

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Maltreatment
Determination, Disqualification, and
Revocation of the Adult Foster Care
License of Barbara Williams

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Barbara L. Neilson on October 14, 2010, at Blue Earth County Justice Center, 401 Carver Road, in Mankato, Minnesota. The parties filed written closing arguments on January 7, 2011. The OAH record closed with the filing of the parties' reply briefs on January 21, 2011.

Cara M. Hawkinson, Corrie A. Oberg, and Cynthia B. Jahnke,¹ Assistant Attorneys General, represented the Department of Human Services (Department or DHS) and Nicollet County Social Services (County). Charles H. Thomas, Attorney at Law, Southern Minnesota Regional Legal Services, appeared on behalf of Barbara Williams (Licensee).

STATEMENT OF ISSUES

1. Did Barbara Williams commit maltreatment by financially exploiting C.N., a vulnerable adult?
2. If so, is she disqualified from providing adult foster care on the basis of the maltreatment determination, or should the disqualification be set aside?
3. If she is disqualified and the disqualification is not set aside, should the Department revoke the adult foster care license of Ms. Williams?

The Administrative Law Judge concludes that Barbara Williams did not commit maltreatment of C.N.; Ms. Williams is not disqualified from providing adult foster care; and revocation of her adult foster care license is not warranted.

Based on the hearing record, the Administrative Law Judge makes the following:

¹ Ms. Hawkinson appeared on behalf of the Department at the hearing. Sometime thereafter, she left the Attorney General's Office. Ms. Oberg and Ms. Jahnke submitted the written closing statement and reply brief on behalf of the Department.

FINDINGS OF FACT

1. Barbara Williams² has been licensed as an adult foster care provider for approximately 12 years.³ During all times relevant to this proceeding, Ms. Williams provided adult foster care services out of her home in North Mankato. Ms. Williams's adult foster care home had 6 bedrooms and was licensed to serve up to four adults.⁴

2. In addition to providing adult foster care services out of her home, Ms. Williams was employed part-time with HaugBeck Support Services, an adult foster care services provider located in Mankato.⁵

3. In 2004, the Department determined that Ms. Williams committed emotional abuse of a vulnerable adult in her care by using a harsh voice and telling the vulnerable adult to "shut up" on more than one occasion. The Department found this maltreatment was not serious or recurring and no further action was taken.⁶ Ms. Williams did not appeal the determination and, as a result, it became conclusive.⁷

4. As part of her licensure requirements, Ms. Williams receives annual training on the Vulnerable Adults Act and the rules governing her adult foster care license.⁸

5. C.N. is a 63-year-old vulnerable adult diagnosed with schizoaffective disorder. She receives social security disability, maintenance and pension payments, and is employed part-time at a Country Inn and Suites. C.N. is not under guardianship, but she has a friend, Judy Whalen, who manages her money and pays her bills. C.N. also has a mental health case worker, Brian Peterson, who coordinates services for her and assists with foster home placements.⁹

6. C.N. moved into Ms. Williams's facility on November 1, 2007. Ms. Williams has known C.N. for many years because C.N. was a good friend of Ms. Williams's mother.¹⁰

7. According to C.N.'s Individual Resident Placement Agreement, Ms. Williams's facility was to provide C.N. with "assistance with daily living skills and management of mental illness."¹¹

² Prior to her marriage in July 2008, Ms. Williams was known as Barbara Lindemann.

³ Testimony of Barbara Williams. Ms. Williams is the license holder for Barbara J. Williams AFC, license number 1048820.

⁴ Test. of B. Williams.

⁵ Test. of B. Williams.

⁶ Exs. 17 and 18.

⁷ See, Minn. Stat. § 245C.29, subd. 1.

⁸ Ex. 11.

⁹ Exs. 3 -6; Testimony of Kjessia Johnson Karol. Mr. Peterson is employed by Fairbault/Martin County Social Services.

¹⁰ Exs. 6 and 8; Test. of K. Karol.

¹¹ Ex. 15.

