

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the Family
Child Care License of Kathy A. Balken

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

This matter came on for hearing by telephone before Administrative Law Judge Richard C. Luis on May 11, 2005. The parties were located at the Otter Tail County Government Services Center, 530 Fir Avenue West, Fergus Falls, MN 56537. The Administrative Law Judge was located at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, MN 55401. The hearing record closed on May 11, 2005, at the conclusion of the hearing.

David J. Hauser, Otter Tail County Attorney, Otter Tail County Attorney's Office, 121 West Junius Avenue, Fergus Falls, MN 56537, appeared for the Minnesota Department of Human Services (DHS) and Otter Tail County Human Services (the County).

Kathy A. Balken (Applicant or Ms. Balken), 630 West Birch, Fergus Falls, MN 56537, appeared on her own behalf.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make a final decision after reviewing the administrative record, and may adopt, reject or modify these Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by the Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155 to ascertain the procedure for filing exceptions or presenting argument. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of comments, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Minnesota Department of Human Services is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

STATEMENT OF ISSUE

Should the denial of Ms. Balken's family child care license application be upheld?

The Administrative Law Judge recommends the denial be upheld because Ms. Balken did not request reconsideration of her disqualification determination.

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

FINDINGS OF FACT

1. Ms. Balken is a resident of Otter Tail County who seeks a license to provide family child care. Ms. Balken's household consists of her boyfriend, Christopher Austad, and Ms. Balken's three children, seven-year-old daughter A.C., four-year-old son A.B., and three-month-old daughter A.A.^[1]
2. On or about June 4, 2004, Ms. Balken contacted Otter Tail County Human Services to inquire about becoming licensed to provide family child care. She spoke to Shelly Bartels, a Child Care Licensor, who briefly discussed the licensing process and informed Ms. Balken of an upcoming orientation session regarding the licensing process.^[2] Ms. Bartels also mailed Ms. Balken a brochure of general licensing information.^[3]
3. On June 9, 2004, Ms. Balken attended the child care licensing orientation session conducted by Ms. Bartels. At the meeting, Ms. Balken received a packet containing Minnesota Rules, Chapter 9502 and Minnesota Statutes, Chapters 245A and 245C, a blank license application form, a Notice of Privacy Practices form, a background check form, and an address history form, among other sample forms.^[4] She also received Ms. Bartels' business card.
4. On October 13, 2004, Ms. Bartels received Ms. Balken's signed application for a family child care license as well as a signed Notice of Privacy Practices form, and a Consent and Request for Law Enforcement, Court, and Agency Records form.^[5] Upon review of the application, Ms. Bartels noted that Applicant had failed to complete the application in its entirety; specifically, Ms. Balken did not indicate street addresses for her three references, did not note the months of operation for her daycare, and did not fill in her complete address history.^[6] Ms. Bartels opened a case file for Ms. Balken's application and sent her a letter, dated October 20, 2004, requesting the missing information.^[7]

5. On or about October 28, 2004, the County started the required background check on Applicant based upon the signed Consent form.

6. By November 8, 2004, Ms. Bartels had not received the requested information from Applicant, so she sent Ms. Balken another letter requesting the information on or before November 16, 2004.^[8] In the letter, she informed Applicant that failure to provide the missing information could be grounds to deny her application for a license.

7. The County's background check of Applicant revealed that Applicant had pled guilty, on June 14, 2004, to a gross misdemeanor theft violation of Minn. Stat. § 609.52, for wrongfully obtaining public assistance in the amount of \$2,567.00.^[9] Applicant's conviction for the crime was a ten-year disqualifying factor under Minn. Stat. § 245C.15, and Ms. Bartels was required to complete a risk of harm assessment under Minn. Stat. § 245C.16, to determine if Applicant posed an immediate risk of harm to the children she wished to serve.^[10]

8. On November 8, 2004, Ms. Bartels completed the risk of harm assessment, determining that Applicant posed a high risk of harm based upon the recency of the crime and the number of times that the theft occurred over time.^[11] That same day, Ms. Bartels sent a letter to Ms. Balken informing her of the disqualification and the determination that she posed a high risk of harm to any children she might serve. She stated that the disqualification and risk of harm determination could result in the denial of Ms. Balken's application for a family child care license.^[12] Ms. Bartels' letter also informed Applicant that she had a right under Minn. Stat. § 245C.21 to submit a written request for reconsideration within 30 days, and Ms. Bartels included a blank Request for Reconsideration form.

9. Ms. Balken did not request reconsideration of the disqualification, nor did she provide the information requested by Ms. Bartels.

