OAH 82-1801-35910

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 and Foster Care Licenses of Roxanne Lillis	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Barbara J. Case for an evidentiary hearing on February 26, 2018. The hearing record closed on that day.

Russell H. Conrow, Lake County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Roxanne Lillis (Appellant) appeared on her own behalf and without counsel.

STATEMENT OF THE ISSUES

1. Did the Department demonstrate that reasonable cause exists to believe that Ms. Lillis' actions, or conditions in the programs, posed an imminent risk of harm to the health, safety, or rights of persons served by the program such that the Temporary Immediate Suspension (TIS) should remain in effect pending the Commissioner of the Department of Human Services' (Commissioner) final order?

2. If so, did Ms. Lillis establish that conditions in the program do not now pose an imminent risk of harm, such that the daycare and foster care should be permitted to resume operations pending the completion of the Department's investigation and the Commissioner's issuance of a final order regarding licensing sanctions under Minn. Stat. § 245A.07, subd. 3 (2018)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department demonstrated that there is reasonable cause to believe that Ms. Lillis' actions, or the conditions of her daycare and foster care programs, pose an imminent risk of harm to the health, safety, or rights of persons served by the program and that a TIS should remain in place pending the completion of the Department's investigation and the Commissioner's issuance of a final order regarding licensing sanctions.

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

FINDINGS OF FACT

I. The Day Care

1. Appellant operates a licensed family child care program and a licensed child foster care program at 1 Kent Lane, Silver Bay, Minnesota, 55614, under license numbers 1064437(Family Child Care) and 1021612 (Child Foster Care).[1]

2. Appellant has been a foster care and daycare provider for more than ten years.[2] She has been a foster parent to many children, some of whom now have children of their own that they place in child care with Appellant.[3]

3. The community of Silver Bay is experiencing a child care crisis because of a lack of available child care. Appellant's day care is available 24 hours a day, seven days a week, 365 days a year. A veterans' home in the community also operates 24 hours a day every day and is staffed at all times. Appellant provides a unique service in the community for the veterans' home staff who need day care services overnight, on holidays and on weekends.[4] Many families rely on Appellant for child care.[5]

4. Eight parents wrote letters supporting Appellant, stating that she provided good care and stating that the suspension of Appellant's day care was a hardship for them.[6]

II. Appellant's Children and Past Issues with the Day Care

5. Appellant has two adopted children, N.L., an 11-year-old girl, and B.L., a 12-year-old boy, N.L.'s biological brother.[7] The children were placed in foster care with Appellant five years ago and Appellant subsequently adopted the children.[8] Prior to their foster placement with Appellant, the children suffered trauma due to physical, verbal and mental abuse.[9]

6. Appellant's relationship with N.L. has been difficult and volatile for at least the last year and a half.[10] N.L.'s behaviors include locking herself in her room and screaming for hours at a time, yelling, and throwing objects. Over the past year, some of

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[1] Amended Notice and Order for Hearing at 2 (Feb. 7, 2019) (Amended Notice and Order).
[2] Test. of Theresa Reineccius; Test of Roxanne Lillis.
[3] Test. of R. Lillis.
[4] Test. of T. Reineccius.
[5] *Id.*
[6] Exs. 103-110.
[7] Test. of Han Taylor.
[8] Ex. 1 at 14 (Chronology Summary, Jan. 22, 2019).
[9] Test. of H. Taylor.
[10] Ex. 1 at 6 (Chronology Summary, Jan. 22, 2019). The Administrative Law Judge approximates the length of time N.L.'s relationship with Appellant has been volatile to be at least the past 1.5 years. Appellant stated that de-escalation techniques worked with N.L. in the past but have not worked for the past 1.5 years. This estimation is consistent with other testimony of the witnesses regarding other incidents of conflict between Appellant and N.L.

these behaviors have subsided and been replaced with more physically aggressive behaviors.[11]

7. In 2017, Lake County (the County) recommended that the Department place Appellant on a conditional license based on a maltreatment determination, the details of which were not offered at the hearing on this matter. The Department entered into a settlement agreement with Appellant, a fine was issued and paid, and no conditional license was issued.[12]

8. In February 2018, the County received a complaint from a parent who had children in Appellant's day care. The parent removed her children from the day care because her children heard Appellant yelling and swearing at N.L., B.L., and other foster children who lived with Appellant. The County investigated and issued a correction order to Appellant for not helping "children learn self-control and acceptable behavior and [because] the caregiver's guidance was not constructive and positive."[13]

