

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 Wanda Riedberger

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

This matter came on for hearing before Administrative Law Judge Perry M. Wilson on March 3, 2016, at the Hennepin County Human Services Building in Minneapolis, Minnesota. The hearing record closed that day.

Grace Song, Assistant Hennepin County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Wanda Riedberger (Licensee) appeared on her own behalf and without legal counsel.

**STATEMENT OF THE ISSUE**

Is there reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in the Licensee's care sufficient to allow the temporary immediate suspension of the family child care license to remain in effect pending the Commissioner of the Department of Human Service's (Commissioner) final order under Minn. Stat. § 245A.08 (2014)?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in the Licensee's care, such that it is respectfully recommended that the temporary immediate suspension of the Licensee's family child care license be **AFFIRMED**, pending the Commissioner's final order.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Licensee operates a family day care located in her home in Rockford, Minnesota.<sup>1</sup> Licensee's daughter and son-in-law live with her in the home.<sup>2</sup> Licensee's adult son also stayed at the home from time to time.<sup>3</sup>

2. The Licensee holds a family child care license.<sup>4</sup>

3. On February 2, 2016, a Hennepin County Child Care Licensing Worker (Licensing Worker) made an unannounced visit at Licensee's facility.<sup>5</sup> The Licensing Worker discovered that Licensee's son, daughter and son-in-law were living at the home.<sup>6</sup> Licensee had not reported the presence of these individuals to her licensing worker and no background studies had been completed on them.<sup>7</sup>

4. As a result of the visit on February 2, 2016, the Licensing Worker issued a Correction Order to Licensee listing 12 violations of law and rules.<sup>8</sup> One of the violations was for Licensee's failure to report the presence of her son, daughter, and son-in-law.

5. On February 4, 2016, the Licensing Worker received a phone call from a confidential reporter who told her that Licensee's son had a felony conviction as a result of the maltreatment of his daughter when she was eight months old.<sup>9</sup>

6. After a Google search confirmed that Licensee's son was convicted of a felony and because no background check had been conducted on him, the Licensing Worker consulted with her supervisor and they decided to recommend that the Department issue an order of Temporary Immediate Suspension of Licensee's day care license.<sup>10</sup>

7. On February 5, 2016, the Licensing Worker wrote a letter to the Department recommending that Licensee's license be temporarily and immediately suspended.<sup>11</sup>

8. On February 5, 2016 the Department issued its Order of Temporary Immediate Suspension.<sup>12</sup>

9. Licensee appealed the Order of Temporary Immediate Suspension.<sup>13</sup>

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<sup>1</sup> Testimony (Test.) of Cassandra Dutrieuille.

<sup>2</sup> Test. of Wanda Riedberger.

<sup>3</sup> *Id.*

<sup>4</sup> Test. of C. Dutrieuille.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Exhibit (Ex.) 1.

<sup>9</sup> Test. of C. Dutrieuille.

<sup>10</sup> *Id.*

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 4.

<sup>13</sup> Notice and Order for Hearing, February 9, 2016.

10. Licensee has asked her son not to return to the day care home when children are present. She will call the police if her son does return to the home during day care hours and refuses to leave.<sup>14</sup>

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

### **CONCLUSIONS OF LAW**

1. The Commissioner and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.07, .08 (2014).

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.<sup>15</sup>

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an Administrative Law Judge within five (5) working days of receipt of the license holder's timely appeal.<sup>16</sup> A hearing must be conducted within 30 calendar days of the request for assignment.<sup>17</sup>

4. The Licensee received due, proper, and timely notice of the allegations against her, and of the time and place of the hearing.

5. The Department has complied with all substantive and procedural requirements of rule and law.

6. The Licensee's appeal of the Order of Temporary Immediate Suspension was timely, and this matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

7. When an Order of Temporary Immediate Suspension is appealed, the scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's final order with respect to a licensing sanction issued under Minn. Stat. § 245A.07, subd. 3.<sup>18</sup>

8. The burden of proof in expedited hearings is on the Commissioner to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or

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<sup>14</sup> Test. of W. Riedberger.

