

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

In the Matter of the Revocation of the  
Family Child Care License of Jeannie Ball

**ORDER**

This matter is before Administrative Law Judge Bruce H. Johnson on a Motion to Limit the Scope of the Contested Case Hearing filed by the St. Louis County Public Health and Human Services Department (County) on May 7, 2009. On May 11 and 12, 2009, the Licensee Jeannie Ball submitted email responses to the County's motion. On May 11, 2009, the County submitted an email reply to the Licensee's responses.

Joseph M. Fischer, Assistant St. Louis County Attorney, represents the County. The Licensee Jeannie Ball is not represented by an attorney and is representing herself.

Based upon the record in this matter, the Administrative Law Judge makes the following:

**ORDER**

IT IS ORDERED THAT the County's Motion to Limit the Scope of the Contested Case Hearing is hereby GRANTED to the extent set forth in the Memorandum that follows.

Dated: May 13, 2009

s/Bruce H. Johnson  
**BRUCE H. JOHNSON**  
Assistant Chief Administrative Law Judge

## MEMORANDUM

This contested case proceeding involves an appeal by the Licensee of the Department's February 5, 2009, Order revoking her family child care license. The Department based that Order on several violations of statutes and rules governing the family child care program that the Licensee allegedly committed. One basis for the Department's Order was that the Licensee was disqualified under Minnesota Statutes, sections 245C.14 and 245C.15, from having direct contact with children in a family child care program resulting from the County's July 30, 2008, determination that the Licensee had committed medical neglect of a child in her care in violation of Minnesota Statutes, section 626.556. The County's written maltreatment determination contained specific instructions to the Licensee on the steps she should take to request the County to reconsider its maltreatment determination and, if necessary, request to the Commissioner of Human Services for a hearing on whether the maltreatment determination was appropriate.<sup>1</sup> Those instructions included the following:

1. Within 15 calendar days from the date that you received this letter, you must submit a written request stating that you want the agency to reconsider its abuse or neglect determination.<sup>2</sup>

The Licensee did not request the County to reconsider its maltreatment determination within 15 calendar days after she received it. The County therefore argues in its motion that its maltreatment determination is conclusive, and that the Licensee is precluded from reopening or challenging that maltreatment determination in this contested case proceeding. In her response, the Licensee does not dispute that no request for reconsideration was submitted within the 15-day deadline. Rather, she asserts that her failure to meet the deadline resulted from an error made by her attorney.

The 15-day deadline to which the County's instructions referred is not just a policy of the County or the Department. Rather, it is a legal deadline that the Legislature placed in the maltreatment statute. Minnesota Statutes, section 626.556, subdivision 10i(a) provides that:

an individual or facility that the commissioner of human services, a local social service agency, or the commissioner of education determines has maltreated a child ... who contests the investigating agency's final determination regarding maltreatment, may request the investigating agency to reconsider its final determination regarding maltreatment. The request for reconsideration must be submitted in writing to the investigating agency within 15 calendar days after receipt of notice of the final determination regarding maltreatment .... If mailed, the request for reconsideration must be postmarked and sent to the investigating agency within 15 calendar days of the individual's or facility's receipt of the final determination.

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<sup>1</sup> Attachment to Affidavit of Mark Wilhelmson.

<sup>2</sup> *Id.*

Moreover, in Minnesota Statutes, section 245C.29, subdivision 1, the Legislature established the legal consequences of failing to meet the 15 calendar day deadline:

Unless otherwise specified in statute, a maltreatment determination or disposition under section 626.556 or 626.557 is conclusive, if:

\* \* \*

(2) the individual did not request reconsideration of the maltreatment determination or disposition under section 626.556 or 626.557;

Because the 15-day deadline is a statutory deadline established in law by the Legislature and because the Legislature itself specified the consequences of failing to meet that deadline, neither this Administrative Law Judge nor the Commissioner has legal authority to waive it and allow that maltreatment determination to be reconsidered, even if failure to meet the deadline was not the Licensee's fault.

However, even though the County's maltreatment determination may be conclusive, that does not necessarily resolve all of the issues in this contested case proceeding. For example, in order for maltreatment of a child under Minnesota Statutes, section 626.556, to disqualify a licensee from having direct contact with children in care and therefore from holding a license, the substantiated maltreatment must be "serious or recurring."<sup>3</sup> Although the findings in the County's maltreatment determination may be evidence of "serious" maltreatment, the Legislature did not specify that such a determination was necessarily conclusive on the issue of seriousness. Rather, the Legislature has given "serious maltreatment" a statutory definition, as it applies to the disqualification statutes:

(a) 'Serious maltreatment' means sexual abuse, maltreatment resulting in death, maltreatment resulting in serious injury which reasonably requires the care of a physician whether or not the care of a physician was sought, or abuse resulting in serious injury.

(b) For purposes of this definition, 'care of a physician' is treatment received or ordered by a physician but does not include diagnostic testing, assessment, or observation.

(c) For purposes of this definition, 'abuse resulting in serious injury' means: bruises, bites, skin laceration, or tissue damage; fractures; dislocations; evidence of internal injuries; head injuries with loss of consciousness; extensive second-degree or third-degree burns and other burns for which complications are present; extensive second-degree or third-degree frostbite and other frostbite for which complications are present; irreversible mobility or avulsion of teeth; injuries to the eyes; ingestion of foreign substances and objects that are harmful; near drowning; and heat exhaustion or sunstroke.<sup>4</sup>

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<sup>3</sup> Minnesota Statutes, section 245C.15, subdivision 4(b)(2).

<sup>4</sup> Minnesota Statutes, section 245C.02, subdivision 18.

At the hearing, the County and Department still have the burden of establishing by a preponderance of the evidence that the maltreatment that the Licensee committed was “serious” within the meaning of Minnesota Statutes, section 245C.02, subdivision 18, and therefore disqualifying.

Finally, the Department’s Order of Revocation is not based solely on a disqualification of the Licensee for committing serious maltreatment. It is also based on alleged violations of several other statutes and rules governing the family child care program. The County and Department have the additional burden of demonstrating reasonable cause for issuing the Order of Revocation by submitting documentary evidence to substantiate the allegations that the Licensee violated those other violations of licensure statutes and rules. Thereafter, the burden shifts to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with those other laws or rules. In other words, the Licensee also will have an opportunity in the contested case hearing to challenge the allegations that she committed other violations of program statutes and rule that might separately warrant revocation of the Licensee’s family child care license.

**B. H. J.**