

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 Tiffany
Hemmelman

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on March 19, 2010, in the Winona County Office Building, 202 West Third Street, Winona, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Susan E. Cooper, Assistant Winona County Attorney, appeared for Winona County Human Services (County) and the Minnesota Department of Human Services (Department). The Licensee, Tiffany Hemmelman, appeared on her own behalf without counsel.

STATEMENT OF ISSUE

The issue presented in this case is whether the family child care license of Tiffany Hemmelman should be revoked because she failed to comply with certain conditions of her conditional license?

The Administrative Law Judge concludes that the Licensee failed to comply by November 12, 2009, with certain aspects of the Order for Conditional License. Specifically, by that date, she failed to submit a detailed written plan for the County's approval addressing how she would ensure that background studies would be submitted as required and all caregivers would complete all required training prior to caring for children. She also failed to provide documentation to the County by that date showing that all parents of children in care had either received a copy of the Conditional Order or had been afforded an opportunity to review it. However, the Administrative Law Judge recommends that the Commissioner's Order of Revocation be rescinded because the Licensee has since complied with these requirements and there is no evidence that any substantive violation of child care laws or rules has occurred.

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

FINDINGS OF FACT

1. Tiffany Hemmelman has been a licensed family child care provider since September 2006. Her license was last renewed in September 2008. She currently holds a Class C-1 license.¹

2. The only other person authorized to provide care under the Licensee's license is her husband, Jason Hemmelman. During her original licensing visit and her relicensing visit with County licensing workers, the Licensee stated that she would use her husband if needed and would not be using other substitutes.²

3. On June 30, 2007, August 3, 2007, and September 4, 2008, the Licensee received correction orders from the County. The County agrees that the Licensee took appropriate action to comply with those orders.³

4. On June 29, 2009, Nancy Prodzinski, the County licensing worker assigned to the Licensee, received a report that the Licensee had gone to Las Vegas during the week of June 15, 2009, and had left substitutes in charge of her child care operation while she was gone. The County had no prior knowledge of this situation.⁴

5. On July 1, 2009, Ms. Prodzinski made an unannounced visit to the Licensee's child care home to discuss the report she had received. The Licensee told her that the substitutes she used were friends, and one had occasionally helped in the child care before. She indicated that neither of the substitutes had had training regarding sudden infant death syndrome or shaken baby syndrome. The Licensee was not sure whether they had had first aid or CPR training. Ms. Prodzinski issued a correction order to the Licensee regarding the situation.⁵

6. Ms. Prodzinski ultimately determined that, during the week of June 15, 2009, the Licensee had gone on a trip out of state and left her day care operation in charge of two women who had not had required training or background checks before caring for the children.⁶

7. The Licensee subsequently provided a background check authorization form to the County relating to one of the individuals she had used as a substitute in June 2009. The results of that background check show that no concerns were noted for that individual.⁷ The Licensee did not submit a

¹ Testimony of Nancy Prodzinski.

² Exhibit 2; Testimony of N. Prodzinski.

³ Testimony of N. Prodzinski.

⁴ Testimony of N. Prodzinski.

⁵ Exhibits 1, 3; Testimony of N. Prodzinski.

⁶ Exhibits 1, 2; Testimony of N. Prodzinski.

⁷ Testimony of N. Prodzinski, Licensee.

background check authorization form for the other person because she does not intend to use that individual in the future.⁸

8. On July 6, 2009, the County recommended to the Department of Human Services that the Licensee's child care license be placed on conditional status and a fine be imposed for the violations that occurred. Ms. Prodzinski notified the Licensee of the recommendation.⁹

9. On October 27, 2009, the Department issued an Order to Forfeit a Fine in the amount of \$1,000 and an Order of Conditional License to the Licensee. The fine was based upon the determination that laws and rules governing family child care had been violated during the week at issue because the two substitute caregivers had provided care without completed background studies; the two substitute caregivers had cared for infants before completing training on reducing the risk of sudden infant death syndrome and shaken baby syndrome; and no one was present in the home who had been trained in first aid and CPR. No deadline was specified in the Order for payment of the fine. The Department also placed the Licensee's child care license on conditional status for one year due to these violations. The Order specified the following terms under which the Licensee could continue to operate with the conditional license:

1. You follow and comply with all applicable Minnesota Rules and Laws.
2. No variances to age distribution or capacity will be granted during the conditional period.
3. You submit and comply with a detailed written plan for how you will ensure that all caregivers complete all required training prior to caring for children. The plan must be submitted to Winona County Department of Human Services **by November 12, 2009**, and must be approved by Winona County.
4. You submit and comply with a detailed written plan for how you will ensure that background studies are submitted as required. The plan must be submitted to Winona County Department of Human Services **by November 12, 2009**, and must be approved by Winona County.
5. You must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order of Conditional License. You must

⁸ Testimony of Licensee.

