

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

in the Matter of the
Day Care License of
Denise Shadow, 405 - 5th
Street Northeast,
Hayfield, MN 55940

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law judge Peter C. Erickson at 11:00 p.m. on Monday, May 1, 1989 at the Dodge County Courthouse, Mantorville, Minnesota. The record closed at the conclusion of the hearing on May 1, 1989.

Kevin Koch, Asstitant Dodge County Attorney, Dodge Courty Courthouse, Mantorville, Minnesota 55955. appeared on behalf of the Dodge County Department of Social Services. Denise Shadow, the Licensee herein, 405 - 5th Street Northeast, Hayfield, Minnesota 55940 appeared and testified an her own behalf.

Notice is hereby liver tnat, pursuant to Minn. Stat. 14.61 the final decision of the Commisisoner of Human Services shall not be made until thin Report has been made available to the parties to the proceeding for at least ten days, and an oppportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with Commissioner Sandra Gardebring, Department of Human Services, Second Floor Human Services Building, 444 Lafayette Road, St, Paul, Minnesota 55155-3815.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Licensee has violated provisions of the family day care rules which warrant the revocation of her family day care license.

Based upon all of the proceedings herein. the Administrative Law judge makes the following

FINDINGS OF FACT

1. Denise Shadow is licensed as a C1-Group Family Day Care Provider with a maximum capacity of ten children. Ms. Shadow provides day care in her home at 405 - 5th Street Northeast, Hayfield, Minnesota.

2 in November of 1987, Ms Shadow was found to be over the ten-child limit during an unannounced inspection by a Department of Social Services employee. During that time, Ms. Shadow cared for children who came to her home after a Bible study course which was prior to other children being picked up by their parents. Consequently, due to the overlap, Ms. shadow was over her limit for a short period of time

3. in May of 1988, two young boys who were being cared for by Ms. Shadow were playing in her fenced-in back yard. Both children left the back yard through an unlocked gate and followed a dog to a location approximately one mile away where they were found by a stranger. Subsequent to this occurrence, Ms. Shadow installed locks on the backyard gates.

4 After locks had been installed on the gates, another child walked away from the home by exiting through the house. Ms. Shadow subsequently installed a gate to block that exit also-

5, The parents who use Denise Shadow's day care services are satisfied with the care given to their children by Ms. Shadow. Most feel that she should not lose her license because two children wandered away from her home.

6, Based upon the indents set forth in Findings 2 and 3 above, the Dodge County Department of Social Services recommended to the Commissioner of Human Services that Denise Shadow's day care license be revoked. Ms. Shadow appealed this action and a Notice of and Order for Hearing was issued by the Department of Human Services on June 3, 1988 setting this matter on for hearing.

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 over this matter pursuant to Minn. Stat. 14.50 and 245A.08. The Notice of Hearing issued by the Department of Human Services was proper in all respects and both the County and Department have complied with all substantive and procedural requirements of law and rule.

2. The County has sufficiently demonstrated that reasonable cause exists to take disciplinary action against Ms. Shadow's day care license. Consequently, pursuant to Minn. Stat. 245A.08, subd. 3. the burden of proof shifts to the Licensee to demonstrate by a preponderance of the evidence that he/she is in full compliance with the rules at issue.

3 Minn. Rules pt. 9502.0367 provides that for a C1 group family day care license, the maximum capacity is ten children. Minn. Rules pt. 9502.0365, subp. 1 requires that family day care providers must comply with the limits set forth in Minn. Rules pt. 9502.0367.

4. Minn. Rules pt. 9502.0365, subp. 5 requires that "children in care must be supervised" The term "supervision" is defined in Minn. Rules pt. 9502.0315, subp. 29a. as "a caregiver being within sight or hearing of an infant, toddler or preschooler at all times so that the caregiver is capable of

intervening to protect the health and safety of the child For the school-age child, it means a caregiver being available for a assistance and care so that the child's health and safety is protected."

Denise Shadow was in violation of Minn. Rules pt. 9502.0365 in November of 1987 when she was found in excess of licensed capacity. Mg. Shadow violated Minn. Rules pt. 9502.0365, subp. 5 when children wandered away from her home on two separate occasions.

6. The above-rules violations are grounds to take disciplinary action against Denise Shadow's day care license, including license revocation.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner's decision to revoke Denise Shadow's day care license be AFFIRMED, or in the alternative, that some lesser disciplinary action be taken as deemed appropriate.

Dated this 11th day of May, 1989.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to 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

Reported: Taped,