

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Laura Sterling To
Provide Family Day Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on July 26, 2011, at the Rice County Government Center, Faribault, Minnesota 55021. The OAH record closed at the end of the hearing on July 26, 2011.

Catherine M. Miller, Assistant Rice County Attorney, 218 NW Third Street, Faribault, Minnesota 55021, appeared at the hearing as attorney for the Minnesota Department of Human Services (the "Department") and the Rice County Social Services Department (the "County"). Licensee, Ms. Laura Sterling, appeared on her own behalf, without legal counsel.

STATEMENT OF THE ISSUE

The issue is whether or not there is reasonable cause to believe that the health, safety or rights of children in Ms. Sterling's care are at imminent risk of harm at this time.

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

FINDINGS OF FACT

1. Ms. Sterling (also herein "Licensee") has been licensed to provide family child care services for 17 years and had done so in her home in Faribault, Minnesota (the "home") until about June 21, 2011, when her license was suspended.¹

2. The parents of six or more children in her care have great confidence in her as a child care provider and are anxious for the restoration of her license. Each of these parents believes that it is acceptable for Licensee's 16-year-old niece to watch their children alone for brief periods.²

¹ Testimony of Laura Sterling.

² Exs. 2-6.

3. On November 17, 2009, in response to a complaint, the County issued Licensee a Correction Order for violations of the following family child care regulations relevant to this proceeding, among others:

- a. Minn. R. 9502.0365, subd. 5, for utilizing a helper, her 16 year old son, as the sole caregiver, without an adult caregiver being present; and
- b. Minn. R. 9502.0425, subp. 9, for having inadequate sleeping space for an infant.³

4. On November 17, 2009, Licensee was advised by the County licenser that use of a helper as a substitute caregiver was impermissible and that only an adult may be utilized as a substitute caregiver.⁴

5. On June 14, 2011, Licensee allowed a 16-year-old helper, her niece, to transport five (5) children from the Faribault middle school baseball field in Licensee's Acadia minivan to Licensee's home.⁵ The helper had not received the training required by Minn. Stat. § 245A.50, subd. 6, before transporting children being cared for in a licensed family child care home.⁶

6. Licensee's daughter, a qualified substitute caregiver, followed the helper home and was with the helper and children until Licensee returned later on June 14, 2011.⁷

7. The County licenser received a report that children in Licensee's care had been left alone with a 16-year-old helper on three occasions while Licensee went to a middle school baseball field to watch her son play or practice baseball. The reporter stated that Licensee would be driving a Ford Mustang or an Acadia minivan. On June 21, 2011 the County family child care licenser investigated the report.⁸

8. At 10:25 a.m., on June 21, 2011, the licenser left the County offices and drove directly to the Faribault middle school ball field where she observed a Ford Mustang and saw Licensee watching baseball, together with a number of children.⁹

9. After observing Licensee at the ball field, the licenser drove to Licensee's home, arriving at 10:44 a.m. The licenser was greeted by a 16-year-old helper, Licensee's niece, who the licenser observed was caring for two children (a one-year-old and a two-year-old). They were watching a movie in the living room. The helper stated

³ Test. of Colleen Peterson, Ex. 1.

⁴ *Id.*

⁵ Test. of L. Sterling and C. Peterson.

⁶ Test. of C. Peterson.

⁷ Test. of L. Sterling.

⁸ Test. of C. Peterson.

⁹ *Id.*

that she was caring only for the two children and that the rest of the children were with Licensee.¹⁰

10. When asked where Licensee was, the helper stated that Licensee had gone to the bank and would be right back. When the helper was asked if she had been left alone with children previously, she stated that she had been left alone one other time about a week before.¹¹

11. While the licensor was waiting there for Licensee to return to the home, she heard an infant cry out. When asked about the crying infant by the licensor, the helper stated, "Oh, is [infant's name] here?"¹²

12. The licensor then found the infant in an adjacent room, lying on its stomach, on the carpeted floor, crying, with a blanket covering it up to its armpits.¹³

13. During the time, well in excess of an hour, that Licensee was absent from the home and only the helper was present, a fourth child arrived at the home after swimming lessons.¹⁴

14. Licensee returned to the home at 11:50 a.m. driving the Ford Mustang and transporting a number of children.¹⁵

Procedural Findings

15. On or about June 21, 2011, Rice County Social Services Department recommended to the Department that Ms. Sterling's family child care license be immediately suspended.¹⁶

16. On or about June 21, 2011, the Department issued an Order of Temporary Immediate Suspension of Licensee's family child care license.¹⁷

17. On or about June 22, 2011, Licensee filed a timely appeal from the Order of Temporary Immediate Suspension and requested an appeal hearing pursuant to Minn. Stat. § 245A.07, subd. 2a.¹⁸

18. On June 23, 2011, the Department executed a Notice of and Order for Hearing, scheduling a contested case hearing for July 20, 2011.¹⁹ The hearing was

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Test. of C. Peterson.

