OAH 10-1801-35748

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Katherine Klein and Dawn Fredricks 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 December 14, 2018, at the Polk County Justice Center in Crookston, Minnesota. The hearing record closed that day at the conclusion of the evidentiary hearing.

Larry Orvik, Assistant Polk County Attorney, appeared for the Minnesota Department of Human Services (Department). Ward Johnson, Attorney at Law, appeared for Katherine Klein (Licensee). Dawn Fredricks (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 Licensees' care sufficient to allow the Temporary Immediate Suspension of the child day care license to remain in effect pending the Commissioner of Human Services' (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 Licensees' care. It is respectfully recommended that the Temporary Immediate Suspension of the Licensees' 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. Licensees operate a child day care at a home in East Grand Forks, Minnesota.[1] The day care home is owned by the current boyfriend of Klein and former husband of Fredricks.[2] The day care is operated through a partnership in which Licensees are the partners.[3]

2. Licensees have held their Minnesota child day care license for six months.[4]

3. On the afternoon of October 26, 2018, a parent arrived at the day care home to pick up her four-month-old child.[5] The parent entered the home through an unlocked door and called for Fredricks, who was working alone that day.[6]

4. There was no response to her call, so the parent walked into the kitchen.[7] In the kitchen, the parent saw her infant child in an infant seat with a blanket on her chest and a bottle propped on the blanket.[8] The infant was not belted into the seat and was asleep.[9] The parent also saw an 18-month-old child sitting in a high chair.[10] Another child was also in the home.[11]

5. The parent picked up her child and walked around the home calling out for Fredricks.[12] After about ten minutes, Fredricks appeared from a bedroom holding her cell phone.[13] Fredricks walked the parent and child to their car and talked for a few minutes, leaving the other two children in the home unattended.[14]

6. On October 30, 2018, the parent made a report about what she had seen in the day care home to Polk County Child Protection.[15]

7. Polk County Child Protection and Child Care Licensing began an investigation on October 31, 2018.[16]

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[1] Testimony (Test.) of Katherine Klein.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] Exhibit (Ex.) 1.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id*.
[16] *Id.*

8. On October 31, 2018, the investigators interviewed the parent who made the report.[17]

9. On October 31, 2018, the investigators interviewed Licensees about the report. Fredricks said that she had three children in her care on the afternoon of October 26, 2018. These children were ages four months, eight months, and 18 months.[18]

10. During the interview, Fredricks denied the facts reported by the parent. Fredricks stated that she was only away from the children long enough to retrieve her cell phone from the bedroom. She admitted that the four-month-old was not buckled into the infant seat.[19] Fredricks stated that she propped the bottle in front of the infant out of instinct. [20]

11. During the interview, Klein stated that she was not present when the parent arrived at the day care on the afternoon of October 26, 2018. [21] She explained that she worked two weeks and then Fredricks worked one week, on an alternating schedule.[22] Klein said that Fredricks spends one week in Minnesota and two weeks in Michigan.[23] She said that Fredricks stays in the day care home when she is in Minnesota to be with Fredricks's two daughters and grandchild who also live in the home.[24]

12. On November 1, 2018, the investigators interviewed another parent whose child attended the day care.[25] The parent reported that the week before the interview, Fredricks had dropped her eight-month-old child on the child's head, resulting in a large blue bump.[26] The parent also said that she observed the 18-month-old child outside unattended and a four-month-old child in an unbuckled infant seat.[27]

13. On November 2, 2018, after consulting the Department, the investigators recommended that the Department issue an Order for Temporary Immediate Suspension of Licensees' license.[28]

14. On November 2, 2018, the Department issued an order temporarily and immediately suspending Licensees' license.[29] The order was based on the report that children and an infant were left unattended while in care and that the safe sleep protocol for an infant had not been followed, resulting in hazardous conditions.[30]

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[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id*.
[21] *Id*.
[22] *Id.*
[23] *Id*.
[24] *Id*.
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *See* attachment 1, Notice and Order for Hearing, filed Nov. 29, 2018.
[30] *Id.*

15. Licensees' appealed the Order for Temporary Immediate Suspension on November 8, 2018.[31]

16. On December 13, 2018, Fredricks filed an affidavit in which she stated that she was solely responsible for the violations supporting the Temporary Immediate Suspension.[32] Fredricks also stated that she would no longer have any involvement in the day care and that the partnership with Klein had ended.[33] Fredricks plans to continue to visit every two weeks and to live in the day care home when she is in Minnesota.[34]

17. On December 13, 2018, Klein filed an affidavit in which she stated that she had no involvement in the violations supporting the Temporary Immediate Suspension.[35] She stated that the partnership with Fredricks had ended. Klein requested to be allowed to operate the day care again, since Fredricks was no longer involved.[36] Klein has applied to be relicensed as a day care provider without Fredricks.[37]

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 .08 (2018).

2. Licensees received due, proper, and timely notice of the allegations against them, 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 Licensees' 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.[38]

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[31] *Id.*
[32] Affidavit (Aff.) of Dawn Fredricks, filed Dec. 13, 2018.
[33] *Id.*
[34] Test. of Dawn Fredricks.
[35] Aff. of Katherine Klein, filed Dec. 13, 2018.
[36] *Id.*
[37] *Id.*
[38] Minn. Stat. § 245A.07, subd. 2 (2018).

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 (2018).[39]

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.[40]

8. "Reasonable cause" means there exist specific articulable facts or circumstances that 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.[41]

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 Licensees' alleged actions or failure to comply with applicable law or rule, 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.

11. The memorandum below is incorporated herein by reference.

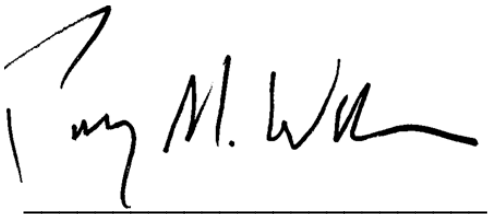
Based upon the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

[39] Minn. Stat. § 245A.07, subd. 2a.
[40] *Id.*
[41] *Id.*

RECOMMENDATION

The Commissioner should **AFFIRM** the Temporary Immediate Suspension of Child Care License of Katherine Klein and Dawn Fredericks pending the Commissioner's final order regarding a licensing sanction under Minn. Stat. § 245A.07, subd. 3 (2018).

Dated: December 26, 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, 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 (2018), 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.[42] 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.[43]

[42] Minn. Stat. § 245A.07, subd. 2a.
[43] *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.[44]

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 parties agree on the facts, and Licensees do not challenge the issuance of the Order of Temporary Immediate Suspension. There is reasonable cause for the Department to believe that Licensees violated the supervision and safe sleep rules as alleged in the order.

Klein argues that since Fredricks is no longer to be involved in the operation of the day care, the suspension of the license should be lifted because Fredricks was the source of the danger and is no longer at the day care.

Klein's argument is better made to the Department in connection with its final resolution of the violations and of Klein's application for a new license. It may well be the basis on which a settlement can be reached. However, such a proposal, submitted during the hearing, is insufficient to overcome the Department's demonstration that the children in the program are in imminent risk of harm.

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.

[44] *Id.*