10. By letter dated December 29, 2004, Ms. Bartels made a recommendation to DHS that Ms. Balken's application for a family child care license be denied based upon Applicant's disqualification, the risk of harm determination,^[13] and Applicant's failure to request reconsideration.^[13]

11. DHS issued an Order of Denial to Ms. Balken on February 10, 2005, citing Minn. Stat. §§ 245A.04, subd. 6, 245A.05, 245C.14, and Minn. R. 9502.0335, subp. 6D.^[14] The letter informed Ms. Balken of her right to appeal the decision and her right to a contested case hearing.

12. Applicant appealed the denial of the license.^[15] As a result, DHS issued a Notice of and Order for Hearing on March 7, 2005, setting the hearing to take place on May 11, 2005.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50 and 245A.08.

2. The Department gave proper notice of the hearing, and all relevant procedural requirements of law or rule have been fulfilled.

3. Pursuant to Minn. Stat. § 245A.05, “the Commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information . . . in connection with an application for a license”

4. Before issuing a family child care license, the Commissioner shall evaluate “facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program, . . . , and information about the qualifications of the personnel employed by the applicant”^[16]

5. Pursuant to Minn. Stat. § 245C.14, subd. 1, the Commissioner shall disqualify an applicant whose background study reveals a conviction of or admission to a crime listed in Minn. Stat. § 245C.15, including theft under Minn. Stat. § 609.52, or a preponderance of the evidence shows that the applicant has committed any crimes listed in Minn. Stat. § 245C.15.

6. If an applicant requests reconsideration of the disqualification under Minn. Stat. § 245C.21, the Commissioner may set aside the disqualification after an analysis of the factors in Minn. Stat. § 245C.22, subd. 4. However, Minn. Stat. § 245C.29, subd. 2, states that a disqualification is conclusive if the applicant fails to request reconsideration within the time provided by statute. Furthermore, Minn. R. 9502.0335, subp. 6.D, provides that an application for a family daycare license shall not be granted if the applicant has a disqualification under Minn. Stat. § 245C.14.

7. Applicant has the burden of proving by a preponderance of the evidence that she complied fully with applicable rule or law and that the license should be granted.^[17]

8. Applicant did not request reconsideration of the disqualification, and therefore, the disqualification is conclusive under Minn. Stat. § 245C.29. Accordingly, Applicant cannot show by a preponderance of the evidence that she fully complied with applicable rule or law.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner affirm the denial of Ms. Balken's family child care license application.

Dated: June 9, 2005

s/Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Tape recorded (1 tape). No transcript prepared.

MEMORANDUM

In her appeal letter and through her testimony at the hearing, Ms. Balken attempted to explain the circumstances that led to her plea of guilty to theft. She argued also that she does not pose a risk of harm to children she wishes to serve, as was determined by Ms. Bartels. She explained that her life as a student, part-time worker, and mother of a child with a brain tumor caused her to overlook or put off providing information to the County regarding her status as a wrongful recipient of public assistance, which resulted in her theft plea and the disqualification.

Ms. Balken presents herself as a hard-working person who loves children, as evidenced by her performance evaluation from Kids Care. Overall, she made a convincing argument that she does not pose a risk of harm to the children she wishes to serve. But Ms. Bartels' letters to Ms. Balken clearly expressed that a failure to provide the County with the necessary information or failure to request reconsideration of the disqualification could result in the denial of her application. Because Ms. Balken did not request reconsideration of her disqualification, the disqualification is conclusive under Minn. Stat. § 245C.29, and the denial of her application was required by statute and rule. As a result, the Administrative Law Judge cannot consider arguments on the merits of her disqualification.

R.C.L.

^[1] Ex. 3, p. 22.

- [\[2\]](#) Testimony of Shelly Bartels.
- [\[3\]](#) Testimony of Shelly Bartels and Ex. 1.
- [\[4\]](#) Testimony of Shelly Bartels. Ex. 9.
- [\[5\]](#) Ex. 3, pp. 21-24. Ex. 6.
- [\[6\]](#) Ex. 3, pp. 20, 22, and 23.
- [\[7\]](#) Ex. 3, p. 19. Ms. Bartels attached to the letter a copy of the application with the blank spaces highlighted.
- [\[8\]](#) Ex. 3, p. 18.
- [\[9\]](#) Ex. 3, pp. 8-10, 11-15. Ex. 5. As part of her plea agreement, Ms. Balken made full restitution prior to sentencing. She was sentenced to 180 days in jail with 170 days stayed for two years on condition that she pay a \$900 fine and serve 10 days in jail. Ex. 3, p. 16.
- [\[10\]](#) Ex. 4.
- [\[11\]](#) Ex. 4.
- [\[12\]](#) Ex. 3, pp. 2-5.
- [\[13\]](#) Ex. 3, p. 1.
- [\[14\]](#) Ex. 7.
- [\[15\]](#) Ex. 8.
- [\[16\]](#) Minn. Stat. § 245A.04, subd. 6.
- [\[17\]](#) Minn. Stat. § 245A.08, subd. 3(b).