

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the Family Child Care
License of Patricia M. Schmidt

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

This matter came on for hearing before Administrative Law Judge Manuel J. Cervantes (ALJ) on June 14, 2012, at the Mower County Courthouse, Austin, Minnesota.

Aaron Jones, Assistant County Attorney, appeared on behalf of Mower County Social Services (County) and the Minnesota Department of Human Services (Department). Daniel T. Donnelly, Attorney at Law, appeared on behalf of Patricia M. Schmidt (Licensee). The record closed at the conclusion of the hearing.

STATEMENT OF ISSUE

Did the Department demonstrate reasonable cause to believe there is an imminent risk of harm to the health, safety, or rights of children in Licensee's program?

The ALJ finds that the Department has demonstrated reasonable cause to believe there is imminent risk of harm due to the over capacity of infants, toddlers, and preschool children in Licensee's child care program.

The ALJ recommends that the Commissioner AFFIRM the Department's Temporary Immediate Suspension (TIS) of the license. The TIS should remain in effect pending the completion of a full investigation and hearing.

Based upon all of the files, records, and proceedings herein, the ALJ makes the following:

FINDINGS OF FACT

1. Licensee is licensed by the Department through Mower County Social Services. Licensee has had a licensed child care program for 28 years. Licensee has not had a negative licensing action brought against her before this action.¹ A number of parents wrote letters in support of her child care abilities.² She normally operates with a C-3 license when her adult helper, her husband, is available. Licensee's husband

¹ Licensee and Heusinkveld Testimony

² Exhibits B – L.

became unavailable in April 2012 when he returned to farming. Licensee knew that she was going to have an over capacity issue when the second adult care provider left the program.³

2. In April 2012, the Licensors received a call from a staff person at the child care food program. The staff had visited Licensee's program on April 12, 2012. During the review of the program, staff found that Licensee was operating over capacity. On this date, Licensee had 3 infants, 3 toddlers, and 4 other preschool children. Under a C-3 license, a provider can have no more than 4 infants or toddlers. Of this total, no more than 3 shall be infants. Licensee was over capacity by 2 toddlers and was missing one adult caregiver. The Licensors reported this information to the Department. The Department recommended that the Licensors visit the Licensee's program.⁴

3. On May 9, 2012, the Licensors made an unannounced visit to Licensee's day care program. Licensee was the only adult in the program that day and was operating with a C-3 license.⁵ She found that there were eleven preschool children in care at the time. They included 3 infants, 3 toddlers, and 5 preschool children. As stated above, under a C-3 license, a provider can have no more than 4 infants or toddlers. Of this total, no more than 3 shall be infants. Licensee was over capacity by 2 toddlers and did not have a second adult care provider as required.⁶

4. The Licensors informed Licensee of the capacity limits under Minnesota rule and indicated that Licensee would need to dis-enroll infants or toddlers to come into compliance, effective that day, May 9. The Licensors recommended that Licensee operate at a C-1 license because the license permitted more infants when only one adult provider was available. The Licensors issued a Correction Order for the two violations. By May 11, 2012, Licensee was to provide the Licensors with a list of program participants she would dis-enroll and indicate who would remain in the program. Licensee did not provide the list as requested.⁷

5. During this discussion, a parent arrived to pick up his child. Licensee told the parent that the Licensors were present. She stated that she was over capacity with children and that his child could not return to the program. Licensee also indicated to the parent that she would call him later.⁸

6. The Licensee was within a couple of weeks away from re-licensing so the Licensors wanted to review the capacity issue again. The Licensors returned to Licensee's program on May 15, 2012. The Licensors found that Licensee was over capacity again. Licensee was operating her program alone and was caring for 3 infants, 2 toddlers, and 6 other preschool children. Licensee exceeded the C-1 license by 1 infant and 1 toddler. Licensee also exceeded the total preschool capacity limit by 3

³ Licensee Test.

⁴ Heusinkveld Test.; Minn. Rs. 9502.0365 and 9502.0367.

⁵ Heusinkveld Test.

⁶ Heusinkveld Test.; Minn. Rs. 9502.0365 and 9502.0367.

⁷ Heusinkveld Test.

⁸ *Id.*

preschool children. At this same meeting, Licensee provided the Licensors with some preliminary notes for a proposed summer schedule. This schedule appears to show that the Licensee would exceed the capacity limits for a C-1 license.⁹

7. The Licensors immediately reported the May 15 over capacity issue to the Department. Upon review, the Department issued the Temporary Immediate Suspension later on May 15, 2012.¹⁰

8. Licensee acknowledged that she did not have a variance in April or May of 2012 and that she violated the capacity limits on April 12, May 9, and May 15, 2012.¹¹

9. While Licensee indicated that she would abide by the capacity rules in the future, doubt is cast on her credibility given that she was told on May 9 that over capacity violations would not be acceptable, and then approximately one week later, on May 15, she violated the limits again.

