

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order of Conditional  
License and Order to Forfeit a Fine Imposed  
Against the Family Child Care License of  
Karen Rice

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 23, 2012, at the Douglas County Social Services Building, 1073 Conference Room, 809 Elm Street, Alexandria, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Daniel C. Lee, Assistant County Attorney, appeared for Douglas County Social Services (County) and the Minnesota Department of Human Services (Department). Karen Rice (Licensee) appeared on her own behalf without counsel.

**STATEMENT OF ISSUE**

Should the family child care license of Karen Rice be made conditional, and should she be fined in the amount of \$800 for (1) operating in violation of capacity and age distribution limits; (2) failing to submit background studies on two substitute caregivers; and (3) failing to ensure that the substitute caregivers received training on Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome?

The Administrative Law Judge concludes that the conditional license and fine are appropriate and should be affirmed.

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

**FINDINGS OF FACT**

1. Karen Rice has been a licensed family child care provider since 1995. She lives in Alexandria, Minnesota. She has a C3 license, which means that she can care for 14 children if two adult caretakers are present; of this total, ten children may be under school age, but no more than four may be infants and toddlers, and no more than three may be infants.<sup>1</sup> If only one adult caretaker is present, she is required to operate as if she had a C2 license, which means she can care for 12 children, no more than two of whom can be infants and toddlers and no more than one can be an infant.<sup>2</sup> When a newborn is in care, and only one

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<sup>1</sup> Minn. R. 9502.0367 C (3) (2011). All citations to Minnesota Rules are to the 2011 edition.

<sup>2</sup> Minn. R. 9502.0367 C (2).

adult caregiver is present, the newborn must be the only child under 12 months of age, and the provider is not allowed to care for more than two other children at the same time, unless the newborn is the provider's own child.<sup>3</sup> Under licensing rules, a newborn is a child between birth and six weeks of age; an infant is a child between six and 12 months of age; a toddler is a child between 12 and 24 months of age.<sup>4</sup>

2. On March 24, 2011, Douglas County Social Services received a complaint that the Licensee was operating over her licensed capacity and that substitute caregivers may not have been trained or cleared through background studies.<sup>5</sup>

3. On March 29, 2011, the child care licensing worker for Douglas County made an unannounced visit to investigate the complaint. At the time, the Licensee had seven children in care full-time and two children in care half-time. During the interview and in subsequent conversations, the Licensee confirmed that:

- Six months previously, she had provided care to a newborn for approximately one month without having a second adult caregiver or changing her capacity to three children total.
- On March 3 and 4, 2011, she had provided care to three infants and one toddler without having a second adult present during naptime.
- On March 7, 2011, she had provided care to three infants and one toddler with her parents acting as substitute caregivers while the Licensee attended a funeral.
- The Licensee had previously submitted a background study request for her mother, but it had expired in 2009; the Licensee had never submitted a background study request for her father.
- The Licensee's parents had not received training on Sudden Infant Death Syndrome (SIDS) and Shaken Baby Syndrome (SBS).
- The Licensee's own training on SBS had expired on February 28, 2011.<sup>6</sup>

4. On April 1, 2011, the licensing worker issued a correction order to the Licensee for violation of Minn. R. 9502.0365, subp. 3 (providing care for newborn without a second adult); Minn. R. 9502.0367 C (being overcapacity on March 3 and 4, 2010); Minn. Stat. § 5C.03, subd. 1(3) (failing to have background studies completed for two substitute caregivers); Minn. Stat. § 245A.50, subd. 5 (no SIDS or SBS training for two substitutes who

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<sup>3</sup> Minn. R. 9502.0365, subp. 3.

<sup>4</sup> Minn. R. 9502.0315, subps. 16 & 20; Minn. Stat. § 245A.02, subd. 19 (2010). All citations to Minnesota Statutes are to the 2010 edition.

<sup>5</sup> Ex. 1.

<sup>6</sup> Ex. 1; Ex. 16; Testimony of Barbara Kleinschmidt.

were providing care for infants); and Minn. Stat. § 245A.50, subd. 5 (Licensee's SBS training expired).<sup>7</sup>

5. The Licensee immediately submitted the background studies for her parents, which came back clear.<sup>8</sup>

6. The Licensee completed her SBS training by April 1, 2011, and her parents completed the SIDS and SBS training by April 1, 2011.<sup>9</sup>

7. The Licensee had one previous citation for failure to submit a background study request. In June 2010, a correction order was issued citing this violation because the Licensee had allowed a day care parent to supervise children outside while the Licensee went inside briefly with another child.<sup>10</sup>

8. On May 3, 2011, the County recommended that the Commissioner fine the Licensee in the amount of \$800 for these violations.<sup>11</sup>

9. On October 27, 2011, the Commissioner issued an Order to Forfeit a Fine and Order of Conditional License. The Order required a fine in the amount of \$400, for the failure to submit background studies on two substitute caregivers; a fine in the amount of \$400, for the failure to ensure that the substitute caregivers received SIDS and Shaken Baby Syndrome training before providing care; and an order of conditional licensure. The order provides:

