

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Disqualification of and
Revocation of the Family Child Care License
of Julia Kachkovsky

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy at 9:30 a.m. on April 1, 2011, at the Hennepin County Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415.

Frederic S. Stephens, Assistant County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, MN 55415, appeared for the Minnesota Department of Human Services (Department) and the Hennepin County Human Services Department, Child Care Licensing (County). Julia Kachkovsky (Licensee) did not appear in person or through counsel. The OAH hearing record closed on April 1, 2011.

STATEMENT OF ISSUES

1. Did the Department properly disqualify the Licensee from direct contact with persons served by her program because a preponderance of the evidence indicates that on April 6, 2004, she committed an act meeting the definition of misdemeanor theft, in violation of Minn. Stat. § 609.52 (2010)?¹

2. Did the Department properly revoke the Licensee's family child care license based on the disqualification and the failure to comply with an order of conditional licensure issued on December 31, 2009?

The Administrative Law Judge concludes the Department's order of revocation should be affirmed.

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

¹ All references to Minnesota Statutes are to the 2010 edition.

FINDINGS OF FACT

1. On January 27, 2011, the County sent the Notice and Order for Hearing to the Licensee at her home address.²

2. The Notice and Order for Hearing scheduled a hearing to take place at 9:30 a.m. on April 1, 2011, at the Health Services Building, Room 111, 525 Portland Avenue, Minneapolis, MN 55415.

3. On February 14, 2011, the Administrative Law Judge sent a Protective Order and Prehearing Order to the parties reminding them that the hearing was scheduled to take place at 9:30 a.m. on April 1, 2011, and requiring them to exchange all exhibits by March 25, 2011.³

4. On March 9, 2011, the County mailed to the Licensee the exhibits it proposed to offer and reminded the Licensee that the hearing was scheduled to take place at 9:30 a.m. on April 1, 2011.⁴ On March 25, 2011, the County mailed more exhibits to the Licensee, with another reminder that the hearing was scheduled to take place at 9:30 a.m. on April 1, 2011.

5. On April 1, 2011, the Licensee failed to appear for the hearing. The Licensee did not contact the Administrative Law Judge prior to the hearing to request a continuance or seek any other relief.

6. The Notice and Order for Hearing contained the following provision:

Failure to appear at the hearing or prehearing conference will result in the allegations of the Notice of and order for Hearing, including the incorporated order, being taken as true. This means that the action being appealed will be upheld.

7. Because Respondent failed to appear for the hearing, she is in default.

8. When a party is in default, Minn. R. 1400.6000 (2009) provides that the allegations contained in the notice of and order for hearing may be taken as true. The allegations contained in the Notice and Order for Hearing, including the incorporated Order, are all taken as true and incorporated by reference into these Findings of Fact.

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

² Affidavit of Service (Jan. 27, 2011).

³ Letter from ALJ to Frederic Stephens and Julia Kachkovsky (Feb. 14, 2011).

⁴ Letter from Frederic Stephens to ALJ and Julia Kachkovsky (Mar. 9, 2011).

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations to the commissioner.⁵

2. The Department gave proper and timely notice of the hearing in this matter and has fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in that Notice and Order for Hearing or other pleadings may be taken as true or deemed proved without further evidence.

4. The Licensee is in default as a result of her failure to appear at the hearing.

5. On December 31, 2009, the Department properly placed conditions on the child care license because the Licensee had repeatedly failed to submit background studies for persons providing care; failed to ensure that caregivers completed required training before caring for infants; allowed a caregiver to place an infant for a nap in an unapproved sleeping space; failed to complete passenger restraint training before transporting children; and failed to comply with numerous environmental health and safety rules in her home.

6. On August 20, 2010, the County notified the Licensee that she was disqualified from licensure because a preponderance of the evidence indicated that she had committed an act on April 6, 2004, that constituted misdemeanor theft in violation of Minn. Stat. § 609.52.

7. On December 10, 2010, the Department properly revoked the Licensee's family child care license based on the disqualification and the Licensee's failure to comply with numerous rules, documented in a correction order dated on or about August 3, 2010, during the period of conditional licensure.

8. Minn. Stat. § 245A.07 (2010) empowers the Commissioner to revoke a license if a license holder fails to comply fully with applicable laws or rules.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

⁵ Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner AFFIRM the December 10, 2010, Order of Revocation.

Dated: April 12, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default
No transcript prepared

NOTICES

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 she 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 recommended decision in which to file any exceptions to the report with the Commissioner.⁶ Parties should contact the office of 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.

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 Minnesota law, the Commissioner of Human Services is required to serve her final decision upon each party and the Administrative Law Judge by first-class mail.

⁶ Minn. Stat. § 14.61.