

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

In the Matter of the Appeal by Jodi Howell
of the Order of Temporary Immediate
Suspension

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

This matter came on for hearing before Administrative Law Judge Perry M. Wilson on September 26, 2018, at the Wright County Family Services Center in Buffalo, Minnesota. The hearing record closed at the conclusion of the evidentiary hearing.

Karen Wolff, Assistant Wright County Attorney, appeared for the Minnesota Department of Human Services (Department). Samuel Merritt, Attorney at Law, appeared for Jodi Howell (Licensee).

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 child day care license to remain in effect pending the Commissioner of Human Service's (Commissioner) Final Order under Minn. Stat. § 245A.08 (2018)?

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 the children in the Licensee's care. It is respectfully recommended that the Temporary Immediate Suspension of the Licensee's day 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 child day care at her home located in Buffalo, Minnesota. She is licensed to have a maximum of 12 children in her care¹

2. Licensee has held her Minnesota child day care license for 15 years.²

3. On afternoon of Monday, August 27, 2018, Wright County Child Care Licensing received a report that Licensee was at Huikko's bowling alley in Buffalo with 18 children.³ A waitress at the bowling alley stated that Licensee left a baby unattended and the baby was crawling down a hall of the bowling alley, without supervision by Licensee or someone working with her.⁴ The reporter stated that, when Licensee ran back into the bowling alley to collect the baby, Licensee left the other 17 children unattended in the parking lot.⁵

4. At 3:15 p.m. on August 27, 2018, two Wright County day care licensers made an unannounced visit to Licensee's day care home.⁶ When they arrived at the home, Licensee let them into the home, but asked them to wait because a parent was picking up children.⁷

5. While the Licensers waited, a woman left Licensee's home with three children. One of the Licensers heard one of the children who was leaving say that he was unsure why he was leaving with the woman.⁸ The Licensers questioned Licensee about how many children were in her care and the identity of the children in care.⁹ The Licensers counted 13 children in Licensee's care, after the departure of the three children, for a total of 16 children in care when the Licensers arrived at the home.¹⁰

6. Licensee's statements about the number of children in care were inconsistent, causing the Licensers to do recounts and change the number of children in care a number of times, eventually establishing 11 in care, after the departure of the three children.¹¹

7. The Licensers also attempted to establish how many children were in Licensee's care at the bowling alley.¹² Licensee told the Licensers that the three children who left upon their arrival were with their mother and that the mother had been at the

¹ Ex 1.

² Testimony (Test.) of Jodi Howell.

³ Ex.2.

⁴ *Id.*

⁵ *Id.*

⁶ Test. of K. Carlson; Ex. 3.

⁷ *Id.*

⁸ Ex. 3.

⁹ *Id.*

¹⁰ Test. of K. Carlson.

¹¹ *Id.*; Ex. 3.

¹² Ex.3.

bowling alley with the children.¹³ The Licensers concluded that there were 18 children in Licensee's care at the bowling alley.¹⁴

8. Licensee told the Licensers that she was over capacity because it was a special day, during which she believed she could be over capacity, if the children were not in her home.¹⁵ She stated that she had taken the children to a bowling alley as a special day.¹⁶ Licensee said she had been told by her regular licensor that she could be over capacity, if she was at a special event, and not in her home.¹⁷

9. On August 27, 2018 at 8:14 p.m., Licensee left a voicemail for one of the Wright County Licensers.¹⁸ Licensee stated that she had told the Licensers the names of the wrong children who were in care during their visit earlier that day.¹⁹ Licensee said that she was confused, blacked out, and was anxious during the Licensers visit to her home.²⁰

10. On August 28, 2018, Wright County Health and Human Services recommended that the Department issue an order temporarily and immediately suspending Licensee's child day care license.²¹ This recommendation was based on the report that Licensee left a baby unattended at a bowling alley and the results of the Licensers' unannounced visit, during which the Licensors confirmed that Licensee was operating over capacity.²²

11. On August 28, 2018, the Department issued its order of Temporary Immediate Suspension of Licensee's child day care license.²³ The order was based on Licensee's operation of her day care over capacity and leaving children unattended.²⁴

12. On August 28, 2018, a Wright County day care licensor and a child protection worker made a visit to Licensee's day care to serve the Order of Temporary Immediate Suspension.²⁵

13. After serving the Order of Temporary Immediate Suspension on Licensee on August 28, 2018, the licensor and child protection worker attempted to question Licensee about the visit to the bowling alley on August 27, 2018, and Licensee's

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Ex.4.