⁹ Ex. 1; Testimony of N. Prodzinski.

obtain parent signatures for each currently enrolled child, indicating they have either received a copy of the conditional order or had an opportunity to review the conditional order. You must provide this documentation to Winona County Department of Human Services **by November 12, 2009**. For new families, you must submit documentation of compliance with this term to Winona County Department of Human Services **within 5 days of any child's admission** to your child care program.¹⁰

The Order further stated that “[f]ailure to comply with the stipulations of your conditional license or any other provisions of Minnesota Rules and Laws may result in revocation of your license.”¹¹

10. A copy of the Order to Forfeit a Fine and Order of Conditional License was sent to the Licensee by certified mail. The Licensee’s husband signed for receipt of the mailing on October 31, 2009.¹²

11. There is no evidence that the Licensee appealed the imposition of the fine or conditional license.

12. The Licensee overlooked the requirements set forth in paragraphs 3 through 5 of the Order of Conditional License that detailed plans be submitted to the County by November 12, 2009, for approval regarding background checks and training for substitutes, along with documentation that day care parents had reviewed the Order or had been given the opportunity to do so.¹³

13. When Ms. Prodzinski did not receive the written plans referenced in paragraphs 3 and 4 or the parent documentation referenced in paragraph 5 of the Order of Conditional License by November 12, 2009, she contacted the Department to find out what the next step should be. The Department advised her to file a recommendation for revocation.¹⁴

14. On November 30, 2009, Ms. Prodzinski sent a letter to the Department recommending revocation of the Licensee’s license based on her failure to comply with these terms of her conditional license.¹⁵ At the same time, Ms. Prodzinski notified the Licensee that the County was recommending revocation of her license based on her failure to comply with the conditional license.¹⁶

¹⁰ Exhibit 3 at 4-5 (emphasis in original).

¹¹ Exhibit 3 at 5.

¹² Exhibit 8.

¹³ Testimony of Licensee; Exhibit 7.

¹⁴ Testimony of N. Prodzinski.

¹⁵ Exhibit 4; Testimony of N. Prodzinski.

¹⁶ Exhibit 5; Testimony of N. Prodzinski.

15. After the Licensee received a copy of Ms. Prodzinski's letter recommending revocation, she called Ms. Prodzinski to ask what she could do. Ms. Prodzinski told the Licensee she could file an appeal if the Department issued an order to revoke her license.¹⁷ There is no evidence that they discussed providing the documents required by the conditional license.

16. On January 6, 2010, the Department issued a Corrected Order of Revocation of the Licensee's child care license. The Order indicated that the Licensee's child care license would be revoked because she had not submitted written plans detailing how she would ensure that all caregivers submit background studies and complete required training prior to caring for children or the required documentation from parents of children in care. The Department also noted that the Licensee had not paid the fine or made arrangements to do so.¹⁸ The Order was sent to the Licensee by certified mail.

17. The Licensee filed a timely request for a hearing on the proposed revocation by letter dated January 8, 2010. In the letter, the Licensee indicated that she was not aware of the stipulations of the conditional license and "would appreciate the chance to submit, in writing, the action items . . . which I was ordered to complete in order to continue operating under the conditional license." She indicated that "an oversight on my part allowed the occurrences and I would appreciate a chance to correct the oversights and comply with all Minnesota Rules and Laws in the future."¹⁹

18. After accumulating the necessary funds, the Licensee paid the fine imposed by the Order of Conditional License in full in February 2010.²⁰

19. At the hearing, the Licensee provided letters from parents of all four children in her care certifying that they had received or had a chance to review and understand the Order of Conditional License.²¹ She also provided the following written plans:

Plan to Ensure All Caregivers Have Proper Training

I will ensure that all caregivers caring for children in my home should I be absent complete the proper training prior to caring for children. To do this I will be certain of the requirements for substitutes by following the Minnesota rule and through follow-up with Winona County daycare licensors. I will also have the

¹⁷ Testimony of N. Prodzinski.

