OAH 61-1800-21872-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

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| In the Matter of the Revocation of the License of Deborah Engeldinger To Provide Family Child Care under Minn. R. pts. 9502.0300 to 9502.0445 | **FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION** |

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on March 23, 2011, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033. The hearing record closed at the end of the hearing on March 23, 2011.

Margaret M. Horsch, Assistant Dakota County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota 55033, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the Dakota Social Services Department (the "County"). The Licensee, Deborah Engeldinger, appeared on her own behalf, without legal counsel.

## STATEMENT OF THE ISSUES

1) Should the disqualification of Katie Engeldinger be set aside; and

2) Should the Department of Human Services' order of revocation of Deborah Engeldinger's family child care license be affirmed because a disqualified individual was: residing in her daycare home; allowed direct contact with daycare children; or allowed access to daycare children?

The Administrative Law Judge concludes that: the disqualification of Katie Engeldinger should not be set aside and the order of revocation of Licensee's family child care license should be rescinded because Katie Engeldinger did not reside in Licensee's home as alleged by the Department, nor did she have access to or direct contact with Licensee's day care children.

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

## FINDINGS OF FACT

1. Ms. Deborah Engeldinger ("Licensee") has been licensed to provide family child care services for almost 20 years at her home in Hastings, Dakota County,

Minnesota ("the home").[1] During this time Licensee has had no complaints related to her license or daycare program and no injuries to any daycare child. Licensee has had no significant licensing sanctions, with the exception of the disqualification of her adult daughter, Katie Engeldinger, born July 7, 1988, that is at issue in this proceeding.[2]

2. Licensee cares for eight children. Three of the children are unrelated to Licensee. Their ages are: six months old; three years old; and one kindergartner.[3][4]

3. Five of the children are Licensee's grandchildren. Licensee has legal parental authority for two of the grandchildren, ages three and 4½, and whose mother is Licensee's daughter, Katie Engeldinger. Katie's children live in Licensee's home and have done so, for the most part, since their birth.[5] The three other grandchildren are 18 months old and two seven-year-olds.[6]

4. Katie Engeldinger moved out of Licensee's home in 2006 when she was 18 years old and pregnant with her first child. She has not returned to Licensee's home to live since that time. Katie Engeldinger now lives with her adult brother in Hastings, Minnesota. Her current driver's license bears her brother's address, where she actually lives.[7]

5. Katie Engeldinger's former boyfriend, the father of her two children, physically and emotionally abused her continuously during the time of their relationship. This relationship caused Katie Engeldinger's living situation to be unstable up until the time she moved into her brother's house in June or July of 2010.[8] Between July 7, 2006 and June or July of 2010, Katie lived variously with friends, relatives other than Licensee, her boyfriend, her boyfriend's mother in Ellsworth, Wisconsin, and the B. Robert Lewis shelter for battered women.[9]

6. Because of her lack of a permanent address between July of 2006 and June or July of 2010, Katie Engeldinger left Licensee's address as her residence on her driver's license.[10]

7. On February 12, 2009, Katie Engeldinger was in the company of her boyfriend, Kyle Kocurek, when she issued and attempted to negotiate two insufficient funds checks at a Kwik Trip store in Goodhue County, Minnesota. When the Kwik Trip clerk asked for identification, Katie fled in a motor vehicle. The clerk called law

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[1] Testimony of Rebecca Elrasheedy, Dakota County Social Worker and family child care licensor.
[2] *Id.;* Ex.8, there have been five correction orders for rule violations, the most recent in 2005, that were all immediately corrected.
[3] Test. of Deborah Engeldinger.
[4] Test. of D. Engeldinger and R. Elrasheedy.
[5] *Id.*; Exs. 13, 14.
[6] Test. of D. Engeldinger; Exs. 12, 13, 14.
[7] *Id.*; Test. of R. Elrasheedy, Ex. 3.
[8] Test. of D. Engeldinger and R. Elrasheedy; Exs. 1, 2, 7, 8.
[9] *Id.*
[10] Test. of R. Elrasheedy and D. Engeldinger; Ex. 8.