10. The over capacity issue is not new to this Licensee. Licensee was found to have violated the capacity rules from November 2004 through April 2010, resulting in 14 written notifications.¹² The documentary evidence shows that Licensee operated with a variance in November and December 2004. Licensee violated the variance in each of those months.¹³

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

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, subd. 2 and 245A.08.

2. The Department, through Mower County Social Services, gave proper and timely notice of the hearing and has complied with all procedural requirements of Minnesota law and rule.

3. The Commissioner shall act immediately to temporarily suspend a license if a “license holder’s actions or failure to comply with applicable law or rule, ... pose an imminent risk of harm to the health, safety, or rights of persons served by the program.”¹⁴

4. The scope of an expedited hearing shall be limited to the issue of whether the Temporary Immediate Suspension should remain in effect pending the

⁹ *Id.*, Ex. M.

¹⁰ *Id.*

¹¹ Licensee Test, Ex. A.

¹² Ex. 1

¹³ *Id.* at 13 and 14.

¹⁴ Minn. Stat. § 245A.07, subd. 2. Statutes are cited to the 2010 edition.

Commissioner's final order regarding a licensing sanction following the immediate suspension.¹⁵

5. At an expedited hearing on an appeal of a Temporary Immediate Suspension, the burden of proof is limited to the Commissioner's demonstration that "reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program."¹⁶

6. "Reasonable cause" 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.¹⁷

7. The Department may demonstrate reasonable cause by submitting statements, reports, or affidavits to substantiate the allegations.¹⁸

8. The Administrative Law Judge shall recommend "whether the immediate suspension should remain in effect pending the commissioner's final order ...regarding a final licensing sanction."¹⁹

9. 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.²⁰ The rationale for the capacity limitations in the rules is to minimize the risk posed by the lack of adequate supervision to preschool children.

10. The Department demonstrated that it had reasonable cause to conclude that Licensee violated the capacity limits relative to infants, toddlers, and the maximum limit for preschool children on April 12, May 9, and May 15, 2012.²¹

11. Licensee's unwillingness to abide by rules created to assure adequate supervision after being warned creates a reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program by.²²

Based upon the foregoing Conclusions, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

¹⁵ Minn. Stat. § 245A.07, subd. 2a (a).

¹⁶ *Id.*

¹⁷ Minn. Stat. § 245A.07, subd. 2a (a).

¹⁸ Minn. Stat. § 245A.08, subd. 3.

¹⁹ Minn. Stat. § 245A.07, subd. 2a (a).

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

²¹ Minn. Rs. 9502.0365 and 9502.0367.

²² Minn. Stat. § 245A.07, subd. 2a (a).

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Order of Temporary Immediate Suspension of the Licensee's family child care license be AFFIRMED.

Dated: June 28, 2012

/s/ Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and she may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommendation in which to file any exceptions to the report with the Commissioner.²³ Parties should contact the office of Lucinda Jesson, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164-0998, 651-296-2701 to find out how to file exceptions.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

During an expedited hearing regarding a Temporary Immediate Suspension, the Department has the burden of showing that there is reasonable cause to believe that an action by the license holder or failure to comply with Minnesota law or rule, poses an imminent risk of harm to the health, safety, or rights of persons in her care. This is a low threshold that is intended to assure the protection of vulnerable children until investigations are complete and there can be a full hearing and final determination. It is a modest standard; similar to the "probable cause" standard used in criminal proceedings.²⁴

The facts in the case are undisputed: Licensee operated her daycare program in violation of the capacity rules on April 12, May 9, and May 15, 2012. Of particular concern is the fact that she violated the rules on May 15, after she was warned. Licensee has had a long history of over-capacity violations dating back to 2004, but for some reason, these violations did not result in any negative licensing action. For Licensee, this became standard practice. Nonetheless, Licensee was put on notice on May 9 that these violations would no longer be tolerated. Licensee's conduct evinced

²³ Minn. Stat. §§ 14.61 and 245A.07, subd. 2a (b).

²⁴ See, e.g., *State v. Florence*, 306 Minn. 442, 239 N.W.2d 892, 897, 903-04 (1976).

an unwillingness to comply with the over capacity requirements, which may result in harm to the program participants, and serves as grounds for a temporary immediate suspension.

The ALJ, at this stage of the process, is not charged with making a final determination. The ALJ need only determine whether the County has provided “articulable facts” to maintain the suspension. Based on the analysis above, the ALJ concludes there is sufficient evidence and recommends that the suspension continue, pending a final determination by the Commissioner.

M. J. C.