

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 Lisa Hauer

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

This matter came on for hearing before Administrative Law Judge Amy J. Chantry on September 21, 2016, at the Anoka County Government Center, 2100 Third Avenue, Anoka, Minnesota. The hearing record closed at the conclusion of the hearing.

Kelsey Kelley, Assistant Anoka County Attorney, appeared for the Minnesota Department of Human Services (Department) and Anoka County Human Services (County). Lisa Hauer appeared on her own behalf and without legal counsel.

STATEMENT OF THE ISSUES

1. Whether there is reasonable cause to believe that Ms. Hauer's failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of children in their care.

2. Whether the temporary immediate suspension of Ms. Hauer's family child care license should remain in effect pending the Commissioner's final order under Minn. Stat. § 245A.08 (2016).

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

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department demonstrated reasonable cause to believe that Ms. Hauer's failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of children served by her child care program. Accordingly, the Administrative Law Judge recommends that the Commissioner **AFFIRM** the Order of Temporary Immediate Suspension.

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

FINDINGS OF FACT

Background

1. Lisa Hauer holds a Class C2 Group Family Child Care License. Ms. Hauer has been licensed to provide family child care services since 2008.¹

2. Ms. Hauer operates her child care program out of her home in Andover, Minnesota. Ms. Hauer provides child care services Monday through Friday from 7:00 a.m. to 5:15 p.m.²

August 13, 2016 County Licensing Violation Report

3. On August 13, 2016, the County received a report from a parent of two children enrolled in Ms. Hauer's child care program that Ms. Hauer was failing to properly supervise children in her care. The parent was further concerned that Ms. Hauer was failing to provide the children with sufficient time to play outside.³

4. The parent reported that she has a four-year-old child and a 19-month-old child who had been attending Ms. Hauer's child care for four weeks. The parent stated that her four-year-old child complained that the child care children were kept in the playroom all day while Ms. Hauer sat on the living room couch. The parent was concerned because Ms. Hauer would be unable to observe the children in the playroom from the living room couch.⁴

5. The parent stated that on August 12, 2016, she sent her six-year-old child along with her two younger children to Ms. Hauer's for child care. According to the parent, her six-year-old child reported that the children stayed in the playroom for most of the day and that Ms. Hauer did not interact with them. In addition, the parent explained that her four-year-old and six-year-old children asked Ms. Hauer if they could play outside, but Ms. Hauer denied their request.⁵

6. Upon reviewing the August 13, 2016 licensing complaint, the County determined that it was not going to investigate the report.⁶

August 15, 2016 County Licensing Violation Report

7. On August 15, 2016, the County received a report from one of the parents of a child enrolled in Ms. Hauer's child care program that Ms. Hauer was sleeping while providing family child care services. The parent stated that when she went to drop her child off at Ms. Hauer's home the morning of August 15, 2016, she and her child were let

¹ Testimony (Test.) of Pamela Bohm.

² Test. of Lisa Hauer.

³ Test. of P. Bohm; Exhibit (Ex.) 2.

⁴ Test. of P. Bohm.

⁵ Ex. 2.

⁶ Test. of P. Bohm.

into the home by a two-year-old child care child. The parent explained that after entering the home, she attempted to locate Ms. Hauer. After failing to find Ms. Hauer, the parent asked the children if they knew where Ms. Hauer was and the children responded that “she’s still sleeping.” The parent then observed Ms. Hauer sleeping on the living room couch. The parent photographed Ms. Hauer asleep on the couch. The parent called out Ms. Hauer’s name a couple of times and, upon hearing no response, the parent said loudly “Lisa, you need to wake up and take care of these kids.” The parent then left with her child.⁷

8. The parent further reported that when she went to drop her child off at Ms. Hauer’s home on July 20, 2016, she also observed Ms. Hauer sleeping. The parent photographed Ms. Hauer sleeping on a mattress in the living room.⁸

9. The parent provided copies of the two photographs taken of Ms. Hauer. The first photograph depicts Ms. Hauer sleeping on a living room couch. The second photograph depicts Ms. Hauer sleeping on a mattress that was placed on the living room floor. Ms. Hauer is the only individual depicted in the photographs.⁹

County Licensing Investigation

10. Pamela Bohm, a child care licensing social worker employed by the County, was assigned to investigate the report.¹⁰

11. After being assigned the investigation, Ms. Bohm and another County social worker made an unannounced visit to Ms. Hauer’s home at 2:15 p.m. on August 15, 2016.¹¹