enforcement and a Goodhue County Sheriff's deputy located the vehicle being driven by Katie.[11]

8. After the Deputy activated the emergency lights on his vehicle while following Katie Engeldinger and Kyle Kocurek, Kocurek placed his glass methamphetamine pipe in the center console between the front seats and also placed gem bags with methamphetamine residue in them into the pouch behind the driver's seat.[12]

9. After the stop Kocurek attempted to flee. A subsequent vehicle search revealed the pipe and baggies. Law enforcement determined that there was probable cause to arrest Kocurek and Katie Engeldinger for 5th degree possession of narcotics. Both Katie Engeldinger and Kocurek were arrested. During their investigation, law enforcement determined that the methamphetamine glass pipe and baggies belonged to Kocurek. The police report and Complaint listed Katie Engeldinger's residence address as Licensee's home, although she was actually living with Kocurek.[13]

10. The County licensor has made numerous unannounced visits to Licensee's home between February 2009 and the present. These inspections of the daycare residence revealed no evidence that Katie Engeldinger has resided in Licensee's home. There is not now, nor has there been a bedroom, bed, clothing or a place for Katie Engeldinger in the home. There are two cribs and two dressers for Katie's children. There is no place for Katie Engeldinger to sleep.[14]

11. On November 2, 2009, Katie Engeldinger pled guilty to and was convicted of one count of issuing a dishonored check in violation of Minn. Stat. § 609.535, subd. 2. The Register of Actions for Katie Engeldinger case lists Hastings, MN, as her address. It does not list Licensee's home as Katie Engeldinger's address.[15]

12. Katie Engeldinger has not completed all of the terms of her sentence, which included jail time, a fine, restitution, community service and supervised probation.[16]

13. During the evening of April 20, 2010, Licensee was attending a County-sponsored daycare class. Her husband, William Engeldinger, was at home with Katie's two children. Katie was visiting her children.[17]

14. Kyle Kocurek, having just gotten out of jail, came to Licensee's home to visit the children. He requested to take the two children to Ellsworth, Wisconsin, to visit his mother. Katie declined to allow him to do so because he had no car seats in which to transport the children. Kocurek's impounded car had car seats, so Katie

[11] Exs. 1, 2, 7.
[12] *Id*.
[13] *Id*.
[14] Test. of R. Elrasheedy.
[15] Ex. 3.
[16] Ex. 3; Test. of D. Engeldinger.
[17] Ex. 1; Test. of D. Engeldinger.

accompanied him there to retrieve the seats, only to find that the impound lot had closed at 6:00 p.m.[18]

15. Kocurek lost his temper and began berating Katie, shouting obscenities at her, including "You're a fucking whore." He took Katie with him to Ellsworth, Wisconsin. During the trip Kocurek grabbed and twisted her left wrist, leaving a mark. He also grabbed her by the neck and shoved her head into the frame of the car door repeatedly, leaving visible injuries. He refused to take Katie back to her parent's home.[19]

16. Kocurek picked up his mother, Lynda Kocurek, and returned to Licensee's home. Throughout the trip, Kocurek and his mother yelled at and berated Katie. The group still had no car seats in which to transport the children.[20]

17. Upon return to Licensee's home, Katie went inside and told her father what had happened. Katie went back outside and told Kocurek that their relationship was over and that she would not allow him to take the children. Both Kocurek and his mother began yelling at Katie, at which time William Engeldinger called law enforcement. The Kocureks fled.[21]

18. Licensee contacted the County licensor and reported the incident. The licensor advised Licensee to seek a restraining order against Kocurek.[22]

19. Licensee, because she has a temporary custody agreement for Katie's children and fearing for their safety and the safety of her daycare children, signed a Petitioner's Affidavit and Petition for Harassment Restraining Order against Kyle Kocurek on April 22, 2010.[23]

