OAH 22-1800-40587

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Sherry Diane Karlsen of the Order of License Revocation of their Child Foster Care License.	**ORDER DENYING SUMMARY DISPOSITION AND SETTING PREHEARING DEADLINES**

License No. 1124796 (Child Foster Care)

This matter comes before Administrative Law Judge Christa L. Moseng upon the Motion for Summary Disposition (Motion) filed by the Minnesota Department of Human Services (Department) on June 16, 2025. Sherry Diane Karlson (Appellant) filed no response to the motion,[1] and the motion record closed on July 3, 2025.

Taylor Mehr and Alyssa Lund, Assistant Hennepin County Attorneys, represent the Department. Sherry Diane Karlsen represents herself, without legal counsel.

Based upon the record, under Minn. R. 1400.8590, and for the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED:

1. The Department's Motion for Summary Disposition is **DENIED**.

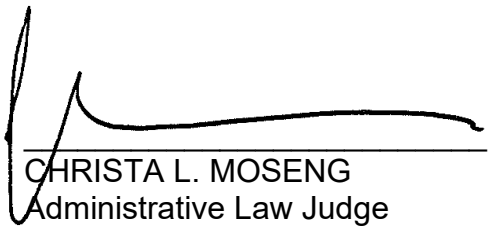
2. A hearing in this matter will be held at the Hennepin County Health Services Building, 525 Portland Avenue, Minneapolis, MN, 55415, on **August 19 and 20, 2025**, beginning at **9:30 a.m.** on each day.

3. By 4:30 p.m. on **August 12, 2025**, the parties shall exchange and file with this Office their proposed pre-labeled exhibits, an index of the proposed exhibits, and their witness lists.

[1] On March 24, 2025, Appellant filed a letter and attachments addressed to Judge Moseng. Letter to Judge Moseng from Sherry Karlson (Mar. 21 2025) (Appellant's Letter). The letter and its attachments were discussed at the March 25, 2025, telephone prehearing conference. Judge Moseng forwarded the letter and attachments to counsel for the Department via email on March 31, 2025. The correspondence is considered as part of the Motion record.

4. The deadline to request subpoenas for the attendance of witnesses or the production of documents shall be **August 12, 2025**.

Dated: July 28, 2025



CHRISTA L. MOSENG
Administrative Law Judge

MEMORANDUM

I. Introduction

This matter concerns the appeal of an order revoking Appellant's license to provide child foster care. The Department has moved for summary disposition of the following issues: (1) was Appellant responsible for maltreatment by neglect and failure to protect a child in Appellant's care from serious endangerment; and (2) was the revocation of Appellant's license proper.

II. Undisputed Facts[2]

In early June 2024, prior to Appellant being licensed, Hennepin County placed a relative child (M.M.) in Appellant's care as an emergency relative placement.[3] On June 11, 2024, Hennepin County received Appellant's completed Maltreatment of Minors Reporting training.[4]

In late June 2024, M.M. began attending 3R's Daycare.[5] On July 25, 2024, Appellant noticed something like diaper rash. "A couple weeks later," Appellant saw "a couple bruises like finger marks in between the knee and ankle" when M.M. returned from daycare.

On August 8, 2024, Appellant was licensed to provide child foster care at her residence in Brooklyn Park, under license number 1124796.[6]

On Friday August 23, 2024, Appellant noticed more red than a rash on the child's private area, a bruise on her forehead, carpet burn on her elbow, and bruises like finger

[2] Neither Appellant's Letter, nor its attachments, nor the Department's Exhibits are offered by sworn declaration or affidavit. To be admitted into the hearing record, all exhibits' admissibility must be established or stipulated to at the hearing.
[3] Department's Exhibit (Ex.) 1.
[4] Ex. 2.
[5] Ex. 4 at 28; Ex. 5 at 42; Appellant's Letter, 1.
[6] Amended Order of License Revocation (Feb. 3, 2025) at 2.

marks on her legs, between the knee and ankle.[7] Appellant took pictures and gave the child a bath.[8]

Appellant took M.M. to a physician, Dr. David M. Smeltzer, MD, on Tuesday August 27, 2024,[9] An examination of the child found a three centimeter yellow-green bruise on the left forehead, bruises on legs and knees, mild erythema of labia, redness, an "almost bruise like lesion near the left inguinal fold" and long dark hairs near the introitus.[10] Dr. Smeltzer told Appellant not to return M.M. to the daycare.[11]

