

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the  
License of Judy Mutz to Provide Family  
Child Care

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara J. Runchey commencing at 9:30 a.m. on May 27, 2009, at the Cottonwood County Courthouse, Windom, Minnesota. The hearing was held in accordance with a Notice of and Order of Revocation dated March 26, 2009.

L. Douglas Storey, Cottonwood County Attorney, appeared on behalf of Cottonwood County (County). Judy Mutz (Appellant) appeared pro se and on her own behalf.

**STATEMENT OF ISSUE**

Did the Commissioner properly revoke the license of Judy Mutz because a family member who resided in the home where services are provided was disqualified.

The Administrative Law Judge concludes that the revocation should be rescinded because the disqualified individual no longer lives in the home or is present during the hours children are in Appellant's care, or working with children.

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

**FINDINGS OF FACT**

1. Judy Mutz has been consistently licensed by the Minnesota Department of Human Services as family daycare provider since August 12, 1998.<sup>1</sup>

2. Background studies were required on Judy Mutz and also on Bret Michael Seidel also known as Bret Michael Mutz, born December 10, 1989 since he was living in Judy Mutz's home. Bret M. Seidel is her grandson. For several years, Judy Mutz received Background Study Clearances for Bret M. Seidel and she was not disqualified from providing direct contact services.<sup>2</sup>

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<sup>1</sup> Ex. 1

<sup>2</sup> Ex. 10

3. On or about August 4, 2008, a background study was completed on Bret M. Seidel and a background study clearance was obtained.<sup>3</sup>

4. Thereafter, on or about November 3, 2008, charges were filed against Bret M. Seidel. Specifically, he was charged with two counts of controlled substance crimes in violation of Minn. Stat. § 152.025 (control substance crime in the fourth degree) which allegedly occurred on November 1, 2008.<sup>4</sup>

5. After becoming aware of these charges, on November 3, 2008, Judy Mutz immediately contacted Cottonwood County Family Service Agency and notified them of the pending charges against Bret M. Seidel. In addition, Rebecca Zuehlke, Cottonwood County Social worker learned of the complaint from the Cottonwood County Attorney.<sup>5</sup>

6. On December 17, 2008, Judy Mutz received a letter from Cottonwood County Family Service Agency notifying her that an applicant background study had been conducted on Bret M. Seidel and that he was found to be disqualified from direct contact with, or access to, persons served by the program. She was further informed that he could continue living with her if (a) she obtained a copy of his notice of disqualification that explains the reason for the disqualification; (b) ensured that he requested reconsideration within 30 days of receiving his notice of disqualification; (c) ensured that he was continuously within sight or hearing of another adult caregiver wherever he is in a position allowing direct contact with, or access to, persons receiving services from her program pending reconsideration of the disqualification.<sup>6</sup>

7. On or about December 17, 2008, Bret M. Seidel also received a letter from Cottonwood County Family Service Agency notifying him that he was disqualified from direct contact with, or access to, persons served by the program. He was informed of his right to request reconsideration of his disqualification.<sup>7</sup>

8. Bret M. Seidel timely submitted a Request for Reconsideration form. In his Request dated December 12, 2008, Bret M. Seidel acknowledged that he “got caught with controlled substance on November 1, 2008.” He further indicated it was his “first time” and that he “didn’t get charged for these crimes.”<sup>8</sup> Criminal charges against Bret M. Seidel were dismissed at an unknown date prior to this hearing<sup>9</sup>.

