

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 Marichel Jones

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

This matter came on for hearing before Administrative Law Judge Steven M. Bialick on June 6, 2016, at the Health Services Building, 525 Portland Avenue South, Minneapolis, Minnesota.

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

The hearing record closed on June 6, 2016, upon conclusion of the hearing.

STATEMENT OF THE ISSUE

Did the Department demonstrate that reasonable cause exists to believe that Licensee's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in Licensee's program, pose an imminent risk of harm to the health, safety or rights of persons served by the program?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department has demonstrated that reasonable cause exists to believe that Licensee's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in Licensee's program, pose an imminent risk of harm to the health, safety or rights of persons served by the program. Therefore, the Administrative Law Judge recommends that the Order of Temporary Immediate Suspension of Licensee's family child care license be **AFFIRMED**.

Based upon the testimony, exhibits and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee has had a family child care license for 16 years.¹
2. In 2009, an Order of Temporary Immediate Suspension of Licensee's family child care license was issued, based on a finding of maltreatment by neglect resulting from a lack of supervision. The findings in that matter indicated a lack of supervision resulting in a 22-month-old child tipping a high chair over and escaping from the safety straps. In that case, Licensee's license was reinstated from the Order of Temporary Immediate Suspension and placed on one-year conditional status, with conditions and imposition of a \$1,000 fine.²
3. Licensee currently holds a class C-1 family child care license. She operates her family child care program out of her home in Brooklyn Center, Minnesota.³
4. Licensee lives in her home with her 21-year-old daughter.⁴
5. On May 4, 2016, eight children were enrolled in Licensee's family child care program. Two of those children are 4 years old, two are 3 years old, one is 2 years old, one is 14 months old, one is 7 months old, and one is 6 months old.⁵
6. On May 4, 2016, all the children who were enrolled in Licensee's family child care program were present in Licensee's home, except for one of the 3-year-old children.⁶
7. The 14-month-old child (IH) in Licensee's program, who was 13 months old at the time, was brought to Licensee's home by his mother at approximately 9:30 a.m. on May 4, 2016.⁷
8. On May 4, 2016, from approximately 9:30 a.m. until approximately 2:00 p.m., Licensee was with IH in her home.⁸
9. At approximately 2:00 p.m. on May 4, 2016, Licensee put IH in a room in her home for a nap. IH was alone in that room until approximately 3:00 p.m., when Licensee also put one of the 4-year-old children in that room for a nap.⁹

¹ Testimony (Test.) of Licensee.

² Exhibit (Ex.) 3.

³ Test. of Licensee.

⁴ *Id.*

⁵ *Id.*; Licensee testified that the events which are the subject of this proceeding occurred on May 3, 2016, rather than on May 4, 2016. However, it appears from the exhibits that the events occurred on May 4, 2016.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

10. Licensee checked on IH approximately every 20 to 30 minutes while he was sleeping on May 4, 2016.¹⁰

11. At approximately 3:50 p.m. on May 4, 2016, Licensee heard noises indicating that IH had woken up. Licensee took IH out of the room in which he had been sleeping, and he went outside with her daughter. Four other children from Licensee's program were also outside with Licensee's daughter at that time.¹¹

12. At approximately 3:55 p.m. on May 4, 2016, Licensee's daughter sent one of the children into the house to get Licensee, because the daughter noticed a mark on IH's face.¹²

13. Licensee went outside and examined IH's face. She thought the mark on his face looked like a bug bite, so she went inside to look for bugs. IH stayed outside with Licensee's daughter and the other children.¹³

14. Licensee did not find any bugs in her house. She called IH's mother about the mark on his face, and used her phone to send IH's mother a picture of the mark at 3:59 p.m. on May 4, 2016.¹⁴

15. At approximately 4:15 p.m. on May 4, 2016, IH's maternal aunt picked up IH from Licensee's home and took him to his home.¹⁵

16. At approximately 4:30 p.m. on May 4, 2016, IH's mother called Licensee about injuries to IH.¹⁶

17. At approximately 4:40 p.m. on May 4, 2016, Licensee went to IH's home and was told that IH was taken to Park Nicollet Urgent Care in Brooklyn Center, Minnesota. Licensee then went to Park Nicollet Urgent Care.¹⁷

18. The personnel at Park Nicollet Urgent Care said to bring IH to Minneapolis Children's Hospital. IH was taken to Minneapolis Children's Hospital on May 4, 2016.¹⁸

19. Minneapolis Children's Hospital consulted with Midwest Children's Resource Center (MCRC) regarding IH's injuries.¹⁹

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Test. of Andrew Larson.

