

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 Barbara Pearson
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 November 16, 2011, at the Kanabec County Courthouse, 18 North Vine Street, Mora, Minnesota 55051. The OAH record closed at the end of the hearing November 16, 2011.

Barbara McFadden, Assistant Kanabec County Attorney, Mora, Minnesota, appeared on behalf of Kanabec County (County) and the Department of Human Services. Willow J. Anderson, Esq., Anderson Law Firm, LLC, appeared on behalf of Barbara Pearson (Licensee).

STATEMENT OF THE ISSUE

Has the Department established that there is reasonable cause to believe that a failure by Licensee to comply with applicable law or rule, the actions of Licensee or other individuals, or conditions in the program, pose an imminent risk of harm to the health, safety or rights of children served by Licensee?

The Administrative Law Judge concludes that there is not reasonable cause to believe that children in Licensee's care are at imminent risk of harm.

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

FINDINGS OF FACT

1. Until October 14, 2011, Licensee operated a daycare center in a residential home in Mora, Minnesota.¹ Also living in the home are Licensee's husband and their 17-year-old son J.P.

¹ Testimony of Barbara Pearson and Katie Heacock, County Social Worker and Family Child Care Licensur.

Licensee's History

2. Licensee has provided licensed family child care for 13 years.²

3. Licensee has had no incidents, complaints, or licensing sanctions of any kind in the years she has been a family child care provider, until the current temporary immediate suspension (TIS) of her license.³

Licensee's Program Conditions

4. Licensee regularly cares for eight children: two school age children, three preschoolers, two toddlers, and one infant. Three are female: the infant, one preschooler, and one school age girl.⁴

5. Licensee provides family child care in the lower level of the residence that is devoted exclusively to providing child care. Licensee's upstairs residence is attached, but not utilized for licensed child care. The day care children do not enter the living quarters of Licensee and her family for any purpose.⁵ The child care level is a separate apartment, complete with a full kitchen, bathroom, bedrooms, play areas, living room, and separate door for ingress and egress.⁶ The child care area is separated from the residence living area by stairs and a permanent child gate.⁷

February 15, 2011 Incident Between J.P. and a 14-year-old Female Acquaintance

6. J.P. has been acquainted with a certain teenage girl for several years. Among other activities, they rode the same school bus and participated in high school track and field together. After a year-long series of sexually suggestive text messages and Facebook communications between them, she invited J.P. over to her residence because her parents would be gone that evening. She was 14 years old at the time.⁸

7. J.P. went over to the girl's home the evening of February 15, 2011, and they engaged in consensual sexual intercourse. The girl told of the encounter to at least three of her friends, to whom she appeared happy and smiling about having lost her virginity. She also made a Facebook posting about the event. J.P. was unhappy about the Facebook posting because he knew his peers would disapprove of his behavior with a girl so young.⁹

² Test. B. Pearson and K. Heacock.

³ Test. of K. Heacock and B. Pearson.

⁴ Exhibits 4 – 8.

⁵ Test. B. Pearson.

⁶ *Id.*; Exs. 9-1 – 9-6.

⁷ *Id.*; Exs. 9-7 – 9-8.

⁸ Exs. 1, 3.

⁹ *Id.*

8. On or about March 1, 2011, the girl reported the February 15, 2011, encounter with J.P. to her therapist.¹⁰

9. On March 24, 2011, the encounter between J.P. and the girl was reported to County law enforcement, County Child Protection and the County Family Child Care Licensor.¹¹

Law Enforcement, County and Department Investigations

10. On March 24, 2011, the County Sheriff's Department began its investigation of the February 15, 2011, incident. On that day the Sheriff's investigator interviewed the 14-year-old girl and her mother. The girl's mother delivered to the investigator a used condom that she had found in her daughter's bedroom trashcan.¹²

11. On March 25, 2011, the Sheriff's investigator interviewed three of the girl's friends. He also spoke with Licensee on the telephone explaining that he needed to speak with J.P. about a sexual relationship that he had. Licensee told the investigator that her husband would pick up J.P. from school and take him to the Sheriff's office. She also informed the investigator that she operated a day care.¹³

