

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Disqualification of
Youree Freeman White and
the Revocation of the License of
Sharon White

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was originally set for hearing on June 21, 2011, but was postponed and convened on December 8, 2011, at the Hennepin County Health Services Building by Administrative Law Judge Beverly Jones Heydinger, pursuant to a Notice and Order for Prehearing Conference and Hearing dated March 17, 2011. The hearing was not completed and was continued to a later date. The hearing reconvened on April 13, 2012, and the hearing record closed at the completion of the hearing on that day.

Appearances: Michael Q. Lynch, Assistant Hennepin County Attorney, on behalf of the Department of Human Services (Department) and Hennepin County Human Services and Public Health (County). Youree Freeman White and Sharon White each appeared on their own behalf.

STATEMENT OF THE ISSUES

1. Should Youree Freeman White be disqualified from contact with persons served by programs licensed by the Department?
2. If Mr. White is disqualified, should Sharon White's license to provide child foster care be revoked?

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

FINDINGS OF FACT

1. This matter arises from the Department's determination that, based on the results of a background study, Youree Freeman White, Sharon White's son, should be disqualified from contact with persons receiving services under a license issued by the Department. Ms. White is licensed to provide child foster care. Because the Department determined that Mr. White has access to the children in Ms. White's care, it

revoked her license to provide child foster care.¹ The Department does not allege any other basis for revocation of Ms. White's license.

2. On or about July 2009, Mr. White, Ms. White's adult son, moved into Ms. White's home. Ms. White submitted an application for a background study for Mr. White.²

3. On October 27, 2009, Mr. White was notified that the Department had determined by a preponderance of the evidence that on March 29, 2007, he had committed an act that met the definition of a violation of Minn. Stat. § 152.022, subd. 2 (1), a felony second degree controlled substance crime. Based on this determination, Mr. White was notified that he was disqualified from direct contact with or access to persons receiving services for his mother's foster care program.³

4. Section 152.022, subd. 2, states that a person is guilty of a controlled substance crime in the second degree if the person has in his possession certain controlled substances, including six grams or more of mixtures containing cocaine.⁴

5. In making its determination, the Department relied upon the police report of the incident.⁵

6. On March 29, 2007, Mr. White was with some friends, one of whom, Robert Inman, was under investigation for narcotics violations. Mr. Inman received a call, which he suspected could be from the police, and asked Mr. White to hold or dispose of some drugs, in the event that the men were stopped. Wanting to be a good friend, Mr. White agreed to take the drugs and put them in his pocket.⁶

7. When Mr. Inman arrived at a gas station in Minneapolis, the police attempted to arrest him. Mr. White was riding in a second car driven by Edward Smith, who stopped to assist Mr. Inman and parked close to Mr. Inman's car. The police perceived that Mr. Smith and Mr. White had involved themselves in Mr. Inman's arrest. Because of Mr. Inman's involvement with narcotics, the police were concerned that any associates could be armed and searched Mr. Smith and Mr. White.⁷

8. When the officer asked Mr. White if he had anything on him, Mr. White nodded and indicated to a pocket in his jacket. The officer checked the pocket and

¹ Exhibit (Ex.) 10.

² Ex. 3 at 4; Ex. 4.

³ Ex. 5. Minnesota Statutes are cited to the 2011 Edition. Although there were references in other documents that Ms. White was given notice of Mr. White's disqualification, the notice to her was not offered into evidence.

⁴ Minn. Stat. § 152.022, subd. 2 (1).

⁵ Exs. 16, 17.

⁶ Test. of Y. White; Ex. 17.

⁷ Ex. 17.

found what he believed was crack cocaine. The drugs were tested and confirmed as 10.04 grams of crack cocaine.⁸

9. Based on this information, the Department determined by a preponderance of the evidence that Mr. White had committed the disqualifying act.⁹

10. Although Mr. White was arrested, he was not charged with a crime and he was released.¹⁰ Mr. Inman told the police that the drugs were his and not Mr. White's. Mr. Inman pled guilty and was sentenced to prison.¹¹

11. Minnesota Stat. § 245C.15 lists the crimes that are considered to be disqualifying offenses. Violations of chapter 152 are listed under subdivision two, which disqualifies a person for 15 years.