20. On April 23, 2010, a District Court Judge issued an Order for Harassment Restraining Order against Kocurek.[24]

21. Kocurek has made no attempts to contact Licensee or Katie's children.[25]

22. Licensee intends to renew the restraining order against Kocurek as and when necessary.[26]

23. Upon receiving a copy of the police report on the April 20, 2010 incident, the County initiated background checks on Katie Engeldinger because Licensee's address was listed as Katie Engeldinger's residence. At this time, the County knew that

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[18] Ex. 1.
[19] *Id*.
[20] *Id*.
[21] *Id*.
[22] Test. of R. Elrasheedy and D. Engeldinger.
[23] Ex. 12.
[24] *Id*.
[25] Ex. 20.
[26] Test. of D. Engeldinger.

Katie Engeldinger did not live with Licensee. The background check on Katie Engeldinger revealed her misdemeanor conviction for the dishonored check.[27]

24. On June 10, 2010, the County sent Katie Engeldinger a letter at Licensee's address, notifying her of the disqualification from direct contact with or access to persons served by the Department. The letter specifically states, in applicable part:

> It has been determined that you pose a risk of harm to persons served by the program that requires you to be under continuous, direct supervision whenever persons served by the program are present.[28]

The County's Immediate Risk of Harm Analysis accompanying the determination letter listed an intermediate risk of harm.[29]

25. On June 10, 2010, the County sent Licensee a letter notifying her of the disqualification of Katie Engeldinger from direct contact with or access to persons served by the Department. The letter specifically states, in applicable part:

> It has been determined that Katie Engeldinger poses a risk of harm to persons served by the program that requires him/her to be under continuous, direct supervision whenever persons served by your program are present. The subject's continued presence in your program is allowed if:
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> 1. You have obtained a copy of the notice of disqualification, which explains the reason for disqualification from Katie Engeldinger.
>
> 2. You have documented that the disqualified individual has requested reconsideration within the stated timeline.
>
> 3. Your program will assure that the subject is under continuous, direct supervision when providing direct contact services pending reconsideration of the disqualification.[30][31]

26. Katie Engeldinger requested reconsideration in a timely fashion. She admitted and did not contest the basis for the disqualification. Her reconsideration request was based on the argument that she posed no risk of harm.[32]

27. At all times after June 10, 2010, Licensee allowed Katie Engeldinger to visit Licensee's home only after daycare hours, where she was under continuous, direct

[27] Test. of R. Elrasheedy; Ex. 4.
[28] Ex. 4.
[29] Ex. 5.
[30] Ex. 4.
[31] Ex. 6. Test. of D. Engeldinger.
[32] Ex. 11.

supervision and within sight and hearing of Licensee or her husband when she was present in Licensee's home.[33]

28. The County sent a letter to the Department on July 20, 2010, recommending that the disqualification of Katie Engeldinger neither be set aside nor a variance granted. After receipt of the letter, the Department advised the County that it must recommend a revocation of Licensee's license if the disqualification is neither set aside nor a variance granted.[34]

29. On July 26, 2010, the Department completed a Risk of Harm Assessment – Reconsideration of Disqualification form, suggesting some risk of harm.[35]

30. Because revocation would be inappropriate and unfounded, the County revised its recommendation to the Department in an August 13, 2010 letter, recommending a variance with the following conditions:

1. Katie shall not reside in the home.

2. Katie shall not stay overnight in the home.

3. Katie shall not be present in the home at any time the family child care program is in operation.

4. Katie shall not provide direct contact services to child care recipients.

5. Visitation between Katie and her children shall only take place when all child care recipients are out of the child care home.

6. Overnight visitation between Katie and her children shall only take place out of the child care home.

7. Katie shall continue to provide verification to the Agency that she is not living in the child care home.

8. There shall be no further incidences of domestic disturbance or violence in the child care home.

Licensee requested such a variance. Licensee and Katie had agreed to these conditions prior the County's revised recommendation letter, including their notarized statements.[36]

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[33] Test. of D. Engeldinger.
[34] Test. of R. Elrasheedy.
[35] Ex. 9.
[36] *Id.*; Test. of D. Engeldinger; Exs. 8, 11.