²² *Id.*

²³ See Notice and Order for Hearing (Notice), filed September 14, 2018.

²⁴ *Id.*

²⁵ Test. of K. Carlson.

supervision of the children at the bowling alley.²⁶ At first, Licensee did not want to talk to the child protection worker without the presence of an attorney.²⁷

14. Eventually, Licensee told the workers that she and the children had taken a Trailblazers bus to the bowling alley.²⁸ The Trailblazers bus has a capacity of 17 persons.²⁹ Licensee and 16 children took the bus.³⁰ Two other children were driven to the bowling alley by Licensee's friend Katie, who works at the bowling alley.³¹ When they arrived at the bowling alley, the children bowled and had food. Three of the children went across the parking lot to play mini golf.³² Licensee allowed the infant in her care to crawl around the area near where the children were bowling.³³

15. Licensee told the workers that when she and the children were ready to return to her home at about 3:00 p.m., Licensee and 16 children took on the bus.³⁴ Two children were driven to Licensee's home by the grandmother of one of the children.³⁵

16. During their discussion with Licensee on August 28, 2018, the workers again tried to establish the number of children in Licensee's care on August 27, 2018. Despite these efforts, there was still confusion about which children were present at Licensee's home and at the bowling alley.³⁶

17. The licensing worker and child protection worker met with Licensee and her lawyers on September 7, 2018.³⁷ The purpose of this meeting was to establish which children were in Licensee's care on August 27, 2018 at her home and at the bowling alley and to discuss the supervision of the children at the bowling alley.³⁸ Licensee stated that while at the bowling alley three children crossed the parking lot to play mini golf.³⁹

18. Licensee stated that on August 27, 2018, when she and the children were ready to leave the bowling alley, she put the infant down and left him unattended for five or six minutes while she chased after the other children.⁴⁰ Licensee and 16 children then took the bus to Licensee's home.⁴¹ Two other children were driven to Licensee's home by the grandmother of one of the children.⁴² Licensee did not know the name of the

²⁶ Ex. 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Test. of J. Howell.

³⁰ *Id.*

³¹ Ex. 3.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Ex. 5.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

grandmother, but stated that the grandmother had no background check and that the parents of the unrelated child did not give permission for that child to be driven by the grandmother.⁴³

19. During the meeting on September 7, 2018, Licensee told the workers that there were 18 children in her home and at the bowling alley on August 27, 2018.⁴⁴ Licensee said that she and 16 children rode the bus to the bowling alley and two children were driven to the bowling alley by Licensee's friend Katie.⁴⁵ Licensee told the workers that the woman who left her home with three children was related to two of the children, but not the third child and that she had not been at the bowling alley with the children.⁴⁶

20. Licensee appealed the Order of Temporary Immediate Suspension on August 30, 2018.⁴⁷

21. Licensee provided statements from 13 parents whose children had been in her care.⁴⁸ The parents of the infant in Licensee's care provided two statements.⁴⁹ These parents all expressed confidence in Licensee's day care⁵⁰. Each statement expressed the parents' belief that Licensee provided excellent care and would not harm children in her care.⁵¹

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, and 245A.08 (2018).

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.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Notice at 2.

⁴⁸ See Licensee's Exs. 1-14.

⁴⁹ See Licensee's Exs. 7-8.

⁵⁰ *Id.*

⁵¹ See Licensee's Exs 1-14.

