STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Onnie Tapio of the Order of Temporary Immediate Suspension	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION**

This matter came before Administrative Law Judge Kimberly Middendorf for a hearing on October 12, 2023. The record closed that same day, at the conclusion of the hearing.

Kyra Ladd, Wadena County Attorney, appeared on behalf of the Minnesota Department of Human Services (Department). Onnie Tapio (Appellant) appeared on his own behalf, without legal counsel.

The Department offered Exhibits 1, 5-18, and 23, which were received without objection. Appellant offered Exhibits 100-106, which were received over the Department's objection.

STATEMENT OF THE ISSUES

Should the temporary immediate suspension of Appellant's family childcare license remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety, or rights of children in his care?

SUMMARY OF RECOMMENDATION

Reasonable cause exists to believe that there is an imminent risk of harm to the health, safety, or rights of persons served by the program. Because the Department has met its burden of proof, the Administrative Law Judge respectfully recommends that the Commissioner of the Department of Human Services (Commissioner) **AFFIRM** the Order of Temporary Immediate Suspension.

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

FINDINGS OF FACT

1. Appellant operates a family childcare program in Sebeka, Minnesota, under license number 1066205.[1] Appellant's 15-year-old daughter is a helper for the daycare.[2]

2. Appellant operates his childcare program under a two-year settlement agreement executed on May 26, 2022, which placed certain conditions on his license. That agreement followed from a serious maltreatment determination and disqualification of a household member, C.T., under Minn. Stat. § 245C.15, due to physical abuse of a child in care in 2021, while C.T. was a licensed family childcare provider.[3]

3. The 2021 incident involved a child injured in C.T.'s care. C.T. reportedly shoved a child, who hit a wall and lacerated his head. The injury required staples. But C.T. did not report the injury.[4]

4. C.T. has a variance for the disqualification that prohibits C.T. from being present on the licensed family childcare property or having contact with or access to persons served by Appellant's family childcare program during operating hours and while children are receiving services.[5]

5. C.T. is also on criminal probation in Wadena County for third-degree assault and child endangerment stemming from the 2021 incident.[6] The terms of probation prohibit C.T. from contact with children attending Appellant's daycare.[7]

6. The settlement agreement prohibits C.T. from being present on the licensed family childcare property or having contact with or access to persons served by the family childcare program during operating hours and while children are receiving services. One of the conditions is that if C.T. is present at the childcare when the program is operating, Appellant is required to immediately close the family childcare program and notify his family childcare licensor.[8]

7. Appellant's program is ordinarily scheduled to close at 5:00 p.m.[9]

8. H.D. began attending Appellant's childcare in late July or early August 2023. His mother observed C.T. at the family childcare program on several occasions preceding an incident that occurred on September 5, 2023.[10]

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[1] Exhibit (Ex.) 1; Testimony (Test.) of Alissa Erdrich.
[2] Test. of Kaisa Tapio.
[3] Test. of A. Erdrich; Exs. 5, 6, 9.
[4] Ex. 18.
[5] Test. of A. Erdrich; Ex. 7.
[6] Test. of Mark Rolloff.
[7] *See* Test. of M. Rolloff, Ex. 18.
[8] Exs. 5, 6; Test. of A. Erdrich.
[9] Test. of O. Tapio; Ex. 10.
[10] Test. of C.D., H.D.'s mother. C.D. is identified by initials only, to protect the privacy of a minor.

9. C.T. works fulltime at Homecrest Outdoor Living, which was closed for the week of September 4, 2023.[11] Her employer considers her to be a good and responsible employee.[12]

10. On September 5, 2023, C.T. had been at her son's home and returned to the childcare premises at some point before 5:00 p.m.[13] Several children were still at the childcare property and the program was in operation while C.T. was present.[14] Appellant did not close the program or immediately notify his licensor as required.[15]

11. Appellant allowed C.T. to have direct contact with H.D., a child served by his program. C.T. grabbed H.D.'s face and forced his head down to make him watch C.T. tie his shoe.[16] When H.D.'s mother arrived to pick him up a few minutes later, C.T. gave her version of the incident to H.D.'s mother before the child said anything about it.[17]

12. On September 6, 2023, Appellant reported the incident with C.T. and H.D. to his family childcare licensors.[18]

13. Law enforcement and Wadena County child protection are investigating the incident.[19]

14. A probation violation has been filed with Wadena County District Court in response to C.T.'s direct contact with a child in Appellant's daycare on September 5, 2023.[20]

