

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

In the Matter of the Application by  
Sussie De Los Santos for Licensure as  
a Child Foster Care Provider

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on March 8, 2010, at the offices of the Freeborn County Human Services Department in Albert Lea. The hearing record closed at the conclusion of the hearing on March 8, 2010.

Erin M. O'Brien, Assistant Freeborn County Attorney, appeared on behalf of the Department of Human Services (Department) and the Freeborn County Department of Human Services (Local Agency, County). Sussie De Los Santos (Applicant, Appellant) appeared on her own behalf, without counsel.

**STATEMENT OF ISSUE**

Whether the disqualification of Sussie De Los Santos, resulting from her conviction of the Gross Misdemeanor of Possession of Stolen Property, should be set aside, and, if the disqualification is set aside, whether the Applicant should be granted a Child Foster Care License?

The Administrative Law Judge recommends that the disqualification against Ms. De Los Santos not be set aside, and that her application for Child Foster Care be denied.

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

**FINDINGS OF FACT**

1. Sussie De Los Santos is a 62-year-old grandmother and great-grandmother from Albert Lea, Minnesota. In March 2009, the Appellant filed an application for child foster care licensure to serve as an emergency foster care provider for her great-grandchildren (two girls, ages four (in April 2010) and two). The girls live part of the time with their mother and part of the time with foster parents in Dakota

County, Minnesota. The father of the girls for whom Ms. De Los Santos seeks foster care licensure is the Applicant's grandson.<sup>1</sup>

2. In connection with her application for foster care licensure, the Applicant filled out an "Individual Fact Sheet" form.<sup>2</sup> Page two of that form asks applicants to respond to the following question:

"REGARDLESS OF HOW LONG AGO, HAVE YOU OR YOUR FAMILY MEMBERS INCLUDING CHILDREN EXPERIENCED ANY OF THE FOLLOWING PROBLEMS:

...(Yes or No) Been charged, and/or adjudicated with any offense even if dismissed.

3. Ms. De Los Santos checked the box next to the word "No" in answer to the above-specified question.

4. The Applicant's negative answer to the question specified in the preceding Finding was false. On November 17, 2000, the Applicant was detained and arrested for shoplifting cordless telephones at a Target Store in Mankato, MN. Specifically, Ms. De Los Santos was observed selecting a cordless telephone, placing it in her shopping cart, concealing the cordless telephone under her coat, and placing a young child (her 4 or 5-year-old grandson) on top of the concealed merchandise. She was later detained by Target security personnel, the stolen merchandise was recovered, and the Applicant admitted taking the cordless telephone and other items listed in Target's security report about the incident.<sup>3</sup>

5. In connection with the incident detailed in the preceding Finding, Ms. De Los Santos was charged with one count of gross misdemeanor theft and one count of possession of stolen property.<sup>4</sup>

6. On April 16, 2001, the Applicant pleaded guilty to the Gross Misdemeanor Count of Possession of Stolen Property, and the theft charge was dismissed.<sup>5</sup>

7. On May 17, 2001, Sussie De Los Santos was sentenced in Blue Earth County District Court for Gross Misdemeanor Possession of Stolen Property. She was sentenced to serve ten days in jail (in her home county of Freeborn), 15 days of "Sentenced to Service" and community service of 40 hours, all before October 1, 2001, and to pay \$227.00 in fine, surcharges and law library fees before October 1, 2001. She was also sentenced to probation for two years, which probation was discharged successfully.<sup>6</sup>

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<sup>1</sup> Testimony of Applicant.

<sup>2</sup> Exhibit 7.

<sup>3</sup> Exhibit 2.

<sup>4</sup> *Id.*

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 3.

8. The 4 or 5-year-old grandson who was placed by Ms. De Los Santos on top of her overcoat, to help conceal the cordless phone she had shoplifted, is now a juvenile who has “issues with theft.”<sup>7</sup>

9. On page three of the Individual Fact Sheet, the Applicant checked “Yes” to a question of:

“REGARDLESS OF HOW LONG AGO, REGARDLESS OF WHERE YOU WERE LIVING, HAVE YOU:

Been charged and/or convicted of any offense, even if dismissed?”

The form asked for an explanation if “Yes” had been checked, and the Applicant failed to provide one.<sup>8</sup>

10. In answer to another question, on page three of the Individual Fact Sheet Form, which asks whether the Applicant had ever been involved in a probation program, the Applicant answered “No”.<sup>9</sup> This was a false statement.

11. Also on the Individual Fact Sheet filled out on March 19, 2009 in connection with her Application for Child Foster Care Licensure, Ms. De Los Santos answered “single/divorced” in response to a question that required her to list a response, under the category of “Relationship History”. The specific question asked for Ms. De Los Santos to declare “Current Marriage/Significant Relationship to:” and to fill in the name of the individual.<sup>10</sup>

12. At about the same time that Ms. De Los Santos claimed in writing that she had no significant relationship, she was, in fact, engaged in a significant relationship with a boyfriend. She continues to be in that relationship. Although the boyfriend does not live at the Applicant’s residence, it is reasonable to assume he will have contact with children in the Applicant’s household.<sup>11</sup>

13. When asked orally by Pamela Watson, Foster Care Licensur for Freeborn County, about whether she had any significant relationships, even though she was divorced, the Applicant replied that she did not. This was another false statement.<sup>12</sup>

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<sup>7</sup> Testimony of Applicant.