¹⁷ *Id.* A copy of the Order of Temporary Immediate Suspension is not part of the record in this proceeding, as neither was a copy introduced into the record nor part of the Notice and Order for Hearing.

¹⁸ Notice and Order for Hearing.

¹⁹ Notice and Order for Hearing.

continued due to the shutdown of the Minnesota State government. The parties agreed to proceed with the hearing on July 26, 2011.

19. On July 22, 2011, the Administrative Law Judge issued a Protective Order, which was served upon the parties that day.

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

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subds. 2 and 2a.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of law and rule.

4. The purpose of family child care licensure statutes and rules is to protect the care, health, and safety of children.²⁰

Temporary Immediate Suspension Standards and Reasonable Cause

5. Pursuant to Minn. Stat. § 245A.07, subd. 2, in order to sustain a temporary immediate suspension, the Department must show that reasonable cause exists to believe that Licensee's failure to comply with applicable law or rule poses a current imminent risk of harm to the health, safety, or rights of persons served by her.

6. At hearing, the burden of proof is on the Department to show that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, the actions of another, or the conditions in the program, poses an imminent risk of harm to the health, safety, or rights of persons served by the program.²¹

7. "Reasonable cause" for the purpose of a temporary immediate suspension means:

there exist specific articulable facts or circumstances which provide the commissioner with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.²²

²⁰ Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325.

²¹ *Id.*

²² *Id.*

Family Child Care Law and Rules Alleged to Have Been Violated

8. Minn. R. 9502.0365 regarding **LICENSED CAPACITY, CHILD/ADULT RATIOS, AGE DISTRIBUTION RESTRICTIONS** provides in relevant part as follows:

Subpart 1. **Capacity limits.** Family day care and group family day care providers shall comply with part 9502.0367, which limits the total number of children and the number of preschoolers, toddlers, and infants who may be in care at any one time, **and provides for the number of adults who are required to be present.** (emphasis added) . . .

Subp. 4. **Helpers.** A helper may be used in place of a second adult caregiver when there is no more than one infant or toddler present.

Subp. 5. **Supervision and use of substitutes.** A licensed provider must be the primary provider of care in the residence. Children in care must be supervised by a caregiver. The use of a substitute caregiver must be limited to a cumulative total of not more than 30 days in any 12-month period.

9. Minn. R. 9502.0367 regarding **CHILD/ADULT RATIOS** requires at least one adult caregiver at all times, regardless of the class of the license or number of children present.

10. Minn. R. 9502.0315 provides the following **Definitions**, in applicable part:

Subpart 1. **Applicability.** As used in parts 9502.0315 to 9502.0445, the following terms have the meanings given them.

Subp. 2. **Adult.** 'Adult' means a person at least 18 years of age.

Subp. 6. **Caregiver.** 'Caregiver' means the provider, substitute, helper, or another adult giving care in the residence.

Subp. 14. **Helper.** "Helper" means a person at least 13 years of age and less than 18 years of age who assists the provider with the care of children.

Subp. 29. **Substitute.** 'Substitute' means an adult at least 18 years of age who assumes the responsibility of the provider as specified in part 9502.0365, subpart 5.

11. Minn. Stat. § 245A.50 regarding **FAMILY CHILD CARE TRAINING REQUIREMENTS** provides in relevant part as follows:

Subd. 5. **Sudden infant death syndrome and shaken baby syndrome training.** (a) 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 and receive training on reducing the risk of sudden infant death syndrome. 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 shaken baby syndrome. The training in this subdivision may be provided as initial training under subdivision 1 or ongoing annual training under subdivision 7. . . .

Subd. 6. **Child passenger restraint systems; training requirement.** (a) A license holder must comply with all seat belt and child passenger restraint system requirements under section 169.685.

(b) Family and group family child care programs licensed by the Department of Human Services that serve a child or children under nine years of age must document training that fulfills the requirements in this subdivision.

(1) **Before a** license holder, staff person, caregiver, or **helper** transports a child or children under age nine in a motor vehicle, the person placing the child or children in a passenger restraint must satisfactorily complete training on the proper use and installation of child restraint systems in motor vehicles. Training completed under this subdivision may be used to meet initial training under subdivision 1 or ongoing training under subdivision 7. (emphasis added) . . .