¹⁸ Ex. 6; Testimony of N. Prodzinski.

¹⁹ Ex. 7; Testimony of N. Prodzinski.

²⁰ Testimony of Licensee.

²¹ Testimony of Licensee; Exhibit 11.

training approved by Winona County daycare licensors prior to using the substitute.²²

Plan to Ensure Background Checks are Completed

I will ensure each caregiver that is present in my home fill out and submit a background check to Winona County before caring for children in my home. All required paper work will be filled out, submitted, and approved by Winona County prior to the caregiver providing care.²³

20. The Licensee did not provide the above plans and documentation until the hearing based on her understanding from Ms. Prodzinski that nothing could be done regarding the Order of Revocation until the appeal hearing.²⁴

21. As of the date of the hearing, the Licensee had complied with all of the requirements of the Order to Forfeit a Fine and the Order of Conditional License.

22. There is no evidence that the Licensee has used any substitutes in her child care since June 2009 or that she has otherwise violated any applicable rules or laws applying to her child care.

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. §§ 14.50 and 245A.07, subd. 2a (2008).

2. If a license holder has not corrected the violations specified in a conditional license, the Commissioner of Human Services may order other licensing sanctions.²⁵ When applying sanctions, 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.”²⁶

3. There is no evidence that the Licensee has failed to correct violations noted in the Commissioner’s October 27, 2009, Order of Conditional License, or has committed any violations of the laws or rules applicable to family child care since the week of June 15, 2009.

²² Exhibit 10.

²³ Exhibit 10.

²⁴ Testimony of Licensee.

²⁵ Minn. Stat. § 245A.06.

²⁶ Minn. Stat. § 245A.07, subd. 1.

4. It is undisputed that the Licensee failed to comply with certain recordkeeping requirements imposed by the terms of the October 27, 2009, Order of Conditional License. Specifically, the Licensee did not submit written plans to the County for approval by November 12, 2009, detailing how she would ensure that all caregivers complete all required training prior to caring for children and submit the required background studies. She also did not provide documentation to the County by November 12, 2009, confirming that parents of currently enrolled children had either received a copy of the conditional order or had been afforded an opportunity to do so.

5. By February 2010, the Licensee had paid the fine required under the Commissioner's October 27, 2009, Order to Forfeit a Fine.

6. By the date of the hearing, the Licensee had complied with all of the terms of the October 27, 2009, Order of Conditional License.

7. The Memorandum attached hereto is incorporated in these Conclusions 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 RESCIND the Order of Revocation.

Dated: April 19, 2010

s/Barbara L. Neilson

BARBARA L. NEILSON
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

It is apparent from the record that the Licensee did not comply fully with the terms of her conditional license. Specifically, she failed to submit detailed plans for County approval by November 12, 2009, regarding how she would ensure that all caregivers submit authorization for background checks and complete all required training prior to caring for children, and she failed to provide the County with documentation that parents of children in her care had had an opportunity to review the Order of Conditional License. The Licensee testified that she overlooked these requirements. She received the impression during a later conversation with the County licensing worker that there was nothing she could do until the hearing was held on the Order for Revocation. She provided the missing plans and documentation at the hearing, and she also paid the \$1,000 fine imposed by the Commissioner in February 2010.

It is obviously important that license holders read and understand all of the terms of any conditional license, and take the requirements that are set forth seriously. The preparation of written plans regarding training and background checks for substitutes provides some assurance to the State and County that the Licensee is aware of the requirements set forth in the statute and rules governing family child care and will take steps to comply with them. And requiring that the Licensee provide documentation that parents of day care children received notice of the conditional license ensures that parents are aware of the issues that gave rise to imposition of the conditional license and will be vigilant in ensuring that the Licensee continues to comply.

However, under the circumstances of this case, it is recommended that the Order of Revocation be rescinded. The Licensee has taken the necessary steps to comply with all of the requirements of the conditional license. The County did not express any disapproval of the plans or documentation provided by the Licensee at the hearing. More importantly, the Licensee's shortcomings were related only to paperwork requirements--there is no evidence that she has used any substitute caregivers since the issuance of the conditional license without fully complying with the applicable laws and rules. In addition, there is no suggestion that parents of the children in her care were unaware of the conditional license prior to the time she submitted the documentation. Considering the nature, chronicity, and 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, the Administrative Law Judge recommends that the Commissioner rescind the Order of Revocation.

B. L. N.