9. On January 6, 2009, Rebecca Zuehlke sent a letter to the Department of Human Services recommending that Bret M. Seidel’s disqualification be upheld and not be set aside or variance granted based upon the “recency and seriousness of the

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<sup>3</sup> *Id.*  
<sup>4</sup> Testimony of Rebecca Zuehlke  
<sup>5</sup> *Id.*  
<sup>6</sup> Ex. 1  
<sup>7</sup> Ex. 3  
<sup>8</sup> Ex. 2  
<sup>9</sup> Test. of R. Zuehlke

disqualification as well as Bret M. Seidel's past history with chemical dependency issues."<sup>10</sup>

10. On March 3, 2009, Rebecca Zuehlke forwarded a letter to DHS recommending that Judy Mutz's family childcare license be revoked due to the information Cottonwood County Family Service Agency received that Bret M. Seidel was disqualified due to a recent charge of felony fifth degree controlled substance.<sup>11</sup>

11. Thereafter, on or about March 26, 2009, Judy Mutz received an Order of Revocation based upon reasons more fully set forth in the Order of Revocation.<sup>12</sup>

12. At this hearing, Rebecca Zuehlke testified that it was now Cottonwood County's position that Judy Mutz's daycare license not be revoked. Ms. Zuehlke opined that as long as Bret M. Seidel was not living in the home and not present while Judy Mutz was providing childcare services that Judy Mutz should be allowed to continue services. Rebecca Zuehlke was confident that Bret M. Seidel had relocated to another residence and that he no longer resides in Judy Mutz's home. Rebecca Zuehlke also indicated that Judy Mutz was an excellent childcare provider and was compliant with all rules, standards and provisions required by law and there had never been any prior violation involving Judy Mutz. Rebecca Zuehlke was adamant that Judy Mutz would follow any rule or condition imposed upon her by her agency. Since Bret M. Seidel was not residing with her, there was no risk of harm to persons served by the program. Ms. Zuehlke further indicated that in her opinion there had been no adverse effects upon the children served by the program as a result of the criminal charges against Bret M. Seidel.<sup>13</sup>

13. Judy Mutz testified that she had been licensed to provide daycare services since 1998 and that she provided services for up to 18 children. She normally provided childcare services without assistance.<sup>14</sup>

14. Bret M. Seidel initially came to live with Judy Mutz in approximately 2004 and has resided with her until March 31, 2009 at which time he moved out.<sup>15</sup>

15. Both Rebecca Zuehlke and Judy Mutz indicated that Bret M. Seidel was listed as a person in the home in the past and that he had received background study clearances in the past.<sup>16</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> Ex. 4

<sup>12</sup> Ex. 8

<sup>13</sup> Test. of R. Zuehlke

<sup>14</sup> Test. of Judy Mutz

<sup>15</sup> *Id.*

<sup>16</sup> Test. of R. Zuehlke and J. Mutz.

16. Consistent with rules and laws, Judy Mutz immediately called Cottonwood County Family Service Agency on November 3, 2008, once she became aware that Bret M. Seidel failed to come home and was incarcerated.<sup>17</sup>

17. Judy Mutz indicated that once she received the Order of Revocation,<sup>18</sup> she insisted that Bret M. Seidel physically move out of her home.<sup>19</sup> Since this time, she has not allowed him into the home while she is providing daycare services.

18. Bret M. Seidel is currently living with Levi Broitzman in another household. He has removed all of this clothing and personal effects to his residence and has lived there consistently since March 31, 2009.<sup>20</sup>

19. Judy Mutz indicated that she has not and would not allow Bret M. Seidel to come to her home at any time in which daycare children are present. In the infrequent event when Bret M. Seidel visits her home, he is required to call Judy Mutz to ensure that there are no daycare children present and must leave the residence shortly after dinner is provided or no later than 8:00 p.m. Bret M. Seidel has not been present when daycare children have been present since March 31, 2009.<sup>21</sup>

20. Judy Mutz acknowledged that Bret M. Seidel must not be allowed to reside in her home or be present when she was providing childcare services. Judy Mutz appeared to understand the importance of protecting the safety of the children in her care.<sup>22</sup>

21. There were several letters of daycare parents presented that indicated Judy Mutz was an exemplary daycare provider. The letters from Mandi Courtright and Diane Haugen and Jenn Mutz all confirmed that Bret M. Seidel had moved out of Judy Mutz's home. They also acknowledged Judy Mutz's dependability, reliability and quality of childcare.<sup>23</sup>

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

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services and the Office of Administrative Hearings have authority to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a and 14.50 (2006).

