

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Order of
Conditional License and Order to
Forfeit a Fine Imposed Against the
Family Child Care License of
Kumarie Gherau

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

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 28, 2010, at the Dakota County Judicial Center, 1560 Highway 55, Hastings, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Margaret M. Horsch, Assistant County Attorney, appeared for Dakota County Human Services (County) and the Minnesota Department of Human Services (Department). Kumarie Gherau (Licensee) appeared on her own behalf without counsel.

STATEMENT OF ISSUE

Should the family child care license of Kumarie Gherau be made conditional, and should she be fined in the amount of \$200 for failing to submit a background study on a person living in the home?

The Administrative Law Judge concludes that the conditional license and fine are appropriate and should be affirmed.

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

FINDINGS OF FACT

1. Kumarie Gherau has been a licensed family child care provider for approximately 22 years. She lives in Apple Valley, Minnesota, with her husband and some of her children. In years past, she has identified her son and two daughters, Pamela and Christine, as household residents. When her license was last renewed, she identified her son and daughter Pamela as household residents, but not her daughter Christine.¹

2. The Licensee's husband is currently disqualified from having contact with children in care based on providing false information and wrongfully

¹ Testimony of Becky Elrasheedy.

obtaining assistance from the County. The Commissioner issued a variance to permit the day care operation to continue despite the disqualification.²

3. In 2007, the Commissioner issued an Order of Conditional License for a period of one year, based on findings that the Licensee had used a crib with tears in the mesh siding; failed to complete cardiopulmonary resuscitation and other training requirements; failed to have immunization records for two children in care; stored personal care products, cigarettes, and matches in areas accessible to children; failed to have an operational fire extinguisher; failed to have an operable flashlight and portable radio or television available for use in the event of storms; used a 15-year old as a substitute caregiver without an adult present (this occurred in July 2000); failed to report a serious injury occurring in the day care residence (in 2002); and failed to have a gate or barrier on the stairway while a child between the ages of six and 18 months was in care (in 2002, 2003, and 2005).³

4. The Licensee complied with the requirements of the conditional license, and her unconditional license was restored in May 2008.⁴

5. Becky Elrasheedy is the licensing worker currently assigned to work with the Licensee. She assumed responsibility for the licensing file in April 2009.⁵

6. Between May and November 2009, the Licensee had some health problems that required frequent visits to her physician.⁶ In September 2009, a day care parent contacted Elrasheedy with a complaint that the Licensee was frequently gone from the home and that Pamela appeared to be providing all care for the children. Elrasheedy reviewed the file and determined that a background study had been performed on Pamela (as an adult resident of the home) but that the Licensee had not previously identified Pamela as an assistant caregiver. Assistant caregivers must have training to work with children, including training on SIDS and shaken baby syndrome, depending on the age of children in care.⁷

7. On the late afternoon of September 25, 2009, the licensing worker went to the home to investigate the complaint. No one answered the door when she knocked. After waiting in her car for approximately 30 minutes, the licensing worker observed that someone came to the door to let in a teenage boy. The licensing worker again knocked on the door, and this time Pamela opened it and admitted the worker.⁸

² Ex. 3 at page 2.

³ Ex. 1.

⁴ Testimony of B. Elrasheedy.

⁵ *Id.*

⁶ Ex. 8.

⁷ Test. of B. Elrasheedy; *see also* Minn. Stat. § 245A.50, subs. 1, 2 & 5 (2008).

⁸ Test. of B. Elrasheedy.

8. Pamela initially advised the licensing worker that her mother had just left. The worker responded that no one had left the home during the time the worker had been sitting in her car. Pamela then advised the worker that the Licensee had gone to the doctor earlier and thereafter had gone to the hospital. While they were talking, the Licensee's husband and Christine arrived home.