<sup>8</sup> Exhibit 7.

<sup>9</sup> *Id.*

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

<sup>11</sup> Testimony of Applicant and Testimony of Pamela Watson.

<sup>12</sup> Testimony of Pamela Watson.

14. The Applicant did not reveal her arrest, conviction, and probation for Gross Misdemeanor Possession of Stolen Property (the shoplifting offense) because she believed it had happened so long ago that it would not be revealed in a search of her records. She thought such a search would go back only five or seven years. She did not reveal the existence of her boyfriend because he does not live with her and is not a member of her family, and she thought the inquiry was limited to such people. After she was informed the boyfriend was a person she should have identified, Ms. De Los Santos supplied his name and agreed to a background check on him, which check revealed no concerns.<sup>13</sup>

15. After receiving notice that she was disqualified from providing foster care service for a period of ten years after her discharge from probation for Gross Misdemeanor Possession of Stolen Property, until sometime in 2013, the Applicant filed a Petition for Reconsideration and Set Aside with the Department. On December 1, 2009, the Department issued a Notice of Disqualification-Not Set Aside and Order of Denial, which Notice and Order ruled that the Petition for Reconsideration had been denied and that the disqualification against Ms. De Los Santos for her Gross Misdemeanor Possession of Stolen Property conviction had not been set aside and, as a result, that her Application for Foster Child Care Licensure was denied. Ms. De Los Santos filed a timely appeal from the December 1, 2009, Notice and Order, and this hearing process followed.

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

### **CONCLUSIONS**

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

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements.

3. Sussie De Los Santos has failed to prove by a preponderance of the evidence that the disqualification against her for her conviction of Gross Misdemeanor Possession of Stolen Property should be set aside.

4. As a result of the failure by the Applicant to prove that her disqualification should be set aside, it is appropriate to deny her Application for Child Foster Care Licensure.

Based on the Conclusions, the Administrative Law Judge makes the following:

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<sup>13</sup> Testimony of Applicant. Exhibit 5. Testimony of Pamela Watson.

## RECOMMENDATION

**IT IS RECOMMENDED** that the disqualification of Sussie De Los Santos from providing Child Foster Care Licensure Services **NOT BE SET ASIDE**, and that her Application for Child Foster Care Licensure be **DENIED**.

Dated this 15th day of March, 2010

s/Richard C. Luis

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RICHARD C. LUIS  
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 Cal Ludeman, Commissioner of the Department of Human Services, P. O. Box 64998, St. Paul, MN 55164-0998 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.

## MEMORANDUM

The Applicant's conviction for Gross Misdemeanor Possession of Stolen Property under Minn. Stat. § 609.53, results in a ten-year period of disqualification from providing any services for which licensure is required under the Minnesota Human Services Laws. In this case, the period of disqualification will not expire until 2013, ten years after completion of the Applicant's probation period.

Under Minn. Stat. § 245C.22, subds. 3 and 4, an individual in the position of the Applicant may have their disqualification set aside if the individual has submitted sufficient information to demonstrate that she does not pose a risk of harm to any person served under the license. The considerations include the nature of the event that led to the disqualification, the vulnerability of persons served by the program for which the applicant seeks licensure, and any other information relevant to the reconsideration.

Among the relevant information considered by the Administrative Law Judge in arriving at his Recommendation, he is persuaded most by the Applicant's apparent lack of honesty in the application process. Specifically, Ms. De Los Santos made a false statement when she indicated that she had never been charged or adjudicated with any offense. In fact, she had a Gross Misdemeanor Possession of Stolen Property conviction on her record, a conviction that still disqualifies her from participation in foster care licensure. In her Request for Reconsideration,<sup>14</sup> Ms. De Los Santos admitted:

"I did not disclose information about this incident because I did not think record checks went back more than seven years. My disqualifying event was more than eight years ago,..."

The problem with Ms. De Los Santos's response in the preceding paragraph is that it ignores the plain and obvious request to report any offenses, regardless of how long ago they occurred.<sup>15</sup>

In addition, Ms. De Los Santos did not disclose the existence of her boyfriend, a person who certainly is foreseeable as someone who could have contact with foster children, and on whom it would be appropriate to search for background information. The Applicant's excuse for not revealing the identity of her boyfriend to Ms. Watson, when asked by the Licensor to state anyone who may be in significant contact with the foster children, was that she thought Ms. Watson meant only people who live with or are related to her (the Applicant). The Administrative Law Judge finds this response to be less than completely credible.

She also answered falsely to a question asking whether she had ever been on probation.

It is noted further that the Applicant has used one of her grandchildren to abet the crime of shoplifting, which act suggests she is a poor role model to children. That the grandchild who was used by Ms. De Los Santos to abet her shoplifting now has "issues with theft" suggests that the poor example set by Ms. De Los Santos may have helped to mold the character of her grandson, but such a causal connection is too speculative to have influenced the Judge's Recommendation.

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<sup>14</sup> Exhibit 5.

<sup>15</sup> Exhibit 7.

When viewed as a whole, the application process demonstrates low credibility on the part of Sussie De Los Santos, and the Administrative Law Judge believes it is inappropriate now to set aside her disqualification and grant her a Child Foster Care License.

**R. C. L.**