

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 Mary Gable	FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION
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This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on July 7, 2010, in the Rice County Government Services Building, 320 NW Third Street, Faribault, MN 55021. The record closed at the conclusion of the hearing that day.

Catherine M. Miller, Assistant Rice County Attorney, 218 NW Third Street, Faribault, Minnesota 55021, appeared on behalf of Rice County Human Services (County) and the Minnesota Department of Human Services (Department). Mary Gable (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the temporary immediate suspension of the family child care license of Mary Gable remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in her care?

The Administrative Law Judge concludes that there is there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in Licensee's care and recommends that the Commissioner affirm the order of temporary immediate suspension.

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

FINDINGS OF FACT

1. Mary Gable is a resident of Northfield, Minnesota, and has been a licensed provider of family child care for 15 years.¹

2. Gable's home is located in the southwest corner of the intersection of Third Street and Orchard Street. The intersection is controlled with four-way stop signs.²

¹ Testimony of Mary Gable.

² Ex. 2; Test. of M. Gable. The map (Ex. 2) drawn by the licenser does not include the stop signs.

3. Gable has a fenced play area in front of her home, with a gate that allows access to the yard and front porch. The porch is set up as a play area for children. The porch door has some kind of latch, but it does not lock. The front door to the home is inside the porch.³

4. The fence and gate in the front yard were installed in 1997, after a child in care left Gable's home and was found in the middle of Third Street. The child was less than two years old and was being supervised at the time by Gable's teenage daughter. As a result of this incident, Rice County found maltreatment by neglect, and the Commissioner of Human Services thereafter placed Gable's license on conditional status for one year. Gable complied with all the required conditions, and her license was thereafter made unconditional.⁴

5. At some point within a year or two of this incident, Gable also installed alarms on the porch door and the front door to her home.⁵

6. Initially, Gable used the alarms, but after about one year she used them infrequently because they are inconvenient. The front door is the only door into the home, and daycare parents use it to drop off and pick up children. The alarms are loud and tend to awaken children napping on the first floor of the home. In addition, over time Gable began leaving the front gate open, because the gate is cumbersome and difficult for parents to open and close.⁶

7. On May 27, 2010, Gable had eight children in care, including M.C., a 23-month-old girl. M.C. was relatively new to the day care and had been coming part-time since May 17, 2010. Around 10:00 a.m., Gable and her husband took all the children to a nearby park. When they returned at about 11:20 a.m., Gable's husband was the last to come inside, carrying an infant in a car seat. As was their practice, he left the gate open when he entered the yard. He pushed the porch door shut with his foot, but did not latch it. He closed the front door after entering the house, but did not lock it. He set the infant carrier down and went to use the restroom.⁷

8. Gable went to the kitchen to take lunch out of the oven. Two of the older children asked if they could play on the porch, and Gable said they could. She finished removing food from the oven, then put some vegetables into the microwave and went to check on the children. She did not see M.C. in the living room and checked to see if she had gone upstairs. She then went onto the front porch and saw that the porch door was open. At about the same time, she saw a woman bringing M.C. toward the gate.⁸

³ Test. of M. Gable.

⁴ Testimony of Colleen Peterson; Ex. 3. The Department did not offer the 1997 maltreatment determination into evidence, but the licensor testified that the County made a determination of maltreatment by neglect.

⁵ Test. of M. Gable.

⁶ *Id.*; Testimony of Larry Gable.

⁷ *Id.*

⁸ Test. of M. Gable.

9. The woman had been driving out of the school parking lot across the street a few minutes earlier, when she saw M.C., pushing a doll stroller, in the crosswalk about halfway across Third Street headed north on Orchard Street. As the woman pulled over to check on her, two cars going westbound on Third Street pulled up to the stop sign on the other side of the intersection and stopped. The approaching vehicles apparently frightened M.C., who veered into the middle of the intersection, then back to the crosswalk before the woman picked her up. The woman called the police to report a child in the street. Believing M.C. had likely come from Gable's day care home, the woman walked M.C. back across the street toward Gable's home.⁹

10. It is unclear how long M.C. was outside by herself. Gable estimates that she had been inside the house for about two minutes before she realized M.C. was not on the porch.¹⁰ Whatever the time interval, M.C. was able to get down the porch steps with a doll stroller, out of the yard, and halfway across the street.