15. Wadena County determined that the failure to abide by the conditions of the settlement agreement posed an imminent risk of harm to the health and safety of the children in Appellant's childcare because C.T. was disqualified for serious maltreatment of a child and was not following the conditions of the settlement agreement. The County recommended that the Department issue a temporary immediate suspension of Appellant's childcare license.[21]

16. On September 7, 2023, the Department personally served Appellant with the Order of Temporary Immediate Suspension (Order), which immediately suspended Appellant's license to provide family childcare services due to the serious nature of the report under investigation by the County and because neither the County nor the Department could ensure the safety of the children served by the program.[22]

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[11] Ex. 20.
[12] Ex. 105.
[13] Test. of C.D.; Exs. 8, 20.
[14] Test. of O. Tapio; Test. of A. Erdrich; Exs. 14-18.
[15] Test. of A. Erdrich.
[16] Test. of C.D.; *see* Test. of O. Tapio; *see* Exs. 20-21, 101 at 3.
[17] Test. of C.D.; Exs. 8, 21.
[18] Test. of A. Erdrich.
[19] Exs. 14-17; Test. of A. Erdrich.
[20] Test. of M. Rolloff; Ex. 18.
[21] Test. of A. Erdrich; Ex. 11.
[22] Test. of A. Erdrich; Ex. 1.

17. Appellant timely appealed the Order via Certified Mail on September 8, 2023.[23]

18. Five families served by Appellant's childcare submitted letters of support for Appellant and reopening the program.[24] The families described the hardships imposed on them by the suspension as they struggle to try to find substitute care.[25]

19. One family stated: "We have struggled to find reliable daycare run by people that we can trust to not only watch our two boys, but that will have them outside playing and learning and also reading and doing crafts with them such as the case with Onnie watching them."[26]

20. Another noted that "I have been with this daycare since the beginning of this all and would still trust them entirely with my kids."[27]

21. A third family reported "we have no options of finding daycare that has infant availability. When push comes to shove, I will be forced to quit my job to become the primary caregiver to our children once more. This takes me out of the workforce as a registered nurse."[28]

22. The fourth family writing in support described their search for alternative care. According to this mother:

> I have found one licensed daycare that my children could go to and I've called everyone in Wadena, Sebeka, Bluffton, Menahga, and Deer Creek. I did visit with that provider about care for my children. I went to meet with her and as soon as I walked in her house it reeked of cigarettes and was very dirty. I can't believe they allow a house like that to be a licensed daycare. I will not be bringing my girls there.[29]

23. Another stated: "This has been absolutely devastating for our family as well as many others. Now, not only are we struggling to find another daycare provider but to find someone that we trust to the level we trust Onnie has been nearly impossible."[30]

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

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[23] Notice and Order for Hearing (Sept. 26, 2023).
[24] Exs. 100-104, 106; *see also* Test. of O. Tapio.
[25] Exs. 100-104, 106.
[26] Ex. 100.
[27] Ex. 101.
[28] Ex. 102.
[29] Ex. 103.
[30] Ex. 104.

CONCLUSIONS OF LAW

1. The Commissioner and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2022).

2. The Department gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. 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]

4. 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. A hearing must be conducted within 30 calendar days of the request for assignment.[32]

5. The scope of the hearing on a temporary immediate Suspension Order is limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the Commissioner's issuance of a final order regarding a licensing sanction under Minn. Stat. § 245A.08 (2022).

6. The burden of proof in expedited hearings is 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, 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.[33]

7. "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.[34]

8. The phrase "reasonable cause exists to believe" found in Minn. Stat. § 245A.07, subd. 2a "requires the existence of circumstances sufficient to warrant a cautious person to reasonably believe" that persons or conditions in a program pose an imminent risk of harm to the health or safety of the children in care.[35]

9. The Department has demonstrated that there is reasonable cause to believe that the failure to comply with the terms of the settlement and variance poses an

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[31] Minn. Stat. § 245A.07, subd. 2 (2022).
[32] Minn. Stat. § 245A.07, subd. 2a(a).
[33] *Id*.
[34] *Id.*
[35] *In re Temporary Immediate Suspension of Family Child Care License of Strecker,* 777 N.W.2d 41, 46 (Minn. Ct. App. 2010).

imminent risk of harm to the health, safety, or rights of persons served by Appellant's program.

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

RECOMMENDATION

Because the Department has met its burden of proof, the Administrative Law Judge respectfully recommends that the Order of Temporary Immediate Suspension be **AFFIRMED**.