12. Upon arriving at Ms. Hauer’s home, investigators learned that Ms. Hauer was providing care for seven children, including one ten-month-old child, three three-year-old children, one five-year-old child, and one six-year-old child, along with Ms. Hauer’s ten-year-old and twelve-year-old children.¹²

13. Ms. Bohm informed Ms. Hauer about the report that County received regarding her sleeping when providing child care services. Ms. Hauer stated that her ten-year-old child was not feeling well that morning and she was laying on the couch with him. Ms. Bohm showed Ms. Hauer a copy of the photograph the parent took that morning of Ms. Hauer sleeping on the couch. In response, Ms. Hauer explained that an approved substitute caregiver was assisting her with caring for the children from 7:45 to 9:00 a.m. that day. According to Ms. Hauer, Ms. Cece Hahn works as an approved substitute

⁷ Test. of P. Bohm; Exs. 1-3.

⁸ Test. of P. Bohm; Exs. 2, 3.

⁹ Test. of P. Bohm; Exs. 2, 3.

¹⁰ Test. of P. Bohm; Exs. 1,3.

¹¹ Test. of P. Bohm; Exs. 1, 3.

¹² Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

caregiver once a month. Ms. Hauer stated that when the child's parent came to drop the child off on August 15, 2016, Ms. Hahn was in the bathroom.¹³

14. Ms. Bohm questioned Ms. Hauer about why Ms. Hauer failed to respond when the parent called out for her. Ms. Hauer stated that by the time she responded, the parent had already left the home.¹⁴

15. While Ms. Bohm was speaking with Ms. Hauer, Ms. Hauer received a telephone call from Ms. Hahn. Ms. Bohm overheard Ms. Hauer inform Ms. Hahn that if Ms. Hahn was contacted by County licensing workers, she should state that she was in the bathroom when the parent dropped off the child that morning.¹⁵

16. Ms. Bohm further questioned Ms. Hauer about the July 2016 incident in which it was reported that Ms. Hauer was sleeping while children were in her care. Ms. Hauer denied sleeping. Ms. Hauer explained that she did not have air conditioning for four days in July 2016, and she was laying in the living room with her ten-year-old son. Ms. Hauer stated that she was able to hear the children in the playroom downstairs.¹⁶

17. While in Ms. Hauer's home, investigators observed a baby monitor on a kitchen counter. During Ms. Hauer's interview, investigators heard a child crying. Investigators noted that the child's cries were not heard through the monitor that was on Ms. Hauer's kitchen counter. Upon hearing the child cry, Ms. Hauer went downstairs and retrieved the ten-month-old child.¹⁷

18. While in Ms. Hauer's home, investigators observed that the crib in which the 10-month-old child slept failed to contain a sheet. Investigators further observed that Ms. Hauer allowed two preschool age children to sleep in a downstairs bedroom with the door opened a crack. No baby monitor was present in the room.¹⁸

Temporary Immediate Suspension

19. On August 15, 2016, the County recommended to the Department that Ms. Hauer's child care license be immediately suspended.¹⁹

20. The County recommended the issuance of the Temporary Immediate Suspension over concern that Ms. Hauer was failing to properly supervise children in her care.²⁰

¹³ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁴ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁵ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁶ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁷ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁸ Test. of P. Bohm; Test. of L. Hauer; Exs. 1, 3.

¹⁹ Test. of P. Bohm; Exs. 2, 3.

²⁰ Test. of P. Bohm; Ex. 3.

21. On August 15, 2016, the Department issued an Order of Temporary Immediate Suspension (TIS Order) of Ms. Hauer's family child care license based on Ms. Hauer's failure to properly supervise children in her care.²¹

Follow-Up Investigation

22. After the issuance of the TIS Order, Ms. Bohm continued to investigate the allegations that Ms. Hauer failed to properly supervise children in her care because she was sleeping.²²

23. On August 24, 2016, Ms. Bohm interviewed Ms. Hahn and her husband, Matt Hahn, at their home.²³

24. Ms. Bohm questioned Ms. Hahn about whether she was providing substitute child care services for Ms. Hauer on August 15, 2016. Ms. Hahn reviewed her calendar and determined that the last time she provided substitute child care services for Ms. Hauer was on August 8, 2016, from 4:30 p.m. until 5:15 p.m.²⁴