11. Gable informed day care parents that evening about the incident. She called her licensor the next morning, May 28, 2010, at about 9:30 a.m. and left a message reporting the incident. The licensor called her back and questioned Gable about it, then requested records for all the children in care. Gable asked whether she could email the information the next day, as she was just leaving for the park with children, and the licensor agreed. Gable provided the requested information within that timeframe.¹¹

12. On the afternoon of May 28, 2010, a child protection investigator went to Gable's home to take a statement. When the investigator arrived, the front gate was open, and the alarms on the porch door and front door were not activated.¹²

13. The County recommended a temporary immediate suspension of Gable's license to the Department of Human Services. The Order of Temporary Immediate Suspension was issued on June 2, 2010, and the licensor served it personally on Gable that day. When the licensor contacted day care parents to advise them of the closing, most were surprised and sad to hear of it.¹³

14. Based on this incident, Rice County Child Protection made a determination of maltreatment by neglect for failing to provide appropriate supervision pursuant to Minn. Stat. § 626.556, subd. 2(f)(3) (2008).¹⁴ Gable sought reconsideration,

⁹ Testimony of Jenny Goodwin.

¹⁰ Ex. 1. There is no information in the record as to the time of the police call, and the statement of the woman who found M.C. is not in the record.

¹¹ Test. of C. Peterson.

¹² Test. of J. Goodwin.

¹³ Test. of C. Peterson.

¹⁴ All citations to Minnesota Statutes are to the 2008 edition.

and the County recently affirmed its determination. The licenser has not yet made a recommendation to the Department as to a final licensing sanction.¹⁵

15. Gable's day care parents strongly support her and believe that she has provided excellent care for their children. They describe her as providing loving care; positive discipline; educational opportunities; and wholesome meals and activities. They also describe her as a dedicated, honest provider who has gone "above and beyond" in providing a stable environment for their children. They believe she will take steps to ensure that no such incident happens again.¹⁶

16. Gable filed a timely appeal of the Order of Temporary Immediate Suspension. The Department requested assignment of an administrative law judge on June 9, 2010, and on June 16, 2010, served by U.S. mail the Notice and Order for Hearing in this matter.

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

CONCLUSIONS OF LAW

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

2. 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, the Commissioner shall act immediately to temporarily suspend the license.¹⁷

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.¹⁸

4. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension.¹⁹

¹⁵ Test. of C. Peterson. Peterson clarified that this appeal involves only the propriety of the temporary immediate suspension. The County had only recently affirmed the maltreatment determination, and Gable had not decided as of the time of hearing whether to appeal that determination.

¹⁶ Testimony of Michele Vosejpkka; Kim Gubeli; Lani Jo; Ex. 4 (letter from Kelly Debnam); Ex. 5 (letter from Oscar and Claudia Grimaldo).

¹⁷ Minn. Stat. § 245A.07, subd. 2

¹⁸ Minn. Stat. § 245A.07, subd. 2a(a).

¹⁹ *Id.*

5. The burden of proof in expedited hearings on a temporary immediate suspension shall be 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 poses an imminent risk of harm to the health, safety, or rights of persons served by the program.²⁰ "Reasonable cause" means there exist specific articulable facts or circumstances which provide a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.²¹

6. The Commissioner has demonstrated that there is reasonable cause to believe that the license holder has either acted or failed to act in compliance with the law such that she poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

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 temporary immediate suspension of Mary Gable's family child care license.

Dated: July 12, 2010

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 (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Cal Ludeman, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

²⁰ *Id.*

²¹ 2010 Minn. Laws, ch. 329, art. 1, § 7.

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 County's assertion that M.C. was "nearly hit by two vehicles" is an overstatement of the record. The vehicles, heading west, stopped at the stop sign on the other side of the intersection. Fortunately, it appears the drivers saw M.C. and did not enter the intersection until the woman had removed M.C. from the street.

Nonetheless, a two-year-old child managed to leave the house and wander into the street, because Gable was not implementing the measures designed to prevent the recurrence of such an incident: securing the front gate and using the alarms. Because of these lapses, there is reasonable cause to believe the child was not properly supervised, and the lack of supervision put the child at imminent risk of harm. Moreover, the Department has established reasonable cause to believe that the risk of harm would continue because of the manner in which the property is used.

The home has a single entry at the front, through which parents, children, and the Licensee go in and out multiple times each day. It also has an outdoor play space in the front yard that is supposed to be effectively enclosed to keep children away from traffic. This combination of uses has proved to be unsafe. At a minimum, some type of physical change to the use of the property would be necessary to ensure the safety of children. The temporary immediate suspension should be continued until the Commissioner has the opportunity to fully evaluate the situation and determine the appropriate licensing sanction.

K.D.S.