31. On January 7, 2011, the Department sent a letter to Katie Engeldinger at Licensee's address. The letter advised her of the Department's decision not to set aside her disqualification, stating that the following factors were determinative:

> 1. The serious nature of the disqualifying offense.
>
> 2. The vulnerability of the persons served in the program, with whom you may have direct contact or access. The clients to be served are children and are vulnerable because of their age.
>
> 3. The recency of the disqualifying event; it has been less than a year since your conviction.
>
> 4. You have not submitted documentation of your successful rehabilitation or completion of probation.

The letter went on to state, "You were previously ordered to remain under continuous direct supervision when persons receiving services from the program are present. This order remains in effect."[37]

32. On January 7, 2011, the Department issued to Licensee an Order of Revocation to Licensee of her license to provide family child care, alleging violations of Minn. Stat. §§ 245A.07, 245A.14; Minn. R. 9502.0335 and 9502.0375. The letter further states:

> You were previously ordered to ensure that the disqualified individual is under continuous direct supervision whenever persons served by the program are present. This order remains in effect.[38]

33. During her visits to Licensee's home after 2006, Katie Engeldinger was under Licensee's direct supervision at all times and had no direct, unsupervised contact with any of the children in Licensee's care.[39]

34. Licensee will continue not to allow Katie Engeldinger to visit her in her home when daycare children are present during the period of her disqualification.[40] Licensee filed a timely appeal from the order of Revocation and requested an appeal hearing pursuant to Minn. Stat. § 245A.07.[41]

35. On January 25, 2011, the Department executed a Notice of and Order for Hearing, scheduling a consolidated contested case hearing for March 23, 2011.[42]

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[37] Ex. 7.
[38] Ex. 1.
[39] Test. of D. Engeldinger; Ex. 11.
[40] Test. of D. Engeldinger; Ex. 8.
[41] Notice and Order for Hearing.
[42] *Id*.

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

## CONCLUSIONS

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter.[43]

2. The Department and the County gave proper and timely notice of the hearing and complied with all procedural requirements of law and rule.

3. Pursuant to Minn. Stat. § 245A.08, subd. 2a, this is a consolidated contested case hearing regarding the revocation of a family child foster care license based upon a disqualification that was not set aside.

### Disqualification

4. The Department has the burden of proving by a preponderance of the evidence that Katie Engeldinger:

a. was convicted of a crime that qualifies as a disqualification from direct contact and access to daycare children in Licensee's care;

b. poses a risk of harm to Licensee's daycare children;

c. lived in Licensee's home as her residence on or after February 9, 2009;

d. had direct contact with Licensee's daycare children on or after February 9, 2009; and

e. had access to Licensee's daycare children on or after February 9, 2009.[44]

5. Minn. Stat. § 245C.03, subd. 1(2) requires that background studies be conducted regarding "an individual age 13 and over living in the household where the licensed program will be provided."

6. Minn. Stat. § 245C.14 regarding **DISQUALIFICATION** provides in relevant part:

> Subdivision 1. **Disqualification from direct contact.** (a) The commissioner shall disqualify an individual who is the subject of a background study from any position allowing direct contact with persons

[43] Minn. Stat. § 245A.07, subd. 3; Minn. Stat. § 245A.08, subd. 2a(a); Minn. Stat. § 14.50.
[44] Minn. Stat. § 256.045, subd. 3b; Minn. Stat. § 626.556, subd. 10e; Minn. R. 1400.7300, subp. 5.

receiving services from the license holder . . . upon receipt of information showing, or when a background study completed under this chapter shows any of the following:

(1) a conviction of, admission to, or Alford plea to one or more crimes listed in section 245C.15, regardless of whether the conviction or admission is a felony, gross misdemeanor, or misdemeanor level crime;

7. Minn. Stat. § 245C.15 regarding **DISQUALIFYING CRIMES OR CONDUCT** provides in relevant part:

Subd. 4. **Seven-year disqualification.** (a) An individual is disqualified under section 245C.14 if: (1) less than seven years has passed since the discharge of the sentence imposed, if any, for the offense; and (2) the individual has committed a misdemeanor-level violation of any of the following offenses: . . . 609.535 (issuance of dishonored checks); . . .