9. Han Taylor, a County child protection worker, responded to a report of suspected abuse in Appellant's home on July 24, 2018. At that time, Mr. Taylor visited the home with a co-worker, and separately interviewed Appellant, N.L. and B.L. N.L. reported to Mr. Taylor that there was a lot of yelling, including swearing directed at N.L. by Appellant. N.L. also described physical altercations between N.L. and Appellant.[14] N.L. reported that Appellant sat on N.L. to make her calm down. N.L. also reported that she had kicked Appellant. B.L. reported that there was a constant battle going on between Appellant and N.L. and that everyone needed a break from each other.[15] Appellant confirmed that she was going through a hard time with N.L., and was having a hard time managing N.L's behavior.[16]

10. In response to the July investigation, the County attempted to help Appellant access therapy and parenting services. The County also offered respite services although Appellant had to identify homes that would take the children. Appellant did not provide names to the County and no respite was arranged.[17] Therapy was set up for the children. Mr. Taylor visited the family monthly to "see how things were going."[18]

11. Mr. Taylor met with Appellant on December 19, 2018 to check in with the family. At that time, Appellant reported that things were going better. Mr. Taylor told Appellant that a plan that was in place that could end if things continued to go well.[19]

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[11] Ex. 1 at 11 (Chronology Summary, Jan. 22, 2019).
[12] Test. of T. Reineccius.
[13] Test. of T. Reineccius. Ms. Reineccius has been a licensor for daycare and foster care in the County since 2008. Ms. Reineccius has known Appellant since 2008.
[14] Test. of H. Taylor.
[15] *Id.*
[16] *Id.*
[17] *Id.*; Test. of R. Lillis.
[18] Test. of H. Taylor.
[19] *Id.* The plan was not submitted into evidence, and Mr. Taylor did not describe the plan in detail.

12. Between mid-December and the event at issue in this case, Mr. Taylor was in the home more frequently as things were not going well. N.L. and Appellant were having difficulties.[20]

III. The Incident on January 18, 2019

13. On January 18, 2019, Gloria Napoli, a county social worker, arrived at the house at 8:35 a.m. to discuss the possibility of personal care attendant (PCA) services for N.L.[21]

14. That same day, the precipitating event for the County's issuance of the TIS in this case occurred. The County received, by text message at 8:41 a.m., a self-report from Appellant that she had struck her daughter. Appellant texted the report to Mr. Taylor.[22] Appellant's text to Mr. Taylor stated, "in crisis mode again this morning. I need Help."[23]

15. Mr. Taylor arrived at Appellant's home at approximately 9:00 a.m. in response to Appellant's text message. Appellant, N.L., B.L., Ms. Napoli and three or more day care children were present.[24] Appellant told Mr. Taylor right away that she had hit N.L., that she had never hit a child before and would never hit a child, but she hit N.L.[25]

16. Mr. Taylor interviewed N.L. privately. The reports from Appellant, N.L. and B.L. report of what occurred on the morning of January 18, 2019, are largely consistent with one another. However, N.L. and B.L. reported to Mr. Taylor that Appellant struck N.L. with a fist [26] and Appellant reported that she slapped N.L. Appellant states that N.L. spit in her face right before Appellant struck N.L. and describes the hit as involuntary.[27]

17. On the morning of January 18, 2019, Appellant and N.L. "yelled at each other back and forth from N.L.'s bedroom to the living room before she got out of bed."[28] N.L. went to the living room where Appellant told her to take her morning medications. N.L. reached for her medications but dropped them on the floor.[29]

18. Appellant got upset at N.L. because she was afraid the daycare children could get into the medication. N.L. explained that things got confusing for her after this. She stated that Appellant got really "ballistic" and hit her in the side of the face with her

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[20] *Id.*
[21] Ex. 1 at 1-2 (County's chronological notes, Jan. 18, 2019).
[22] Mr. Taylor has held this position since April, 2018. Mr. Taylor had also responded to a report of possible abuse in the home in July of 2018.
[23] Ex. 1 at 1 (County's chronological notes, Jan. 18, 2019); Test. of H. Taylor.
[24] Test. of H. Taylor; Test. of R. Lillis. Appellant stated that she had three children there in the morning and a total of nine children that day. Mr. Taylor did not dispute her records.
[25] Test. of H. Taylor.
[26] Ex.1 at 2-3 (Chronology Summary, Jan. 18, 2019).
[27] Test. of R. Lillis.
[28] Ex. 1 at 2; Test. of H. Taylor.
[29] Test. of H. Taylor.