9. In the discussions that followed, Pamela acknowledged that she had regularly been assisting the Licensee in the care of children, and Christine acknowledged that she had been living in the home for approximately two months. The licensing worker also observed that there was no gate at the top of the stairway, and children between the ages of six months and eighteen months were in care.⁹

10. On September 28, 2009, after reviewing the licensing file, the worker issued a correction order citing five violations. On September 30, 2009, the Licensee responded to the correction order as follows:

Condition constituting a violation	Describe how corrected
There was no health form on file for Pamela & she has been regularly assisting in care of children	Health form for Pamela was sent in 9-29-09
There was no gate on the top of the stairway when children between 6 & 18 months old were in care	Gate was installed 9-26-09
Pam has been helping when infants present & had not taken the SIDS training (verification not on record)	Completed training for Pam & received certificate 9-30-09
There was no shaken baby syndrome training record for Pam (or Christine) who was caring for infants, toddlers & preschoolers	Completed training for Pam & received certificate on 9-30-09
Christine has been living in the home for 2 months & there is no background study form on her. She was also holding an infant giving him a bottle. ¹⁰	Christine filled out background check. She will not help with the children.

⁹ Test. of B. Elrasheedy.

¹⁰ Ex. 9. The Licensee did not seek reconsideration of the Correction Order.

11. When the background study was performed, it showed that Christine Gherau was disqualified based on her August 2006 plea of guilty to a misdemeanor charge of domestic assault of her mother. She received a stay of adjudication on the condition that she perform 20 hours of community service; pay \$100 in prosecution costs; complete anger management and all recommended aftercare; and remain law-abiding. The charge was dismissed in July 2007 upon completion of the community service and anger management course.¹¹

12. Christine Gherau requested reconsideration of the disqualification, and in January 2010 the family indicated that she would be moving out of the home in February or March 2010. Based on this information, the licensing worker recommended to the Department that the disqualification not be set aside or a variance issued.¹² In March 2010, the licensing worker recommended that the license be indefinitely suspended, because Christine was still living in the home and had not provided evidence to the licensing worker that she had completed the anger management course.¹³ After the licensing worker received the documentation regarding the anger management course, she then recommended that the Department order a conditional license and issue a variance to permit Christine to live in the home but have no contact with children.¹⁴

13. On May 12, 2010, the Commissioner declined to set aside Christine Gherau's disqualification, but did grant a variance to the disqualification on the condition that, among other things, she provides no care to children.¹⁵

14. On May 12, 2010, the Commissioner also issued to the Licensee an order to forfeit a fine in the amount of \$200, for the failure to submit a background study on a person residing in the home, and an order placing the license on conditional status for two years. The order provides:

Due to the serious nature of the above violations; because an individual required to have a background study has a disqualification for which a variance has been granted; because you failed to submit a background study on a required individual; because you failed to notify Dakota County of a change to your household membership; and, in order to protect the health, safety, and rights of persons receiving services in DHS-licensed programs, your license to provide family child care is placed on conditional status for two years.¹⁶

¹¹ Ex. 2.

¹² Ex. 3.

¹³ Ex. 4.

¹⁴ Test. of B. Elrasheedy.

¹⁵ Ex. 5. Neither the Licensee nor Christine Gherau have appealed the Commissioner's refusal to set aside the disqualification.

¹⁶ Ex. 6.

15. The terms of the conditional license require the Licensee to follow and comply with all applicable laws and rules; have no variances to age distribution or number of children in care; never use the disqualified person (Christine) as a caregiver or substitute caregiver; have the disqualified person in sight whenever children served by the program are present; immediately notify the County of any changes to the disqualified person's living situation or address; report to the County any anticipated changes in household membership before they occur; obtain additional training; and provide a copy of the Order of Conditional License to parents of children in care.¹⁷

16. The Licensee appealed the fine and the Order of Conditional License.

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

CONCLUSIONS OF LAW

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subd. 2a (2008).¹⁸

2. At a hearing regarding a licensing sanction, the Commissioner has the burden to demonstrate reasonable cause for action taken by submitting evidence to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner 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 violated, at the time the commissioner alleges the violations occurred.¹⁹

3. Licensing rules require a provider to inform the agency within 30 days of any change in the regular membership of the household.²⁰

4. The Licensee violated Minn. R. 9502.0375, subp. 2, by failing to inform the County within 30 days that her daughter had moved back into the home.

5. The Commissioner shall conduct a background study on individuals age 13 and over living in the household where the licensed program will be provided.²¹

¹⁷ Ex. 6.

