

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
Lisa M. Vosberg

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 22, 2009, at the Wright County Human Services Building, 1004 Commercial Drive, Conference Room #144, Buffalo, Minnesota. The OAH record closed on September 24, 2009, upon receipt of additional documentation from the County, which the Licensee requested at the hearing.¹

Anne L. Mohaupt, Assistant County Attorney, Wright County Government Center, 10 Second Street NW, Room 400, Buffalo, MN 55313-1189, appeared for Wright County Human Services (County) and the Minnesota Department of Human Services (Department). Lisa M. Vosberg (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the family child care license of Lisa Vosberg be revoked based on her serious and chronic violation of licensing rules?

The Administrative Law Judge concludes that the license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Lisa Vosberg has been a licensed provider of family child care since 2001. When she first became licensed, Vosberg lived in Maple Grove, Minnesota, and Hennepin County was responsible for the licensing process. During a pre-licensing visit, a licensing worker noted that a variety of items needed to be corrected in order to comply with licensing rules. A number of rooms in the home needed to be made inaccessible, medicines and other hazardous items needed to be moved out of reach or to areas not used for daycare purposes, and the hot water temperature needed to be reduced to 120

¹ The ALJ marked and received those documents as Exhibits 7 through 10.

degrees (from 140 degrees). In addition, gates on a back yard fence needed to be locked, pet vaccination records needed to be maintained, and a changing pad needed to be used for diapering.²

2. On a licensing renewal visit to Vosberg's home about one year later, in November 2002, the licensing worker issued a Correction Order for a variety of violations, including missing pet vaccination records and other required forms, failure to make a bathroom inaccessible to children in care, failure to comply with training requirements, failure to use a changing pad for diapering, failure to submit a background study form, and missing items from the first aid kit.³ Vosberg did not seek reconsideration of the Correction Order.⁴

2. In connection with renewal visits in 2004, 2005, 2006, and 2007, the licensing worker issued additional Correction Orders for similar violations each year, including missing pet vaccination records and other required forms (including crib inspection forms), failure to comply with training requirements, missing items from first aid kit, excessive water temperature, failure to clean with bleach and water, failure to make certain rooms inaccessible, and leaving hazardous or toxic items in areas accessible to children.⁵ Vosberg did not seek reconsideration of any of these Correction Orders.⁶

3. In the fall of 2007, Vosberg moved to Buffalo, Minnesota, and sought licensure of her new home in Wright County. Vosberg's home is in a development that is built around two large ponds. Vosberg's back yard is directly to the east of one pond and directly to the south of the other pond. A public walking path running north and south separates Vosberg's back yard from the pond on the east, but there are no natural barriers or fences that limit access to the ponds. When she sought licensure in the fall of 2007, Vosberg agreed to install a fence in her back yard by the spring of 2008.⁷ Vosberg's home was licensed in March 2008, and she began providing child care at that time.⁸

4. In July 2008, a Wright County licensing investigator went to Vosberg's home in response to a complaint by a parent whose child was bitten by another child in Vosberg's care. The investigator issued a Correction Order finding 18 violations of licensing rules. The most significant violations were for failure to fence the back yard, as the Licensee had agreed to do in November 2007, and failure to adequately supervise children by allowing them outdoors without supervision. Other violations included many of the same violations for which the Licensee was previously cited in Hennepin County, including missing materials in the first aid kit, excessive water temperature, missing crib inspection

² Ex. 1 (10/25/01 pre-licensing visit).

³ *Id.* (Correction Order dated 11/14/02).

⁴ Testimony of Lisa Vosberg.

⁵ *Id.* (Correction Orders dated 1/30/04, 1/24/05, 1/26/06, 2/20/07, and 3/14/07).

⁶ Test. of L. Vosberg.

⁷ *Id.*; Ex. 1 at 3.

⁸ Test. of L. Vosberg.

forms, and hazardous materials (knives and scissors) and toxic substances (cleaning products and medications) in reach of children. In addition, Vosberg was permitting children to use areas not approved for child care; her home lacked outlet covers in the kitchen area; and diapers (dirty and clean) were accessible to children in care.⁹ Vosberg did not seek reconsideration of the Correction Order.¹⁰

5. On August 4, 2008, Wright County Human Services recommended to the Department that Vosberg's license be made conditional for one year.¹¹

6. On November 6, 2008, the Commissioner issued an Order of Conditional License. Based on the failure to supervise a child who had access to a water hazard, the failure to fence the back yard to protect children from the water hazard, and the repeated failures to complete required training, maintain documentation of crib safety inspections, and keep toxic and hazardous materials inaccessible to children, the Commissioner placed Vosberg's license on conditional status for one year. During these timeframe, she was required to comply with all applicable licensing statutes and rules. In addition, the Commissioner ordered Vosberg to submit plans for maintaining her home safely and for completing required annual training by November 21, 2008; to document that Vosberg made the Order of Conditional License available to all parents by November 21, 2008; to fence the outdoor play space by December 5, 2008; to submit monthly documentation of crib safety inspections beginning December 5, 2008; and to complete additional training by January 30, 2009.¹² The Licensee did not seek reconsideration of the Order of Conditional License.¹³

7. The Licensee failed to fence the yard as required by the Order of Conditional License. On February 13, 2009, the Wright County Licensing Investigator issued a correction order based on this failure.¹⁴ The Licensee did not seek reconsideration of the Correction Order.¹⁵

8. During a relicensing visit on February 18, 2009, the licensing worker issued a correction order finding four violations, for failure to document notice to one parent that the Licensee carried no liability insurance; a missing emergency medical authorization form for one child; incomplete information on crib safety checklists; and failure to document fire and storm drills for August and October 2008.¹⁶ The Licensee did not seek reconsideration of the Correction Order.

