

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD
Community Care and Assisted Living Act,
SBC 2002, c. 75

APPELLANT: NAK, Family Child Care Licensee

RESPONDENT: Dr. John Blatherwick, Chief Medical Health Officer,
Vancouver Coastal Health

PANEL: Marcia McNeil, Panel Chair
Sheila Ebenstiner, Member
Ken Pauli, Member

ORAL HEARING: June 7, 2005
Vancouver, B.C.

APPEARING FOR THE APPELLANT: NAK

APPEARING FOR THE RESPONDENT: Alice Munger, Supervisor, CCFL

Decision
(rendered orally after the hearing)

[1] The Panel has considered the evidence before it and has decided to give oral reasons of its decision today.

[2] This is a hearing of an appeal brought by the appellant, NAK, against the decision of the Chief Medical Health Officer of the Vancouver Coastal Health Unit. His decision was made pursuant to s. 13(1) of the *Community Care and Assisted Living Act* and it was to cancel the licence of the Family Child Care facility owned and operated by NAK.

[3] The Chief Medical Health Officer's decision was communicated to the appellant in a letter delivered to her on April 7th, 2005 and was to have been effective originally on May 7th, 2005, but later an extension was granted until June 15th, 2005. It is for these reasons that a decision was made to expedite this hearing and to attempt to have the matter heard before the expiry date of June 15th, 2005. There is no issue raised in the hearing that the appellant properly appealed the decision of the Chief Medical Health Officer.

[4] By way of background facts, the appellant was first issued an interim permit to operate her Family Child Care facility in March 2003. This permitted her to operate a facility with a maximum capacity of four children. Subsequent interim permits were also provided and the appellant was granted a licence on March 3rd, 2004. The licence also set out provisions that are contained in the *Regulations* to the *Act* restricting the number of children under three years of age to three at any time, and the number of children under 12 months of age to one at any time.

[5] From time to time, licensing officers attended at the appellant's facility to conduct site inspections. In the course of these inspections, the appellant was instructed not to use the basement of her home as part of her daycare until she had completed specified upgrades which had been approved. She was also advised that the upstairs of her home was only to be used for napping. Also, on a number of occasions, licensing officers determined that the appellant was not in compliance with the maximum enrolment specified on her licence and this was brought to her attention.

[6] In December 2003, the appellant was advised that she could apply for a temporary placement which would allow her daughter to remain at the facility on days when she had three other children under three years of age present. However, the temporary placement required her to have a second adult caregiver present.

[7] Non-compliance with the licence was noted in February of 2004 when a licensing officer noted that four children under the age of three were present at the residence without a second care provider present. Similar non-compliance was noted on February 10th. The non-compliance was acknowledged by the appellant in a meeting with the licensing officers on February 13th, 2004.

[8] Site inspections again noted non-compliance in October 2004. Again, the non-compliance was discussed with the appellant and she was warned that further contraventions could result in action against her licence.

[9] In March 2005, non-compliance was again noted, in that it was determined that there were seven children under the age of three, as well as the appellant's daughter, who was by then older than three, being cared for at one time. While there was a second care provider available, these numbers were considerably outside the term of the appellant's licence. At the time the non-compliance was noted, the appellant was not initially forthcoming about the number of children that she was caring for. In a subsequent meeting, the appellant acknowledged that she was not in compliance with her licence and indicated that she had been out of compliance for financial reasons.

[10] The same site inspection also determined that the appellant's basement was being used as part of her daycare, although the required upgrades had not taken place. This was discussed

with the appellant and she indicated she was not aware of the requirement despite previous correspondence to this effect that had been given to her.

[11] A further site inspection on March 18th determined that, again, the basement was being used as part of the daycare, contrary to the specific instructions given to the appellant.

[12] We do note that it is agreed between the parties that, since the Chief Medical Health Officer communicated his decision to cancel the licence to the appellant, subsequent site visits have found that the appellant has been in compliance with the terms of her licence. The appellant stated, in the hearing of this matter heard today, that she knew she was not in compliance in the past, that the situation of being out of compliance had been stressful for her, and that she had not realized the significance of the consequences of her non-compliance. The appellant assured this Panel that she would remain in compliance if she was given another chance.

[13] Under the *Community Care and Assisted Living Act*, this Board must listen to the evidence presented to it, but, in order to alter the decision under appeal, the Panel must be convinced that the decision under appeal was not justified. The appellant admits that she knew of the requirements of her licence. She knew that she was in contravention of her licence requirements and she had been advised that her licence was in jeopardy if she continued to act in contravention of the licence. As noted earlier, the contraventions of her licence occurred over a period of more than 18 months.

[14] In these circumstances, the Panel finds that the decision of the Chief Medical Health Officer was justified and this Panel confirms the decision under appeal.

Marcia McNeil

Sheila Ebenstiner

Ken Pauli