

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 Jennifer J. Glauvitz

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

This matter came on for hearing before Administrative Law Judge Perry M. Wilson on July 26, 2016, at the Mille Lacs County Justice Center in Milaca, Minnesota. The hearing record closed at the end of the evidentiary hearing.

Heather Griesert, Assistant Mille Lacs County Attorney, appeared for the Minnesota Department of Human Services (Department). Jennifer Glauvitz (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 license holder's care sufficient to allow the Temporary Immediate Suspension of the family child care license to remain in effect pending the Commissioner's Final Order under Minn. Stat. § 245A.08 (2016)?

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 Milaca, Minnesota.¹ Licensee has held a family day care license since 2008.²

2. Licensee's fifteen-year-old son and ten-year-old daughter live with her in the day care home.³

3. On June 24, 2016, Mille Lacs County Community and Veterans Service received a report of Licensee's possible chemical use and behaviors with her children after day care hours and determined to investigate the report.⁴

4. On June 27, 2016, a child protection worker interviewed Licensee's children.⁵ The Mille Lacs County licensing worker assigned to Licensee observed these interviews.⁶

5. During the course of the interviews, both of Licensee's children confirmed that Licensee drinks alcohol to the point where her breath smells of alcohol, her words become slurred and she has difficulty walking in a straight line.⁷

6. Licensee's fifteen-year-old son told the investigator that he has seen Licensee drink alcohol while day care children were present in her home.⁸ Licensee's son reported that Licensee has hidden alcohol in a water bottle and her sweatshirt.⁹

7. Licensee's ten-year-old daughter told the investigator that Licensee drinks alcohol during the operation of her day care and that Licensee hides alcohol in the cookie cabinet.¹⁰

8. On June 28, 2016, the investigator received a handwritten document dated June 13, 2016, in which Licensee's children requested that she get professional help for alcohol abuse.¹¹ Licensee signed the document, indicating that she agreed to seek treatment.¹²

9. On June 28, 2016, at 2:30 p.m., the child protection worker and licensing worker made an unannounced visit to Licensee's day care.¹³ When the workers entered

¹ Testimony (Test.) of Jenn Fronk.

² Exhibit (Ex.) 3.

³ Test. of J. Fronk.

⁴ Ex. 1.

⁵ Test. of J. Fronk.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ex. 4.

¹² *Id.*

¹³ Test. of J. Fronk.

Licensee's home, there were three children, ages ten, three and two, in Licensee's care.¹⁴ The licensing worker completed an inspection of the day care home and completed a checklist of areas of inspection.¹⁵ During the course of her inspection, the licensing worker discovered three beers in a low cupboard, accessible to children, in Licensee's garage.¹⁶

10. Licensee has a Drug/Alcohol Policy dated August 9, 2008, reviewed on December 3, 2014, stating that "when directly responsible for persons served by the program," the license holder is prohibited from being under the influence of alcohol.¹⁷

11. During the inspection on June 28, 2016, the child protection worker asked Licensee whether she consumed alcohol during the operation of her day care.¹⁸ Licensee denied consuming alcohol during the operation of her day care.¹⁹

12. After the children left Licensee's home on June 28, 2016, the child protection worker asked Licensee to provide a urine sample to be tested to determine whether Licensee was under the influence of alcohol.²⁰ After about 20 minutes, Licensee produced what she said was her urine in a sample jar.²¹ The child protection worker noted that the sample was not warm and the sample smelled like soap, not urine.²²

13. Licensee was asked when she last consumed alcohol and she stated that she drank alcohol the previous weekend, two days before June 28, 2016.²³

14. The child protection worker asked Licensee to provide a breath test to measure the alcohol content in her body.²⁴ Licensee, the child protection worker, and the licensing worker traveled to the Milaca police department for the test.²⁵

15. A Milaca police officer administered the breath test to Licensee.²⁶ The first test failed and the police officer believed the failure resulted because Licensee placed her tongue over the mouth piece of the test apparatus.²⁷ A second test, performed at 5:32 p.m. on June 28, 2016, succeeded, measuring Licensee's blood alcohol content at .059.²⁸

¹⁴ *Id.*

¹⁵ Ex. 5.

¹⁶ *Id.*

¹⁷ Ex. 3.

