

May 3, 2024

CERTIFIED MAIL

Kari Ackerman
605 North Lafayette
Fulda, MN 56131-9201

License Number 1063698 FCC

ORDER OF CONDITIONAL LICENSE ORDER TO PAY A FINE

Dear Ms. Ackerman:

Based on the recommendation of Southwest Health and Human Services (SWHHS), the Department of Human Services (DHS) is placing your license to provide family child care at 605 North Lafayette, Fulda, MN on conditional status for one year beginning May 3, 2024. This means you must meet certain conditions to maintain your license, detailed below. This order is based on your level of noncompliance with family child care licensing requirements. Our next steps and your options are also provided below.

In addition, DHS is ordering you to pay a fine of \$400. Details of our findings are provided below.

REASON FOR THE CONDITIONAL LICENSE

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 repeatedly failed to operate within the capacity or distribution limits of your license and because you failed to follow sudden unexpected infant death (SUID) reduction requirements when sleeping an infant. DHS has determined that it is appropriate to place your license on conditional status based on the violations identified below and the program evaluation.

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

2. Failure to comply with licensing laws and rules

As a result of previous licensing visits, SWHHS determined that your program failed to comply with the laws and rules for licensed family child care. DHS has considered the nature, chronicity, and severity of these violations, which are provided below.

Legal Authority: Minnesota Statutes, section 245A.06, subdivision 1.

Nature, history and severity of violations

The following violations summarize the nature of your licensing violations. Because these violations are now conclusive, the individual violations are not within the scope of your appeal rights. Please refer to the previously issued correction orders for further details on these violations. If you do not have copies of these orders, contact your SWHHS licensor for assistance. DHS also considered this history as a factor when it determined that a Conditional License is appropriate.

On April 21, 2022, SWHHS made a visit to your family child care program. As a result of the visit, you were issued a correction order for failure to operate within the capacity and distribution limits of your license. You were caring for three toddlers and nine preschool age children. You were allowed to have no more than two in the infant and toddler age group and no more than ten under school age.

On April 14, 2023, SWHHS made a visit to your family child care program. As a result of the visit, you were issued a correction order for failure to operate within the distribution limits of your license. You were caring for one infant and two toddlers. You were allowed to have no more than two in the infant and toddler age group.

On April 2, 2024, SWHHS made a visit to your family child care program. As a result of the visit, you were issued a correction order for failure to operate with the distribution limits of your license. You were caring for one infant, one toddler, and nine preschool age children. You were allowed to care for no more than ten children under preschool.

You have repeatedly failed to operate your program within your licensed capacity and distribution limits as required.

Additionally, as a result of a licensing visit conducted on April 2, 2024, SWHHS determined that you failed to follow SUID reduction requirements when an infant was observed covered with a blanket sleeping in a crib.

Severity of violations

Due to the serious and chronic nature of these violations, and the conditions in the program, which impact the health and safety of children served in your care, your license to provide family child care is placed on a conditional status.

Conditional License Terms

In addition to the licensing rules and statutes for family child care, you are required to comply with the following terms:

1. You must follow and comply with all applicable Minnesota Rules and Laws.
2. No variances to age distribution or capacity will be granted during the conditional period.
3. You must operate you license as a Class A license.
4. You must submit a written detailed plan on how you will follow SUID reduction requirements when sleeping infants. The plan must also include how you will operate your family child care within the capacity limits at all times. The plan must be submitted to SWHHS **within 15 days of the order** and must be approved by SWHHS.
5. You must complete at least six hours of additional training **within 60 days of this order**. The training is in addition to the annual training requirements as listed in Minnesota Statutes, section 245A.50. The training must include infant safe sleep and following the training you must submit a written summary of the training. Additionally, you must attend SWHHS orientation. Prior to attending training, you must obtain approval from SWHHS that the training is appropriate. You must submit documentation of your attendance to SWHHS.
6. You must either provide a copy of the Order of Conditional License to parents of children in care or document that all parents have been given an opportunity to review the Order. You must obtain parent signatures of each currently enrolled child, indicating they have either received a copy of the Order or had an opportunity to review the Order. You must provide this documentation to SWHHS **within 15 days of this order**. For new families, you must submit documentation of compliance with this term to SWHHS **within 5 days of any child's admission** to your child care program.

Ongoing Monitoring

Your SWHHS licensor will monitor your compliance with these terms and with all of the family child care rules and laws. This will include unannounced visits. If you fail to demonstrate substantial compliance with family child care requirements or with the terms of your conditional license that are provided above, DHS may take an additional licensing sanction, including a revocation of your license.

REASON FOR FINE

1. Violation of Safe Sleep Practices

As a result of a licensing visit conducted on April 2, 2024, SWHHS determined that you failed to follow sudden unexpected infant death (SUID) reduction requirements when an infant was observed covered with a blanket sleeping in a crib.

Statute Violated: Minnesota Statutes, section 245A.1435.

Fine: \$200

2. Failure to Comply with Correction Order

On April 21, 2022, SWHHS made a visit to your family child care program. As a result of the visit, you were issued a correction order for failure to operate within the capacity and distribution limits of your license. You were caring for three toddlers and nine preschool age children. You were allowed to have no more than two in the infant and toddler age group and no more than ten under school age.