12. Licensee's husband picked up J.P. from school and took him to the Sheriff's office where he was interviewed by the Sheriff's investigator. J.P. denied that the February 15, 2011, incident had occurred, denied having been at the girl's home, and denied communicating with her on Facebook.¹⁴

13. Also on March 25, 2011, the County Licensor relayed the report to the Department. The Department advised the County Licensor that there was no need for a TIS of Licensee's family child care license at that time and that any licensing action could wait until completion of all investigations.¹⁵

14. The County Licensor and a County Child Protection worker visited with Licensee on March 25, 2011, for safety planning for Licensee's day care.¹⁶

15. On April 3, 2011, Licensee voluntarily removed J.P. from the family residence where the day care is located and J.P. resided elsewhere. Licensee advised the County of the change of residents in the day care home.¹⁷

16. Licensee and the County licensor had several conversations and e-mails during May 2011 regarding the status of her license and other issues. Licensee sent the

¹⁰ Ex. 1.

¹¹ Test. of K. Heacock.

¹² Ex. 1.

¹³ *Id.*; Test of B. Pearson.

¹⁴ Ex. 1.

¹⁵ *Id.*; Test. of K. Heacock.

¹⁶ Test. of K. Heacock and B. Pearson.

¹⁷ *Id.*

County licensor an e-mail in the middle of May advising her that J.P. had moved back into the family home.¹⁸

17. The County licensor immediately contacted the Department and was advised by the Department that J.P.'s return to the home was not a substantial change and that she must wait for the outcome of the investigations.¹⁹

18. The Sheriff's investigator delivered the used condom to the Minnesota Bureau of Criminal Apprehension for DNA testing. DNA samples were taken from J.P. and the girl. The results of the DNA testing were delivered to the Sheriff's investigator on May 27, 2011, and showed a match with J.P.'s DNA profile.²⁰

19. One of the County licensor's regular duties is to read the District Court calendar on a daily basis.²¹

20. On July 11, 2011, a Juvenile Delinquency Petition (Petition) regarding J.P. was filed with the Tenth Judicial District Court Juvenile Division. In the Petition J.P. was charged with Criminal Sexual Conduct in the Third Degree, a violation of Minn. Stat. § 609.344, subds. 9(b) and 2, because he had sexual intercourse with a female that was at least 13 but less than 16 years of age when J.P. was more than 24 months older than the girl.²²

21. Licensee did not affirmatively advise the County licensor of the filing of J.P.'s Petition because she assumed that the licensor was closely following the County law enforcement investigation regarding J.P.²³

22. Licensee and the County Licensor have exchanged many e-mails and had telephone conversations between March 25, 2011, and October 12, 2011, regarding licensing and safety matters.²⁴

23. Dr. James Alsdurf, a licensed psychologist, conducted a psychological evaluation of J.P. consisting of two interviews and administration of a series of tests to J.P. Dr. Alsdurf issued an August 7, 2011, written report to the Court, the County Attorney, J.P.'s probation officer, and J.P.'s attorney. In his report Dr. Alsdurf concluded that:

- a. J.P. is not a sexual predator; and
- b. J.P. does not need sex offender treatment; and

¹⁸ *Id.*

¹⁹ Test. of K. Heacock.

²⁰ *Id.*

²¹ *Id.*

²² Ex.1.

²³ Test. of B. Pearson

²⁴ *Id.*; Test. of K. Heacock.

