

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

In the Matter of the Temporary Immediate Suspension of the License of Virginia Klinger to Provide Adult Foster Care	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION</b>
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A hearing in this matter was held by Administrative Law Judge Steve M. Mihalchick on January 20, 2009, at 10:00 a.m. in Courtroom 2 of the Todd County Courthouse, Long Prairie, Minnesota, pursuant to a Notice of and Order for Hearing dated January 14, 2009.

Charles G. Rasmussen, Todd County Attorney, 212 2nd Ave S, Suite 2, Long Prairie, MN 56347 appeared for the Department of Human Services and Todd County Social Services. There was no appearance by the Licensee, Virginia Klinger.

**STATEMENT OF ISSUE**

The issue in this contested case proceeding is whether the Temporary Immediate Suspension of the License of Virginia Klinger to Provide Adult Foster Care should be affirmed because of numerous substandard conditions of Licensee's facility and numerous failures to provide adequate services to persons in care at the facility.

The Administrative Law Judge finds and concludes that the Temporary Immediate Suspension should be affirmed.

Based upon the record, the Administrative Law Judge makes the following

**FINDINGS OF FACT**

1. Licensee is licensed to provide adult foster care at 33545 Lilac Trail, Cushing, Minnesota (Licensee's facility). Licensee's facility is a trailer home located in a remote area of Todd County. Licensee does not live at that location, and is only occasionally there. She has an employee or employees operate her facility. She lives in Dakota County and operates a licensed facility there as well.

2. On November 12, 2008, Marlys Steidl, a Licensor with Todd County Social Services, personally served the Order of Temporary Immediate Suspension upon the Licensee, who as at her facility at the time.

3. The Order of Temporary Immediate Suspension was based upon a recommendation made by Todd County Social Services in a letter of November 10,

2008. That recommendation was based upon an investigation by Ms. Steidl and other County officials conducted in response to a complaint regarding health and safety violations at Licensee's facility received by Todd County Social Services on November 3, 2008. The investigation revealed numerous health and safety violations at Licensee's facility. Three adult foster care residents lived at the facility and there was only one employee who was to provide their care. Garbage and other debris was piled around the home, inside and out; rooms smelled of urine; some of the residents' clothing had rodent feces on it and was otherwise unusable; plumbing and wiring were exposed; parts of the structure were damaged. Only the kitchen was marginally clean. The employee had not been instructed to assist the residents with their personal cares and did not do so. The residents were not provided with toothbrushes or razors. Required documentation was severely lacking. The building and grounds were dangerous for the residents. Other violations existed.

4. On November 7, 2008, the three residents were removed and placed in other foster homes.

5. Licensee appealed the Order of Temporary Immediate Suspension. The County was notified of the appeal on January 6, 2009. On January 12, 2009, Ms. Steidl had a telephone conversation with Licensee. Todd County Social Services had requested a building inspection of Licensee's facility that would be at Licensee's expense. Licensee told Ms. Steidl that she would not allow the inspection to take place because the property was being foreclosed and she was not planning to provide care again in Todd County. She also told Ms. Steidl that she planned to withdraw the appeal of the Temporary Immediate Suspension. She did not do so.

6. The Notice of and Order for Hearing in this matter was served upon Licensee on January 14, 2009, by U.S. mail addressed to Licensee's facility. It set the hearing for January 20, 2009, at 10 AM at the Todd County Courthouse in Long Prairie, Minnesota. Attached to the Notice of and Order for Hearing were an Exhibit A that described the reasons for the Temporary Immediate Suspension, a copy of the Order for Temporary Immediate Suspension, and all the other file documents relating to Licensee.

7. The Notice of and Order for Hearing included the following notice: "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." Licensee did not file any Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief.

8. In the morning prior to the hearing, Ms. Steidl had another telephone conversation with Licensee. Licensee stated that she had not sent in a withdrawal of her appeal, but that she would not appear at the hearing.

9. Licensee did not appear at the hearing on January 20, 2009, or have an appearance made on her behalf.

10. Because the Licensee failed to appear at the hearing in this matter, she is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing and the documents attached to the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact.

11. Based on the foregoing Findings of Fact, the Administrative Law Judge hereby makes the following:

### **CONCLUSIONS OF LAW**

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

2. Licensee was given timely and proper notice of the hearing in this matter and all relevant substantive and procedural requirements of statutes and rules have been fulfilled.

3. Under Minn. Rule 1400.6000, Licensee is in default as a result of her failure to appear at the scheduled hearing.

4. Under Minn. Rule 1400.6000, when a party defaults, the allegations and the issues set out in the Notice of and Order for Hearing may be taken as true and deemed proved. The Administrative Law Judge therefore takes the allegations and issues set forth in the Notice of and Order for Hearing and attached Exhibit A as true and deemed proved. Licensee's actions and failures to comply with applicable law and rules in regard to the care and conditions at Licensee's facility pose an imminent risk of harm to the health, safety, and rights of persons served by Licensee's facility. Therefore, the Temporary Immediate Suspension of the License of Virginia Klinger to Provide Adult Foster Care should be affirmed.

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

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Temporary Immediate Suspension of Virginia Klinger to Provide Adult Child Foster Care be **AFFIRMED**.

Dated: January 29th, 2009

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge

Reported: Digitally Recorded (file A-SMM-012009:0001)

## 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. The Commissioner may adopt, reject, or modify this Recommendation. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, PO Box 64998, St. Paul, MN 55164-0998, 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 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.