25. Ms. Hahn stated that her five-year-old son attended Ms. Hauer's child care program two to three times a week from 10:00 a.m. until 12:00 p.m. Ms. Hauer denied ever observing Ms. Hauer sleep and she had no concerns over the level of care Ms. Hauer provided.²⁵

26. On August 29, 2016, Ms. Bohm interviewed Jessa Zahn and her son, O.Z. Ms. Zahn explained that she would drop O.Z. off at Ms. Hauer's home at 7:15 a.m. and pick him up between 3:00 p.m. and 5:00 p.m. Ms. Bohm questioned Ms. Zahn about any concerns Ms. Zahn may have over Ms. Hauer's ability to care for O.Z. In response, Ms. Zahn described a time when she came to pick up O.Z. and she observed all of the children outside while Ms. Hauer was inside the home and the deck door was locked.²⁶

27. Ms. Zahn further explained that there were times when she dropped O.Z. off at Ms. Hauer's home and child care children would open the door and let her and O.Z. into the home. Ms. Zahn stated that during these times, there would be no sign of Ms. Hauer and there were kids in care.²⁷

28. Ms. Bohm questioned O.Z. about what he did while he was at Ms. Hauer's home and where Ms. Hauer was during those activities. O.Z. was unable to provide specific answers to Ms. Bohm's questions.²⁸

²¹ Test. of P. Bohm; Ex. 1.

²² Test. of P. Bohm; Ex. 1.

²³ Test. of P. Bohm; Ex. 2.

²⁴ Test. of P. Bohm; Ex. 1.

²⁵ Test. of P. Bohm; Ex. 1.

²⁶ Test. of P. Bohm; Ex. 1.

²⁷ Test. of P. Bohm; Ex. 1.

²⁸ Test. of P. Bohm; Ex. 1.

Ms. Hauer's Evidence

29. Ms. Hauer submitted five letters of support from parents of children in her care and others. All of the letters are highly complementary of Ms. Hauer's work as a child care provider.²⁹

30. On August 18, 2016, the Department received Ms. Hauer's timely appeal of the TIS Order and request for a contested case hearing. The Department issued a Notice and Order for Hearing on August 23, 2016.³⁰

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

CONCLUSIONS OF LAW

1. The Commissioner 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. 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.³¹

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an Administrative Law Judge within five working days of receipt of the license holder's timely appeal.³² A hearing must be conducted within 30 calendar days of the request for assignment.³³

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

5. The County and the Department have complied with all of the substantive and procedural requirements of law and rule.

6. The appeal of the TIS Order by Ms. Hauer was timely, and this matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

7. When a 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 under Minn.

²⁹ Exs. 101-105.

³⁰ See NOTICE AND ORDER FOR HEARING dated August 23, 2016.

³¹ Minn. Stat. § 245A.07, subd. 2.

³² Minn. Stat. § 245A.07, subd. 2a.

³³ *Id.*

Stat. § 245A.08, with respect to a licensing sanction issued under Minn. Stat. § 245A.07, subd. 3.³⁴

8. The burden of proof in expedited hearings shall be 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.³⁵

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.³⁶

10. A licensed child care provider must be the primary provider of care in the residence and the children must be supervised by the caregiver.³⁷

11. "Supervision" is defined in Minn. R. 9502.0315, subp. 29a (2015), as follows:

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. For the school age child, it means a caregiver being available for assistance and care so that the child's health and safety are protected.

12. The Department has presented specific and articulable facts that Ms. Hauer failed to adequately supervise the children in her program on August 15, 2016. By falling asleep, Ms. Hauer was not within sight or hearing of the children in her care and was incapable of intervening to protect the health and safety of the children. Accordingly, the Department has met its burden of proof in demonstrating that reasonable cause exists to believe that Ms. Hauer's failure to comply with applicable law or rule on August 15, 2016, poses an imminent risk of harm to the health, safety, or rights of children served by the child care program.

13. 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:

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Minn. R. 9502.0365, subp. 5 (2015).

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services **AFFIRM** the temporary immediate suspension of the family child care license of Lisa Hauer pending the Commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.08.

Dated: October 4, 2016



AMY J. CHANTRY
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 the final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64254, St. Paul, MN 55164-0254, (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 a TIS Order 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.08.³⁸ 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, 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.³⁹

"Reasonable cause," 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.⁴⁰

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.