- c. J.P. would benefit from individual counseling for a period of a few months to address the issues of sexual boundaries, age-appropriate behavior and the choices he made that resulted in his current legal circumstances; and
- d. In light of risk assessment, given his age, it is difficult to apply specific measures that assess risk for persons his age. However, he does appear to be at low risk for future sexual offending or any other type of offending. Base rate data would indicate that he is at very low risk for re-offending;²⁵

24. On October 12, 2011, the District Court issued Findings and Disposition Order (Order) on the Petition regarding J.P. J.P. admitted to the offense charged in the Petition. The Order imposed a stay of adjudication for six months with a number of conditions. Among others, the following conditions were imposed on J.P.:

- a. Complete individual sexuality counseling as recommended in the psychological evaluation; and
- b. No contact with females under 16 except for school and supervised contact at mother's day care.²⁶

25. J.P. has complied with the conditions of the Order as of the date of the hearing.²⁷

Licensee's Actions to Cause the Lifting of the TIS and Maintain Her License

26. From March 25, 2011, to the date of the hearing Licensee has repeatedly asked the County and the County has asked the Department for guidance on what the Licensee must do to preserve her day care license and, since the TIS was imposed, how to have the TIS lifted. The Department has declined to provide such guidance.²⁸

27. Licensee is willing and has made preliminary preparations to either remove J.P. from the residence again or move her entire family out of the day care home to an apartment until J.P. begins attending college in Duluth in the fall of 2012.²⁹

28. Licensee has been advised by the County that her family child care license must be revoked.³⁰

²⁵ Ex. 3.

²⁶ Ex. 2.

²⁷ Test. of Wade Lennox, County Court Services Juvenile Probation Officer.

²⁸ Test. of K. Heacock and B. Pearson.

²⁹ *Id.*

³⁰ *Id.*

Opinion of Dr. James Alsdurf

29. In addition to the conclusions in his August 7, 2011 report, Dr. Alsdurf testified at the hearing that:

- a. J.P. is not sexually deviant in any way; and
- b. J.P. has no interest in prepubescent children; and
- c. J.P. presents no risk of harm to day care children.³¹

Opinion of County Sheriff's Deputy Sergeant and Current Day Care Parent

30. Sergeant Kevin Braiedy has been an investigator with the County Sheriff's Department for six and a half years. He knows the details and the nature of the legal proceedings involving J.P. Sergeant Braiedy has no concerns about the safety of his son and daughter in Licensee's care. When asked if he believes that J.P. presents any risk of harm to day care children, his response was, "Absolutely not."³²

Parent Confidence in Licensee's Program Conditions and the Safety of Their Children in Licensee's Care

31. Licensee has the confidence and unconditional support of all nine current day care parents, representing all eight children in Licensee's care. They universally believe that Licensee is an exceptionally skilled and caring family child care provider. These parents, all knowing about the situation involving J.P., have no concerns for the safety of children while in Licensee's care. Two mothers would have no concerns if it were J.P. caring for their daughters. The parents are anxious to return their children to Licensee's care. They have all been subjected to difficulties of missing work and in obtaining child care of quality equal to that supplied by Licensee. Their children have had difficulties with the disruption of their routines. Some children have begun acting out without the structure provided by Licensee.³³

Procedural Findings

32. On October 12, 2011, the County advised the Department of the Juvenile Disposition Order on (Petition). The Department advised the County that a temporary immediate suspension of Licensee's license would be issued because of J.P.'s admission to a disqualifying act and because Licensee did not notify the County of the filing of the Petition.³⁴

³¹ Testimony of Dr. James Alsdurf, Licensed Psychologist.

³² Test. of Kevin Braiedy; Ex. 7.

³³ Test. of K. Braiedy, Heather Oslin and Melissa Peterson; Exs. 4 - 8.

³⁴ Test. of K. Heacock.

33. On October 14, 2011, the Department issued Licensee an Order of Temporary Immediate Suspension that was hand delivered to Licensee on that date.³⁵

34. Following a timely appeal of the TIS by Licensee, the Department issued a Notice of and Order for Hearing on October 19, 2011, scheduling a contested case hearing for November 16, 2011.

35. On October 26, 2011, the County issued a letter to Licensee advising her that a determination letter of disqualification was issued to her son.³⁶

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case proceeding pursuant to Minn. Stat. §§ 14.50 and 245A.08.³⁷

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. The purpose of family child care licensure statutes and rules is to ensure that minimum levels of care and service are given and to protect the care, health and safety of children.³⁸

Temporary Immediate Suspension Standards and Reasonable Cause

4. Minn. Stat. § 245A.07, subd. 2. provides, in applicable part:

If the license holder's actions . . . or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the commissioner shall act immediately to temporarily suspend the license.

