

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

In the Matter of the Application of John
and Mary Mc Reynolds for Family Foster
Care Licensure

FINDINGS OF FACT,
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Richard C. Luis at the Scott County Courthouse in Shakopee on May 22, 1995. Angela M. Helseth, Assistant Scott County Attorney, 206 Scott County Courthouse, 428 South Holmes Street, Shakopee, Minnesota 55379-1380, appeared on behalf of the Scott County Department of Human Services ("Agency, County"). Dennis P. Moriarty, Esquire, Jaspers, Moriarty & Walburg, P.A., 206 South Scott Street, Shakopee, Minnesota 55379, appeared on behalf of the Applicants, John and Mary Mc Reynolds. The record in this matter closed on June 26, 1995.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity 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 Maria R. Gomez, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155.

STATEMENT OF ISSUES

Whether the Applicants have met successfully the Physical Environment standards for Family Foster Care licensure found at Minn. Rule 9545.0190, subparts 3 and 5 and, if they have, whether it is then proper to grant them a Family Foster Care license?

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

FINDINGS OF FACT

1. On approximately June 17, 1994, John and Mary Mc Reynolds contacted the Scott County Human Services Department to initiate an application process for Family Foster Care (FFC) licensure. Their written application for licensure was not filed until approximately September 6, 1994.

2. The application was filed in an effort by the Mc Reynoldses to improve their position on the merits of a case pending in Scott County District Court regarding the placement in their home of R.B., an 11 year-old boy who has been living with them for approximately 10-½ years. R.B.'s natural mother, who is of limited mental capacity, had commenced an action in District Court to retain custody of the boy. That case remains unresolved. The Mc Reynoldses maintain they can get a court order to retain custody of R.B. even if Family Foster Care licensure is not obtained. They allege that, should licensure be granted, they will seek no other placements. In addition to R.B., the Applicants also have two daughters, two grandchildren and a son-in-law living with them.

3. On August 19, 1994, Deborah Beske, a Social Worker assigned to foster care licensing cases for Scott County, inspected the Mc Reynolds home. The house, which had been moved from its original location on First Avenue near downtown Shakopee to a location approximately six miles south of First Avenue (3240 Marschall Road, still within Shakopee city limits), was undergoing major construction to add on a large garage and a separate apartment above the garage when Beske made her visit.

4. On August 19, Beske observed accumulations of rubbish inside and outside the house, peeling paint on the ceiling, kitchen cupboards without doors containing cleaning supplies and kitchen utensils (exposed to the construction and within the reach of children), the presence of hazardous materials and dangerous tools throughout the house, an accessible but unsupported walk-out porch suspended over an outdoor patio area, no hand rails on a stairway and holes in the floor.

5. On August 26, 1994, Ms. Beske received documentation from Fulton Schleisman, Building Official for the City of Shakopee, showing that as of that date, the Mc Reynolds house failed to meet "all code requirements". The correspondence included a 16-point list of specific requirements to be done before occupancy on the new building site would be authorized, dated August 4, 1992, and a May 11, 1994 letter to the Applicants regarding plumbing, heating, electrical and framing inspections that still needed to be done on the garage addition mentioned in Finding 3.

6. On October 7, 1994, Beske recommended in writing to the Minnesota Department of Human Services (MDHS) that the Mc Reynolds's application for foster care licensure be denied because of deficiencies (specified in her letter - Exhibit 7) in the physical plant. Beske proceeded in this fashion on the advice of an official in the "Family Systems Unit" at MDHS, who told her that the application process could stop and a denial of licensure could be issued based solely on a failure to meet building and fire safety code requirements.

7. On November 15, 1994, James G. Loving, Director of the Division of Licensing at MDHS, issued a determination of denial of Family Foster Care licensure to the Applicants based on the reasons laid out by Ms. Beske in her October 7 recommendation.

