

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Order to Forfeit a Fine  
Against the Family Child Care License of  
Betty Anderson

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on March 22, 2011, at the Freeborn County Department of Human Services, 203 West Clark Street, Room 241, Albert Lea, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Erin M. O'Brien, Assistant County Attorney, appeared for the Freeborn County Department of Human Services (County) and the Minnesota Department of Human Services (Department). Betty Anderson (Licensee) appeared on her own behalf without counsel.

**STATEMENT OF ISSUE**

Should a fine in the amount of \$400 be imposed against the family child care license of Betty Anderson based on a finding that she had violated two licensing requirements?

The Administrative Law Judge concludes that it is appropriate to impose a \$400 fine against the Licensee's child care license.

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

**FINDINGS OF FACT**

1. The Licensee, Betty Anderson, has been a licensed family child care provider in Emmons, Minnesota, since approximately January of 2007. She is currently licensed as a Class C-3 Group Family Child Care provider.<sup>1</sup>

2. The Licensee was relicensed in December of 2009. At that time, she identified one adult caregiver (J.B.) who would work with her child care on a regular basis, and noted that that person had completed the required training (including SBS and SIDS training). She answered "yes" to questions asking whether background studies were on record in the agency for "substitutes" and

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<sup>1</sup> Testimony of Stacy Heusinkveld; Testimony of Betty Anderson; Exhibit 1.

for “any adult caregivers providing care on a regular basis.”<sup>2</sup> The Licensee subsequently obtained the County’s approval to add J.B.’s spouse as an additional adult caregiver.<sup>3</sup> Due to health issues, J.B. has not been able to work in the Licensee’s child care on a daily basis, as she has in the past.<sup>4</sup>

3. As part of her 2009 relicensing, the Licensee signed a “Family Day Care Provider’s Agreement” that included the following statements:

1. I agree to follow all the provisions of the Minnesota Department of Human Services, Family Day Care, and Group Family Day Care Standards, and to cooperate with Freeborn County Community Services to assure the protection, proper care, health, safety, and development of the children in my care (9502.0300 – 9502.0445).

\* \* \*

8. I agree to require every individual providing care in the residence (age 13 and over) to complete a consent for a background check (9543.3040, Subp. 1-2).<sup>5</sup>

4. Stacy Heusinkveld, a day care licensing worker for the County, made an unannounced visit to the Licensee’s child care on September 17, 2010. As Ms. Heusinkveld arrived, the Licensee was leaving her home for a chiropractic appointment. The Licensee told Ms. Heusinkveld that L.W., the parent of a child in the Licensee’s child care, was going to watch the four children who were present at that time. She further indicated that L.W. had watched the day care children on one prior occasion for approximately one hour while the Licensee went to another chiropractic appointment. The Licensee stated that L.W. was also assisting the Licensee with cleaning tasks in order to help her satisfy her child’s day care expenses. Ms. Heusinkveld informed the Licensee that she could not leave the children in L.W.’s care because there was no background check on file for her. The Licensee thereafter cancelled her appointment and stayed home with the children.<sup>6</sup>

5. There were four children in care at the Licensee’s home at the time of Ms. Heusinkveld’s visit on September 17, 2010. None were infants. Three were toddlers and one was a preschooler.<sup>7</sup> The same children were present on the prior occasion when L.W. provided care.<sup>8</sup>

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<sup>2</sup> Exhibit 7, pp. 6-7.

<sup>3</sup> Testimony of S. Heusinkveld.

<sup>4</sup> Testimony of B. Anderson.

<sup>5</sup> Exhibit 8; Testimony of S. Heusinkveld.

<sup>6</sup> Testimony of S. Heusinkveld; Testimony of B. Anderson.

<sup>7</sup> Testimony of S. Heusinkveld; Testimony of B. Anderson.

<sup>8</sup> Testimony of B. Anderson.

6. There is no evidence that the Licensee sought to have a background study conducted with respect to L.W. or provided any training to L.W. prior to allowing her to care for the children.