On April 14, 2023, SWHHS made a visit to your family child care program. As a result of the visit, you were issued a correction order for failure to operate within the distribution limits of your license. You were caring for one infant and two toddlers. You were allowed to have no more than two in the infant and toddler age group.

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You have repeatedly failed to operate your program within your licensed capacity and distribution limits as required.

Statute Violated: Minnesota Statutes, section 245A.06, subdivision 3.

Fine: \$200

Total Fine Amount \$400

Legal Authority: Minnesota Statutes, section 245A.07, subdivision 3, paragraph (c), subparagraph (4)(i).

YOUR APPEAL/RECONSIDERATION RIGHTS

If You Wish to Appeal the Fine and the Conditional License, or Just the Fine

You have the right to appeal both the fine and the conditional license, or only the fine. 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 receive 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 receive 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 Wish to Only Appeal the Conditional License

If you are not appealing the fine, you do not have a right to a contested case hearing. However, you have the right to request reconsideration of the conditional license and the cited violations. Your request must:

- Be in writing
- Clearly state that you are requesting reconsideration of the conditional license
- List each citation you are challenging and identify what is inaccurate or incomplete about the information in the order
- Supply information that is accurate or more complete
- State why you believe your license should not be on a conditional status
- Be made before the deadlines provided below

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. If you do not meet this deadline, you lose your right to request reconsideration. The timeline to appeal began when you received this order. Please send it to:

Commissioner, Department of Human Services
Office of Inspector General
Licensing Division
Attention: Legal Unit
PO Box 64242
St. Paul, MN 55164-0242

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
Licensing Division
Attention: Legal Unit
444 Lafayette Road North
St. Paul, MN 55155

Billing and Payment of the Fine

DHS will send you an invoice for the \$400 fine. Payment must be made as directed on the invoice.

If you request a contested case hearing, as described above, do not pay the fine at this time. Following the contested case hearing, the Commissioner of DHS will issue a final order on this matter.

Please note, you may not avoid payment of this fine by closing, selling, or otherwise transferring the license to a third party. If this occurs, you are personally responsible for payment.

If you do not pay the fine on or before the date specified on the invoice and you did not request a contested case hearing, as described above, the Commissioner may issue a second fine, may not issue or reissue a license, or may suspend the license until the license holder pays the fine.

Conditional license stayed pending reconsideration

If you request reconsideration within the timeframes described above, the terms of the conditional license will not take effect until a decision is issued by DHS. If the conditional license is affirmed on reconsideration, the terms would take effect on the date of the reconsideration decision, and run for one year from that date. You continue to be required to comply with all family child care laws and rules.

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.

Posting of this licensing action

You are required to place this Order of Conditional License and Order to Pay a Fine 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.

Prohibition against providing legally unlicensed child care

If this action is not reversed on appeal, you will not be allowed to provide legally unlicensed child care to unrelated children. Operating an unlicensed family child care home is a misdemeanor offense.

Legal authority for this licensing action

- This action is taken under Minnesota Statutes, section 245A.07, subdivision 1, paragraph (a), which describes under which conditions DHS may impose a fine against a license.
- DHS may impose a \$200 fine for each health, safety, or supervision licensing violation under Minnesota Statutes, section 245A.07, subdivision 3, paragraph (c)(4)(iv).
- Minnesota Statutes, section 245A.07, subdivision 3, paragraph (c)(5) states that license holders may not avoid payment of a fine by closing, selling, or transferring a license.
- Minnesota Statutes, section 245A.04, subdivision 7, paragraph (d)(4), states that DHS shall not issue or reissue a license if the applicant, license holder, or controlling individual has an outstanding debt related to a license fee, licensing fine, or settlement agreement for which payment is delinquent.
- Minnesota Statutes, section 245A.07, subdivision 3, paragraph (c)(2), states that that the license holder shall pay the fine assessed on or before the payment date specified, and if the license holder does not do so the commissioner may issue a second fine or suspend the license until the license holder complies.
- The timeline to request reconsideration of the order of conditional license is provided in Minnesota Statutes, section 245A.06, subdivision 4.
- 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.
- If a license holder files a timely reconsideration request, the terms of the conditional license are stayed pending a decision by DHS under Minnesota Statutes, section 245A.06, subdivision 4.
- Under Minnesota Statutes, section 245A.06, subdivision 4, if DHS issues a dual order to pay a fine and a conditional license and the license holder appeals both the fine and the conditional license, DHS will not do a separate reconsideration of the conditional license. If the license holder does not appeal the fine but requests reconsideration of the conditional license, then the license holder does not have a right to a hearing and DHS will conduct a reconsideration of the conditional license.
- Operating a prohibited unlicensed family child care program is a misdemeanor offense 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.06, subdivision 8 and Minnesota Statutes, section 245A.07, subdivision 5.

Kari Ackerman

May 3, 2024

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Questions

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

Sincerely,

A handwritten signature in black ink, appearing to read "BD", is centered on the page.

Beth Donahue, Supervisor
Licensing Division
Office of Inspector General

cc: Lori Tammeus, Southwest Health and Human Services