

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Order to Forfeit a Fine and for Conditional Status of the License of LeChresha Spears.	FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION
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This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on February 22, 2011. The hearing was held in at the Health Services Building, in Minneapolis, Minnesota and the hearing record closed on that day.

Frederic S. Stephens, Assistant County Attorney, Hennepin County Attorney's Office, appeared on behalf of Hennepin County Human Services and the Minnesota Department of Human Services (County and Department). The Licensee, LeChresha Spears, appeared on her own behalf and without counsel.

STATEMENT OF ISSUES

1. Did the Department demonstrate that reasonable cause exists to support its determination that Licensee should be fined \$1000 based on its determination that she committed maltreatment by neglect under Minn. Stat. § 626.556?
2. Did the Department demonstrate that reasonable cause exists to support a fine of \$200 for failure to submit a background study for a caregiver?
3. Did the Department demonstrate that reasonable cause exists to support two \$200 fines for two instances in which a substitute caregiver had not completed required training?
4. Did the Department demonstrate that reasonable cause exists to support the Order of Conditional License for Ms. Spears' child care license?
5. If the Department demonstrated reasonable cause to support the fines and conditional license, did Ms. Spears demonstrate by a preponderance of the evidence that she complied with all applicable laws and rules?

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

FINDINGS OF FACT

1. Licensee has been licensed to operate a group family day care in Hennepin County for approximately eight years. The Licensee's day care program is operated out of her home in Richfield, Minnesota.¹

2. At all times relevant to these proceedings, the Licensee was licensed as a group family child care provider.²

Violations of Training and Background Study Requirements

3. On December 14 and 15, 2009, Hennepin County Licensing staff received complaints against the Licensee.³

4. During the investigation of these complaints, the licensing investigator determined that the Licensee's helper, Natalie, was providing substitute care for Licensee and that Natalie had not participated in Shaken Baby Syndrome training as required by Minn. Stat. § 245A.50, subd. 5.⁴

5. On December 16, 2009, the County issued a Correction Order to the Licensee based on her use of a substitute caregiver who lacked required Shaken Baby Syndrome training.⁵

6. Ms. Spears did not request reconsideration of the December 16, 2009 Correction Order.⁶

7. On July 14, 2010, Hennepin County Licensing staff received a report that Licensee's mother, Janet Echols, was providing care at Licensee's child care program and that Ms. Echols used corporal punishment on a child.⁷

8. As a result of the investigation that followed, the County issued a Correction Order on July 21, 2010. The Correction Order determined that: Ms. Echols used physical punishment in violation of Minn. R. 9502.0395, subp. 2.A.; Ms. Echols was working in Licensee's child care program without a required background study as required by Minn. Stat. § 245C.03, subd. 1 (a)(3); and that Ms. Echols lacked caregiver training as required by Minn. Stat. § 245A.50, subd. 1 and 5.⁸

¹ Testimony of Tim Hennessey; Exhibit 28 at 1.

² See, Exs. 1 through 29.

³ Ex. 14 at 1-2.

⁴ Ex. 14 at 3.

⁵ Ex. 15.

⁶ Test. of T. Hennessey.

⁷ Ex. 17.

⁸ Ex. 18.

9. Because these violations were not addressed by mid-August 2010, they were included in a second Correction Order dated August 17, 2010.⁹

10. Licensee requested reconsideration of the July 21, 2010 and August 17, 2010 Correction Orders. Ms. Spears' request for reconsideration was denied in a letter dated September 30, 2010 from the Department of Human Services.¹⁰

Maltreatment by Neglect

11. In July of 2010, Ms. Spears had an arrangement with one of her day care parents, K.S., to transport K.S.'s children to the home of K.S.'s sister at the end of each week day. K.S. had five children under care with the Licensee.¹¹

12. In July of 2010, K.S.'s children were 8, 6, 4, 3 and 2 years old.¹²

13. In July of 2010, K.S.'s sister, T.S., lived in the Cinnamon Ridge Apartments on Slater Road in Eagan, Minnesota.¹³

14. On July 28, 2010, some time between 3:30 and 4:00 p.m., the Licensee drove the five siblings to the Cinnamon Ridge Apartment complex and waited in her automobile as the children entered, unescorted, into the building. Because the apartment building has a secure entryway and foyer, the children pressed the buttons on the outside intercom until one of the residents responded by activating the electronic entry mechanism.¹⁴

15. Consistent with her practice, the Licensee waited in her van for one of the children's relatives – either their aunt or another adult – to come down to the building's foyer and signal that the children had been safely received.¹⁵

16. T.S. was not at home when the children arrived at her apartment.¹⁶

17. Approximately 10 minutes after the children had entered the building, an adult in the foyer waved to the Licensee. The person who waved to Ms. Spears was not

⁹ Ex. 21.