Due to the serious and chronic nature of the above violations, including repeated failure to submit background studies as required; failure to assure substitute caregivers completed SIDS/SBS training prior to assisting with the care of children; failure to operate within your licensed capacity and age distribution limits; and, in order to protect the health, safety, and rights of children receiving services in DHS-licensed programs, your family child care license is placed on conditional status for one year.<sup>12</sup>

15. The terms of the conditional license require the Licensee to follow and comply with all applicable laws and rules; have no variances to age distribution or number of children in care; complete six hours of additional training, in addition to the annual training requirements, in the areas of licensing rule review and children's health and safety; submit and comply with a detailed written plan detailing how she planned to ensure that background studies and required training were completed and documented for all caregivers before they provide care for children; have parents sign children in and out each day and submit these records, along with daily attendance records, to the County on a monthly basis, along with the names and hours worked of all caregivers providing care each day.<sup>13</sup>

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<sup>7</sup> Ex. 3.

<sup>8</sup> Testimony of Karen Rice; Test. of B. Kleinschmidt.

<sup>9</sup> Ex. 3; Ex. 5.

<sup>10</sup> Ex. 7; Ex. 13.

<sup>11</sup> *Id.*

<sup>12</sup> Ex. 9.

<sup>13</sup> Ex. 9.

16. The Licensee appealed the fine and the Order of Conditional License.

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

### **CONCLUSIONS OF LAW**

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

2. At a hearing regarding a licensing sanction, the Commissioner has the burden to demonstrate reasonable cause for action taken by submitting evidence to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time the commissioner alleges the violations occurred.<sup>14</sup>

3. The Commissioner shall conduct a background study on a license holder's prospective employees or contractors who will have direct contact with persons served by the program, or volunteers who will have direct contact with persons served by the program and are not under continuous, direct supervision of the Licensee or an employee.<sup>15</sup>

6. The Licensee failed to have current background studies completed for her parents before allowing them to be substitute caregivers.

7. License holders must document that before caregivers or helpers assist in the care of infants, they receive training on reducing the risk of SIDS. In addition, license holders must document that before caregivers or helpers assist in the care of infants and children under school age, they receive training on reducing the risk of SBS.<sup>16</sup> The training must be completed at least once every five years.<sup>17</sup>

8. The Licensee failed to renew her SBS training in a timely manner, and she failed to ensure that her parents were trained in SIDS/SBS before providing care to infants.

7. A license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but limited to the failure to submit a background study.<sup>18</sup>

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<sup>14</sup> Minn. Stat. § 245A.08, subd. 3.

<sup>15</sup> Minn. Stat. § 245C.03, subd. 1(3) & (4).

<sup>16</sup> Minn. Stat. § 245A.50, subd. 5(a).

<sup>17</sup> *Id.*, subd. 5(b) & (c).

<sup>18</sup> Minn. Stat. § 245A.07, subd. 3(c)(4).

8. The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules.<sup>19</sup>

9. If the commissioner finds that a license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the license holder. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.<sup>20</sup>

10. Before issuing, denying, suspending, revoking, or making a license conditional the commissioner shall evaluate information gathered under Minn. Stat. § 245A.04 and 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 license holder.<sup>21</sup>

11. The Commissioner properly considered all the statutory factors in ordering a fine and a conditional license.

Based upon the foregoing Conclusions of Law, and for the reasons explained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services AFFIRM the Order to Forfeit a Fine and the Order of Conditional License.

Dated: February 22, 2012

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not issue a final decision until this Report has

<sup>19</sup> Minn. Stat. § 245A.07, subd. 3(a) (2008).

<sup>20</sup> Minn. Stat. § 245A.06, subd. 1.

<sup>21</sup> Minn. Stat. § 245A.04, subd. 6.

been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. Parties should contact Lucinda Jesson, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164 (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

### **MEMORANDUM**

The Licensee does not dispute the violations but seeks to have the \$400 in fines pertaining to her father rescinded. She has not used her father as a substitute caregiver in the past, so had not completed the background study request or required the training on SIDS/SBS for him. She asked him to help her mother on an emergency basis so that two adults would be present on March 7, 2012, because the Licensee was attending the funeral of a close friend. She acknowledges the Commissioner's discretion to impose the fine, but asks that the fine be reduced as a measure of compassion.

In addition, she requests that two of the terms of the conditional license be modified. She objected to the requirement of six hours of additional training, because it is difficult to obtain training in Douglas County, and she would likely have to close the daycare for a day to obtain it. At the hearing, the licensing worker advised the Licensee of an option to obtain the required credit by reviewing the licensing rules and taking a test developed by the County, which would not require travel outside the County. The Licensee indicated that this would be acceptable to her, but she had not known this option would be available. In addition, the Licensee objected to the requirement that parents sign their children in and out each day, on the basis that it is administratively difficult, parents will not take it seriously, and it will require her to spend time following up with parents that would be better spent in caring for children. Again, the licensing worker testified at the hearing that she had created a form for the Licensee to use as a record-keeping tool and that it would not require significant time or effort to complete and submit. The terms of the conditional license are reasonable and should be affirmed.

**K.D.S.**