8. The negotiated monthly rate for C.N.'s room and board was \$943.55. This amount included the base rate of \$757, plus \$186.55 based on the County's "Difficulty of Care" rate formula. In addition to her own room, C.N. received two meals a day (breakfast and dinner) and transportation when necessary.¹²

9. In January of 2008, Ms. Williams began having problems with C.N. C.N. started to engage in disruptive and noisy behaviors, such as slamming doors and making loud noises early in the morning. Other residents complained about C.N.'s inconsiderate behavior.¹³

10. On March 18, 2008, Ms. Williams provided C.N. with a written notice to vacate the home in 30 days.¹⁴

11. On or about March 24, 2008, Ms. Whalen wrote a check to Ms. Williams in the amount of \$943.55 for C.N.'s room and board for the month of April.¹⁵

12. Brian Peterson helped C.N. locate a new foster home. C.N. moved out of Ms. Williams's foster home on April 10, 2008.

13. The County determined that Ms. Williams was required to refund C.N. \$660 of her total April payment for the days she did not reside at Ms. Williams's home. The amount was based on a daily rate of approximately \$31. The County arrived at this figure by dividing the total monthly amount of \$943.55 by 30 days. Because C.N. resided at Ms. Williams home for only nine nights in April, the County determined Ms. Williams was required to refund the daily rate for 21 days.¹⁶

14. Ms. Williams recognized that she owed C.N. money for the days in April that she did not reside in her home; however, she was financially strapped, and unable to pay the full amount at once.¹⁷

15. On or about May 20, 2008, Ms. Williams sent Ms. Whalen a note along with a check for \$100. The note read as follows:

Sorry it took me so long to get something sent to you. I am waiting for my rebate check. It is tough when someone moves out and they expect you to come up with a large amount. I'm sending \$100, the balance is \$560. I will get it sent to you soon. Thank you. Barb Lindemann.¹⁸

16. Sometime after May 2008, Ms. Whalen talked to Ms. Williams about refunding the remainder of the April payment. Ms. Williams explained to Ms. Whalen that she was unable to pay the full amount, and she asked Ms. Whalen if she could pay

¹² Exs. 6, 9 and 24.

¹³ Ex. 13.

¹⁴ Exs. 12 and 13.

¹⁵ Ex. 5.

¹⁶ Test. of K. Karol; Ex. 6.

¹⁷ Test. of B. Williams.

¹⁸ Exs. 12 and 13.

back the money owed in installments. Ms. Whalen was confident that Ms. Williams would repay the money, and she agreed to accept installment payments. Ms. Whalen told C.N. about the arrangement, and C.N. indicated that it was acceptable to her. Ms. Whalen told Ms. Williams that C.N. had sufficient resources and was not worried, so long as the money was paid back in full.¹⁹

17. Between May and July 2008, Mr. Peterson talked to Ms. Williams on three occasions regarding her obligation to refund the money owed to C.N.²⁰

18. On July 8, 2008, Mr. Peterson reported Ms. Williams's failure to refund C.N.'s rent to the Department's Common Entry Point. The report was logged as possible financial exploitation/maltreatment of a vulnerable adult, and the Department thereafter initiated an investigation.²¹

19. Ms. Kjessia Johnson Karol, an investigator in the Department's Licensing Division, was assigned to investigate the complaint against Ms. Williams.²²

20. On September 18, 2009, Ms. Karol contacted the North Mankato Police Department and spoke with Officer Jeremy Swenson. Ms. Karol explained to Officer Swenson that Ms. Williams had failed to refund money owed to C.N. Officer Swenson told Ms. Karol that the situation seemed to be more of a civil matter, rather than a criminal matter, and that it did not sound like something that would involve the police. However, Officer Swenson did stop by Ms. Williams's home and talked to her about refunding C.N.'s money. Officer Swenson warned Ms. Williams that if she did not refund the money, she might face criminal charges or licensing sanctions.²³ Ms. Williams felt very intimidated by the police officer's visit.²⁴

21. On September 19, 2008, Ms. Williams sent Ms. Whalen a check for \$100.²⁵ On September 25, 2008, Ms. Williams mailed Ms. Whalen a money order in the amount of \$300. According to the Department's calculations, Ms. Williams still owed C.N. \$160 following that payment.²⁶

22. On October 1, 2008, Ms. Karol interviewed Ms. Williams regarding the money owed C.N. Ms. Williams stated that she knew she owed C.N. some money and that she intended to pay her back, but that it was difficult for her to come up with the full amount quickly.²⁷

23. In a letter to Ms. Karol dated October 6, 2008, Ms. Williams reiterated that it was always her intention to pay C.N. the full amount owed. Ms. Williams also

¹⁹ Exs. 6, 7 and 23; Test. of K. Karol and B. Williams.

²⁰ Ex. 4.

²¹ Ex. 3.

²² Test. of K. Karol; Ex. 1.