On August 28, 2024, Appellant brought M.M. to the Midwest Children's Resource Center to be examined for possible sexual and physical abuse.[12] The examination identified bruising on M.M.'s forehead and shins, but made no findings that were "specific for abuse."[13] The report of the visit notes that "[i]t was discussed that as [redacted] has not made any disclosures of sexual abuse including during open-ended conversations about the private parts of her body, there is no particular reason to be concerned for sexual abuse."[14]

Appellant first reported her suspicions and the medical appointments to the Department on September 3, 2024.[15] On that day, a child protection social worker visited the foster home. During the visit, Appellant told the social worker about the child's bruising and vaginal redness.[16] When the worker asked Appellant why she did not report her concerns to anyone, Appellant told a child protection social worker that she did not know what to do but kept documentation of the bruising and vaginal redness.

On September 9, 2024, Appellant enrolled M.M. in a new daycare.[17]

On September 16, 2024, Hennepin County initiated a child protection investigation for alleged neglect, specifically: failure to protect the foster child from serious endangerment.[18] On September 23, 2024, the Department attempted to remove

[7] Appellant's Letter, 1.
[8] Appellant's Letter, 1.
[9] Appellant's Letter, 1, 4–7 (Medical Record).
[10] Appellant's Letter, 5.
[11] Appellant's Letter, 6.
[12] Ex. 6.
[13] Ex. 6 at 46.
[14] Ex. 6 at 46.
[15] Appellant's Letter, 1; Ex. 4 at 9.
[16] Ex. 5 at 42.
[17] Apellant's Letter, 2.
[18] *See, generally*, Ex. 4.

M.M. from Appellant's home.[19] Appellant refused to cooperate and M.M. was removed the following day.[20]

The Department issued an Order of License Revocation to Appellant on December 31, 2024 (Revocation Order).[21] On March 3, 2025, the Department filed an Amended Order of License Revocation, bearing a January 31, 2025 reissuance date (Amended Revocation Order).[22] The Amended Revocation Order states that it supersedes the December 31, 2024 order and was amended to correct the maltreatment determination date. There is no dispute that the correct maltreatment determination date is September 25, 2024.[23]

The Department acknowledges that Appellant timely appealed both the revocation of her foster care license and the maltreatment determination.[24]

III. Summary Disposition Standard

Summary disposition is the administrative law equivalent to summary judgment.[25] Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[26] Administrative law judges generally follow the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[27]

An administrative law judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual disputes exist with regard to material issues.[28] The judge does not weigh the evidence on a motion for summary disposition.[29]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[30] All doubts and factual inferences

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[19] Ex. 4 at 29.
[20] Ex. 4 at 36
[21] Ex. 8.
[22] Amended Order of License Revocation (Feb. 3, 2025).
[23] Ex. 7.
[24] Dept's Memorandum of Law in Support of its Motion for Summary Disposition (Dept's Mem.) at 4.
[25] *Pietsch v. Minnesota Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2023).
[26] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); *Gaspord v. Washington County Planning Commission*, 252 N.W.2d 590, 590-591 (Minn. 1977); *See* Minn. R. 1400.5500 K (2023); Minn. R. Civ. P. 56.03.
[27] *See* Minn. R. 1400.6600 (2023).
[28] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[29] *Id.*
[30] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).

must be resolved against the moving party.[31] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[32]

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[33] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts that are in dispute that can affect the outcome of the case.[34]

It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[35] A genuine issue is one that is not sham or frivolous.[36] A material fact is a fact whose resolution will affect the result or outcome of the case.[37]

While the purpose and useful function of summary disposition is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[38] Summary disposition is only proper where there is no fact issue to be decided.[39]

IV. Analysis

At issue is whether material factual disputes preclude disposition of the following two issues: (1) was Appellant responsible for maltreatment by neglect and failure to protect a child in Appellant's care from serious endangerment? And (2) was the revocation of Appellant's license proper?

