

	Link to Final Agency Decision
	OAH Docket No. 12-1800-20846-2

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

In the Matter of the Temporary Immediate Suspension of the License of Mary Sirek to Provide Family Child Care	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter was scheduled to be heard by Administrative Law Judge Steve M. Mihalchick on October 5, 2009, in the Polk County Attorney's Office Conference Room, in Crookston, Minnesota.

Wayne H. Swanson, Attorney at Law, PO Box 555, Crookston, MN 56716 appeared on behalf of the Licensee, Mary Sirek, who was also present.

Larry Orvik, Assistant Polk County Attorney, appeared on behalf of Polk County Social Services (the County) and the Minnesota Department of Human Services (the Department or DHS). Also present were the Family Child Care Licensor, the Licensing Supervisor, and the Child Protection Worker involved in this matter.

At the beginning of the hearing, the parties entered an oral stipulation that the pending maltreatment investigation of a member of the Licensee's family had resulted in a finding of unsubstantiated maltreatment and, therefore, no disqualification of that person would be issued. It was also agreed that the Temporary Immediate Suspension was no longer required. The Licensee stated that, nevertheless, she no longer wished to provide family child care as she had for 21 years and would submit the documents required to terminate her license to the Family Child Care Licensor that day.

The contested case record was closed on October 5, 2009.

Based on the recorded oral stipulation and the documents in the contested case record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 1, 2009, the Department issued an Order of Temporary Immediate Suspension to the Licensee, which was personally served upon the Licensee that day. The Licensee ceased operation of her Family Child Care as required by the Order.

2. On September 2, 2009, the Licensee filed a timely appeal of the Order of Temporary Immediate Suspension. By letter dated September 17, 2009, a Notice of and Order for Hearing was served on the Licensee and her Counsel setting the hearing to take place on October 5, 2009.

3. The Order of Temporary Immediate Suspension stated that it was based upon an August 26, 2009, report regarding the Licensee's home that was still under investigation at the time and that due to the serious nature of the matter under investigation, the County could not ensure the safety of persons served by the program. Therefore, the Temporary Immediate Suspension was necessary.

4. The report and investigation involved a member of the Licensee's family, not the Licensee herself. The Child Protection investigation has now been completed with a determination of "unsubstantiated maltreatment." The family member was not given a disqualification. There is no intent by the County or Department to impose any licensing sanction upon the Licensee.

5. The Licensee has decided to stop doing Family Child Care and intended to meet with the Family Child Care Licensur on October 5, 2009, after the hearing to prepare and submit the appropriate documents to voluntarily terminate her license immediately.

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction to consider this matter pursuant to Minn. Stat. § 14.50 and 245A.07, subds. 2 and 2a.

2. The Department, through Polk County Social Services, gave proper and timely notice of the hearing and has complied with all procedural requirements of law and rule.

3. Under Minn. Stat. § 245A.07, subd. 2, if a license holder's actions or violations, or the actions of others, pose an imminent risk of harm to the health, safety, or rights of persons served by the license holder's program, the Commissioner must act immediately to temporarily suspend the license and inform the licensee by personal service.

4. Under Minn. Stat. § 245A.07, subd. 2a(a), if a license holder appeals an order immediately suspending a license, the scope of the resulting expedited hearing is limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order on any license sanction issued following the immediate suspension. The burden of proof in temporary immediate suspension hearings is limited to the Commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.

5. The Department demonstrated that reasonable cause existed on September 1, 2009, to believe that a family member in the Licensee's home posed an imminent risk of harm to the health, safety, or rights of the children served by the Licensee's child care program. However, due the results of the Child Protection investigation, there is no evidence that that risk of harm any longer exists.

6. The Order of Temporary Immediate Suspension should not remain in effect. There is no evidence of risk of harm and there is no intent by the County or Department to proceed with any further licensing sanction against the Licensee.

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

RECOMMENDATION

IT IS RECOMMENDED that the Order of the Department of Human Services temporarily immediately suspending the family child care license of Mary Sirek be **RESCINDED**.

Dated: October 12, 2009

s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) 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. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period,

the record will close. The Commissioner then has 10 working days to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, (651) 296-2701, 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.