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

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

³⁵ Test. of K. Heacock and B. Pearson.

³⁶ Test. of K. Heacock.

³⁷ Minnesota Statutes are cited to the 2010 Edition.

³⁸ Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325. Minnesota Rules are cited to the 2011 Edition.

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.³⁹

7. Minn. R. 9555.6125 (4) provides in relevant part as follows:

Subp. 4. **Qualifications.** Operators, caregivers, and household members must meet the qualifications in items A to G.

...

D. Operators, caregivers, and household members must not have 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.

8. Sexual contact with a child is a violation of Minnesota Statutes §§ 609.344 and 626.556.

9. 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. . . .

10. Minn. Stat. § 245C.26, regarding situation where the disqualified individual no longer lives in the licensed home, provides:

In the case of any ground for disqualification under this chapter, if the act was committed by an individual other than the applicant or license holder residing in the applicant's or license holder's home, the applicant or license holder may seek reconsideration when the individual who committed the act no longer resides in the home.

³⁹ *Id.*

No Reasonable Cause to Continue the Suspension

11. The Department failed to act immediately, as required by Minn. Stat. § 245A.07, subd. 2, when it suspended Licensee's license six and a half months after actual knowledge of the incident.

12. There are no articulable facts or circumstances at this time that would provide a reasonable, prudent person with a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of children served by Licensee.

13. The Department has failed to demonstrate reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the Licensee.

14. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

15. The bases and reasons for these Conclusions are those expressed in the Memorandum that follows, and the Administrative Law Judge incorporates that Memorandum into these Conclusions.

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 that: the Order of Temporary Immediate Suspension suspending the family child care license of Licensee be **RESCINDED**.

Dated: November 30, 2011

s/M. Kevin Snell

M. Kevin Snell
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) 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. The parties have 10 calendar days after receiving this report to file Exceptions to the report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue her final decision. Parties should contact Lucinda Jesson, Commissioner, Department of Human Services, PO Box 64998, St. Paul, MN 55164-0998, (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

Burden of Proof

At this stage, the County, on behalf of the Department, must demonstrate the existence of circumstances sufficient to warrant a cautious person to reasonably suspect that the Licensee poses an imminent risk of harm to the health, safety or rights of persons in the Licensee's care. This is a modest standard, intended to insure that vulnerable children are protected until there can be a full hearing and final determination on the underlying circumstances.

Permitted Evidence

During an expedited hearing regarding a temporary immediate suspension, the Department must present reliable oral testimony and/or reliable documentary evidence in support of a finding of reasonable cause. The Department and the Administrative Law Judge are entitled to rely on reliable hearsay evidence linking the license holder to an act that puts children at risk of imminent harm. The Department relied on two exhibits and the testimony of the County Licensor. At this stage of the process, the Administrative Law Judge's task is to determine whether there is enough reliable evidence to maintain the suspension.

Necessity of "Imminent Risk of Harm"

The basis for the TIS rests entirely on the occurrence of an October 12, 2011 Juvenile Court proceeding involving facts the Department knew about on March 25, 2011, and the fact that Licensee did not take the affirmative step of advising the County licensor of the County's filing of the Juvenile Petition on July 11, 2011. The Department argues that imminent risk of harm exists because J.P. admitted to a disqualifying act on October 12, 2011 and Licensee didn't tell the County about the filing of the July 11, 2011 Petition. Articulable facts that would lead a reasonable, cautious person to suspect that children in Licensee's care may be at imminent risk of harm may or may not have existed on March 25, 2011 when the Department received actual knowledge of the disqualifying act committed by J.P. At that time it was not known whether or not J.P.

was a pedophile who presented a risk of harm to children. On and after August 7, 2011 it was known that J.P. is not a pedophile and does not present a risk of harm to day care children.