¹⁰ Ex. 27; Test. of T. Hennessey.

¹¹ Ex. 2 at 9; Ex. 5 at 1-8; Testimony of Loretta Huffman.

¹² Ex. 1 at 1-4; Test. of L. Huffman.

¹³ Ex. 1 at 1; Ex. 2 at 9; Ex. 3 at 5.

¹⁴ *Id.*; Testimony of LeChresha Spears.

¹⁵ Ex. 5 at 2.

¹⁶ Ex. 3 at 5-6.

the children's aunt and was not otherwise known to Ms. Spears. The Licensee assumed that the person who waived to her was related to K.S.'s children.¹⁷

18. At approximately 4:15 p.m., the children walked, by themselves, from their aunt's apartment building to the leasing office of the complex. The route between the two buildings is approximately one-quarter of a mile along Slater Road, a busy thoroughfare in Eagan. Additionally, at the time of the children's journey, Slater Road included an active construction site for an apartment siding project.¹⁸

19. Arriving at the leasing office, the children asked the Rental Agent to telephone T.S. – explaining that T.S. was not answering her apartment door. The Rental Agent attempted to telephone T.S. but could not reach her. The children stated that they would walk back to their aunt's apartment. The Rental Agent suggested that they return to her office if they were unable to find their aunt. When none of the children returned, the Rental Agent assumed that they had found T.S.¹⁹

20. Later, the Rental Agent received calls from tenants reporting that there were unsupervised children in the building. The Rental Agent then called the police.²⁰

21. Shortly after 5:00 p.m., Officer Jenni Wills of the Eagan Police Department arrived at the Cinnamon Ridge Apartments. The children were sitting outside of the apartment complex, unsupervised, when she arrived. Officer Wills, Officer Lisa Francher and the children went upstairs to T.S.' apartment. The children's shoes were outside the apartment door and the apartment door was locked.²¹

22. While undertaking some errands late in the afternoon, Ms. Spears retrieved a text message from K.S. The message stated that T.S. was not available that day to care for K.S.'s children.²²

23. After receiving the text message from K.S., the Licensee called T.S., who verified that she was not with the children.²³

24. The Licensee drove back to the Cinnamon Ridge complex where she found Officers Wills and Francher with K.S.'s children.²⁴

¹⁷ Ex. 5 at 3-4.

¹⁸ Ex. 2 at 2; Ex. 3 at 7.

¹⁹ Ex. 2 at 5.

²⁰ *Id.*

²¹ Ex. 3 at 5.

²² Ex. 5 at 4.

²³ Ex. 5 at 6.

²⁴ Ex. 5 at 7.

25. After confirming with K.S. that she wanted her children left in the Licensee's care, the police officers left the scene.²⁵

26. The Licensee remained with K.S.'s children until approximately 7:00 p.m., when adult relatives arrived to care for them.²⁶

27. Hennepin County Human Services and Public Health Department notified Licensee in a letter dated August 11, 2010 that it found Licensee was responsible for neglecting the Children pursuant to Minn. Stat. § 626.556, subd. 2(f).²⁷

28. In a letter dated August 16, 2010, Ms. Spears challenged the neglect determination.²⁸

29. Hennepin County affirmed the maltreatment determination in a letter to the Licensee dated August 25, 2010.²⁹

30. On September 15, 2010, Ms. Spears appealed the maltreatment determination.³⁰

Order to Forfeit a Fine and Order of Conditional License

31. In a letter dated November 30, 2010, the Department of Human Services Ordered that Licensee forfeit fines of \$1,600. The Department imposed a \$1,000 fine following its finding of maltreatment by neglect, imposed two fines of \$200 each for failing to have the substitute caregiver adequately trained, and a \$200 fine for a failure to obtain a background study.³¹

32. In addition, the November 30, 2010 Order made Licensee's child care license subject to a number of conditions for a period of one year. Among those conditions, the Licensee must: obtain additional training, beyond the annual training requirements for licensed child care providers; submit a plan for hours of operation limiting Licensees child care program to no more than 12 hours per day; and submit a detailed safety and supervision plan, a written background study plan, and procedures for signing children in and out of the day care home.³²

²⁵ Ex.3 at 6-7.