²³ Ex. 1; Test. of K. Karol and B. Williams.

²⁴ Test. of B. Williams.

²⁵ Ex. 7.

²⁶ Ex. 5; Test. of K. Karol.

²⁷ Ex. 7.

acknowledged that she should have set up a payment plan with Ms. Whalen as soon as C.N. moved out and stated that she regretted not communicating better with Ms. Whalen.²⁸

24. On or about November 8, 2008, Ms. Williams paid Ms. Whalen the remaining money she owed C.N.²⁹

25. On June 10, 2009, Ms. Karol issued an investigation memorandum regarding Ms. Williams's alleged financial exploitation of C.N. Ms. Karol determined that the maltreatment allegation was substantiated and that Ms. Williams had financially exploited C.N. by withholding approximately \$500 of her money for more than five months.³⁰ Ms. Karol determined further that the maltreatment was recurring based on the prior maltreatment determination issued to Ms. Williams in 2004.³¹

26. On June 10, 2009, the Department issued a Determination of Maltreatment, Disqualification from Direct Contact, and Order of License Revocation to Ms. Williams based on its finding of substantiated and recurring maltreatment. Specifically, the Department determined that Ms. Williams financially exploited a vulnerable adult, in violation of Minn. Stat. §§ 626.557 and 626.5572, by not refunding money due the vulnerable adult after she moved out of Ms. Williams's adult foster care home. The Department notified Ms. Williams of her right to appeal the maltreatment determination, disqualification, and license revocation.³²

27. On June 10, 2009, the Department also issued Orders to HaugBeck Support Services and Alliance Health Services requiring those agencies to remove Ms. Williams from any position allowing direct contact with, or access to, persons receiving services from its program based on Ms. Williams's disqualification.³³ Approximately two days after the issuance of these Orders, HaugBeck Support Services terminated Ms. Williams's employment.³⁴

28. In a letter dated June 18, 2009, Ms. Whalen informed the Department that she had reached an agreement with Ms. Williams, sometime after C.N. moved out of her home, to accept installment payments from Ms. Williams for the money she owed C.N. Ms. Whalen stated that she had discussed the arrangement with C.N. and that C.N. had agreed to the arrangement.³⁵

29. By July 1, 2009, the County removed the remaining residents from Ms. Williams's adult foster care home and relocated them to other adult foster care homes.³⁶

²⁸ Ex. 12.

²⁹ Ex. 22; Test. of B. Williams.

³⁰ Ex. 15.

³¹ Id.

³² Ex. 19.

³³ Ex. 20; Test. of K. Karol.

³⁴ Test. of B. Williams.

³⁵ Ex. 23.

³⁶ Test. of K. Karol.

30. Ms. Williams filed a timely appeal of the Maltreatment Determination, Disqualification, and Order of License Revocation.³⁷

31. On its website, the Department thereafter updated Ms. Williams's license status on its website to read: "Revoked: Under Appeal."³⁸

32. Ms. Williams closed her adult foster care home sometime in July 2009. The home is now in foreclosure.³⁹

33. On August 2, 2010, more than one year after Ms. Williams requested a contested case hearing, the Department issued a Notice and Order for Prehearing Conference. This contested case proceeding followed from that Order.

34. The Department offered no explanation as to why it took more than one year from the date C.N. moved out of Ms. Williams's home to determine maltreatment occurred. The Department also offered no explanation as to why it took more than one year from the date Ms. Williams's appealed the Order of Revocation to issue a Notice and Order for Hearing.

Based on the 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.⁴⁰

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

3. The Minnesota Statutes governing the licensure of adult foster care providers authorize the Commissioner of Human Services to revoke a license if a license holder fails to comply fully with applicable laws or rules or has a disqualification which has not been set aside.⁴¹

4. At a hearing regarding a licensing sanction under Minn. Stat. § 245A.07, the Department may demonstrate reasonable cause for the action taken by submitting evidence to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Department demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that

³⁷ Ex. 21.

³⁸ Ex. 29.

³⁹ Testimony of Williams.

⁴⁰ Minn. Stat. §§ 245 A.06, subd. 4; 245A.07, subd. 3; 245A.08, subd. 2a (a); 14.50.