<sup>15</sup> Minn. Stat. § 245A.07, subd. 2.

<sup>16</sup> Minn. Stat. § 245A.07, subd. 2a.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>19</sup>

9. “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.<sup>20</sup>

10. Minn. Stat. § 245A.07, subd. 2, provides, in pertinent part:

If the license holder’s failure to comply with applicable law or rule has placed the health, safety, or rights of persons served by the program in imminent danger, the commissioner shall act to immediately suspend the license.

11. Minnesota Statutes section 245C.15, subdivision 1 (2014), provides that a person who commits a crime of child abuse is permanently disqualified from contact with children in a family day care.

12. Licensee’s adult son was convicted of a felony involving child abuse of an eight-month-old child. By operation of Minn. Stat. § 245C.15, subd. 1, Licensee’s son is permanently disqualified from contact with the children in Licensee’s care.

13. The Department has demonstrated that reasonable cause exists to believe that Licensee’s failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.

14. The presence of Licensee’s son, who lived, from time to time, in the day care home, posed an imminent risk of harm to the person’s served by Licensee’s program.

15. Licensee violated Minn. R. 9502.0375, subp. 2A (2015) when she failed to report to the Department the presence of her son, daughter and son-in-law in her home.

16. The Memorandum below is incorporated herein by reference.

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

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that the Commissioner **AFFIRM** the temporary immediate suspension of the family child care license of Wanda Riedberger, pending the Commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.07, subd. 3.

Dated: March 10, 2016



PERRY M. WILSON  
Administrative Law Judge

Reported: Digitally Recorded; No transcript prepared

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services (the Commissioner) 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. The parties have 10 calendar days after receiving this Report to file Exceptions to the Report. At the end of the exceptions period, the record will close. The Commissioner then has 10 working days to issue the final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64998, St. Paul, MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1 (2014), 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.

## MEMORANDUM

The scope of an expedited hearing on an appeal of an Order of Temporary Immediate Suspension is limited solely to the issue of whether the temporary immediate suspension of the license holder's license should remain in effect pending the Commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.08.<sup>21</sup> The burden of proof is on the Commissioner to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule, the actions of other individuals, or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>22</sup>

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<sup>21</sup> Minn. Stat. § 245A.07, subd. 2a.

<sup>22</sup> *Id.*

“Reasonable cause” means:

[T]here exist specific articulable facts or circumstances which provide the Commissioner with reasonable suspicion that there is an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>23</sup>

The “reasonable cause” burden of proof is a fairly modest standard, intended to ensure that vulnerable children are protected until there can be a full hearing and final determination of any possible licensing sanction under Minn. Stat. § 245A.08.

In this case, reasonable cause is shown by the unreported presence of Licensee’s son in the day care home when he has a felony conviction involving child abuse. It is reasonable for the Department to conclude that the presence of Licensee’s son in the home provides a reasonable suspicion of an imminent risk of harm to the children served by Licensee’s program.

The legal standard applicable to the appeal of an Order of Temporary Immediate Suspension does not require the Department to show that Licensee’s son will harm the children in her care, only that there are articulable facts or circumstances providing the Department with reasonable suspicion that he might. The Department has met its burden of proof.

Licensee’s testimony that her son will not be allowed in the home during day care hours and that, if he is present and refuses to leave, she will call the police was offered as her solution to the fact that her son cannot be present in the home during day care hours. Since this solution was offered after the issuance to the Order of Temporary Suspension, it is for the Department to determine, as a part of its final licensing action, if it is adequate to assure the safety of the children in Licensee’s care. Licensee’s failure to report her son’s presence in the home and her failure to bring her son’s felony conviction to the attention of the Department should be factors in that decision.

Therefore, the Administrative Law Judge respectfully recommends that the Order of Temporary Immediate Suspension be **AFFIRMED**.

**P. M. W.**

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<sup>23</sup> *Id.*