

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary Immediate  
Suspension of the Family Child Care  
License of Angela Thostenson

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

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) at 10:00 a.m. on May 12, 2010, at the Freeborn County Human Services Building, Albert Lea, MN 56007. Erin O'Brien, Assistant County Attorney, appeared on behalf of Freeborn County Human Services (County) and the Department of Human Services (Department). Angela Thostensen (Licensee) appeared on her own behalf. The record closed on May 12, 2010, at the conclusion of the hearing.

**STATEMENT OF ISSUE**

Is there reasonable cause to believe there is an imminent risk of harm to the health, safety or rights of children in Licensee's family child care program because of a domestic assault which occurred at the daycare home involving Licensee's 17-year-old son and Licensee's boyfriend?

The ALJ finds reasonable cause to believe there is imminent risk of harm to the safety or rights of children in Licensee's child care, and therefore, the temporary immediate suspension of the Licensee's child care license should be affirmed.

Based upon all of the proceedings herein, the ALJ makes the following:

**FINDINGS OF FACT**

1. The Licensee is licensed by the Department through Freeborn County Human Services. Licensee has been licensed to provide child care since November 2008; approximately one and one-half years. Licensee provides child care services 24 hours per day, seven days per week.<sup>1</sup> She was providing child care to five children on April 13, 2010, when an altercation occurred at the child care home.<sup>2</sup> Licensee and Russell Besco have one child in common.

2. On April 13, 2010, D.T., Licensee's 17-year-old son was on the family computer in the child care home. D. T. directed profanity at his mother. Russell Besco, Licensee's boyfriend, became upset and asked D.T. to leave. As D.T. was heading

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<sup>1</sup> Testimony (Test.) of Stacy Heusinkveld, Freeborn County Licensing Official.

<sup>2</sup> Test. of Ronald Wacholz, Freeborn County Deputy Sheriff.

towards the door, Besco pushed D.T. out of the door. Outside, Besco put D.T. in a headlock. D.T. attempted to strike Besco with his fists and ended up on top of Besco. D.T. proceeded to strike Besco about the face multiple times.<sup>3</sup> The aggression between the two was equal.<sup>4</sup> The children heard the profanity but did not see the altercation which occurred primarily outside.<sup>5</sup> Both D.T. and Besco were residing in the childcare home on the date of the fight.

3. The local police were called. At about 10:30 p.m., Albert Lea Police Officer Stockwell responded to the call. He was joined by Freeborn County Deputy Sheriff Wacholz. Officer Stockwell interviewed D.T. and Licensee at the home. Deputy Wacholz interviewed Besco.<sup>6</sup> Later that evening, Officer Stockwell interviewed D.T. at the hospital where D.T. and Besco were being treated for injuries. Besco sustained a fractured left eye socket.<sup>7</sup> D.T. was treated for a fractured hand.<sup>8</sup> Both Besco and D.T. were charged with Domestic Assault. D.T. was not returned to the home, but rather was taken to an out-of-home placement.<sup>9</sup> Licensee indicated that D.T. was not welcome to return to the child care home.<sup>10</sup>

4. D.T. has a temper and has broken things such as doors at the home and has punched holes in the walls. D.T. was also expelled from school because of violent conduct.<sup>11</sup>

5. On April 14, 2010, Officer Stockwell reported the incident to Ms. Heusinkveld.<sup>12</sup> On the same day, Ms. Heusinkveld wrote the Department recommending a temporary immediate suspension of Licensee's daycare license based on the criminal charges resulting from altercation. Ms. Heusinkveld also wrote that a child protection worker would conduct an investigation.<sup>13</sup>

6. On April 14, 2010, the Department accepted the County's recommendation and issued an Order of Temporary Immediate Suspension. The Order advised Licensee of the reasons for the suspension and her right to an expedited hearing.<sup>14</sup>

7. On April 15, 2010, Licensee appealed the suspension order and requested a contested hearing. Licensee also reiterated that D.T. was no longer

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<sup>3</sup> Ex. 1; Besco statement to Wacholz.

<sup>4</sup> Ex. 1; Licensee statement to Stockwell, Ex. 3.

<sup>5</sup> *Id.*, Test. of Stockwell.

<sup>6</sup> Ex. 1; Supplement of Deputy Wacholz.

<sup>7</sup> Ex. 4; Juvenile Criminal Complaint, filed April 15, 2010.

<sup>8</sup> Test. of Heusinkveld and Stockwell.

<sup>9</sup> Ex. 1; Supplement of Officer Stockwell.

<sup>10</sup> Test. of Licensee.

<sup>11</sup> *Id.*, Test. of Besco, Ex. 1; Supplement of Officer Stockwell.

<sup>12</sup> Ex. 1; April 14, 2010 email from Stockwell to Heusinkveld.

<sup>13</sup> Ex. 1 Heusinkveld letter to the Department.

<sup>14</sup> Ex. 2.

residing at the child care home. D.T. is currently in a group detention home. Upon his release, D.T. will reside with his father.<sup>15</sup>

8. On April 15, 2010, D.T. was charged with Third Degree Assault involving substantial bodily harm, a felony, and a misdemeanor Domestic Assault charge.<sup>16</sup> On April 16, 2010, the juvenile court judge issued a no-contact order prohibiting D.T. from having any contact with Besco.<sup>17</sup>

9. On April 29, 2010, Besco pled guilty to a misdemeanor charge of Disorderly Conduct. The judge issued a no-contact order prohibiting Besco from having any contact with D.T.<sup>18</sup> The judge ordered a pre-sentence investigation and scheduled sentencing for June 3, 2010.<sup>19</sup> Besco continues to reside in the child care home.