12. If the commissioner determines by a preponderance of the evidence that an individual has committed certain acts listed in Minn. Stat. § 245C.15, regardless of whether the preponderance of the evidence is for a felony, gross misdemeanor, or misdemeanor level offense, the person shall be disqualified from any position allowing direct contact with persons receiving services from a license holder, pursuant to Minn. Stat. § 245C.14, subd. 1 (a)(2).

13. The commissioner may set aside a disqualification under certain circumstances, but Minn. Stat. § 245C.24, subd. 3, states that the commissioner may not set aside the disqualification based on a preponderance of evidence determination under § 245C.14, subd. 1 (a)(2), if less than ten years has passed since the individual committed the act.

14. Since less than ten years had passed since the incident that led to Mr. White's disqualification, the Department may not set it aside.¹²

15. The Department's letter of October 27, 2009, informing Mr. White of his disqualification, also notified him that he had the right to request reconsideration of the disqualification.¹³

16. On January 7, 2010, Mr. White requested reconsideration and notified the County that he was no longer living with his mother. Mr. White acknowledged that he had used very poor judgment when he agreed to hold the drugs for his friend, and regretted he had done so, describing it as "the worst decision I have ever made in my

⁸ Ex. 17.

⁹ Ex. 16.

¹⁰ Ex. 16; Test. of Y. White.

¹¹ Test. of Y. White.

¹² Ex. 5.

¹³ Ex. 5.

life.” He stated that, although he had not been charged, he was truly sorry for the incident.¹⁴

17. Olivia Dinkins, County Foster Care Licensing Worker, completed a risk of harm determination, and evaluated each of Mr. White’s risk factors as “low,” with the exception of the recency of the disqualifying event, which was rated as “moderate” because it had occurred within 1 to 7 years.¹⁵ Ms. Dinkins completed an additional form and wrote a letter to the Department, dated February 16, 2010, recommending that the commissioner grant a variance to the disqualification because Mr. White was not living with his mother and because the County valued Ms. White as a provider.¹⁶

18. Following receipt of the notice of disqualification and while the appeal was pending, Ms. White did not allow Mr. White to be in her home without supervision. If she was not at home, her adult daughter was at home.¹⁷

19. In April 2010, while his Request for Reconsideration was pending, Mr. White was shot and seriously injured.¹⁸ Mr. White was probably not the intended victim.¹⁹

20. On June 9, 2010, Ms. White notified the County that Mr. White had been discharged from the hospital and rehabilitation facility, and had returned to her home. At that time, Mr. White was disabled and needed nursing care. Ms. White had one child in foster care.²⁰

21. In September 2010, the Request for Reconsideration was still pending at the Department. The County rescinded its recommendation for a variance because Mr. White was in the home, and recommended that the Department revoke Ms. White’s license.²¹

22. On February 24, 2011, the Department issued the Order of Revocation. The Order stated that the Request for Reconsideration had been denied and no variance granted, and for that reason, Ms. White’s license was revoked.²² A separate letter, also dated February 24, 2011, notified Mr. White that the Request for Reconsideration had been denied.²³

¹⁴ Ex. 6 (two pages). The Department waived its objection to the timeliness of the Request for Reconsideration (Statement of Assistant County Attorney on Dec. 8, 2011).

¹⁵ Ex. 20.

¹⁶ Exs. 7, 15.

¹⁷ Ex. 13 at 4-5; Test. of S. White.

¹⁸ Ex. 9 at 1.

¹⁹ Ex. 8 at 2; Test. of Y. White.

²⁰ Test. of S. White; Ex. 1 at 3; Ex. 8 at 2-4.