⁴¹ Minn. Stat. § 245A.07, subd. 3.

the Department alleges the license holder violated, at the time that the Department alleges the violations of law or rules occurred.⁴²

5. When applying licensing sanctions, the Commissioner must “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.”⁴³ Before revoking a license, the Commissioner is required to consider facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the license-holder.⁴⁴

6. The purpose of adult foster care licensure statutes and rules is to protect and to provide for the care, health and safety of vulnerable adults.⁴⁵

7. Under the Minnesota Vulnerable Adults Act, “maltreatment” is defined to include abuse, neglect, or financial exploitation.⁴⁶ “Financial exploitation” is defined to include the willful use, withholding, or disposition of funds or property of a vulnerable adult in the absence of legal authority.⁴⁷

8. Where there is a fiduciary obligation recognized in law, “financial exploitation” is defined under the Act to include situations in which there is a failure to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.⁴⁸

9. Under the rules governing adult foster care services, providers are required to develop a written plan informing residents of the care to be provided with respect to assisting the safeguarding of residents’ cash resources, such as banking, reporting residents’ earnings to appropriate agencies, keeping records of financial information (checks issued and received), and accounting for those funds of the residents that are controlled by the provider.⁴⁹ Upon a resident’s death or transfer, a provider must surrender to the resident or the resident’s legal representative the cash resources of the resident.⁵⁰

10. There is no specific rule governing the return of the pro-rated portion of the monthly room and board payment in the event a resident moves out of a foster home before the end of the month.

⁴² Minn. Stat. § 245A.08, subd. 3.

⁴³ Minn. Stat. § 254A.07, subd. 1.

⁴⁴ Minn. Stat. § 245A.04, subd. 6.

⁴⁵ See, Minn. Stat. § 626.557(1).

⁴⁶ Minn. Stat. § 626.5572, subd. 15 (““Maltreatment” means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.”).

⁴⁷ Minn. Stat. § 626.5572, Subd. 9(b)(1).

⁴⁸ Minn. Stat. § 626.5572, Subd. 9(a)(2).

⁴⁹ Minn. R. 9555.6235B.

⁵⁰ Minn. R. 9555.6265E.

11. Adult foster care providers and household members must not have a disqualification under Minn. Stat. § 245C.15, that is not set aside or for which a variance has not been granted.⁵¹

12. Minnesota Statutes § 245C.15, subd. 4(b)(2), specifies that an individual is disqualified from any position allowing direct contact with persons receiving services from a DHS-licensed program if less than seven years has passed since a determination of the individual's "substantiated serious or recurring maltreatment of a minor under section 626.556, a vulnerable adult under section 626.557, or serious or recurring maltreatment in any other state ..."

13. "Substantiated maltreatment" means that a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred.⁵²

14. Recurring maltreatment means more than one incident of maltreatment for which there is a preponderance of the evidence that the maltreatment occurred and the subject was responsible for the maltreatment.⁵³

15. If a license holder is disqualified, and the disqualification is not set aside, the Commissioner may revoke the license.⁵⁴

16. The Department must present reliable testimony or documentary evidence to support finding reasonable cause existed to revoke Ms. Williams's adult foster care license.⁵⁵

17. The Department failed to submit sufficient evidence establishing reasonable cause to believe Ms. Williams maltreated C.N. by financially exploiting her. Specifically, the Department did not establish reasonable cause to believe that Ms. Williams willfully used or withheld C.N.'s funds, or that she failed to use C.N.'s funds on appropriate care or services to the detriment of C.N.⁵⁶

18. The record established that Ms. Williams reached an agreement with Ms. Whalen that she would pay back the \$660 amount in installments. The record further established that C.N. agreed to the arrangement and that the arrangement did not result in any detriment to C.N.

19. Ms. Williams demonstrated by a preponderance of the evidence that she was in compliance with the laws and rules alleged to have been violated.

20. Because the Department failed to demonstrate that Ms. Williams financially exploited C.N., Ms. Williams is not responsible for recurring maltreatment and

⁵¹ Minn. R. 9555.6125, Subp. 4.

⁵² Minn. Stat. § 626.5572, subd. 19.

⁵³ Minn. Stat. § 245C.02, subd. 16.

⁵⁴ Minn. Stat. § 245A.07, subd. 3(a).

⁵⁵ Minn. Stat. § 245A.08, Subd. 3.

⁵⁶ See, definition of "financial exploitation" at Minn. Stat. § 626.5572, Subd. 9.

should not be disqualified from providing direct contact services in programs licensed by the DHS or the Department of Health.

