

February 24, 2023

CERTIFIED MAIL

Hodan M Gudal, Authorized Agent
Blue Sky Day Care LLC
2540 East River Road NE
Rochester, MN 55906

License Number 1088078 (Child Care Center)

ORDER OF LICENSE REVOCATION

Dear Hodan M Gudal:

The Department of Human Services (DHS) is revoking your license to provide child care services at BlueSky Day Care LLC located at 4915 Highway 52 North, Rochester, Minnesota. This revocation is based on the disqualification of a controlling individual. Details of our findings are provided below. Our next steps and your options are also detailed.

The revocation goes into effect on March 6, 2023, at 10:01 p.m., to allow time for delivery of this order and ten days for you to inform the Commissioner whether you intend to appeal the license revocation explained below.

REASON FOR LICENSE REVOCATION

1. Disqualification of a controlling individual

On November 4, 2022, DHS notified you that a controlling individual (C1) had a disqualification, and informed you that C1 could not work in any position in a licensed child care center or have direct contact with, or access to people who receive services.

On November 28, 2022, C1 requested reconsideration of the disqualification. On February 24, 2023, DHS notified you and C1 that the disqualification was not set aside and a variance was not granted. Your program was ordered to ensure that C1 was immediately removed and not returned to any position allowing direct contact with, or access to, persons receiving services from your program. If you appeal this revocation order, the issue of whether C1 poses a risk of harm to children served by the program will be reviewed as a part of the contested case hearing.

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3(a)(2).

2. Controlling individual excluded from DHS administered program

C1 is a controlling individual of your program. On April 27, 2022, DHS issued an Administrative Disqualification & Notice of Refusal to Pay indicating that C1 was no longer authorized to receive Child Care Assistance Program payments in the State of Minnesota, effective May 27, 2022. C1 was disqualified from the Child Care Assistance Program for a period of three years until May 27, 2025. Based on this determination, C1 is prohibited from being licensed during this period of exclusion.

Legal Authority: Minnesota Statutes, sections 245.095, subdivision 1; and 245A.07, subdivision 3(a)(4).

3. Commissioners evaluation of program

In determining whether a licensing action is warranted, DHS evaluated the facts, conditions, and circumstances concerning your program's operation. This includes consideration of the well-being of children served by your program, and information about the qualifications of staff persons that are working in your program.

DHS has determined based on the disqualification of the program's controlling individual, C1, DHS cannot ensure that public funds received by your program will be obtained in compliance with relevant state and federal statutes and cannot ensure that persons who are the intended beneficiaries of those funds receive the care to which they are entitled. Further, as an individual who has been disqualified, and whose disqualification has not been set aside nor a variance granted, C1 may not have direct contact with, or access to, persons served by the program. Accordingly, DHS has determined that revocation of your license is warranted.

Legal Authority: Minnesota Statutes, section 245A.04, subdivision 6; and 245A.07, subdivision 1(a).

Due to the serious nature of these violations and the conditions in the program, which impact the health and safety of persons served in your care, your license to provide child care services is revoked.

YOUR RIGHT TO APPEAL

You have the right to appeal the revocation. Your request must be in writing and clearly state that you are requesting a contested case hearing for this matter. Your request must be made before the deadlines provided below. If you do not meet this deadline, you lose your right to an administrative appeal. The timeline to appeal began when you received this order.

If you are mailing your request, it must be sent by certified mail and postmarked within 10 calendar days from when you received this order. Please send it to:

Office of Inspector General
Legal Counsel's Office
Attention: Licensing Legal Unit
PO Box 64953
St. Paul, MN 55164-0953

If your request is being personally delivered, it must be received by DHS within 10 calendar days from when you received this order. Please bring it to:

Office of Inspector General
Legal Counsel's Office
Attention: Licensng Legal Unit
444 Lafayette Road North
St. Paul, MN 55155

Upon DHS' receipt of your timely appeal, your case would be scheduled for a contested case hearing in front of an Administrative Law Judge. Following this hearing, the Commissioner of DHS will issue a final order. If you do not appeal or if the order is affirmed by the Commissioner following a hearing, DHS is prohibited from issuing you and the controlling individuals a license for five years. In addition, any additional licenses held by you or the controlling individuals shall also be revoked.