Dated: October 19, 2023

KIMBERLY MIDDENDORF
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 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 a final decision. Parties should contact Administrative Law Office staff at DHS_AdminLaw@state.mn.us to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1 (2022), 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

I. Applicable Legal Standards

The expedited hearing in this matter is intended to address the issue of whether the temporary immediate suspension should remain in effect pending the final order of the Commissioner regarding a licensing sanction under Minn. Stat. § 245A.08. At this

stage, the County, acting for the Department, is required to demonstrate that reasonable cause exists to believe that a licensee'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.[36] The reasonable cause standard is slight, presumably to assure that vulnerable children and other persons served by the Department's programs are protected pending a full hearing and final decision on the matter.

The Commissioner's decision must be supported by substantial evidence.[37] The Administrative Law Judge's function at this stage of the process is to determine whether there is enough evidence to continue the suspension until an investigation is completed and a determination made as to any sanction that should be imposed.

II. The Parties' Arguments and Analysis

The Department argues that Appellant's license must remain suspended temporarily, to allow the investigation to be completed and for sanctions, if any, to be determined. Appellant argues that no child was hurt by C.T.'s presence on September 5.

The standard for a temporary immediate suspension is a modest one. The Department is not required to establish that a child was harmed. A temporary immediate suspension is intended to prevent harm from occurring, not to punish a licensee for harming a child. It is appropriate to suspend a license temporarily when a licensee's failure to follow the terms of his license presents sufficient risk to the children in care.

Here, that standard has been met by the Department. While there is some disagreement about the exact time C.T. was on the childcare premises, by her own admission it was prior to the childcare's regularly scheduled closing time of 5:00 p.m. Even if her arrival had been after 5:00 p.m., the settlement agreement cannot be read to apply only until 5:00 p.m. It prohibits her presence while the childcare is in operation, and the childcare is in operation until the last child goes home for the day. Despite this condition, H.D.'s mother observed C.T. at the daycare at pick up on several occasions during the month that she brought her child to Appellant's program.

Further, this was not a matter of a mere technical violation where C.T.'s presence accidentally overlapped with the operation of the daycare, such as her coming home when she expected all of the children to have already been picked up. C.T. was not only on the childcare premises while it was still in operation but also had direct contact with a child. The settlement agreement, and the disqualification variance, clearly provide that Appellant "must ensure" that C.T. "does not otherwise have any direct contact with, or access to, persons served by the family childcare program[.]"[38] It cannot be reasonably argued that the settlement agreement allowed C.T. to interact with a child being served by Appellant's program under any circumstance.

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[36] Minn. Stat. § 245A.07, subd. 2a(a).
[37] *Id.*
[38] Ex. 5.

The Judge understands that the Sebeka area may have too few childcare options to fully meet the needs of working parents. Continuing the temporary suspension of Appellant's childcare program surely exacerbates the shortage. Yet Appellant's failure to abide by the conditions he agreed to is concerning. This is all the more unfortunate because it seems like Appellant and his daughter run a program that is otherwise a good one. Tying a child's shoe may seem like a trivial thing, but C.T. was prohibited from direct contact with daycare children for good reason. In the maltreatment matter that cost her license, C.T. apparently pushed a child into a wall, causing the child to need staples, and then downplayed the incident. Here, C.T. did more than tie a shoe – she touched the child to make him watch her do it. There is disagreement in the record about how much force was used, but the fact remains that there should have been no direct contact at all.

The conditions placed on Appellant's license are not "punishment" or about making Appellant "jump through hoops" as C.T. contends.[39] Under the law, the Department cannot allow a person who was disqualified because of serious maltreatment of a child to continue to have direct contact with children served by a program it licenses. The Department has a responsibility to ensure that a childcare it licenses abides by the laws enacted to ensure the safety of children served by the program. The Department cannot fulfill its responsibility when a licensee violates the licensing conditions like those that allowed Appellant to continue operating despite the general requirement for licensure that no household member be disqualified. The failure to comply with the conditions of the license and settlement agreement creates a risk of harm to the children served by this program because ensuring C.T. would not have access to children in Appellant's care was the only way that the Department could reasonably ensure their safety.

For these reasons, the Administrative Law Judge concludes that the Department has met its burden of proof and recommends that the suspension be affirmed until the investigation is completed and what sanctions, if any, should be imposed.

K. J. M.

[39] *See* Ex. 10.