¹⁸ All references to Minnesota Statutes are to the 2008 edition.

¹⁹ Minn. Stat. § 245A.08, subd. 3.

²⁰ Minn. R. 9502.0375, subp. 2 (2009). All references to Minnesota Rules are to the 2009 edition.

²¹ Minn. Stat. § 245C.03, subd. 1(2).

6. The Licensee failed to forward a background study form to the Commissioner when her adult daughter moved home, in violation of Minn. Stat. § 245C.03.

7. A license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but limited to the failure to submit a background study.²²

8. The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules.²³

9. If the commissioner finds that a license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the commissioner may issue a correction order and an order of conditional license to the license holder. When issuing a conditional license, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.²⁴

10. Before issuing, denying, suspending, revoking, or making a license conditional the commissioner shall evaluate information gathered under Minn. Stat. § 245A.04 and shall consider facts, conditions, or circumstances concerning the program's operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the license holder.²⁵

11. The Commissioner properly considered all the statutory factors in ordering a fine and a conditional license for a period of two years.

12. The Memorandum attached hereto is incorporated herein by reference.

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

²² Minn. Stat. § 245A.07, subd. 3(c)(4).

²³ Minn. Stat. § 245A.07, subd. 3(a) (2008).

²⁴ Minn. Stat. § 245A.06, subd. 1.

²⁵ Minn. Stat. § 245A.04, subd. 6.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services AFFIRM the Order to Forfeit a Fine and the Order of Conditional License.

Dated: October 8, 2010

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner shall not issue a final decision 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 this Report to file exceptions and present argument to the Commissioner. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, 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. Parties should contact Cal Ludeman, Commissioner, Department of Human Services, P.O. Box 64998, St. Paul, MN 55164 (651) 431-2907 to learn the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, 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. 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. 2a.

MEMORANDUM

The Licensee contends there is no evidence of the length of time that Christine had been living in the home. Pamela testified that Christine started staying there in September 2009 and that they did not know how long she would be there (whether for a few days, or longer) or in what timeframe they were obligated to disclose her residence in the home. She further testified that the only time Christine was in the home during day care hours was on September

25, 2009. The licensing worker, on the other hand, testified that both Christine and Pamela acknowledged to her on September 25, 2009, that Christine had been living there for approximately two months. The licensing worker's testimony is corroborated by the correction order written a few days later. The correction order asserts that Christine had been living in the home for two months, and the Licensee did not dispute this assertion or seek reconsideration of it. She responded only by submitting the background study form and stating that Christine would not help with the children. The Administrative Law Judge has accepted as credible the testimony of the licensing worker on this issue.

In addition, Pamela testified that the only time she provided care to children, in her mother's absence, was on September 25, 2009. This testimony differs from that of the licensing worker, who testified that Pamela admitted to regularly caring for children prior to that date. Based on this information, the correction order asserts that Pamela had been regularly helping the Licensee care for children. Again, the Licensee did not dispute this assertion at the time. Her response was to submit the required forms and to document that the required training had taken place. The licensing worker's testimony is also corroborated by the complaint received from a parent.

The Licensee also argues that the two-year duration of the order of conditional license is excessive because it will have significant financial consequences, in that new parents will be less likely to place their children in her care. The County argued that a two-year period is appropriate given that the previous order of conditional license for one year was not effective in ensuring the Licensee's compliance with day care laws and rules.

It is crucially important that licensed day care providers, and the persons assisting them, give truthful information to licensing workers about conditions in a licensed home. The Licensee was aware of the significance of reporting the identity of people residing in the home, because of the previous background study and disqualification of her husband. Her failure to disclose Christine's residence in the home resulted in a disqualified person providing care, at least on one occasion, to day care children. Considering the nature, chronicity, and severity of the violations of law or rule, and the effect of the violations on the health, safety, or rights of persons served by the program, the decision to order a fine and to place the license on conditional status for a period of two years is reasonable and appropriate. It is calculated to ensure that the County has accurate information about who is residing in the home, providing care for children, and ensuring compliance with the stringent rules that govern the provision of licensed care.

K.D.S.