Whether or not Licensee's son presented a risk of imminent harm to children in her care on July 11, 2011, when the juvenile petition was filed, is not the appropriate standard for this proceeding, but rather whether there is imminent risk of harm at the time of the hearing. At the time of the hearing there were no relevant, reliable, and specific articulable facts or circumstances which could provide a cautious and prudent person with a reasonable suspicion that Licensee or her son pose an imminent risk of harm to children in Licensee's care.

Suspending Licensee's license on October 14, 2011 is not "immediate action" as required by the law when the Department had actual knowledge of the disqualifying act on March 25, 2011. The law is designed for swift and immediate action when situations like this arise and is coupled with an expedited hearing process that should be completed in approximately 70 days.⁴⁰ The fact that a TIS was not issued shortly after March 25, 2011 suggests that there has not been an immediate risk of harm to children in Licensee's care at any time.

The Department also argues that, despite the fact it suspended Licensee's license six and a half months after it received information that Licensee's son had sexual contact with a minor female, an "imminent risk of harm" did not exist until October 12, 2011 when the Disposition Order on the Juvenile Petition was entered. Such a conclusion has no legal or factual basis. At a minimum, "imminent harm" means harm that is impending or about to occur,⁴¹ or ready to take place.⁴² There was no immediacy or imminent risk involved at the time Licensee's license was suspended. Immediate means now, or within a matter of hours, not days and certainly not six and a half months. Licensee's son has been living in the day care home for many months and Licensee had been caring for minor female children during that entire time without incident or complaint after the permanently disqualifying conduct was known by the Department.

"The standard that the Commissioner [is] required to apply is belief based on reason."⁴³ The evidence in the record in this case suggests that the standard applied by the Department in issuing the TIS was a belief based on speculation. There were insufficient articulable facts to warrant a cautious person to reasonably suspect that Licensee, other persons (including her son), or the conditions of the day care facility presented a risk of imminent harm to children in their care at the time the TIS was issued.

⁴⁰ Minn. Stat. § 245A.07, subds. 2, 2a.

⁴¹ See, American Heritage College Dictionary (3d ed.).

⁴² See, Merriam-Webster Online Dictionary.

⁴³ *In Re Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010).

Relevance of the Disqualification Determination

The existence of a disqualification is normally not relevant to the determination that must be made in appeals of TIS orders. Disqualification determinations run on a parallel and generally unrelated process than the determination and appeals process for a TIS order. However, the Administrative Law Judge will address the disqualification determination in this matter for two reasons. First, both parties were determined to address the disqualification determination and its status at the hearing. The second reason the disqualification determination must be discussed is because the disqualification decision is one of the two bases that the Department relied on in making the decision to issue the TIS.

The Department appears to argue that a “*per se*” imminent risk of harm exists because a disqualifying act was done by a resident of Licensee’s household. This argument is an incorrect understanding of the relevant law.

The legislature has determined that certain acts, whether or not they result in criminal convictions, are serious enough that they will result in either: permanent, life long disqualification; or disqualification for a set period that may be set aside or for which a variance may be granted. Disqualifications preclude the actor from “access” to persons being served by the Department’s various programs. In permanent disqualification situations any actual risk of harm or absence of any risk of harm is irrelevant. Risk of harm is relevant in non-permanent disqualification decisions. The record in this matter does not contain: the disqualification letters; whether or not the disqualification determination was permanent or subject to set aside or variance; or whether or not reconsideration of the disqualification decision has been requested.

If J.P. has committed and admitted to an act that permanently disqualifies him from unsupervised contact with any person being served by the Department’s programs, the fact that he presents no actual risk of harm to day care children is irrelevant in a final disqualification determination.

However, whether or not J.P. presents an imminent risk of harm to day care children is the only determination to be made in this proceeding. The Administrative Law Judge has determined that J.P. presents no imminent risk of harm to children in his mother’s care.

The Department appears to argue that it is not possible for Licensee to maintain her license, even if J.P. no longer resided in the home,⁴⁴ because he might visit. This is an incorrect interpretation of the law. Non-resident disqualified individuals that are strictly supervised in accordance with the disqualification statute may visit licensed facilities.⁴⁵

⁴⁴ Conclusion 10.

⁴⁵ *Id.*; Conclusion 9.

