

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal of the
Revocation of the Family Child Care
License of Lisa Christianson

**FINDINGS, CONCLUSIONS,
AND ORDER REGARDING
DISCIPLINARY ACTION UNDER
MINN. STAT. § 14.62, SUBD. 2a**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on January 31, 2012. Frederic S. Stephens, Assistant County Attorney, Hennepin County Attorney's Office, appeared on behalf of the Hennepin County Human Services and Public Health Department (County) and the Minnesota Department of Human Services (Department). The Licensee, Lisa Christianson, appeared on her own behalf without counsel.

On March 2, 2012, Judge Sheehy issued her Findings of Fact, Conclusions, and Recommendation to the Commissioner of Human Services. The parties were afforded the opportunity to file exceptions by April 2, 2012. During the 90 days following the April 2, 2012, close of the record, the Commissioner did not take any further action.

On July 26, 2012, in accordance with Minn. Stat. § 14.62, subd. 2a,¹ the Commissioner returned this matter to the Office of Administrative Hearings for consideration of disciplinary action.

STATEMENT OF THE ISSUE

The issue presented is what, if any, disciplinary action shall be imposed against the Licensee's family child care license in this matter.

The Administrative Law Judge concludes that revocation of the Licensee's family child care license is not warranted, but it is appropriate to require as a term of continued licensure that the Licensee submit a safety plan to her County licensing worker within 30 days in which she outlines the steps she will take to keep her son (who has a disqualification) from having access to children served by her child care program. The Administrative Law Judge concludes that imposition of a one-year conditional license is not appropriate because there has been no showing that the Licensee has violated applicable laws or rules.

¹ All reference to Minnesota Statutes are to the 2010 edition.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Administrative Law Judge Kathleen D. Sheehy conducted a hearing in this matter on January 31, 2012, and, on March 2, 2012, issued her Findings of Fact, Conclusions, and Recommendation (ALJ Report) to the Commissioner of Human Services. Findings of Fact Nos. 1-16 set forth in the ALJ Report are hereby incorporated by reference in these Findings.

2. By letter dated March 13, 2012, Debra D. Schumacher, Administrative Law Attorney, notified the parties that any exceptions to the ALJ Report must be received by the Commissioner of Human Services by April 2, 2012.

3. By letter dated March 14, 2012, the Department filed its comments with the Commissioner pertaining to the ALJ Report. The Department indicated that the Department did not oppose Judge Sheehy's recommendation to rescind the revocation of the Licensee's child care license, but urged that the Commissioner place the Licensee's license on a conditional status for a period of one year, subject to certain conditions. The conditions proposed by the Department would (a) require the Licensee to comply with laws and rules governing family child care; (b) specify that she would not be granted any variances during the conditional period; (c) require the Licensee to develop a detailed written safety plan outlining how she will keep her adult son (who has been disqualified) from having access to day care children; (d) specify that she would be subject to unannounced monthly visits by County workers; and (e) require her to provide a copy of the Order of Conditional License to the parents of children in care.

4. The Commissioner did not receive any comments from the Licensee regarding the ALJ Report.

5. During the 90 days following the April 2, 2012, deadline for the submission of exceptions, the Commissioner did not take any further action with respect to this matter.

6. By letter dated July 24, 2012, Ms. Schumacher notified the Office of Administrative Hearings that, due to an inadvertent oversight, no agency decision had been issued during the 90-day period following the April 2, 2012, closing of the record. Pursuant to Minn. Stat. § 14.62, subd. 2a, the matter was returned to the Office of Administrative Hearings for issuance of a final order regarding what, if any, disciplinary action should be taken.

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

CONCLUSIONS

1. Conclusions of Law 1-10 contained in the March 2, 2012, ALJ Report and the accompanying Memorandum are hereby incorporated by reference in these Conclusions.

2. Minn. Stat. § 14.62, subd. 2a, states, in relevant part:

Unless otherwise provided by law, the report or order of the Administrative Law Judge constitutes the final decision in the case unless the agency modifies or rejects it under subdivision 1 within 90 days after the record of the proceeding closes under section 14.61. When the agency fails to act within 90 days on a licensing case, the agency must return the record of the proceeding to the Administrative Law Judge for consideration of disciplinary action.

3. Because the Commissioner failed to act within 90 days of the close of the record of this proceeding, the ALJ Report constitutes the final decision in this case under Minn. Stat. § 14.62, subd. 2a. The Commissioner thereafter properly returned the record to the Office of Administrative Hearings for consideration of disciplinary action, in accordance with Minn. Stat. § 14.62, subd. 2a.²

4. For the reasons set forth in the March 2, 2012, ALJ Report, the Commissioner lacked reasonable cause to subject the Licensee's son, C.C., to a background study in 2011 and also lacked proper cause to issue, require, or terminate the variance for C.C. in 2011 because C.C. no longer resided in the Licensee's home.

5. Revocation of the Licensee's license to provide family child care is not warranted under Minn. Stat. § 245A.07, subd. 1.

6. The imposition of a one-year conditional license is not warranted because there has been no demonstration that the Licensee violated applicable laws or rules.

7. Because C.C. lives in close proximity to the Licensee, has a criminal history of burglary and theft, and has had serious chemical dependency issues in the recent past, it is appropriate to require the Licensee to develop and provide the County with a written safety plan regarding C.C. as a term of continued licensure. This requirement is described in more detail in the Order set forth below.

² Judge Sheehy is no longer with the Office of Administrative Hearings due to her recent appointment to the Fourth Judicial District Court bench. Accordingly, this matter was assigned to the undersigned Administrative Law Judge for consideration of disciplinary action.

Based upon these Conclusions, the Administrative Law Judge issues the following:

ORDER REGARDING DISCIPLINARY ACTION

IT IS HEREBY ORDERED as follows:

1. The Commissioner's Order of Revocation of the family child care license of Lisa Christianson shall be RESCINDED.
2. As a term of continued licensure, the Licensee shall, within 30 days of receiving this Order, develop and provide to the Hennepin County Licensing Division a detailed written safety plan outlining how she will keep her son, C.C., from having access to children served by her family child care program during the hours of operation.

Dated: August 9, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 2a, this Order is the final administrative decision in this case. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.