

November 22, 2023

CERTIFIED MAIL

Kristine Underdale
937 Scenic Drive
Two Harbors, MN 55616

License Number 1061698 FCC

ORDER OF LICENSE REVOCATION

Dear Ms. Underdale:

Based on the recommendation of Lake County Human Services (Lake County), the Department of Human Services (DHS) is revoking your license to provide family child care services at 937 Scenic Drive, Two Harbors, MN. Details of our findings are provided below. Our next steps and your options are also detailed.

REASON FOR LICENSE REVOCATION

1. Commissioner's 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 in your program, available evaluations from consumers of your program, and information about the qualifications of caregivers working in your program. Specifically, because you failed to provide required supervision to children when you were sleeping with children in your care. DHS has determined that revocation of your license is appropriate based on the violations identified below and the program evaluation.

Legal Authority: Minnesota Statutes, section 245A.04, subdivision 6.

2. Determination that the license holder is responsible for maltreatment

September 20, 2023, Maltreatment Determination

On September 20, 2023, Lake County determined that you are responsible for maltreatment of a minor by neglect. Specifically, Lake County determined that you had fallen asleep while children were in care.

You requested reconsideration of the maltreatment determination and Lake County determined that the maltreatment determination was correct. You were notified of your right to appeal this determination through a fair hearing. If you request a fair hearing and if you appeal the revocation order, as explained below, the underlying maltreatment determination will be reviewed as a part of the contested case hearing.

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3 paragraph (a) subparagraph (1).

License holders found responsible for maltreatment are required to pay a \$1000 fine for each determination of maltreatment of minors. Because license revocation is a more severe sanction against your license, DHS is not imposing this fine. If the revocation is rescinded, DHS may impose the fine at that time.

3. Failure to comply with licensing laws and rules

Lake County determined that you failed to fully comply with the laws and rules that apply to licensed family child care program. DHS has considered the nature, chronicity, or severity of the violations that led to the revocation of your license.

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3, paragraph (a), subparagraph (1).

Nature, history and severity of violations

The following are new violations that have not been the subject of a previous correction order. If you appeal this order, the following violations *will* be reviewed as a part of the appeal. DHS considered these violations, as well as the maltreatment determination described above, as a factor when it determined that revocation of your license is appropriate.

On August 21, 2023, Lake County received a report regarding your family child care program. As a result of the report, DHS issued a Temporary Immediate Suspension of your license. You did not appeal the Temporary Immediate Suspension. The Temporary Immediate suspension remains in effect.

Lake County completed an investigation at your licensed program. As a result of the investigation, Lake County determined that you failed to provide required supervision when you admitted to sleeping while children were in your care. Lake County also determined that you were responsible for maltreatment by neglect. You requested reconsideration of the maltreatment determination. In a letter date October 19, 2023, Lake County notified you that the maltreatment determination was upheld.

Rule/Statute Violated: Minnesota Rules, part 9502.0315, subpart 29a and Minnesota Rules, part 9502.0365, subpart 5 and Minnesota Statutes, 260E.03.

Severity of violations

Because you are responsible for maltreatment of children in your care and in order to protect the health, safety, and rights of children in your care, your license to provide family child care 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:

Commissioner, Department of Human Services
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:

Commissioner, Department of Human Services
Office of Inspector General
Legal Counsel's Office
Attention: Licensing 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 a license for five years. In addition, any additional licenses held by you 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:

On August 25, 2023, DHS issued an Order of Temporary Immediate Suspension on your family child care license. Because the immediate suspension of your license remains in effect, if you appeal the revocation, you continue to be prohibited from operating pending a final order from the Commissioner of DHS.

Questions about CCAP

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.

Prohibition against providing legally unlicensed child care

On August 25, 2023, DHS issued an Order of Temporary Immediate Suspension to your family child care program, which disqualified you from providing legally unlicensed child care. You remain prohibited from providing legally unlicensed child care even if you appeal this order.

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

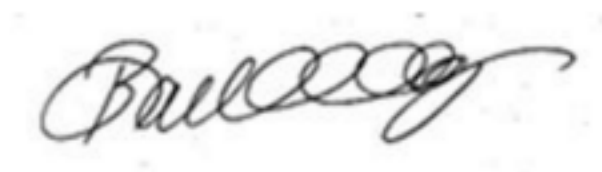
- This action is taken under Minnesota Statutes, section 245A.07, subdivision 3, which describes under which conditions DHS may revoke a license.
- When a revocation of a license is based on a maltreatment determination and/or a disqualification for which reconsideration was timely requested and which was not set aside, the scope of the contested case hearing for the revocation shall also include the maltreatment and/or disqualification and set aside under Minnesota Statutes, section 245A.08, subdivision 2a, paragraph (a).
- When a revocation of a license is based on a maltreatment determination and/or a disqualification of an individual other than the license holder, the hearings of all parties may be consolidated into a single contested case hearing upon consent of all parties and the administrative law judge, under Minnesota Statutes, section 245A.08, subdivision 2a, paragraph (f).
- Minnesota Statutes, section 245C.29, subdivision 1 states that a maltreatment determination is final if the commissioner has issued a final order following an appeal, the individual did not request reconsideration of the maltreatment determination, or the individual did not request a hearing of the maltreatment determination.
- Minnesota Statutes, section 245A.07, subdivision 3, paragraph (c), clause (4) states that license holders shall pay a \$1000 fine for each determination of maltreatment under 260E.
- Minnesota Statutes, section 245.095 defines which programs administered by DHS are included in the exclusion provision, and further defines "excluded," "individual," and "provider."
- License holders have a right to appeal licensing actions and request a contested case hearing, under Minnesota Statutes, chapter 14, Minnesota Rules, parts 1400.8505 to 1400.8612, and Minnesota Statutes, section 245A.08.

- 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.
- 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.
- Minnesota Statutes, section 245A.03, subdivision 2a provides that an applicant for licensure who has received a license revocation that has not been reversed on appeal may not operate as a legally unlicensed child care provider. Operating an unlicensed family child care is a misdemeanor under Minnesota Statutes, section 245A.03, subdivision 3.
- The requirement to post this order in a clearly visible location is required under Minnesota Statutes, section 245A.07, subdivision 5.

Questions

If you have any further questions regarding this matter, you may contact Beth Donahue, Supervisor at 651-431-6565.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara Wagner', is written over a faint, light-colored circular stamp or watermark.

Barbara Wagner, Unit Manager
Licensing Division
Office of Inspector General

cc: Theresa Rose, Lake County Human Services