21. Revocation of Ms. Williams's adult foster care license is not warranted.

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

RECOMMENDATION

It is recommended that the Commissioner of the Department of Human Services **VACATE** the June 10, 2009, maltreatment determination and disqualification of Barbara Williams, and that the Order of License Revocation be **RESCINDED**.

Dated: February 22, 2011

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Recorded Digitally (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. Parties should contact Lucinda Jesson, 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.

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 Department alleges that Barbara Williams committed maltreatment by financially exploiting a resident of her adult foster care home. Because Ms. Williams was found responsible for maltreatment by emotional abuse in 2004, a finding of maltreatment in this case would result in Ms. Williams being found responsible for substantiated recurring maltreatment and require her disqualification from providing direct contact services in programs licensed by DHS or the Department of Health.

Financial exploitation is defined in relevant part to mean the willful use or withholding of a vulnerable adult's funds or property. The word "willful" has been defined as "obstinately bent on having one's own way."⁵⁷ The Minnesota Court of Appeals has interpreted "willful" in other contexts to mean something more than intentional; a willful act is one of unreasonable character that is intentionally done in disregard of obvious risk and usually accompanied by a conscious indifference to the consequences.⁵⁸

The record established that C.N. moved out of Ms. Williams's adult foster care home on April 10, 2008, after having paid for the entire month. The County determined that Ms. Williams owed C.N. \$660 for the days in April that C.N. did not reside in Ms. Williams's home. Ms. Williams acknowledged she owed C.N. that amount, but maintained she was financially unable to pay it immediately. After paying back \$100 in May of 2008, Ms. Williams reached an agreement with Judy Whalen, the woman managing C.N.'s money, to pay the amount owed in installments. A specific payment schedule was never established, but C.N. approved the arrangement and Ms. Whalen indicated that neither she nor C.N. were worried that Ms. Williams would fail to pay the full amount back. Although it took Ms. Williams until November of 2008 to fully refund C.N.'s money, there is insufficient evidence to support finding that she willfully withheld the funds and is culpable for financially exploiting a vulnerable adult.

In addition, the Department can point to no rule or statute requiring adult foster care providers to refund foster care payments in a specific time period when a resident leaves before the end of the month. There is a rule governing how providers may manage or safeguard residents' cash resources, but the Department acknowledged at the hearing that it was not relying on this rule as the basis for Ms. Williams's disciplinary action. In any event, that rule seems to apply to cash a resident may keep in the foster care home, and not payments for monthly room and board.

The Department put forward the testimony of only one witness, Kjessia Johnson Karol, the Department's licensing investigator. Ms. Karol testified that the maltreatment determination was based solely on the seven-month period of time that elapsed between the date C.N. moved out and the final payment made by Ms. Williams. Ms. Karol indicated that she was not aware of the agreement reached between Ms. Williams and Ms. Whalen that permitted Ms. Williams to pay the money in installments. Despite

⁵⁷ *American Heritage College Dictionary* 1568 (4th ed. 2002).

⁵⁸ *Zeno v. Turning Point, Inc.*, 2004 WL 1152751, No. A03-1246 (Minn. App. May 25, 2004), *rev. denied* (Minn., August 17, 2004), *citing*, *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001)..

C.N.'s approval of this arrangement, the Department determined that Ms. Williams's inability to pay back C.N. promptly amounted to the willful withholding C.N.'s funds and maltreatment.

The record does not support finding that Ms. Williams financially exploited C.N. by willfully withholding money owed her. Instead, the evidence demonstrated that Ms. Williams acknowledged she owed C.N. the money, but due to her financial inability to pay back the full amount immediately, she arranged to pay the amount owed in installments – an arrangement that was approved by the vulnerable adult and her representative. Based on this record, the Administrative Law Judge concludes that the Department failed to show by a preponderance of the evidence that Barbara Williams was responsible for recurring maltreatment of a vulnerable adult and should be disqualified from working in programs licensed by the DHS or Department of Health.

In addition, the Administrative Law Judge is troubled by the Department's lengthy delay both in making its maltreatment determination and in providing Ms. Williams with a hearing. The Department offered no explanation for the delays. Ms. Williams requested a contested case hearing on June 24, 2009. The Department did not issue a notice of hearing until August 3, 2010. In the meantime, Ms. Williams was forced to close her adult foster care home and was terminated from her employment with another adult foster care services provider. While there is no time limit or deadline set out in the statute governing when the hearing will be provided, a delay of more than one year appears to interfere with a the right to a prompt and meaningful review, especially for a licensee facing a loss of livelihood.

B.L.N.