²¹ Exs. 3 and 9; *see also* Ex. 8 at 7-8.

²² Ex. 10.

²³ Ex. 10 (last two pages).

23. On March 7, 2011, Ms. White filed an appeal of the Order of Revocation and requested a contested case.²⁴

24. The Department issued a Notice of and Order for Hearing to Ms. White on March 17, 2011, setting the hearing for June 21, 2011.

25. By letter dated June 6, 2011, Ms. White requested a continuance so that she could try to retain an attorney to assist her. The hearing was rescheduled for July 18, 2011, but cancelled due to the Minnesota State Government shut-down.

26. The hearing was rescheduled for December 8, 2011. At that time, the Department presented its case. It was agreed on the record that the sole basis for the revocation was Mr. White's disqualification. Ms. White was given a continuance so that Mr. White could request that the Department accept a late appeal of the Department's denial of his Request for Reconsideration, based on his disability. The matter was re-set for February 29, 2012.

27. On December 29, 2011, Mr. White requested that the Department accept a late appeal of his disqualification because his disability had prevented him from seeking it sooner.²⁵

28. On February 29, 2012, Ms. White was present for hearing. The Assistant County Attorney stated that he had received notice that the Department had accepted Mr. White's late appeal and his disqualification should be considered in this proceeding. The Department had not given notice of its decision to Mr. White, Ms. White, or the ALJ.

29. The hearing was postponed in order to give Mr. White notice of the hearing to consider his disqualification. On March 7, 2012, the County notified Mr. White that the Department had granted his request for a hearing, and provided him with copies of the exhibits. The letter was copied to Ms. White and the ALJ.²⁶

30. The hearing reconvened on April 13, 2012. The Department reiterated that the issue to be addressed was Mr. White's disqualification and that the revocation of Ms. White's license was based solely on the disqualification. The Department also restated its position that any family member who visits occasionally is considered to have access to the home of the foster care provider.²⁷

31. Mr. White has not lived with his mother throughout the course of this proceeding.²⁸ He does not go to her home unless she calls him. He feels very badly that his mistake could lead to his mother's loss of her license and deeply regrets that his actions in 2007 are still at issue. He will not visit his mother's home if it will jeopardize her license. Mr. White and Ms. White are willing to maintain their relationship by

²⁴ Ex. 11.

²⁵ Ex. 21.

²⁶ Ex. 23.

²⁷ See Exhibit 14.

²⁸ Test. of Y. White; Test. of S. White.

telephone and by meeting at other locations. As is apparent from the County's risk of harm assessment, Mr. White presents a low risk of harm to others.

32. Ms. White acknowledges that she loves her son and does not intend to cut him out of her life, but she has previously limited his access to her home and would do so again if necessary to maintain her license.

33. At all times, Mr. White and Ms. White have been candid with the County. Ms. White submitted a background study for Mr. White, she notified the County when he moved home following his hospitalization, and she has been honest and forthcoming. Mr. White accepts full responsibility for his actions, and has no criminal record or, apart from the one disqualifying incident, other involvement with illegal behavior.

34. Except for permanent disqualifications arising under Minn. Stat. § 245C.15, subd. 1, the commissioner may issue a time-limited variance for a disqualification when the commissioner has not set aside the disqualification and there are conditions under which the disqualified individual may provide direct contact services or have access to people receiving services that minimize the risk of harm to the people receiving service.²⁹

35. In determining the risk of harm for the set aside of a disqualification, certain statutory criteria apply, as set forth in Minn. Stat. § 245C.22, subd. 4. These factors, although not expressly applicable to a request for a variance, provide some guidance. They include:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (9) any other information relevant to reconsideration.³⁰

²⁹ Minn. Stat. § 245C.30.

³⁰ Minn. Stat. § 245C.22, subd. 4 (b).