8. Katie Engeldinger was convicted of a misdemeanor offense under 609.535, an offense listed in Minn. Stat. § 245C.15. The Department has proved by a preponderance of the evidence that Katie Engeldinger is therefore disqualified for seven years from having direct contact with children being cared for by Licensee, as required by Minn. Stat. § 245C.14.

**Set Aside of Disqualification**

9. Under Minn. Stat. § 245C.14, subd. 2(b), an individual's disqualification may be set aside if the individual does not pose a risk of harm to any person served by the Licensee. In determining whether an individual does not pose a risk of harm, the factors to be considered are:

a. The nature, severity, and consequences of the event or events that led to the disqualification;

b. Whether there is more than one disqualifying event;

c. The age and vulnerability of the victim at the time of the event;

d. The harm suffered by the victim;

e. The similarity between the victim and the person served by the program;

f. The time elapsed without a repeat of the same or similar event;

g. Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and

h. Any other information relevant to reconsideration.[45]

10. The Department proved by a preponderance of the evidence that Katie Engeldinger presents some risk of harm to daycare children in Licensee's care.[46] Therefore, the Commissioner should not set her disqualification aside.

11. Minn. R. 2960.3010, subp. 14 provides, in applicable part:

> 'Direct contact' means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to a child.

12. Minn. R. part 9502.0315 provides, in applicable parts:

> Subp. 9. Day care. 'Day care' means the care of a child in a residence outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24 hour day.
>
> Subp. 21. Parent. 'Parent' means a person who has the legal responsibility for a child such as the child's mother, father, or legally appointed guardian.

13. Katie Engeldinger was not providing face-to-face care to Licensee's program children on February 9, 2009 or thereafter. The Department failed to prove that Katie Engeldinger had direct contact with Licensee's daycare children on or after February 9, 2009.

14. Minn. Stat. § 245C.02, regarding the definitions of terms applicable to chapter 245C, provides, in applicable parts, as follows:

> Subdivision 1. Scope. The definitions in this section apply to this chapter.
>
> Subd. 2. Access to persons served by a program. 'Access to persons served by a program' means physical access to persons receiving services or the persons' personal property without continuous, direct supervision, as defined in subdivision 8. . . .
>
> Subd. 8.Continuous, direct supervision. 'Continuous, direct supervision' means an individual is within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program. . . .

[45] Minn. Stat. § 245C.22, subd. 4.
[46] Minn. Stat. § 245C.22, subd. 4.

15. Katie Engeldinger has not had physical access to Licensee's day care children without continuous, direct supervision as defined in Minn. Stat. § 245C.02, subd. 8. The Department has failed to prove by a preponderance of the evidence that Katie Engeldinger had access to Licensee's daycare children. Therefore, the Department has failed to prove by a preponderance of the evidence that Licensee or Katie Engeldinger was in violation either of Minn. Stat. § 245C.14 or Minn. Stat. § 245C.15.

16. The April 20, 2010 incident was outside of the daycare program and its hours. No children that did not live there were present when the incident occurred. Therefore, the Department failed to prove by a preponderance of the evidence that Licensee or Katie Engeldinger was in violation either of Minn. Stat. § 245C.14 or Minn. Stat. § 245C.15.

17. Minn. Stat. § 245A.07, subd. 3, allows the Commissioner to suspend or revoke a license or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

18. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken 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 shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

19. Minn. R. 9502.0335, regarding the licensing process provides in applicable part:

> Subp. 6. Disqualification factors. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:
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> . . .
>
> > D. Has a disqualification under Minnesota Statutes, section 245C.15, that is not set aside under Minnesota Statutes, section 245C.22, or for which a variance has not been granted under Minnesota Statutes, section 245C.30.