10. On April 15, 2010, Jerry Kerber, Director, Division of Licensing, MDHS issued a Notice of and Order for Hearing, scheduling the matter for a contested hearing on May 12, 2010.<sup>20</sup>

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

### CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subds. 2, 2a, 3, and 14.50.

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

3. The Commissioner shall act immediately to temporarily suspend a license if a “license holder’s actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.”<sup>21</sup>

4. At a hearing appealing an order of Temporary Immediate Suspension, the burden of proof is on the Department to demonstrate that “reasonable cause exists to believe that the license holder’s actions, or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the

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<sup>15</sup> Ex. 3.

<sup>16</sup> *Id.*

<sup>17</sup> Ex. 5.

<sup>18</sup> Ex. 7.

<sup>19</sup> Ex. 6.

<sup>20</sup> Notice of and Order for Hearing.

<sup>21</sup> Minn. Stat. § 245A.07, subd. 2, (2008). Unless otherwise noted, statutes are cited to the 2008 edition.

program.”<sup>22</sup> The Department may demonstrate reasonable cause by submitting statements, reports or affidavits to substantiate the allegations.<sup>23</sup>

5. The Administrative Law Judge shall recommend “whether the immediate suspension should remain in effect pending the Commissioner’s final order regarding a final licensing sanction.”<sup>24</sup>

6. Given the profanity and pushing inside the child care home between Besco and D.T., the fighting and serious injury resulting from the altercation, and the criminal charges resulting therefrom, the Department has demonstrated there is reasonable cause to believe there is an imminent risk of harm to the children in Licensee’s care. The County has a legitimate concern as to whether Licensee can assure the health and safety of the children in her program.

Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Order of Temporary Immediate Suspension of the Licensee’s family child care license be AFFIRMED.

Dated: May 21, 2010

s/Manuel J. Cervantes  
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MANUEL J. CERVANTES  
Administrative Law Judge

Reported: Digitally Recorded

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge’s Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommendation in which to file any exceptions to the report with the Commissioner.<sup>25</sup> Parties should contact the office of Cal Ludeman, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, 651-431-2907 to find out how to file exceptions.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

<sup>22</sup> Minn. Stat. § 245A.07, subd. 2a(a).  
<sup>23</sup> Minn. Stat. § 245A.08, subd. 3.  
<sup>24</sup> Minn. Stat. § 245A.07, subd. 2a(a).  
<sup>25</sup> Minn. Stat. §§ 14.61 and 245A.07, subd. 2a(b).

## MEMORANDUM

During an expedited hearing regarding a temporary immediate suspension, the Department has the burden of showing that there is reasonable cause to believe that an action by the license holder, or as in this case, the action of other individuals in the household, pose an imminent risk of harm to the health, safety, or rights of persons in her care. This is a low standard which is intended to assure the protection of vulnerable children until there can be a full investigation and final determination after a full hearing.

The County, acting for the Department, need only present reliable oral testimony and/or documentary evidence in support of a finding of reasonable cause. The County is entitled to rely on hearsay evidence linking the license holder, or others, to an act that puts children at risk of imminent harm. It is a modest standard, similar to a probable cause showing that must be made in criminal proceedings.<sup>26</sup>

In this case, the County presented documentary evidence: the juvenile court complaint charging D.T. with two counts of assault; one involving serious bodily harm, the District Court Register of Records verifying a misdemeanor conviction of Besco of Disorderly Conduct, the testimony of the licensing official, and the testimony of the investigating peace officers. The evidence in the record supports reasonable cause.

The fight between Besco and D.T. resulted in a serious injury to Besco, a fractured eye socket, and hence, resulted in a felony-level assault charge to D.T. Besco was convicted of a lesser misdemeanor charge of Disorderly Conduct. While it appears that D.T. is no longer in the child care home, Besco still is. Besco has not been sentenced yet. The judge ordered a presentence investigation. The presentence report as well as the information from child protection may assist the County in its deliberation whether to impose a license sanction or impose conditions subsequent to a full investigation and hearing.

The County expressed legitimate concerns about the profanity and pushing which occurred in the child care home. The ALJ agrees with Ms. Heusinkveld that participants in the program should not have to be subjected to this type of conduct. While the ALJ is empathetic to the serious injury sustained by Besco, the evidence is that the physical aggression was equal between D.T. and Besco. The ALJ questions Besco's judgment to use pushing and fighting in response to profanity. This conduct not only raises serious concerns about Besco's temperament and judgment, but also reflects upon Licensee's ability to assure the safety of the children in her care.

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<sup>26</sup> See, e.g., *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 897, 903-04 (1976).

The ALJ, at this stage of the process, is not charged with assessing the relative credibility of conflicting testimony or making a final determination on all facts. The ALJ need only determine whether the County has provided sufficient evidence to maintain the suspension. Based on the current record, the ALJ concludes there is sufficient evidence and recommends that the suspension continue pending a final determination by the Commissioner.

**M. J. C.**