12. Minn. Stat. § 245A.1435 providing for **REDUCTION OF RISK OF SUDDEN INFANT DEATH SYNDROME IN LICENSED PROGRAMS**, provides as follows:

(a) When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant. The parent directive must be on a form approved by the commissioner and must include a statement that the parent or legal guardian has read the information provided by the Minnesota Sudden Infant Death Center, related to the risk of SIDS and the importance of placing an infant or child on its back to sleep to reduce the risk of SIDS.

(b) The license holder must place the infant in a crib directly on a firm mattress with a fitted crib sheet that fits tightly on the mattress and overlaps the mattress so it cannot be dislodged by pulling on the corner of the sheet. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. The requirements of this section apply to license holders

servicing infants up to and including 12 months of age. Licensed child care providers must meet the crib requirements under section 245A.146.

Violations Found

13. Licensee's 16-year-old helper who transported five child care children from the baseball fields to Licensee's home has not been trained for placing children in passenger restraint systems, in violation of Minn. Stat. § 245A.50, subd. 6.

14. Neither Licensee nor a qualified adult substitute caregiver was driving Licensee's minivan on June 14, 2011, when five child care children were transported from the ball field to the child care home, in violation of Minn. R. 9502.0365 and 9502.0367.

15. Neither Licensee nor a qualified adult substitute caregiver were present in Licensee's home on June 21, 2011, when there were three child care children present: one two-year-old; one one-year-old; and an infant, in violation of Minn. R. 9502.0365 and 9502.0367.

16. Licensee violated Minn. Stat. § 245A.1435 by allowing placement of an infant on its stomach on the floor, failing to have an approved written directive signed by the infant's parent, and failing to provide an approved crib for an infant.

Reasonable Cause Conclusions

17. When the Order was issued on June 21, 2011, there were specific articulable facts and circumstances indicating law and rule violations that provided the commissioner with a reasonable suspicion to believe that all of the children in Ms. Sterling's care were at imminent risk of harm.

18. At the hearing, Licensee failed to express any commitment that she will take necessary measures to prevent any future similar situations as occurred in November 2009, June 14, 2011, and June 21, 2011. The evidence is sufficient for a reasonable, prudent person to conclude that there is a reasonable suspicion that Licensee presents a current, imminent risk of harm to children.

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

20. 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 temporary immediate suspension of the family day care license of Laura Sterling be continued; and
- 2) The July 22, 2011 Protective Order of the Administrative Law Judge shall remain in effect.

Dated: July 29, 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 (Commissioner) will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b), the parties adversely affected have ten (10) calendar days to submit exceptions to this Report and request to present argument to the Commissioner. The record shall close at the end of the ten-day period for submission of exceptions. The Commissioner then has ten (10) working days from the close of the record to issue his final decision. Parties should contact Lucinda Jesson, Commissioner of Human Services, Box 64998, St. Paul MN 55155, (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.

MEMORANDUM

At this stage, the Department of Human Services is not required to prove by a preponderance of the evidence that actions by individuals or violations actually occurred. Instead, at this stage, during an expedited hearing regarding a temporary immediate suspension, the Department must only present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on any alleged violations of law or rule. The Department and the Administrative Law Judge are entitled to rely on hearsay evidence linking the license holder (or any person present during the hours that children are in care) to an act that puts children at risk of imminent harm.

In this case, there was little conflicting testimony or statements regarding the material facts. The fact that an apparently unqualified helper was allowed to care for three children alone is serious enough. However, when one of those children is an infant of whose presence the helper is unaware, the seriousness of the violation is magnified. Furthermore, Licensee appears to be under the mistaken belief that permission from parents of children in her care is adequate and allows her to not follow minimum standards set forth in certain laws and regulations applicable to family child care licensees.

In addition, key factors were unchanged at the time of the hearing: Licensee's lack of explanations for multiple failures in required use of adult substitutes; Licensee's testimony suggests that she does not fully understand the statutes and regulations regarding proper use of helpers and adult substitutes, and their required training; and Licensee's lack of an articulated commitment to follow all applicable child care laws, regulations, and orders. Furthermore, Licensee made no commitment that such events will not occur in the future.

Due to the combination of the foregoing factors, the Administrative Law Judge cannot determine that the Department failed to show reasonable cause for its actions. The evidence indicates that there is a quantifiable risk of imminent harm to children in Licensee's care. Actual harm is not required in these situations. The Administrative Law Judge finds that the Commissioner has reasonable cause to continue the suspension until such time as:

- 1) the Licensee has demonstrated to the Commissioner an adequate understanding of the law and regulations regarding infant sleeping arrangements and the use of substitutes and helpers; and
- 2) Licensee demonstrates a sincere and articulated commitment to follow those laws and regulations; and
- 3) her substitutes and helpers have obtained all required training.

M.K.S.