20. On or after February 9, 2009, Katie Engeldinger has not: had direct contact with children served by Licensee's program; access to children served by Licensee's program; or been present during the hours when children served by

Licensee's program are in care; all as defined in Minn. Stat. § 245C.02, subd. 2 and Minn. R. 9502.0335.

21. The Department has failed to establish reasonable cause to substantiate the allegations in the Order for Revocation that Licensee, at any time, allowed a disqualified individual to be a resident in the licensed household, allowed a disqualified individual direct contact with daycare children, allowed a disqualified individual access to Licensee's daycare children, or allowed a disqualified person to be present during the hours when children served by Licensee's program are in care, all actions that would result in violation of: Minn. Stat. §§ 245A.07 or 245C.14; Minn. R. 9502.0325 or 9502.335.

22. Minn. R. 9502.0335, subp. 2, concerning reporting to the Department provides in part:

> The provider shall inform the agency:
>
> A. within 30 days of any change in the regular membership of the household within the day care residence or the addition of an employee who will regularly be providing care;

The Department listed the foregoing rule in the Order of Revocation. However, the Order did not allege how or in what way Licensee violated the rule. The Department offered no evidence into the record as to how or in what way Licensee violated the rule.

23. The Department has failed to establish reasonable cause to suggest that Licensee, at any time, violated Minn. R. 9502.0335, subp. 2.A.

24. Licensee has proved by a preponderance of the evidence that she was in compliance with Minn. Stat. §§ 245A.07 and 245C.14, and the Commissioner's orders and directives, and did comply with the law because Katie Engeldinger was not: a resident in the home on or after July 7, 2006; nor was she allowed unsupervised direct contact with or access to Licensee's daycare children on or after February 9, 2009; nor was Katie Engeldinger present in Licensee's home on or after February 9, 2009 during the hours when children served by Licensee's program were in Licensee's care.

25. Licensee has proved by a preponderance of the evidence that she is and has been in compliance with all applicable laws and rules related to her license since 2005.

26. Minn. Stat. § 245A.04 provides in applicable part:

> Subd. 6. **Commissioner's evaluation.** Before issuing, denying, suspending, revoking, or making conditional a license, the commissioner shall evaluate information gathered under this section. The commissioner's evaluation shall 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 applicant or license holder. The commissioner shall evaluate the results of the study required in subdivision 3 and determine whether a risk of harm to the persons served by the program exists. In conducting this evaluation, the commissioner shall apply the disqualification standards set forth in chapter 245C.

27. As provided in Minn. Stat. §§ 245A.04, subd. 6 and 245C.16, the County considered some facts, conditions, and circumstances concerning the program's operation and the vulnerability of persons served by the program. The Department did not consider available consumer evaluations of the program, information about the unique qualifications of the Licensee, or the value of continuity of care and the overall well being of the children in Licensee's care. The Commissioner evaluated the results of the background study for Katie Engeldinger and applied the disqualification standards set forth in chapter 245C.

28. Minn. Stat. § 245A.07, subd. 1, requires the Commissioner to 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 those persons in a licensee's program before applying sanctions under Minn. Stat. § 245A.07.

29. The Commissioner may revoke a license if a license holder fails to fully comply with applicable laws or rules or has a disqualification. Since the Department failed to show that the Licensee violated any of the laws or rules alleged as the basis for the revocation, no grounds exist to revoke the License's' license to provide family child care.

30. These Conclusions are reached for the reasons set forth in the Memorandum below, which is hereby incorporated by reference into these Conclusions.

31. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

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

## RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends to the Commissioner of Human Services that:

(1) The disqualification of Katie Engeldinger not be set aside; and

(2) The revocation of the family child care license of Ms. Deborah Engeldinger be withdrawn and rescinded.