²⁶ Ex. 2 at 10; Ex. 5 at 14..

²⁷ Ex. 6 at 1.

²⁸ Ex. 7.

²⁹ Ex. 26.

³⁰ Hennepin County Ex. A at 1.

³¹ Ex. 28.

³² Ex. 28 at 11-12.

33. The Licensee timely appealed the imposition of fines and a conditional license.³³

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The County and the Department has complied with all substantive and procedural requirements of law and rule.

3. Maltreatment of a minor by neglect is defined in relevant part as “failure to protect a child from conditions or actions that seriously endanger the child’s physical or mental health when reasonably able to do so” and “failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child’s age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child’s own basic needs or safety.”³⁴

4. Pursuant to Minn. Stat. § 256.045, subd. 3b, the Department may demonstrate that “maltreatment has occurred if a preponderance of evidence exists to support the final disposition”

5. The Licensee failed to insure that an authorized, responsible adult was available to care for K.S.’s children on July 28, 2009. Her failure resulted in the children being unsupervised, and at risk of serious harm, for an hour or more.

6. With respect to the training and background study violations, pursuant to Minn. Stat. § 245A.08, subd. 3, the Department may demonstrate reasonable cause for the proposed licensing sanction by submitting statements, reports, or affidavits 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 she was in full compliance with those laws or rules.

7. Minn. Stat. § 245C.03, subd. 1 (a) (3) requires that a background study be performed on “current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program.”

8. Minn. Stat. § 245C.03, subd. 1 (h) requires that such background studies be complete before the individuals “begin positions allowing direct contact in any licensed program.”

³³ Ex. 29.

³⁴ Minn. Stat. § 626.556, subd. 2(f)(2)-(3).

9. The Licensee failed to demonstrate that Ms. Echols underwent a background study prior to having direct contact with children served by the Spears day care.

10. Minn. Stat. § 245C.03, subd. 1 (a) (3) requires that “licensed child foster care providers that care for infants or children through five years of age must document that before staff persons and caregivers assist in the care of infants or children through five years of age, they are instructed on the standards in section 245A.1435 and receive training on reducing the risk of sudden infant death syndrome and shaken baby syndrome for infants and young children.”

11. The Licensee failed to demonstrate that either of her substitute caregivers had received training on reducing the risk of sudden infant death syndrome and shaken baby syndrome for infants and young children.

12. The Licensee failed to demonstrate by a preponderance of the evidence that she was in full compliance with the above-cited laws and rules at the time the Commissioner alleges the violations occurred.

13. The Commissioner may sanction a license if a license holder fails to fully comply with applicable laws or rules. 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.”³⁵

14. The record in this proceeding supports the conditioning of Ms. Spears’ license and imposition of fines for her violation of the training and background study requirements.

Based upon 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 AFFIRM the Order to Forfeit a Fine and Order of Conditional License.

Dated: March 22, 2011

/s/ Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Digitally Recorded, No Transcript Prepared

³⁵ Minn. Stat. § 245A.07, subd. 1.

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 and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties shall have ten calendar days to submit exceptions to the administrative law judge's report. The record shall close at the end of the ten-day period for submission of exceptions. The commissioner's final order shall be issued within ten working days from the close of the record.³⁶ Parties should contact Lucinda Jesson, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

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

MEMORANDUM

Ms. Spears argued at the evidentiary hearing that the imposition of \$1,600 in fines is a disproportionate response to any of the claimed violations in state day care standards.³⁷ The Administrative Law Judge disagrees.

The fines imposed by the Department were in the amount set by the Legislature in Minn. § 245A.07, subd. 3 (c)(4).

Moreover, the Department's response comes against the backdrop of earlier rule violations, and in this instance, serial violations of the supervision and training standards.³⁸ The Order to Forfeit a Fine and Order of Conditional License are appropriate, necessary for the protection of the children under care and should be affirmed.

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³⁶ Minn. Stat. § 245A.07, subd. 2a(b).

³⁷ See, Testimony of LeChresha Spears.

³⁸ Ex. 28 at 9-11.