan.

¹² Ex. 3, para. 7.

¹³ Test. of MacDonald-Porthan.

¹⁴ Exhibit ("Ex.") 1.

15. On July 9, 2008, Ms. MacDonald-Porthan spoke with representatives of the St. Paul Housing Inspections Division. The staff indicated that Licensee and her property at 775 W. Minnehaha Avenue were well known to them because of numerous housing code issues. They also were aware that the utilities had been shut off in the past. They provided Ms. MacDonald-Porthan with their reports.¹⁵

16. On September 23, 2008, the Department issued its Order for Revocation.¹⁶

17. On November 17, 2008, Licensee filed a timely appeal of the proposed revocation.¹⁷

18. On November 19, 2008, the Department issued a Notice of Hearing scheduling the contested hearing for February 18, 2009. The Notice was signed by Jerry Kerber, Director, Licensing Division.

Based on the Findings of Fact, the ALJ makes the following:

CONCLUSIONS

1. The ALJ and the Commissioner have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, and 245A.08.

2. The Notice of Hearing is proper in all respects and the Placing Agency and the Department have complied with all substantive and procedural requirements of law and rule.

3. At all times relevant to these proceedings, Licensee was licensed to provide child foster care.

4. Minnesota law authorizes the Department to impose sanctions on a licensee who does not comply with applicable law or rule.¹⁸

5. If the Department shows that it has reasonable cause to sanction a license, the burden of proof then shifts to the Licensee to show, by a preponderance of evidence, that she fully complied with the applicable laws or rules she is alleged to have violated.¹⁹

6. The Department may suspend or revoke a foster care license if the licensee knowingly withholds relevant information from or gives false or misleading information to the Department in connection with an application for a license, during an investigation, or regarding compliance with applicable laws or rules.²⁰ Licensee violated

¹⁵ Exs. 2 and 3.

¹⁶ Ex. 4.

¹⁷ Ex. 5.

¹⁸ Minn. Stat. §245A.07, subd. 1 (2008).

¹⁹ Minn. Stat. § 245A.08, subd. 3.

²⁰ Minn. Stat. §245A.07, subd. 3 (2008).

this provision on June 25, 2008 when she failed to disclose to the license worker that the gas and electricity in Unit 2, where A.C. and her infant were to reside, had been turned off since April 25, 2008.

7. The foster care licensing rules require that the Licensee must cooperate with the provision of basic services to the child[ren].²¹ The foster care licensing rules define “Basic services” as:

[S]ervices provided at the foster home to the foster child that meets the foster child’s basic need for food, shelter, clothing, medical and dental care, personal cleanliness, privacy, spiritual and religious practice, safety, and adult supervision.²²

Licensee violated this provision by failing to provide for the basic services of electricity and gas to A.C. and her infant to meet their need for food, shelter and personal cleanliness. Due to the lack of these basic services there was no hot water or general lighting, and the refrigerator and other appliances required for daily living were inoperable.

8. The foster care licensing rules require that the foster home be in compliance with applicable fire, health, building, and zoning codes.²³ Licensee violated this provision when she permitted the placement of A.C. and her infant in her building when she knew there were outstanding correction orders for failing to comply with the housing and/or fire code.²⁴

9. Because of the conduct described in paragraphs 6-8 above, Licensee violated this provision.

10. The Department has demonstrated that it had reasonable cause to take disciplinary action against Licensee’s foster care license based on her failure to meet the licensing requirements in Minn. Stats. §245A.07, subds 1 and 3 and Minn. Rs. 2960.3010, subps. 5. and 2960.3040, subp. 1.

11. Licensee has failed to show by a preponderance of evidence that she fully complied with the applicable licensing laws and rules.

12. When considering whether to impose sanctions against a license holder, the Department must “consider the nature, chronicity, or severity of the violation[s] of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.”²⁵

²¹ Minn. R. 2960.3040, subp. 1.

²² Minn. R. 2960.3010, subp. 5.

²³ Minn. R. 2960.3040, subp. 1.

²⁴ Ex. 3.

²⁵ Minn. Stat. § 245A.07, subd. 1.

13. The Department has considered the nature, chronicity, or severity of the violation[s] of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. Deprivation of basic utilities to a foster care family constitutes a severe violation of the foster families' rights to: bathe and clean properly, wash their dishes and clothing, and make use of lighting and other basic requirements of daily life which we all take for granted.

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

RECOMMENDATION

That the Commissioner of the Department of Human Services AFFIRM the revocation of Ms. Mayard's license to provide foster care.

Dated: April 22, 2009

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally recorded: No transcript.

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 and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a 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.

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.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The record is clear that Ms. Mayard was in possession of information that the basic utilities necessary for daily living had been cut off to Unit 2 months before she permitted the placement of A.C. and her infant in her building. Licensee said nothing to the licensing worker although she had several opportunities to do so. Licensee did say that she had a light out in Unit 2 but this was not enough to put a reasonable licensing worker on notice that the entire unit was without basic utilities. In addition to the utilities issue, there were other housing code violations which Licensee was required to report and repair.

Licensee's explanation of June 25, 2008 that she had hired an electrician to repair the electrical box is not credible given that the energy source had been turned off by her energy provider, Excel Energy.

Licensee testified at the hearing that she did not want a placement in June 2008. No written document to that effect was entered at the hearing. Yet within a week after placement, Licensee obtained the licensing and child protection workers' signatures signing off on Licensee's rules of the house as they related to A.C.'s boyfriend and visiting hours. This testimony plus licensee's testimony about the hiring of an electrician to make repairs calls the credibility of the Licensee into question.

The fact that Licensee permitted A.C. to bathe in her unit and bought food, diapers, and other supplies for A.C., and her child, is to her credit but does not relieve Licensee from the obligations to comply with foster care laws and regulations. For these reasons, there is a basis for license sanctions, and it is so recommended.

M. J. C.