7. When Ms. Heusinkveld returned to her office, she spoke with Department personnel and was told to issue a correction order to Ms. Anderson. On September 21, 2010, Ms. Heusinkveld issued a correction order citing the Licensee for violations of Minn. Stat. §§ 245C.03, subd. 1, for failing to obtain a background study prior to having L.W. watch the children, and 245A.50, subd. 5, for failing to ensure that L.W. had had training regarding Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome (SBS) prior to providing care. The correction order noted that these violations had been corrected as of September 21, 2010.<sup>9</sup>

8. On September 22, 2010, the County recommended that the Commissioner fine the Licensee due to her failure to obtain a background study prior to using L.W. as a substitute caregiver. The County also noted in its recommendation that L.W. had not had SIDS or SBS training.<sup>10</sup>

9. By letter dated December 10, 2010, the Commissioner ordered the Licensee to forfeit a fine in the total amount of \$400. A \$200 fine was imposed because the Licensee had allowed a substitute caregiver to provide care to infants and children prior to receiving training on reducing the risk of SIDS and SBS, in violation of Minn. Stat. § 245A.50. Another \$200 fine was imposed because the Licensee had failed to submit a background study for a substitute caregiver prior to caring for children, in violation of Minn. Stat. §§ 245C.03, subd. 1, and 245C.04, subd. 1(h).<sup>11</sup>

10. By letter dated December 21, 2010, the Licensee appealed the Order to Forfeit a Fine. This contested case proceeding was subsequently initiated.

11. A Protective Order was issued by the Administrative Law Judge on March 3, 2011, that, among other things, restricted the use of not public data encompassed by the Order to this proceeding and specified that it was not to be used for any other purpose unless otherwise ordered by a Court.

12. The hearing that was initially set for March 8, 2011, was continued to March 22, 2011, by agreement of the parties. The hearing proceeded as scheduled on March 22, 2011.

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<sup>9</sup> Exhibit 2.

<sup>10</sup> Testimony of S. Heusinkveld; Exhibits 3, 4.

<sup>11</sup> Exhibit 5.

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

### CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subd. 2a (2010).

2. Pursuant to Minn. Stat. § 245A.07, subd. 3, license holders “shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to . . . failure to comply with background study requirements under chapter 245C.”<sup>12</sup>

3. The Commissioner may demonstrate reasonable cause for a 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 Commissioner 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 the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred. When applying sanctions authorized under this section, the Commissioner shall 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.<sup>13</sup>

4. Chapter 245C of the Minnesota Statutes requires, among other things, that background studies must be conducted on employees or contractors of the applicant who will have direct contact with persons served by the licensed program and volunteers who will have direct contact with persons served if not under continuous, direct supervision.<sup>14</sup> The statute further specifies that license holders must submit completed background study forms to the Commissioner “before [such] individuals . . . begin positions allowing direct contact in any licensed program.”<sup>15</sup>

5. The Commissioner has established reasonable cause to believe that the Licensee violated Minn. Stat. §§ 245C.03, subd. 1, and 245C.04, subd. 1(h), by failing to obtain a background study for L.W. prior to allowing L.W. to care for children in the Licensee’s family child care program.

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<sup>12</sup> Minn. Stat. § 245A.07, subd. 3(c)(4).

<sup>13</sup> Minn. Stat. § 245A.08, subd. 3.

<sup>14</sup> Minn. Stat. § 245C.03, subd. 1.

<sup>15</sup> Minn. Stat. § 245C.04, subd. 1(h).

6. The Licensee has failed to demonstrate by a preponderance of the evidence that she was in full compliance with Minn. Stat. §§ 245C.03, subd. 1, and 245C.04, subd. 1(h), at the relevant time.

7. Family child care training requirements are set forth in Minn. Stat. § 245A.50.<sup>16</sup> The requirements relating to Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome (SBS) are included in subdivision 5 of the statute. As amended, that provision now states:

License holders must document that before staff persons, caregivers, and helpers assist in the care of infants, they are instructed on the standards in section 245A.1435 [relating to placing infants on their backs to sleep, using firm mattresses with tightly-fitting sheets, and excluding soft products from cribs in order to reduce SIDS risk in licensed programs] and receive training on reducing the risk of [SIDS]. In addition, license holders must document that before staff persons, caregivers, and helpers assist in the care of infants and children under school age, they receive training on reducing the risk of [SBS].<sup>17</sup>

When this statute was initially enacted in 2007, the SBS training was only required before staff persons, caregivers, and helpers could assist in the care of *infants*.<sup>18</sup> In 2009, the statute was amended to require SBS training for staff persons, caregivers, and helpers before they care for *infants and children under school age*.<sup>19</sup>

8. The Commissioner has not established reasonable cause to believe that the Licensee violated the SIDS training requirement contained in Minn. Stat. § 245A.50, subd. 5, because there is no evidence that L.W. ever cared for infants in the Licensee's child care program.