¹⁹ *Id.*

20. When IH's mother brought IH to Licensee's home on May 4, 2016, there was only a small, healing abrasion near his hairline.²⁰

21. When IH was picked up from Licensee's home on May 4, 2016, he had multiple injuries including a "busted" lip, bite marks, and abrasions.²¹

22. The report of the doctor who evaluated IH at Minneapolis Children's Hospital on May 4, 2016 states:

(IH's) physical examination is notable for 5 patterned injuries concerning for bite marks including the prior mark the hairline. There C-shaped injuries are small and appear consistent with the bite from a child, however, the injuries occur on multiple planes including the right side of the face (temple), left cheek, chin, left shoulder and right forehead which is highly concerning for a lack of appropriate supervision. The physical examination is also notable for multiple additional injuries including bruising around the right eye, multiple small lacerations on the hands, and a patterned laceration on the upper back. There is no history provided for these injuries. This is highly concerning for either inflicted injury and/or accidental injury with neglectful supervision.²²

23. IH sustained multiple injuries on May 4, 2016, while under Licensee's care.

24. Licensee does not know how IH sustained the injuries reported by the doctor at Minneapolis Children's Hospital.²³

25. On May 6, 2016, the Department issued an Order of Temporary Immediate Suspension of Licensee's family child care license, based on the injuries sustained by IH at Licensee's home on May 4, 2016.²⁴

26. On May 9, 2016, the Department received Licensee's appeal of the May 6, 2016 Order of Temporary Immediate Suspension.²⁵

27. On May 10, 2016, the Department issued a Notice and Order for Hearing, scheduling the hearing in this matter for June 6, 2016.²⁶

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

²⁰ Ex. 1.

²¹ *Id.*

²² *Id.*

²³ Test. of Licensee.

²⁴ Ex. 2.

²⁵ Notice and Order for Hearing, dated May 10, 2016.

²⁶ *Id.*

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07-.08 (2014).

2. Licensee received adequate notice of the Order of Temporary Immediate Suspension of her family child care license, and she timely appealed the Order of Temporary Immediate Suspension of that license.

3. The Department gave proper and timely notice of the hearing in this matter.

4. The Department complied with all relevant substantive and procedural requirements of law and rule.

5. Minn. Stat. § 245A.07, subd. 2(a)(1) provides:

The commissioner shall act immediately to temporarily suspend a license if ... the 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[.]

6. Minn. Stat. § 245A.07, subd. 2a(a) sets forth applicable law for a hearing on an appeal of an Order of Temporary Immediate Suspension, and provides in applicable part:

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 under section 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension... [T]he burden of proof in expedited hearings under this subdivision shall be 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, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program. "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.

7. For purposes of family day care licensing, "toddler" means a child who is at least 12 months old but less than 24 months old.²⁷

²⁷ Minn. Stat. § 245A.02, subd. 19(d) (2014).

8. IH is a “toddler” as defined by Minn. Stat. § 245A.02, subd. 19(d).

9. For purposes of child care centers, “supervision” means when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of a child.²⁸

10. Pursuant to Minn. R. 9502.0315, subp. 29a (2015), “supervision” means 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.

11. Licensee failed to provide adequate supervision to IH while he was under her care on May 4, 2016, as evidenced by her lack of knowledge regarding how IH sustained multiple injuries in her home during that day.

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

Based upon the foregoing Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension of Licensee’s family child care license be **AFFIRMED**.

Dated: June 14, 2016



STEVEN M. BIALICK
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

²⁸ Minn. Stat. § 245A.02, subd. 18 (2014).

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 of Law, and Recommendation. The parties have ten 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 ten 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

When IH arrived at Licensee's home during the morning of May 4, 2016, the only injury he had was a small, healing abrasion near his hairline. When IH was picked up from Licensee's home in the afternoon of May 4, 2016, he had multiple additional injuries, including four bite marks, bruising, and multiple lacerations.

The doctor who evaluated IH at Minneapolis Children's Hospital reported that IH's injuries were "highly concerning for a lack of appropriate supervision."

Licensee does not know how IH's injuries occurred, and she has not indicated how those types of injuries can be avoided in the future.

IH's injuries, when combined with Licensee's lack of knowledge regarding how the injuries occurred and her failure to say how those types of injuries can be avoided, demonstrate reasonable cause to believe that there is an imminent risk of harm to the health and safety of children in Licensee's program.

It should also be noted that an Order of Temporary Immediate Suspension of Licensee's family child care license was issued in 2009 for lack of supervision resulting in a 22-month-old child tipping a high chair over and escaping from safety straps.

The photograph Licensee sent to IH's mother on May 4, 2016, does not show all the injuries IH sustained.²⁹ However, photographs taken while IH's injuries were being evaluated on May 4, 2016, do show multiple injuries.³⁰

²⁹ Ex. 105.

³⁰ Ex. 5a-f.

Licensee filed two letters supporting her and her program.³¹ However, those letters do not alleviate the cause for concern discussed in this Report.

For the reasons set forth in this Report, the Administrative Law Judge recommends that the Order of Temporary Immediate Suspension of License's family child care license be affirmed.

S. M. B.

³¹ Exs. 101, 102.