If the Department shows there is no material factual dispute on these issues, the Department bears the burden to establish reasonable cause for the maltreatment determination and the license revocation.[40] If the Department demonstrates that reasonable cause existed, the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder

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[31] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[32] *DLH*, 566 N.W.2d at 69.
[33] *Thiele*, 425 N.W.2d at 582.
[34] *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).
[35] Minn. R. Civ. P. 56.05.
[36] *Highland Chateau,* 356 N.W.2d at 808.
[37] *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); *see also O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[38] *Sauter*, 70 N.W.2d at 353.
[39] *Id.*
[40] Minn. Stat. § 245A.08, subd. 3(a).

violated, at the time that the commissioner alleges the violations of law or rules occurred.[41]

A. Maltreatment

Under Minn. Stat. § 360E.03, maltreatment by neglect includes the non-accidental failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so.[42]

Doubt about material facts precludes disposition of this issue prior to a hearing. Appellant acknowledges taking M.M. to Dr. Smeltzer on August 27, 2024, and that "his findings were what I suspected and [he] told me to pull her out of daycare."[43] On August 28, M.M. was examined by the Midwest Children's Resource Center**.** Then, during a September 3 visit by the child protection social worker, Appellant was told not to bring M.M. to daycare, and Appellant responded that "she's not going back."[44] M.M. was enrolled in a new daycare on September 9.

However, the record leaves doubt about when Appellant first noticed and suspected possible abuse at the daycare provider.[45] There is also ambiguity in the record about when M.M. attended 3R's daycare and whether Appellant returned M.M. to 3R's after suspecting abuse.[46] For purposes of resolving this motion, doubt must be resolved in Appellant's favor.[47] Whether Appellant failed to protect M.M. from serious endangerment when reasonably able to do so cannot be determined on this record.

B. License Revocation

Besides the maltreatment determination, discussed above, the Department cites four licensing violations to support its Revocation Order: (1) failure to comply with M.M.'s case plan by not providing timely access to basic, emergency, and specialized medical care; (2) failure to report suspected maltreatment; (3) failure to cooperate with

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[41] *Id.*
[42] Minn. Stat. § 260E.03, subds. 12(2), 15(a)(2).
[43] Appellant's Letter, 1.
[44] Appellant's Letter, 1.
[45] *Compare, e.g.,* Ex. 4 at 28 (describing Appellant statements about suspecting abuse as long as one year prior) with Appellant's Letter, 1 (apparently denying suspicion prior to August 23, 2024).
[46] *Compare, e.g.,* Appellant's Letter, 1 (stating that M.M. started 3R's daycare on June 17, 2024) *with* Ex. 4 at 39 (noting a statement that M.M. had been attending 3R's since 2022), Ex. 5 at 42 (noting a September 3, 2024 statement by Appellant that M.M. attended 3R's every Thursday and Friday since June), Ex. 5 at 43 (noting an unattributed report that Appellant brought M.M. to 3R's on September 4, 2024), *and* Ex. 6 (stating that M.M. began attending 3R's in March 2023 and, as of August 28, 2024, attends 3R's five days a week).
[47] The Department's exhibits include, and its arguments rely, on reported statements made by Appellant about suspicions of abuse prior to August 23, 2024, that she now denies and affirmatively claims to have denied at the time of the reported statement. Appellant's affirmative contrary claim is sufficient to present a specific and genuine factual dispute in this case because the Department's evidence is unsworn triple-hearsay.

the case manager by "not following the directive to not return the foster child to the child care program where there were concerns of alleged maltreatment[;]" and (4) failure to comply with the Commissioner's right of access by refusing to let county workers into the home to remove the foster child.

As discussed above, there are several apparent factual discrepancies and disputes in the Motion record. These include: when Appellant first noticed the indicia of possible abuse; when Appellant developed her own concerns about 3R's daycare; whether or when Appellant was aware of M.M.'s mother's concerns about 3R's daycare; whether Appellant told social workers or child protection investigators of concerns that predate August 23, 2024; what date M.M. began attending 3R's; and how often M.M. attended 3R's and on what days during the relevant period.

Alleged violation #1, concerning timely access to medical care, is contingent on disputed facts relating to when Appellant first suspected, or became aware of others' suspicion of abuse at the daycare facility. Alleged violation #3 requires a finding that M.M. returned to the daycare after September 3, 2024, which the Department has not established—the Department's affirmative evidence on this point appears limited to a case file note of a single unattributed report.

Accordingly, material factual disputes preclude a determination of alleged violations 1 and 3. Because the Amended Revocation Order is premised, in part on "the serious and chronic nature of the licensing violations," a hearing is necessary to ascertain whether the revocation of Appellant's license should be affirmed.

V. Conclusion

The Department has not met its burden to show an absence of genuine disputes of material fact. The motion must therefore be **DENIED**. The hearing will proceed as scheduled.

C. L. M.