⁹ Ex. 1 (Correction Order dated 7/25/08).

¹⁰ Test. of L. Vosberg.

¹¹ Ex. 1.

¹² Ex. 2.

¹³ Test. of L. Vosberg.

¹⁴ Ex. 7.

¹⁵ Test. of L. Vosberg.

¹⁶ Ex. 8; Ex. 10.

9. On March 5, 2009, the licensing worker issued another Correction Order for failure to complete the annual training requirement and failure to provide documentation that meals and snacks provided to children were nutritionally balanced.¹⁷ The Licensee did not seek reconsideration of this Correction Order.

10. On May 12, 2009, Wright County Human Services recommended to the Department that Vosberg's family child care license be revoked. Wright County's recommendation was based on the failure to fence the outdoor play area; the new violations documented in February and March 2009; and the failure to respond to the Order of Conditional License by sending the crib safety checklists to the County on a monthly basis and failing to submit documentation that parents had reviewed or had the opportunity to review the Order of Conditional License.¹⁸

11. On July 9, 2009, the Commissioner issued an Order of Revocation providing as follows:

Due to the serious and chronic nature of licensing violations; because you have failed to comply with the terms of the Order of Conditional License issued to you on November 6, 2008; because you have failed to fence your outdoor play space to protect children from a water hazard; because you have failed to maintain documentation of crib safety inspections; and, in order to protect the health, safety and rights of children receiving services in DHS-licensed programs, the Commissioner of the Department of Human Services is revoking your license to provide family child care.¹⁹

12. The Licensee filed a timely appeal of the Order of Revocation, and the Commissioner served the Notice and Order for Hearing on August 5, 2009.

13. The Licensee is currently providing child care for two children on a part-time basis, in addition to caring for three children of her own.²⁰

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2008).

¹⁷ Ex. 9.

¹⁸ Ex. 3.

¹⁹ Ex. 4.

²⁰ Test. of L. Vosberg.

2. If the commissioner finds that a license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the license holder. When issuing a conditional license, 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.²¹

3. If the commissioner finds that a license holder has not corrected the violations specified in the correction order or conditional license, the commissioner may impose a fine and order other licensing sanctions pursuant to section 245A.07.²²

4. The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules.²³ When applying sanctions authorized under this section, 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.²⁴

5. Before issuing, denying, suspending, revoking, or making a license conditional the commissioner shall evaluate information gathered under Minn. Stat. § 245A.04 and shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the license holder.²⁵

6. At a hearing regarding a licensing sanction, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.²⁶

²¹ Minn. Stat. § 245A.06, subd. 1 (2008).

²² *Id.*, subd. 3.

²³ Minn. Stat. § 245A.07, subd. 3 (2008).

²⁴ *Id.*, subd. 1 (2008).

²⁵ Minn. Stat. § 245A.04, subd. 6 (2008).

²⁶ Minn. Stat. § 245A.08, subd. 3.

7. The Commissioner has demonstrated reasonable cause to revoke the license, and the license holder has failed to demonstrate that she was in full compliance with licensing laws and rules.

8. Based on the nature, chronicity, and severity of the violations, and the potential effect of the violations on persons served by the program, revocation of the license is appropriate.

9. The Memorandum attached hereto is incorporated herein by reference.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services affirm the order revoking the family child care license of Lisa Vosberg.

Dated: October 14, 2009

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

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 these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not issue a final decision 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. 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. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164 (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. 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.

MEMORANDUM

The Licensee does not dispute that she has a chronic history of failing to comply with licensing rules and statutes. She argues that in the past she did not take the licensing requirements seriously enough, but she now understands that she would have to conduct her business more professionally. The Licensee would like another chance to demonstrate her willingness to comply.

The most serious violation is the failure to fence the yard as required by the Order of Conditional License. The licensing rule regarding outdoor play space provides, in relevant part, as follows:

There must be an outdoor play space of at least 50 square feet per child in attendance, adjacent to the residence, for regular use, or a park, playground, or play space within 1.500 feet of the residence. On-site supervision must be provided by a caregiver for children of less than school age when play space is not adjacent to the residence. Enclosure may be required by the agency to provide protection from rail, traffic, water, or machinery hazard.²⁷

The Licensee insists that she does not understand why the Department would require her to provide a fenced outdoor play space, when she could use a playground adjacent to one of the ponds, or her front yard, as a play area. She does not believe it makes sense to require her to fence her back yard. The Licensee's yard (both front and back) is open to two large, nearby water hazards. It is reasonable of the Department to require her to provide a fenced play area for children in care, in order to minimize the chances that a child might wander out of the yard, fall into open water, and drown. The Licensee agreed to fence her yard before the license was issued; the Order of Conditional License obligated her to do so by December 5, 2008; and almost one year later, she has still not done it. At the hearing the Licensee was still hesitant to commit to installing a fence. Her hesitation to do so is inexplicable on this record.

The Licensee has chronically violated the same licensing rules over and over again, ranging from failure to complete required training to failure to keep the hot water in her home below the temperature set by rule. Moreover, the Licensee's lack of response to the Order of Conditional Licensure suggests the Licensee does not believe compliance is important. The Administrative Law Judge has no choice but to conclude that based on the nature, chronicity, and

²⁷ Minn. R. 9502.0425, subp. 2 (2007).

severity of the violations, and the potential effect of the violations on persons served by the program, revocation of the license is the appropriate remedy.

K.D.S.