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

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<sup>17</sup> Test. of J. Mutz.

<sup>18</sup> Ex. 8

<sup>19</sup> Test. of J. Mutz.

<sup>20</sup> Test. of J. Mutz; Ex. 5

<sup>21</sup> Test. of J. Mutz

<sup>22</sup> *Id.*

<sup>23</sup> Ex. 6 & 7

3. The Department and Cottonwood County have complied with all applicable procedural requirements of rule and law.

4. Minn. Stat. § 245A.07 and Minn. R. 9502.0335 authorize the Commissioner to revoke a license where a disqualified person lives in the daycare residence or is present during daycare hours and where the disqualification has not been set aside or a variance granted.

5. Under Minn. Stat. § 245A.07, subd. 3, if the Department demonstrates that a reasonable cause exists to take action, the burden of proof shifts, in a hearing on a license revocation, to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with the laws and rules allegedly violated.

6. Minn. R. 9502.0335, subp. 6 provides as follows:

Subp. 6. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

D. Has a disqualification under Minn. Stat. § 245C. 15, that is not set aside under Minn. Stat. § 245C.22, or for which a variance has not been granted under Minn. Stat. § 245C.30.

7. Minn. R. 9502.0375 requires all daycare providers to inform the licensing agency within 30 days of any change in the regular membership of the household.

8. When applying sanctions under Chapter 245, 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.

9. The Department has not shown by a preponderance of the evidence, that Bret M. Seidel's grandson, who is a disqualified person, is living in the daycare residence or is present during daycare hours.

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

## RECOMMENDATION

IT IS HEREBY RECOMMENDED:

The Administrative Law Judge recommends that: the Commissioner of Human Services **rescind** the Order of Revocation of the license of Judy Mutz to provide family childcare.

Dated: June 4, 2009

s/Barbara J. Runchey

BARBARA J. RUNCHEY  
Administrative Law Judge

Reported: Digitally Recorded

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. 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 the office of the Commissioner to learn the procedure for filing exceptions or present 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. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. 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.

## MEMORANDUM

Judy Mutz's grandson, Bret M. Seidel is admittedly now disqualified from living in her daycare residence or from being present during the hours children are in her care. While he lived in her home at the time of her re-application for licensure (August, 2008)

and until March 31, 2009, uncontroverted and unequivocal hearing testimony revealed that he is no longer in her home. Testimony from Judy Mutz and from the licensing social worker and daycare parents also verified this fact. Since Bret M. Seidel is no longer in Judy Mutz's home nor is he allowed to be present during the hours children are in her care, there is no basis for the revocation. While the licensing social worker initially indicated that she supported a revocation because Bret M. Seidel was in Judy Mutz's home, her opinion changed after Bret M. Seidel permanently relocated to another residence. This fact, coupled with the facts that Judy Mutz violated no other rules or statutory provision over an 11 year span, and where daycare parents did not believe her action in allowing Bret M. Seidel to live in the home in the past posed any harm to their children at this time or that Judy Mutz was likely to allow him around or near daycare children in the future, all weigh in favor of a denial or revocation. Under the facts presented, Judy Mutz does not pose a risk of harm to any person served by the program. She has proven by a preponderance of the evidence that the legitimate danger posed by her grandson is no longer a risk to her program. Judy Mutz appears to take very seriously the obligation to preclude Bret M. Seidel from having direct contact with daycare children.

Therefore, it is recommended that the Commissioner of Human Services rescind the revocation of her license and permit her to supplement her application as necessary to demonstrate Bret M. Seidel is no longer in her home or present during the hours children are in her care. Assuming, *arguendo*, that her actions in allowing Bret M. Seidel to reside with her after his admitted drug use and pending his request for reconsideration were a violation of rule or statute, a more reasonable course of action would have been to issue a conditional license or some other less severe penalty.

**B. J. R.**