Credibility of Witnesses

The County Licensors' testimony contained inconsistencies in material respects. First, she claimed that the first she knew of the Petition was on October 12, 2011 when she was conducting her daily review of the Court calendar. If she actually conducts a daily review of the Court calendar, it would be reasonable to assume that she would have become aware of the July 11, 2011 filing of the Petition upon a review of the Court calendar that day.

Second, many of the Licensors' answers to direct questions were unresponsive to the questions and evasive. Many of the unresponsive answers on cross examination were delayed and lacked adequate articulation. Principally, most of the nonresponsive answers directly and indirectly concerned the central issue of this proceeding: whether or not children in Licensee's care are at imminent risk of harm. In such situations, the fact finder may appropriately conclude that candid and fully truthful answers would be adverse to the party calling the witness. In this case, the Administrative Law Judge concludes that the County licensor actually believes that children in Licensee's care are not at imminent risk of harm.

The County Licensors failed to adequately explain why the licensing decision to impose the TIS was not made until October 14, 2011. The purported reasons are insufficient to support the issuance of the TIS. All of the reliable evidence in the record suggests that the County actually does not consider J.P. to present an imminent risk of harm to children in Licensees care.

Analysis of the Facts in Evidence

For the reasons stated below, there is no relevant and reliable evidence in the record to suggest that Licensee's son currently presents an imminent risk of harm to children. The following factors are listed in the order of the weight given them by the Administrative Law Judge.

First, Dr. James Alsdurf, a licensed psychologist, who conducted a psychological evaluation of J.P. and issued a written report to the Court, the County Attorney, J.P.'s probation officer, and J.P.'s attorney, testified without qualification or hesitation that J.P. is not sexually deviant in any way, has no interest in prepubescent children, and presents no risk of harm to day care children.⁴⁶ Dr. Alsdurf's answers to the relevant questions were direct, precise and given without hesitation, qualification or indicators of guile.

Second, Licensee's son lived in the day care residence without incident, complaint or licensing action from March 24, 2011 to April 3, 2011, and from the middle of May 2011 to the present.

Third, the day care parent and current County Sheriff's Deputy Sergeant, who has six and a half years experience as an investigator in the County, has no safety

⁴⁶ Findings and 23 and 29.

concerns for children in Licensee's care or with the care given his daughter by Licensee.

Fourth, the evidence from every daycare parent, all who have direct knowledge about Licensee and the daycare Licensee provides, having full knowledge of J.P.'s actions, believe Licensee provides a safe environment for their children. This fact militates against a conclusion that a reasonable person could suspect that Licensee or J.P. present a risk of harm to children. The Minnesota Court of Appeals has determined that such evidence is relevant and desirable in TIS cases.⁴⁷

Fifth, the weight of the credibility determinations favors Licensee's witnesses and documentary evidence.

Finally, the relevant and reliable evidence submitted by the Department does not demonstrate that children in Licensee's care would be at imminent risk of harm if she were permitted to resume the operation of her family child care business during the appeal and reconsideration of the disqualification determination concerning her son.

Conclusion

The relevant and reliable evidence in the record regarding the situations on March 24, 2011, and between that time and now, suggests that there is no imminent risk of harm to the health, safety, or rights of the children served by the Licensee. The weight of the evidence suggests that the purpose of family child care licensure statutes and rules (to ensure that minimum levels of care and service are given and to protect the health and safety of children)⁴⁸ is being served by Licensee. There is no evidence in the record to suggest that Licensee's son has since March 25, 2011 or will in the future have unsupervised access to Licensee's day care children. There are insufficient reliable and relevant articulable facts in the record that would allow a reasonable, prudent person to suspect that Licensee presents an imminent risk of harm to children in her care.

Although the parties appropriately await the final determination on the disqualification determination, the ALJ finds that imminent risk of harm is not present and respectfully suggests to the Commissioner that the TIS be immediately rescinded.

M. K. S.

⁴⁷ *In Re Strecker*, 777 N.W.2d 41, 46 (Minn. App. 2010).

⁴⁸ Conclusion 3.