Analysis

A licensed provider must be the primary provider of care and is responsible for supervising the children in her program. "Supervision," by law, requires that Ms. Hauer to be within sight or hearing of the infants, toddlers, and preschoolers in her care at all times so that she is capable of intervening to protect the children.⁴¹ The Department has demonstrated by a preponderance of the evidence that Ms. Hauer failed to adequately supervise children in her care on August 15, 2016, in violation of Minn. R. 9502.0315, subp. 29a.

While Ms. Hauer maintains that she was awake and laying with her son on the living room couch, a preponderance of the evidence demonstrates that she was, indeed, sleeping. The Administrative Law Judge is persuaded by the evidence that if Ms. Hauer was not sleeping she would have heard and responded to the parent who was dropping off her child. The parent entered the home and called out for Ms. Hauer but Ms. Hauer did not respond. Moreover, the parent was unable to locate Ms. Hauer until the child care children reported that Ms. Hauer was sleeping on the living room couch.

The most persuasive evidence of Ms. Hauer sleeping is the photograph taken by the parent the morning of August 15, 2016, depicting Ms. Hauer asleep on the living room couch. Thus, the greater weight of the evidence supports a finding that Ms. Hauer was,

³⁸ Minn. Stat. § 245A.07, subd. 2a.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Minn. R. 9502.0315, subp. 29a.

indeed, asleep when the parent came to drop off her child at Ms. Hauer's home. Therefore, the Department has demonstrated by a preponderance of the evidence that Ms. Hauer failed to adequately supervise the children in her care on August 15, 2016, in violation of Minn. R. 9502.0315, subp. 29a.

While the Department has established that Ms. Hauer violated Minn. R. 9502.0315, subp. 29a, on August 15, 2016, a violation of the rule is not, in itself, sufficient to sustain a TIS Order. The Department also has the burden to establish that such violation poses an imminent risk of harm to the health, safety, and rights of the children in Ms. Hauer's care while disciplinary action is pending. By use of the word "pose" or "poses" (present tense) as opposed to "posed" (past tense), the legislature intended that the hearing be a forward-looking hearing, reviewing whether there is an immediate risk of harm if the child care license is reinstated pending the issuance of the Commissioner's final order. The emphasis of this analysis is on the continuing nature of the risk and the immediacy of the risk presented; not whether the act or violation, itself, posed a risk of harm at the time it was committed.

Thus, August 15, 2016, is not the timeframe of the risk that is central to Ms. Hauer's appeal of a TIS Order. Rather, the proper temporal analysis is of the future: whether Ms. Hauer's violation of Minn. R. 9502.0315, subp. 29a, presents a continuing or on-going risk of immediate harm or imminent future danger. The narrow question presented at this proceeding an appeal of a TIS Order is whether the violation is likely to reoccur or whether the conditions will continue so as to demonstrate an on-going risk of harm.

The Department has met its burden. Ms. Hauer's failure to provide adequate supervision of the children in her care on August 15, 2016, was not an isolated event. In fact, it was a recurring event. In July 2016, Ms. Hauer was observed by a parent dropping off her child to be asleep in violation the supervision requirements outlined in Minn. R. 9502.0315, subp. 29a. Moreover, Ms. Zahn reported during her interview with Ms. Bohm that some mornings she would drop her children off at Ms. Hauer's home and there would be no sign of Ms. Hauer. It is troubling that child care children would let Ms. Zahn into the home and Ms. Zahn could not locate Ms. Hauer. Ms. Hauer's continued failure to maintain adequate supervision of the children in her care demonstrates a disregard of the licensing rules and laws designed to protect children in care; and evidences a pattern that would likely continue unless the TIS Order is affirmed.

It is particularly concerning that Ms. Hauer told County investigators that Ms. Hahn was providing substitute child care services the morning of August 15, 2016, when in fact Ms. Hahn was not providing such care. Ms. Hauer's lack of honesty and continued denials that she was sleeping further demonstrate a lack of insight and sound judgment that continues to place child care children at an on-going imminent risk of harm. The Administrative Law Judge is not convinced that Ms. Hauer's failure to properly supervise children in her care would not reoccur in the future because of her failure to accept responsibility for her actions.

In sum, the Department has presented specific and articulable facts that Ms. Hauer's history of supervision failures poses an imminent risk of harm to the children in her care. The gravity and nature of those risks makes a temporary immediate suspension appropriate in this case. Accordingly, it is respectfully recommended that the Commissioner **AFFIRM** the Order for Temporary Immediate Suspension while the Department proceeds with its investigation into a licensing action.

A. J. C.