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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0494**

Michael Jay, et al.,  
Relators,

vs.

Commissioner of Human Services,  
Respondent.

**Filed November 5, 2012  
Reversed  
Peterson, Judge**

Minnesota Department of Human Services  
File No. 107442 RO2

Patricia Alander Aanes, Erickson & Aanes PLLC, Brainerd, Minnesota (for relators)

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Considered and decided by Peterson, Presiding Judge; Stauber, Judge; and Larkin,  
Judge.

**UNPUBLISHED OPINION**

**PETERSON**, Judge

In this certiorari appeal, relators Tina and Michael Jay challenge a decision by respondent Commissioner of the Minnesota Department of Human Services to affirm an order imposing a conditional license on their home daycare center. We reverse.

## FACTS

Relators Tina and Michael Jay began operating a licensed daycare center in 1990. The daycare center is attached to relators' home in Brainerd. Michael Jay works in the daycare center full time with staff, and Tina Jay works in the center when she is available or needed. Since 1998, Tina Jay has worked for the Ninth Judicial District in Crow Wing County as a Guardian ad Litem.

Until August 16, 2011, relators lived in their home with their two minor daughters and their 18-year-old son Tyler Jay. Tyler Jay has never been a caregiver in the daycare center. On August 16, relators moved Tyler Jay out of their home after they learned that a minor child reported that Tyler Jay touched him inappropriately in an incident that occurred at Tyler Jay's workplace on August 15.

On August 16, law-enforcement officers interviewed Tyler Jay at his workplace and then informed Tina Jay about the incident. Tina Jay knew that Tyler Jay had to be immediately removed from the family home and arranged for him to immediately begin living with her adult son Cory Jay. While Tyler Jay was still at work, relators moved his belongings from their home. Cory Jay picked up Tyler Jay at work and brought him to his home, and Tyler Jay has lived there continuously since he got off work on August 16. Tyler Jay returned to relators' home one time in September 2011 to attend his sister's wedding. He was continuously supervised by two adults, and the daycare center was not in operation.

On October 7, DHS disqualified Tyler Jay from direct contact with and access to children in relators' care based on information from the Crow Wing County Sheriff's

Office that there was a preponderance of evidence that Tyler Jay was involved in an act of second-degree criminal sexual conduct. In December, the commissioner of DHS affirmed the disqualification.

As a result of Tyler Jay's conduct at his workplace on August 15, an investigation began on September 1 to determine whether relators had committed any licensing violation.<sup>1</sup> On September 28, the Minnesota Department of Human Services (DHS) issued a temporary immediate suspension (TIS) of relators' daycare license. Relators appealed, and DHS scheduled a contested hearing.

Following a contested hearing before an administrative law judge (ALJ), the ALJ concluded that relators committed no violations of law or rule and that no facts supported a suspicion of an imminent risk of harm to children in relators' care. The ALJ recommended that the TIS be immediately rescinded. On November 22, the commissioner rescinded the TIS. The commissioner adopted and incorporated all of the ALJ's findings of fact and adopted all but one of the ALJ's conclusions of law. The commissioner adopted the ALJ's conclusion of law that relators "committed no violations of law or rule."

On December 13, DHS placed relators' license on conditional status for two years, citing its authority under Minn. Stat. § 245A.06 (2010). DHS stated:

Because an individual subject to a background study has been disqualified from having any direct contact with, or access to, persons served by programs licensed by [DHS]; because the

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<sup>1</sup> To avoid any potential conflict of interest because of Tina Jay's position as a Guardian ad Litem in Crow Wing County, Morrison County Social Services conducted the investigation.

disqualified individual does not reside in the home where [relators] are licensed to operate [their] family child care program; and in order to protect the health and safety of children receiving services in DHS-licensed programs, [relators'] license to provide family child care is made conditional for a period of two years.

In affirming the conditional license, the commissioner stated:

The record demonstrates that [Tyler Jay] was correctly disqualified from direct contact with and access to children in [relators'] care. Due to the extremely serious nature of the disqualifying offense, the order of Conditional License was issued to protect the health and safety of children receiving services from [relators'] licensed program. While the Commissioner appreciates [relators'] immediate removal of the individual from the residence, given the nature of the disqualifying event, it is determined that conditions on [relators'] license remain necessary to protect the health and safety of children in [relators'] care.