fist.[30] N.L. threatened to go to the police station and Appellant responded that in that case, N.L. and B.L. were going to hell and Appellant might as well beat the crap out of them.[31]

19. N.L. told Mr. Taylor that Appellant struck her with a closed fist and N.L. saw stars. N.L. showed Mr. Taylor that Appellant had struck her on the cheekbone, which Mr. Taylor examined. The area did not appear bruised or swollen to Mr. Taylor but the lighting was poor. N.L. did seem dull and disoriented to Mr. Taylor.[32] When asked by Mr. Taylor, N.L. stated that she did not feel safe in her home.[33]

20. After interviewing N.L., Mr. Taylor interviewed B.L. B.L. said that he had heard arguing while he was in a separate part of the home with the day care children. B.L. went to see what was happening. B.L. saw N.L.'s head swing to the side and heard the hit. B.L. described the hit exactly as N.L. had described it. B.L. said the hit was made with "a closed fist and a swing."[34] When asked by Mr. Taylor, B.L. stated that he did not feel safe in the home. He also told Mr. Taylor that he thought everyone just needed a break from each other.[35]

21. On January 18, 2019, Mr. Taylor discussed the incident with Ms. Reineccius, the County licensor for Appellant. Mr. Taylor told Ms. Reineccius that day care children had been present in the home at the time of the incident. In addition to her concern about Appellant striking N.L., Ms. Reineccius was concerned that the day care children might have been scared or felt intimidated by the incident.[36] Ms. Reineccius consulted with the Department and was advised to issue the TIS so that all of the details of the incident could be examined.[37] A TIS, suspending Appellant's licenses for day care and foster care, was issued the same day and Ms. Reineccius served Appellant with the TIS order.[38]

22. Later that day, Mr. Taylor asked Appellant if she would be willing to have the children go to respite for the weekend. Appellant agreed and then later agreed to a voluntary out-of-home placement for the children.[39] As of the date of this hearing, the children continued to be in the voluntary out-of-home placement.[40]

23. There are conflicting reports about whether there were day care children in the home when Appellant hit N.L.[41]

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[30] Ex.1 at 2 (Chronology Summary, Jan. 18, 2019).
[31] Ex. 1 at 3 (Chronology Summary, Jan. 18, 2019).
[32] Test. of H. Taylor.
[33] Ex. 1 at 2 (Chronology Summary, Jan. 18, 2019).
[34] *Id.*
[35] Ex. 1 at 3 (Chronology Summary, Jan. 18, 2019).
[36] Test. of T. Reineccius.
[37] *Id.*
[38] *Id.*
[39] Test. of H. Taylor.
[40] *Id.*
[41] Test. of T. Reineccius; Test. of R. Lillis.

24. On January 22, 2018, Mr. Taylor and Krista Olek met with N.L. at her school. N.L. told them that she did not feel safe going home but she did feel safe at the respite home.[42]

25. After meeting with N.L. and B.L. at their school, Mr. Taylor and Ms. Olek met with Appellant at her home. They explained that the children did not feel safe to come back home. Appellant signed a voluntary placement with the knowledge that the children would be placed in a licensed foster home.[43] She stated that her goal is for the children to come back home.[44]

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Human Services (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.08 (2018).

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

3. The Commissioner shall impose a TIS of a child care license "[i]f 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."[45]

4. A TIS shall "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" if the Commissioner demonstrates "that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses . . . an imminent risk of harm to the health, safety, or rights of persons served by the program."[46]

5. "Reasonable cause" means that there are 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.[47]

[42] Ex. 1 at 13 (Chronology Summary, Jan. 22, 2019).
[43] *Id.*; Ex. 2 (Voluntary out-of-home placement agreement, Jan. 22, 2019).
[44] Ex. 1 at 13-14.
[45] Minn. Stat. § 245A.07, subd. 2 (2018); Minn. R. 9502.0341, subp. 9 (2017).
[46] Minn. Stat. § 245A.07, subd. 2a (a) (2018).
[47] *Id.*

6. The record includes specific articulable facts or circumstances that would lead the Commissioner to reasonably suspect that the daycare children are threatened with immediate risk to their health, safety or rights.[48]

7. The hearing record includes evidence that reasonably suggests that events like those that occurred on January 18, 2019, will recur.