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.⁵²

6. When an Order for Temporary Immediate Suspension is appealed, the scope of the hearing is 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. 3.⁵³

7. The burden of proof in expedited hearings 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, 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.⁵⁴

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.⁵⁵

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

The [C]ommissioner shall act immediately to temporarily suspend a license if . . . the license holder's actions or failure to comply with applicable law or rule, . . . pose an imminent risk of harm to the health, safety, or rights of persons served by the program.

10. The Department has demonstrated that reasonable cause exists to believe that Licensee's alleged 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.

11. 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:

⁵² Minn. Stat. § 245A.07, subd. 2 (2018).

⁵³ Minn. Stat. § 245A.07, subd. 2a.

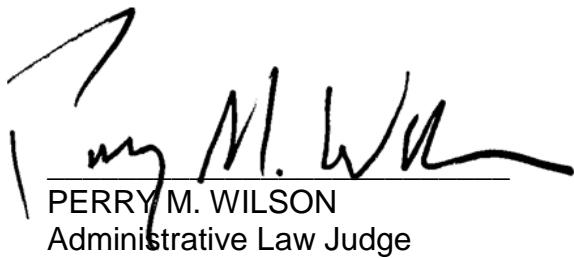
⁵⁴ *Id.*

⁵⁵ *Id.*

RECOMMENDATION

The Commissioner should **AFFIRM** the Temporary Immediate Suspension of Child Care License of Jodi Howell pending the Commissioner's Final Order regarding a licensing sanction under Minn. Stat. § 245A.07, subd. 3 (2018).

Dated: October 9, 2018



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, and Recommendations. 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, P.O. 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, 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 for Temporary Immediate Suspension is limited 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.08.⁵⁶ 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.⁵⁷

⁵⁶ Minn. Stat. § 245A.07, subd. 2a.

⁵⁷ *Id.*

“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.⁵⁸

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.

The Department argues that there is reasonable cause to believe that Licensee presents an imminent risk of harm to the children in her care because she operated her child care over capacity and failed to supervise the children in her care on August 27, 2018.

Licensee argues that she is remorseful for her actions on August 27, 2018 and her attempts to mislead the Department on August 27 and 28, 2018. Licensee admits that she operated her day care over capacity and that she left children unattended while they were at the mini golf and left an infant unattended for five or six minutes.⁵⁹ Licensee argues that these were one-time occurrences that will never happen again.

The Administrative Law Judge agrees with the Department. Minn. R. 9502.0315, subp. 29a (2017) defines supervision as:

“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 is protected.

Licensee clearly violated this supervision rule when she allowed three of the children in her care to play mini golf across the parking lot from the bowling alley. These children were not within Licensee's sight or hearing and she was not available for assistance to protect the health and safety of the children. Licensee also violated the supervision rule when she left an infant unattended in the bowling alley for five or six minutes. This infant was not within Licensee's sight or hearing during that time.

It is undisputed that Licensee operated her day care over capacity on August 27, 2018 when she had 18 children in her care.⁶⁰

⁵⁸ *Id.*

⁵⁹ Test. of J. Howell.

⁶⁰ The evidence also showed that Licensee attempted to deceive the Department about the number of children in her care on at least two separate occasions. As this violation was not the basis for the Order of Temporary Immediate Suspension and is not mentioned in the Notice, The Administrative Law Judge has not included these facts as a reason to affirm the Order.

Licensee's over capacity violation and her failure to supervise the children in her care endangered the children. The danger was further increased because these violations occurred when Licensee and the children were in a public place, assessable to anyone who happened by.

The Administrative Law Judge has considered the written statements of parents whose children have attended Licensee's child care. These parents believe that Licensee provides proper care for their children and that she would not harm a child in her care. While this may be the experience of these parents, on August 27, 2018 Licensee endangered the children in her care. The Department was correct to temporarily suspend Licensee's child day care license while it investigates Licensee's actions and determines the appropriate licensing sanction.

Because there are specific articulable facts that 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, the Administrative Law Judge respectfully recommends that the Order for Temporary Immediate Suspension be **AFFIRMED**.

P. M. W.