Relators requested reconsideration, asserting that there was no basis for issuing the conditional license because they had not violated a law or rule, or, alternatively, that some of the conditions on their license were unreasonable. The commissioner affirmed the conditional license, but modified some of the conditions. This certiorari appeal follows.

## **D E C I S I O N**

“Judicial review presumes the correctness of an agency decision.” *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006). In reviewing agency decisions, an appellate court must exercise judicial restraint and not substitute its judgment for that of the agency. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) An agency’s decision must be upheld

unless it violates the constitution, exceeds the agency's authority or jurisdiction, results from unlawful procedure or other error of law, is not supported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 14.69 (2010).

“We decline to give judicial deference to an administrative decision interpreting statutory language when the interpretation contravenes plain statutory language, or where there are compelling indications that the agency's interpretation is wrong.” *In re Temp. Immediate Suspension of Family Child Care License of Strecker*, 777 N.W.2d 41, 45 (Minn. App. 2010) (quotation omitted). We review “de novo errors of law which arise when an agency decision is based upon the meaning of words in a statute.” *In re Denial of Eller Media Co.'s Applications for Outdoor Adver. Device Permits in City of Mounds View*, 664 N.W.2d 1, 7 (Minn. 2003).<sup>2</sup> To determine whether a statute has been properly applied, we focus on the words of the statute to “ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2010). “Where the meaning of statutory language is plain and free of ambiguity, we apply that meaning as a manifestation of legislative intent.” *Meuleners*, 725 N.W.2d at 123 (quotation omitted).

Relators argue that because they did not violate a rule or law, DHS did not have authority to issue a conditional license under Minn. Stat. § 245A.06. We agree. The Minnesota Human Services Licensing Act authorizes the commissioner to impose

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<sup>2</sup> Citing *Blue Cross & Blue Shield*, the commissioner contends that “deference should be given to the commissioner's expertise in administering and enforcing the DHS licensing statutes.” But the statutory language at issue is plain. See *Meuleners*, 725 N.W.2d at 124 (“Administrative interpretations are not entitled to deference when they contravene plain statutory language, or where there are compelling indications that the agency's interpretation is wrong.”).

sanctions when a licensee fails to comply with an applicable law, rule, or term of a correction order or conditional license. Minn. Stat. §§ 245A.06-.07 (2010). The commissioner may issue a correction order or conditional license, suspend or revoke a license, impose a fine, or secure an injunction. Minn. Stat. §§ 245A.06, subds. 1-3, .07, subds. 1, 3. Licensors and inspectors may also place the license holder on probation. Minn. R. 9543.0100, subp. 5 (2010).

Minn. Stat. § 245A.06, subd. 1 states:

If the commissioner finds that the applicant or 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 applicant or license holder.

Under the plain language of the statute, the commissioner has authority to issue an order of conditional license “[i]f the commissioner finds that the . . . license holder has failed to comply with an applicable law or rule.” The commissioner argues that relators violated Minn. Stat. § 245C.14, subd. 2(a) (2010), because Tyler Jay’s disqualifying incident occurred on August 15 and he lived in relators’ household until August 16. We disagree.

DHS exercised its authority under Minn. Stat. § 245C.14, subd. 1 (2010), to disqualify Tyler Jay from any position allowing direct contact with persons receiving services from relators. And section 245C.14, subdivision 2(a), provides that an individual disqualified under subdivision 1 shall be disqualified from access to persons served by the license holder. Although the incident that led to Tyler Jay’s disqualification occurred on August 15, he was not disqualified from having direct

contact with or access to children served by relators' program until October 7, 2011. Under the plain language of Minn. Stat. § 245C.14, subd. 2(b) (2010), the prohibition against Tyler Jay having access to children served by relators' program began when Tyler Jay was disqualified. There is no evidence in the record that Tyler Jay resided at relators' home or had any access to or contact with children served by relators' program since August 16, 2011, the day that law enforcement interviewed Tyler Jay about the August 15 incident and informed relators about the incident. Consequently, there has been no showing that relators failed to comply with an applicable law or rule, and the commissioner erred in affirming the order of conditional license.

Because we conclude that the commissioner erred in affirming DHS's imposition of a conditional license, we do not address relators' alternative argument that some of the license conditions are unreasonable.

**Reversed.**