¹⁸ Test. of J. Fronk.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

16. When informed of the test result, Licensee stated that she had consumed three rum drinks the previous evening.²⁹ She stated that she had not consumed water during the day and speculated that this might account for the high blood alcohol reading.³⁰

17. The police officer offered to perform a third test to attempt to determine how quickly Licensee's body metabolized alcohol, but Licensee declined this test.³¹

18. On June 29, 2016, the licensing worker recommended that the Department issue an Order of Temporary Immediate Suspension of Licensee's day care license based on the evidence that she was under the influence of alcohol while operating her day care.³²

19. On June 29, 2016, the Department issued its order temporarily and immediately suspending Licensee's day care license³³

20. On July 5, 2016, Licensee appealed the Order of Temporary Immediate Suspension.³⁴

21. Child protection workers interviewed three children who attended Licensee's day care.³⁵ Two of the children, ages four and five, indicated that Licensee napped when the children were napping.³⁶ The other child, who is somewhat older, stated that Licensee listens to the radio when the children are napping.³⁷

22. Licensee provided six letters from the parents of children in her care. All six parents stated that Licensee is a very good day care provider.³⁸ The parents stated that they trust Licensee and would have recommended that others send their children to Licensee's day care.³⁹

23. Licensee also provided three additional letters of support, one from her back-up day care provider, one from a friend, and one from the grandmother of children in Licensee's care.⁴⁰ All three letters commend Licensee for the manner in which she operates her day care.⁴¹

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

²⁹ Test. of J. Fronk.

³⁰ *Id.*

³¹ *Id.*

³² Ex. 1.

³³ Ex. B, Notice and Order for Hearing filed July 18, 2016.

³⁴ *Id.*; Ex. A.

³⁵ Test. of Alisen Gundersen.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ex. 100.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

CONCLUSIONS OF LAW

1. The Commissioner of the Department of Human Services (Commissioner) and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 245A.07-.08 (2016).

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

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

4. 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.

5. 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.⁴²

6. 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. 3.⁴³

7. 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 conditions in the program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.⁴⁴

8. "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.⁴⁵

9. 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.

⁴² Minn. Stat. § 245A.07, subd. 2.

⁴³ Minn. Stat. § 245A.07, subd. 2a.

⁴⁴ *Id.*

⁴⁵ *Id.*

10. 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.

11. Minnesota Statutes, section 245A.04, subdivision 1(c) (2016), provides:

An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

12. It is reasonable for the Department to conclude that Licensee violated Minn. Stat. § 245A.04, subd. 1(c) (2016), and her Drug/Alcohol Policy when she operated her home day care while under the influence of alcohol on June 28, 2016.

13. By operating her day care while under the influence of alcohol, Licensee posed an imminent risk to the children in her care.

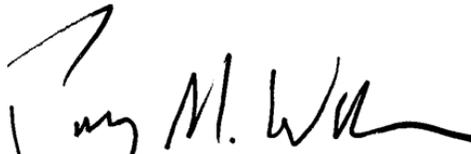
14. The Memorandum below is incorporated herein by reference.

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

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner **AFFIRM** the Temporary Immediate Suspension of Family Child Care License of Jennifer J. Glauvitz pending the Commissioner's Final Order regarding a licensing sanction under Minn. Stat. § 245A.07, subd. 3.

Dated: August 5, 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 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 her 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 (2016), 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.08.⁴⁶ The burden of proof is on the Department 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.⁴⁷

"Reasonable cause," by statute, means that:

[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.⁴⁸

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.

It is the Department's position that the statements of Licensee's children that she consumed alcohol during operation of her day care, the June 13, 2016 statement signed by Licensee stating that she agreed to seek treatment for alcohol abuse, and the results of the breath test performed on licensee indicating a blood alcohol level of .059 all support a reasonable suspicion that Licensee operated her day care while under the influence of alcohol.

⁴⁶ Minn. Stat. § 245A.07, subd. 2a.

⁴⁷ *Id.*

⁴⁸ *Id.*

Licensee argues that she did not consume alcohol during the operation of the day care, but did consume alcohol the evening before.

The Administrative Law Judge agrees that the Department has met its burden of proof. The Department provided evidence sufficient to support a reasonable suspicion that Licensee was under the influence of alcohol during the operation of her day care. Even if Licensee did not consume alcohol during operation of her day care, the evidence supports a reasonable suspicion that she was under the influence of alcohol while children were present in her day care. Licensee's changing explanations of when she last consumed alcohol make her statements about when she last consumed alcohol unreliable.

The legal standard applicable to the appeal of an Order of Temporary Immediate Suspension does not require the Department to show that Licensee will harm the children in her care, only that there are articulable facts showing that it is reasonable to suppose that she might. The Department has met that standard.

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

P. M. W.