Dated: April 20, 2011

s/M. Kevin Snell
M. KEVIN SNELL
Administrative Law Judge

Reported: Digitally recorded; 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.[47] 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.

## MEMORANDUM

This is a consolidated case involving the appeal of the Department's disqualification determination concerning Licensee's adult daughter, Katie Engeldinger, and Licensee's appeal of the Order of Revocation of Licensee's family child care license. Licensee does not dispute the appropriateness of the disqualification decision. Katie Engeldinger requested reconsideration of the disqualification based on her

[47] Minn. Stat. § 14.61.

argument that she does not pose a risk of harm to daycare children. However, Licensee does not argue that her daughter, at the present time, poses no risk of harm to daycare children. There remain two separate determinations that must be made: whether Katie Engeldinger's disqualification should be set aside and whether the facts of this case support revocation of Licensee's license.

The Administrative Law Judge has concluded that: the disqualification of Katie Engeldinger should not be set aside and the order of revocation of Licensee's family child care license should be rescinded for the reasons discussed below. Although these issues arise from the same factual allegations, the standards for them are not the same and each must be separately examined.

**Burdens of Proof**

The Department has the burden of demonstrating by a preponderance of the evidence that Katie Engeldinger was convicted of an act that results in her disqualification from direct contact with or access to children in programs licensed by the Department. It also has the burden of demonstrating by a preponderance of the evidence that Katie Engeldinger, on or after the act that resulted in her disqualification, lived in Licensee's home, and Licensee allowed Katie Engeldinger either direct contact with or access to children in Licensee's care.[48]

The Department also has the burden to demonstrate "reasonable cause" for the revocation of the foster care license. As set forth in statute, "the [Department] may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule."[49] When such facts are shown that would support a conclusion that a violation occurred, the burden shifts to the license holder to demonstrate compliance with the applicable statute and rules. But if the Department fails to show reasonable cause, the burden does not shift, and the violation must be dismissed.

**Set Aside of the Disqualification of Katie Engeldinger**

Based on the evidence and application of the law, the Department's determination regarding the disqualification of Katie Engeldinger is correct. Conviction for the commission of certain crimes carries with it a mandatory disqualification from direct contact with persons being cared for in programs licensed by the Department. Neither the Commissioner nor the Administrative Law Judge may overlook those disqualifications. Depending on the seriousness of the crime, as determined by the legislature when creating the law, a disqualification may be permanent, for a period of 15 years, for a period of 10 years, or for a period of 7 years. Katie Engeldinger's disqualification falls into the seven year category.

[48] Minn. Stat. §§ 626.556, subd. 10e; 245C.15, subd. 4 (b) (2).
[49] Minn. Stat. § 245A.08, subd. 3.

Because the disqualification is not being challenged, one of the two issues remaining to be determined in this proceeding is whether or not Katie Engeldinger's disqualification should be set aside.

The law allows the Commissioner to set aside a disqualification only for the purposes of the individual licensed program that is involved if the disqualified individual poses no risk of harm to the persons served by that program. Katie Engeldinger, in the July 2010 request for reconsideration, states only five essential facts. First, that she is in the process of making arrangements for restitution. Second, that she does not live in Licensee's home. Third, that she does not provide services to daycare children. Fourth, that she is currently on probation and has been ordered to participate in community service. Fifth, that she has learned from her mistakes and is trying to better herself.[50]

The reliable evidence in the record establishes that Katie does not and did not, at any time relevant to this proceeding, live in the licensed home or provide child care services to Licensee's daycare children. These facts alone, however, do not establish that Katie poses no risk of harm.

With regard to the second factor, the Department correctly states in its reconsideration decision that Katie Engeldinger did not provide documentation of completion of her probation or rehabilitation as required by the statute. There is no evidence in the record that she has completed community service or her jail time. It has only been two years since the disqualifying act. Also, the record is silent regarding whether or not Katie Engeldinger has or has not been involved in illegal activities since 2009. The record contains no affirmative assurances that Katie Engeldinger has not and will not in the future return to illegal behavior. The foregoing facts and the recency of the disqualifying act establish by a preponderance of the evidence that Katie Engeldinger poses some risk of harm at this time. The disqualification should not be set aside at this time.

