

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

In the Matter of the Appeal by Krista Bright
of the Order of Temporary Immediate
Suspension

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

License No. 1085368 (Family Child Care)

This matter came on for hearing before Administrative Law Judge Steven M. Bialick on June 16, 2021, via Microsoft Teams video conference. The hearing record closed on June 16, 2021, upon conclusion of the hearing.

Larry Orvik, Assistant Polk County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Steven R. Coon, Law Offices of Steven Coon, appeared on behalf of Krista Bright (Appellant).

STATEMENT OF THE ISSUE

Did the Department demonstrate that reasonable cause exists to believe that Appellant's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in Appellant's family child care program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the Department has not demonstrated that reasonable cause exists to believe that Appellant's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in Appellant's family child care program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program. Therefore, the Administrative Law Judge recommends that the Order of Temporary Immediate Suspension of Appellant's family child care license be **RESCINDED**.

Based upon the testimony, exhibits, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Appellant operates a family child care program (program), under license number 1085368, out of a home she rents from her daughter in East Grand Forks, Minnesota.¹

2. On March 30, 2021, Appellant's adult son (K.S.) was a member of Appellant's household, and was a caregiver and employee in the program.²

3. On March 30, 2021, while working as a caregiver and employee in the program, K.S. penetrated the anus of a three-year-old child who was in the program with his finger, while the child was using the bathroom.³

4. On March 30, 2021, K.S. then proceeded to spank and yell at the child after the child had a bowel movement in the child's pants.⁴

5. There are open child protection and law enforcement investigations regarding the March 30, 2021, incident.⁵

6. On March 31, 2021, based solely on K.S.'s alleged actions on March 30, 2021, set forth above, Polk County (County) recommended that Appellant's family child care license be immediately suspended.⁶

7. On March 31, 2021, the Department issued an Order of Temporary Immediate Suspension (TIS Order), which immediately suspended Appellant's family child care license, due to the serious nature of the March 30, 2021, incidents and because the Department could not ensure the safety of persons served by the program.⁷

8. Appellant timely appealed the TIS Order by certified mail sent on April 2, 2021, and received by the Department on April 5, 2021.⁸

9. On April 12, 2021, the Department issued a Notice and Order for Hearing that scheduled a prehearing conference for April 21, 2021 and a hearing for May 7, 2021.⁹

¹ Exhibit (Ex.) 3; Testimony (Test.) of Appellant.

² Exs. 1, 2.

³ Exs. 1, 2.

⁴ Exs. 1, 2.

⁵ Exs. 1, 2, 3.

⁶ Ex. 2; Test. of Annabelle Narlock.

⁷ Ex. 3.

⁸ Ex. 4.

⁹ Notice and Order for Hearing (April 12, 2021).

10. A prehearing conference was held on April 21, 2021. At the requests of Appellant and her attorney, and for good cause shown, and there being no objection by the Department, the hearing was continued to May 19, 2021, and then to June 16, 2021.¹⁰

11. After March 31, 2021, Appellant suspended K.S.'s employment with the program, pending the conclusion of the investigation regarding the alleged abuse by K.S. on March 30, 2021.¹¹

12. Appellant also notified K.S. that he was evicted from his room and board at the family child care premises and that he would need to be completely moved out by June 13, 2021.¹²

13. As of the time of the hearing on June 16, 2021, K.S. had moved to Oregon, where he is living with his father.¹³

14. At the hearing, Appellant testified that, if K.S. returns to Minnesota, she will not allow him to live on the family child care premises or to work as a caregiver in the program.¹⁴

15. K.S. does not have a key or garage door opener to the family child care premises.¹⁵

16. Appellant is currently living alone on the family child care premises.¹⁶

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

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of the Department (Commissioner) have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 245A.07-.08 (2020).

2. Appellant received adequate notice of the TIS Order and she timely appealed the TIS Order.

3. Appellant was given proper and timely notice of the prehearing conference and hearing in this matter.

4. The Department complied with all relevant substantive and procedural requirements of law and rule.

¹⁰ First Prehearing Order (April 21, 2021); Order for Continuance (June 1, 2021).

¹¹ Ex. 100.

¹² *Id.*

¹³ Test. of Appellant.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

5. Minn. Stat. § 245A.07, subd. 2(a)(1) provides:

The commissioner shall act immediately to temporarily suspend a license if ... 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[.]

6. Minn. Stat. § 245A.07, subd. 2a(a), sets forth applicable law for a hearing on an appeal of an Order of Temporary Immediate Suspension, and provides, in applicable part:

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 following the immediate suspension... [T]he burden of proof in expedited hearings under this subdivision shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses, 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. "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.

7. Minn. R. 9502.0395, subp. 2A (2019), states that the following shall apply to all caregivers when guiding behavior in children:

No child shall be subject to corporal punishment or emotional abuse. "Corporal punishment" means the nonaccidental infliction of physical pain on a child by a caregiver. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking. "Emotional abuse" means the infliction of verbal or psychological abuse on a child by a caregiver. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, derogatory remarks about the child or child's family, and threats which threaten, humiliate, or frighten the child.

8. Minn. R. 9502.0395, subp. 3 (2019), states the following:

If toilet training is undertaken, the provider and parent shall cooperatively develop a plan for the timing and method of training.

- A. No child shall be punished for toileting accidents.
- B. A child shall be offered opportunity for toileting.

9. K.S. violated Minn. R. 9502.0395, subps. 2A, and 3A, on March 30, 2021, while working as a caregiver in the program.


10. However, since K.S.'s actions on March 30, 2021, were the sole basis for the issuance of the TIS Order; and since K.S. now lives in Oregon with his father and no longer works in the program; the Department has not demonstrated that reasonable cause exists to believe that Appellant's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in Appellant's family child care program, pose an imminent risk of harm to the health, safety, or rights of persons served by the program.

Based on the foregoing Findings of Fact and Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Order of Temporary Immediate Suspension of Licensee's family child care license should be **RESCINDED**.

Dated: June 23, 2021



STEVEN M. BIALICK
Administrative Law Judge

Reported: Digitally recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Human Services (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 10 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 10 working days to issue her final decision. Parties should send an email to DHS_AdminLaw@state.mn.us to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62 subd. 1 (2020), the agency is required to serve the final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The sole basis for the Order of Temporary Immediate Suspension of Appellant's family child care license was K.S.'s actions on March 30, 2021.

No evidence has been presented in this proceeding which would support an allegation that anything other than K.S.'s actions presents an imminent risk of harm to the health, safety, or rights of persons served by Appellant's family child care program.

The Department demonstrated that reasonable cause existed to believe that K.S.'s actions posed an imminent risk of harm to the health, safety, or rights of persons served by the program, while K.S. was living on the family child care premises and was working as a caregiver in the program.

However, Appellant provided unrefuted testimony: (1) that K.S. no longer lives on the family child care premises, (2) that K.S. currently lives with his father in Oregon, (3) that K.S. is not now working in the program, (4) that K.S. does not have a key to the premises or a garage door opener for the premises, and (5) that Appellant will not allow K.S. to work in the program or live on the premises if he returns to Minnesota.

The Department has not demonstrated that reasonable cause exists to believe that Appellant's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program, currently poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

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

S. M. B.