Legal representation at the contested case hearing:

You do not need a lawyer to appeal. However, a lawyer can help you with your appeal. The state or county will not get you a lawyer and will not pay for a lawyer. If you cannot afford a lawyer, you may be able to get free legal advice or help with your appeal. To find out if free help is available, contact: Volunteer Lawyers Network at 612-752-6677; Central Minnesota Legal Services at 612-332-8151; Southern Minnesota Legal Services at 651-222-4731; or go to www.lawhelpmn.org to find a local legal services program that may be able to help you.

You can also find information on contested cases from the Office of Administrative Hearings website at <https://mn.gov/oah/self-help>. Click on Administrative Law Overview, then click on Administrative Law Contested Case Hearing Guide for a list of frequently asked questions.

Operating the program pending the outcome of the appeal:

If you file an appeal within the timeframes described above, you may continue to operate pending the outcome of your appeal. If you continue to operate, you must do so in full compliance with all licensing laws and rules. Failure to follow a law or rule that may impact the health or safety of children served by your program could result in the immediate suspension of your license.

If you are a provider authorized to receive Child Care Assistance Program (CCAP) payments, this revocation order could impact your ability to receive CCAP funding. If you have questions about CCAP, contact the County or CCAP agencies where you are authorized to receive CCAP funds.

Posting of this licensing action

You are required to place this Order of License Revocation in a place that is clearly noticeable to the people receiving services and all visitors to the facility for two years, even if you appeal.

Legal authority for this licensing action

- This action is taken under Minnesota Statutes, section 245A.07, subdivision 3, which describes under which conditions DHS may revoke a license.

- The timeline to appeal a revocation order is provided in Minnesota Statutes, section 245A.07, subdivision 3(b).
- "Controlling individual" is defined under Minnesota Statutes, section 245A.02, subdivision 5a.
- When a revocation of a license is based on a disqualification for which reconsideration was timely requested and which was not set aside, the scope of the contested case hearing for the revocation shall also include the disqualification and set aside under Minnesota Statutes, section 245A.08, subdivision 2a, paragraph (a).
- Minnesota Statutes, section 245C.29, subdivision 2 states that a disqualification is final if the commissioner or court has issued a final decision, the individual did not request reconsideration on the basis the disqualification was incorrect, or the individual did not timely request a hearing after being given the right to do so.
- License holders have a right to appeal licensing actions and request a contested case hearing, under Minnesota Statutes, chapter 14 and Minnesota Rules, parts 1400.8505 to 1400.8612.
- The requirement to post this order in a clearly visible location is required under Minnesota Statutes, section 245A.07, subdivision 5.
- If a license holder files a timely appeal of a revocation order, the license holder may continue to operate the program pending a final order of the appeal, under Minnesota Statutes, section 245A.07, subdivision 1(b) and section 245A.04, subdivision 7, paragraph (d), clause (5), if the license holder complies, and submits documentation demonstrating compliance, with the order prohibiting C1 from working in any position in the program or having direct contact with, or access to children who receive services.
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (5), when a license issued under this chapter is revoked under clause (1) or (3), the license holder and controlling individual may not hold any license under chapter 245A for five years following the revocation, and other licenses held by the applicant, license holder, or controlling individual shall also be revoked.
- Under Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d), clause (3), the commissioner shall not issue or reissue a license if the applicant, license holder, or controlling individual has had a license issued under this chapter revoked within the past five years.

Questions

If you have any further questions regarding this matter, you may contact Donna Gainor, Supervisor, at 651-431-6534.

Sincerely,



Peggy Cunningham, Unit Manager
Licensing Division
Office of Inspector General