36. In this instance, there was one disqualifying event in 2007, with no consequences to others and no victim. Although Mr. White has not completed training or rehabilitation, he was not charged with a crime nor is there evidence that he was encouraged to seek training or rehabilitation. He has had no subsequent offense. By definition, all children, including those in foster care, are vulnerable.³¹

37. There are conditions, such as directing Mr. White to remain away from Ms. White's home when she has foster children placed with her, that would minimize any risk of harm to persons receiving services from Ms. White.

38. The documents offered into evidence include information about A.M., a child placed in foster care with Ms. White. Since the decision to revoke Ms. White's license was based solely on the disqualification of Mr. White, and there was no determination of maltreatment or license violations, this evidence was disregarded.

39. Citations to the transcripts or hearing exhibits in these Findings of Fact are not inclusive of all applicable evidentiary support in the record.

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

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§14.50, 245A.07, subd. 3 (b), and 245A.08, subd. 2.

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

3. The burden of proof is on the Department to demonstrate by a preponderance of the evidence that Mr. White should be disqualified. It demonstrated that Mr. White participated in activity that violated Minn. Stat. ch. 152, which is a basis for disqualification pursuant to Minn. Stat. § 245C.14, subd. 1 (a)(2), and it demonstrated that the disqualification could not be set aside for ten years, as set forth in Minn. Stat. § § 245C.24, subd. 3.

4. The commissioner has the authority to grant a variance when a disqualification has not been set aside and there are conditions under which the disqualified individual may have access to persons receiving services that minimize the risk of harm to those persons.³²

5. Mr. White presents virtually no risk of harm. Five years have passed since the disqualifying event; Mr. White does not live with his mother; and both Mr. White and Ms. White are trustworthy. They have agreed that, if Ms. White is permitted to retain

³¹ See Minn. Stat. §§ 626.556 and 626.557.

³² Minn. Stat. § 245C.30, subd. 1.

her license, Mr. White will not go to her home when Ms. White has a child placed in foster care. Under the circumstances presented here, a variance would be appropriate so that Ms. White can retain her license.

6. When applying sanctions, 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.³³

7. In this instance, Ms. White has not violated any law or rule applicable to her license.

8. The commissioner may revoke a license if a license holder fails to fully comply with applicable laws or rules or there is a disqualification.³⁴ If a variance is given, there is no basis for revocation of Ms. White's license.

9. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

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

RECOMMENDATION

The Administrative Law Judge recommends:

1. That Mr. White's disqualification be affirmed;
2. That the Commissioner issue a variance to Ms. White, allowing her to maintain her license so long as Mr. White does not have access to her home at any time when she has children placed with her for foster care; and
3. That the Order of Revocation be withdrawn.

Dated: May 3, 2012

s/Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Digitally Recorded

³³ Minn. Stat. § 245A.07, subds. 1 and 3 (a).

³⁴ Minn. Stat. § 345A.07, subd. 3 (a).

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 make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, PO Box 64998, St. Paul, MN 55164-0998, (651) 431-2907, to learn the procedure for filing exceptions or presenting argument.

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 Administrative Law Judge of the date the record closes. 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.

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 facts of this case lend strong support to the recommendation that Mr. White should be given a variance so that his mother, an excellent foster care provider, may retain her license. The sole basis for disqualification is an incident in 2007 for which Mr. White was never criminally charged. He takes full responsibility for his actions, and is truly sorry that a mistake he made in a misguided attempt to help a friend resulted in possession of crack cocaine and serious consequences for his mother. He is very concerned that his misstep could deprive his mother of the opportunity to provide foster care and credibly stated that he would never intentionally do something that would prevent her from doing so.

Mr. White is now living with his sister. He is willing to stay away from his mother's home, talk with her by telephone, and meet her at other places if any children are placed with her for foster care. There is no reason to question Mr. White's sincerity, since at other times, when limitations have been placed on his access to her home, both Mr. White and Ms. White have fully complied with the limitations.

With such conditions, there would be no risk of harm to the children placed in foster care.

B.J.H.