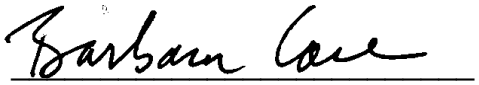
8. The hearing record includes evidence of conditions at Licensee's daycare that present a significant risk of harm to children.

Based upon the Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Commissioner should **UPHOLD** the Order of Temporary Immediate Suspension of the Appellant's Family Child Care License and Foster Care License of. pending the completion of the Department's investigation and the Commissioner's issuance of a final order regarding licensing sanctions.

Dated: March 11, 2019



BARBARA J. CASE
Administrative Law Judge

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, 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 (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

I. Regulatory Standards

By statute, the Commissioner shall immediately temporarily suspend the license of a licensed program if the provider's actions, failure to comply with law or regulations, or program conditions "pose an imminent risk of harm to the health, safety, or rights of

[48] *See* Minn. Stat. § 245A.07, subd. 2a (a).

persons served by the program."[49] A provider may demand an expedited hearing to consider whether the Commissioner has shown reasonable cause for the immediate suspension.[50] "Reasonable cause" requires "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."[51]

The Administrative Law Judge must also determine if the evidence shows that the license holder's actions, at the time of the hearing, continue to pose an imminent risk of harm.[52] This determination is made to inform the Commissioner as to whether the suspension should continue pending final determination of any appropriate licensing sanction.[53]

II. Analysis

Appellant has provided 24-hour a day, seven day a week child care services in the Silver Bay community for many years. In addition, she has been a foster parent to numerous children over more than ten years. The county and numerous parents concur that families in the community rely on her day care and her unique round-the-clock service. It is to Appellant's credit that she self-reported the fact that she struck her daughter shortly after the incident occurred. However, that self-report does not adequately address conditions in the daycare.

The dispute in this case focuses on whether the incident that occurred on January 18, 2019, or the conditions in the daycare generally, continue to suggest an imminent risk of harm to the health, safety, or rights of persons served by the program. The hearing record includes "specific articulable facts or circumstances"[54] that point to "an imminent risk of harm to the health, safety, or rights of persons served by the program."

Appellant admits that she and N.L. have been fighting verbally and physically for over a year and a half. Appellant denies that day care children were in the day care home during the incident. This assertion may be better proven or disproven after a fuller investigation. However, even if day care children were not present during the incident, it is almost certain that day care children have heard the fighting, including swearing, yelling and physical altercations, over the last year and a half. This conclusion is supported by the fact that the County issued Appellant a correction order in February 2018 after a parent removed children from the home because of Appellant's swearing at N.L. Second, B.L., who presents as the most reliable reporter of the family, reported that the fights between N.L. and Appellant included yelling and physical altercations. Third, the day care operates round-the-clock. All three family members described a household

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[49] Minn. Stat. § 245A.07, subd. 2(a)(1).
[50] *Id*., subd. 2a(a).
[51] *Id.*
[52] *See In the Matter of the Temporary Immediate Suspension of the Family Child Care License of Angie Mattison,* 2016 WL 2946022, slip op. at *3 (Minn. Ct. App. May 23, 2016) (unpublished).
[53] Minn. Stat. § 245A.07, subd. 2a(a) ("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").
[54] *Id.*

in which there is almost constant yelling, swearing and fighting. That fact, coupled with the round-the-clock nature of the day care, supports the conclusion that day care children are present during the household's conflicts. Such an environment poses an imminent risk of harm to the health and safety of day care children because it exposes them to fighting, swearing and yelling that day care age children could find frightening and intimidating. This ongoing fighting threatens the day care children's health and rights.

At the time of the hearing, N.L. and B.L. were in a voluntary foster care placement. As a result, the conditions in the home were significantly different. The TIS is nonetheless warranted because it is Appellant's goal to have her children return home. When they do return, there is nothing in place at this time to assure that day care children would not be subjected to the fighting that has been a feature of the home over the last year and a half. Therefore, the evidence demonstrates reasonable cause to believe both day care children and foster care children would be in imminent risk of harm were the day care or foster care to resume operation at this time.

The Commissioner should uphold the Order of Temporary Immediate Suspension of Appellant's day care and foster care licenses pending a complete investigation and a determination on a final licensing sanction.

B. J. C.