## Licensee's Family Child Care License

### Background Study of Katie Engeldinger

The County and the Department properly followed the requirements of the applicable statutes in their initiation and review of the background study on Katie Engeldinger. This process was set in motion by the fact that a domestic incident occurred at the Licensee's home. The facts that Katie Engeldinger incorrectly listed Licensee's home in her driver's license and law enforcement also incorrectly listed Licensee's home as Katie's residence was information and an existing circumstance that provided the commissioner with an articulable suspicion that further pertinent

[50] Ex. 11.

information may exist concerning Ms. Engeldinger.[51] This was reasonable cause to initiate the background study and further investigation.

**County Investigation Regarding Katie Engeldinger's Residence**

The County conducted a thorough investigation by interviewing the relevant parties and conducting multiple unannounced visits to the home over a period of two years. The County licensor conducting the investigation has 32 years experience in licensing. Here testimony was thorough, candid and persuasive. These visits confirmed that Katie Engeldinger did not and does not live in the licensed home. No evidence was discovered that would lead a reasonable person to conclude that Katie Engeldinger lived in the licensed home or had any contact with daycare children. Once the County learned that Katie Engeldinger did not, in fact, live at the licensed home or have direct contact with or access to Licensee's daycare children, there was no reasonable cause to pursue a licensing sanction against Licensee.

The Department presented no reliable evidence to establish reasonable cause to believe that Katie Engeldinger resided with Licensee after 2006. The County's investigation proved, by a preponderance of the evidence, that the initial documentary evidence that the Department correctly relied on to initiate the background study was incorrect. It arose from the fact that Katie Engeldinger neglected to list her actual residence address on her driver's license because she did not have a permanent home.

Licensee proved by a preponderance of the evidence that her daughter physically moved out of the home permanently in 2006. The reliable evidence in the record suggests that Katie Engeldinger's temporary residences changed periodically, but were still not at Licensee's home. Katie Engeldinger made no effort to keep the documentation of her actual residences current until after the disqualification decision. However, she did so before the Department issued the Order of Revocation.[52] The reliable and verified facts allow no dispute that Katie Engeldinger has lived elsewhere than Licensee's home since 2006.

**Direct Contact or Access to Licensee's Day Care Children by Katie Engeldinger**

Law and regulation prohibit a disqualified person from: providing face-to-face care to persons in Department licensed programs or having physical access to persons receiving services without being within sight or hearing of the program's supervising individual to the extent that the program's supervising individual is capable at all times of intervening to protect the health and safety of the persons served by the program.[53]

The Order of Revocation does not allege, and the record contains no evidence that Katie Engeldinger was present in Licensee's home and unsupervised by Licensee

[51] Minn. Stat. § 245C.02, subd. 15 – the definition of reasonable cause that may initiate a background study.
[52] Ex. 11.
[53] Conclusions 11, 14, 19.

when daycare children were present. Both Licensee and the County licensor testified that Katie and Licensee have agreed that they are abiding by and will abide by the eight conditions listed in the August 2010 recommendation and request for a variance.

## Conclusion

There is no evidence in the record to indicate that health, safety, or rights of daycare children in Licensee's care were in imminent danger at any time.

The facts establish that Licensee is now and has been in compliance with the law, and was in full compliance with the Commissioner's orders and directives during the six months that the Department was considering the request for reconsideration of the disqualification. The only licensing violations occurred over six years ago and were not alleged as a basis for the revocation in the Order of Revocation. Therefore, there is no basis for Licensee's family child care license to be sanctioned.[54]

For these reasons, the Administrative Law Judge recommends that the Order of Revocation be rescinded.

**M. K. S.**

[54] Minn. Stat. § 245A.07, subd. 1.