8. Ms. Beske returned to the Mc Reynolds home in November 1994, in the company of another social worker, this time to investigate specifically in connection with the "placement of R.B." case discussed earlier. Although she was not there to inspect the physical plant specifically for purposes of assessing fitness for foster care licensure,

Beske noticed and mentioned to the Applicants that they had made significant progress regarding the physical plant deficiencies noted earlier. In a follow-up letter to Beske (who inquired after the Applicants appealed the denial of licensure from MDHS) dated February 15, 1995, Mr. Schleisman advised:

“ . . . according to our records, while there has been recent progress and inspections (November 1994), final inspections have not been done on the above-referenced project. Therefore, this office assumes that work remains unfinished. It is the owner/contractor’s obligation to schedule these inspections when all work is complete. (Ex. 2)

9. On May 19, 1995, Jim Grampre, Building Inspector for the City of Shakopee, inspected the Mc Reynolds house. Pursuant to the inspection, he issued a conditional Certificate of Occupancy with the proviso that certain building code deficiencies had to be repaired or brought up to code by June 30, 1995. In Grampre’s opinion, the house is safe for “summer” occupancy, but still needs work, which he gave the Mc Reynoldses through June 30 to accomplish, before it can be considered as meeting the City building code. Specifically:

- (a) Some siding still needs to be installed;
- (b) Steps need to be constructed at the landing for the garage service door, to connect with the patio deck approximately five feet below (see Exhibit 21). Otherwise, persons using that door to step out of the garage or the stairway to the apartment above it face a potential 5-foot drop to the paved deck material;
- (c) A flue chase at the bottom of the chimney in the basement is not sealed off;
- (d) Handrails were not completed on the stairs to the basement;
- (e) One column post was not completely secured in the basement;
- (f) Work was not completed on the hot water heater vent;
- (g) The on-off switch for the furnace in the garage (which heats the apartment above) was not secured; and
- (h) The hole in the garage ceiling for the duct from the furnace was not sealed off.

10. No fire safety inspection of the Mc Reynolds house has been conducted.

11. The Agency has conducted no inspection to assess the Applicants’ home for compliance with the “Cleanliness and freedom from hazard” standards of Minn. Rule 9545.0190, subp. 3 since Ms. Beske’s site visit of August 19, 1994.

12. Scott County suspended further processing of the Mc Reynolds’s FFC license application from the issuance of the recommended denial on October 7, 1994 to the present, except for follow-up action by the City Building Inspector on May 17, 1995, related to the merits of the “noncompliance with building code” issue. As a result, certain other parts of the application process have not been completed, including:

- (1) The filing of physician reports regarding the Applicants' personal health (Minn. Rule 9545.0140, subp. 1B);
- (2) The signing of a Foster Parent-Placement Agency Agreement (Minn. Rule 9545.0100A);
- (3) The filing of employer references confirming the Applicants' employment situations (Minn. Rule 9545.0090);
- (4) Documentation that the Mc Reynolds's pets (3 dogs) have had all necessary shots (Minn. Rule 9545.0180, subp. 2); and
- (5) A fire safety inspection, as noted at Finding 10 (Minn. Rule 9545.0190, subp. 5).

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

CONCLUSIONS

1. Any Finding of Fact more properly termed a Conclusion is hereby adopted as such.
2. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.57-14.62 and Minn. Stat. § 245A.08.
3. The Notice of Hearing was proper and all substantive and procedural requirements of law and rule have been fulfilled.
4. The Applicants have not established that their house is free from hazards that jeopardize health and safety within the meaning of Minn. Rule 9545.0190, subp. 3. The house failed a County agency inspection in August of 1994 (and has not been reinspected for that purpose by the Agency). Under Minn. Rule 9545.0190, subp. 3A, the Agency can delegate inspection responsibility to city officials, as was done in this case. The Applicants' house does not satisfy the City of Shakopee's building code, as of May 19, 1995, with respect to freedom from hazards that jeopardize safety.
5. The Applicants have not established by a preponderance of the evidence that they have satisfied the requirements of Minn. Rule 9545.0190, subp. 3 and subp. 5 for the reasons stated in the preceding Conclusion and in Findings 9, 10, 11 and 12(5).
6. Even if the Applicants satisfy all Physical Environment requirements of Minn. Rule 9545.0190 regarding the "Cleanliness and freedom from hazard" standards of Subpart 3 and the "Fire safety" standards of Subpart 5, the application is still incomplete in the absence of documentation necessary to satisfy the other requirements noted at Finding 12.
7. Because of the unresolved concerns noted at Conclusions 4, 5 and 6, it is inappropriate to issue a Family Foster Care license to the Applicants based on this record. It is appropriate to affirm the denial of licensure issued November 15, 1994.