9. The Commissioner has established reasonable cause to believe that the Licensee violated the SBS training requirement contained in Minn. Stat. § 245A. 50, subd. 5, by failing to ensure that L.W. had SBS training prior to allowing L.W. to care for children under school age in the Licensee's family child care program.

10. The Licensee has failed to demonstrate by a preponderance of the evidence that she was in full compliance with the SBS training requirement contained in Minn. Stat. §§ 245A.50, subd. 5, at the relevant time.

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<sup>16</sup> Unless otherwise noted, all references to Minnesota Statutes shall be to the 2010 version.

<sup>17</sup> Minn. Stat. § 245A.50, subd. 5(a).

<sup>18</sup> See Laws 2007, Chapter 112, Section 5.

<sup>19</sup> See Laws 2009, Chapter 26, Section 4, and Laws 2009, Chapter 142, Section 21. In 2010, the statute was also amended to specify that the DHS video on SBS shall be part of the initial and ongoing annual training of not only licensed child care providers but also "caregivers and helpers." See Laws 2010, Chapter 329, Article 1, Section 11.

11. Because the Licensee violated two provisions of applicable statutes governing matters of health, safety, or supervision, imposition of a \$400 fine under Minn. Stat. § 245A.07, subd. 3, is proper.

12. The Memorandum below is incorporated in these Conclusions by reference.

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 Order to Forfeit a Fine against the license of Betty Anderson.

Dated: April 12, 2011

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally recorded (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. 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. 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.

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. 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.

## MEMORANDUM

The Licensee testified that she was not aware that she needed to request that a background check be performed for an adult who was only providing care on an occasional basis for an hour at a time. She also did not realize that training regarding SBS was required for such individuals. She indicated that she was not present at a Day Care Association meeting last fall when the County licensing worker distributed copies of the 2009 amendments to Minn. Stat. § 245A.50 which required that SBS training be provided prior to individuals caring for children under school age. She was critical of the County's prior child care licensing worker for failing to notify her of the background check and training requirements applicable to caregivers and argued that some type of a warning should be required before fines are imposed. She also testified that she does not remember reading the Family Day Care Provider's Agreement form before signing it. She also asserted that the materials that were given to her at the time of her initial licensure in 2007 were incomplete and, with respect to substitutes, merely specified that a substitute was not to be used more than 30 days in a 12-month period unless he or she was also a licensed provider.

The fact that the Licensee may not have known or may have been confused about the precise nature of the laws and rules that govern her day care operations does not excuse the violations that occurred. As a licensed family child care provider in Minnesota, she has an obligation to become familiar with the requirements imposed by the applicable statutes and rules and keep track of changes in those requirements. Although the County licensing workers should serve as an important resource in this process, the Licensee herself must take an active role to ensure that she remains apprised of the requirements of her licensure. Moreover, the Family Day Care Provider's Agreement form that was completed by the Licensee at the time of her relicensure clearly informed the Licensee that she must require every individual providing care in the residence (age 13 and over) to complete a consent for a background check; reminded her of her general obligation to comply with the rules governing child care licensees; and provided citations to the relevant rules that would have enabled her to easily find and review them.

The applicable statutes require the imposition of a fine in the amount of \$200 for each violation of licensing laws or rules governing matters of health, safety, or supervision.<sup>20</sup> No advance warning is required by the statute; to the contrary, the language of the statute compels that a fine be forfeited when a violation occurs. There can be no question that the background check and SBS training requirements have an important relationship to the health and safety of children in care. Moreover, there is no dispute that the two violations in fact occurred. Accordingly, the Administrative Law Judge recommends that the Commissioner affirm the imposition of the \$400 fine.

**B. L. N.**

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<sup>20</sup> Minn. Stat. § 245A.07, subd. 3(c)(4).