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

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Human Services AFFIRM the denial of the Family Foster Care license application of John and Mary Mc Reynolds issued on November 15, 1994, WITHOUT PREJUDICE.

Dated this 27th day of June, 1995

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

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

MEMORANDUM

The Applicants argue that the basis for denial of the application, that their house was not “reasonably clean, reasonably neat, and free from hazards that jeopardize health and safety” or “safe from fire or structural hazards” within the meaning of Rule 9545.0190, subps. 3 and 5 on August 19, no longer exists. The Administrative Law Judge cannot agree. The lack of a stairway from the garage service door leading to the patio deck presents a clear fall hazard that remained unremedied at the time of the hearing. The house still was granted only an interim Certificate of Occupancy, and the improper ventilation hazards, if continued into the heating season, clearly would render the house unfit for occupancy then. Also, the Agency has clear authority to request an inspection by the State Fire Marshal’s Office (as it has in this case), and that inspection has not been done. Until such an inspection of the Mc Reynolds’s house occurs, and the house passes the inspection, there is no compliance with the fire safety standards of 9545.0190, subp. 5.

Counsel for the Applicants argues further that once the Applicants meet all the deficiencies noted in the denial of licensure determination dated November 15, 1994, that licensure must be granted in order to avoid “piecemeal” regulation and a lengthening of time for the process that is unconscionable. The Judge concludes that, on the facts of this case, that argument is without merit. Minn. Rule 9543.0040, subp. 4, part of the regulatory code governing Human Services Licensure in general, makes it clear that no application for foster care is complete unless all studies, reports and evaluations specified at Subparts 2 and 3 of 9543.0040 are completed and reviewed by the (County) agency. Subparts 2 and 3 require the completion of licensing studies and background studies, respectively, and compliance with Minn. Rule 9545.0190, subps. 3

and 5 relate only to part of the licensing study information necessary to complete the application review process. The record is incomplete regarding how much of the process remains, and to recommend licensure upon meeting the requirements of 9545.0190, subps. 3 and 5 is clearly premature.

The decision by Scott County to stop the licensure process in order to resolve the health and safety concerns presented by the Applicants' house is not unreasonable. No license can be issued until the house meets certain physical standards. Unfortunately, that decision appears to have led the Applicants to believe that fixing up their house to meet the building code is all that is required for licensure at this point. The record shows they are incorrect. While such a result may frustrate the Applicants, a granting of licensure without requiring the meeting of all applicable standards has the potential to cause even greater harm. As pointed out in the Brief from counsel for the County, it is illogical to assume that when licensure is denied before the application/review process is complete, that compliance with all other licensing requirements has been waived. In addition, the length of the process involved to date (approximately one year) is not unconscionable to a degree sufficient to make such blanket relief as a granting of licensure appropriate. While the Applicants may have undertaken this process solely to bolster their equities regarding R.B., that is no reason (nor have they suggested so) to relax the standards required of all Family Foster Care applicants.

It was recommended that the denial of licensure be without prejudice in this case because the Judge agrees with counsel for the County—if the Mc Reynoldses correct the deficiencies supporting denial at this stage, the balance of the licensing process can then proceed immediately.

RCL