

## COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

*Community Care and Assisted Living Act,  
SBC 2002, c.75*

**APPELLANT:** KR, Licensee  
(operating Happy Hearts Daycare)

**RESPONDENT:** Suzanne Sellin, Manager, Community Care Facilities Licensing,  
Fraser Health Authority

**PANEL:** Susan E. Ross, Chair

### Revocation of Conditional Stay Order

[1] On September 14, 2007, the Board made a conditional order staying the decision under appeal of the Fraser Health Authority ("FHA") canceling the licence of Happy Hearts Daycare. The FHA originally intended to cancel the licence effective August 10, 2007. However, in a reconsideration decision dated August 8, 2007, the FHA extended the cancellation date to September 14, 2007 to permit the families of children in care to find alternate care for their children. On September 7, 2007, the appellant appealed the licence cancellation decision to the Board. The appellant asked for a stay pending appeal, the Board received the parties' written submissions on that request and made its conditional stay order on September 14, 2007. The conditional stay order had various terms. These included the requirement for strict compliance by the appellant with the *Community Care and Assisted Living Act* ("CCALA"), the *Child Care Licensing Regulation* ("Regulation") and the terms of the conditional stay order itself and the requirement that the parties make themselves available for early scheduling of the appeal.

[2] Requests for variation and clarification of the conditional stay order followed, as did FHA inspection reports of concerns about the appellant's interpretation and compliance with that order.

[3] The Board denied the appellant's request for more relaxed terms, or interpretations, of the conditional stay order and the parties were informed that the Board would be scheduling the appeal for hearing before the end of October 2007. On September 27, 2007, the Board Director, on my instructions, informed the parties that the appeal would be set for hearing on October 22 and 23, 2007. The parties were also alerted that, after hearing from the appellant respecting the most

recent FHA inspection report, the Board would if necessary review the continued viability of the whole of the stay order.

[4] In her further submission dated October 1, 2007, the appellant has requested deferral of the hearing of the appeal to late November. She has stated that in her view Board guidelines entitle her to the usual 20 days prior to the hearing date to prepare her submissions on appeal and this is not said to be otherwise when a conditional stay order is in place. She says that closing down Happy Hearts Daycare to prepare for her appeal of the cancellation of her licence is not acceptable as she wants to assist the families with children in her care by keeping her facility open pending determination of her appeal. She points to responsibilities to her own family that are weighing on her and to the stress of the licence cancellation and appeal. Regarding the most recent FHA inspection report, the appellant's response is that last week she did not instigate her alternate caregiver to transport children to and from their homes or school and Happy Hearts Daycare before the alternate caregiver's qualifications were established under the Regulation. She states that those events resulted from the actions of parents.

[5] The FHA has not supported the granting of a stay order from the outset. It continues in that position and opposes later hearing dates on the grounds that an early conclusion of the appeal is in the interests of all concerned, particularly the families involved, and monitoring of the conditional stay order would be difficult for any extended period of time.

[6] The Board has also received letters dated October 4 and 5, 2007 from three parents of children in care at Happy Hearts Daycare who support the appellant's request for a later hearing date and for the stay of the licence cancellation until that time.

[7] As the Board observed in its September 14, 2007 conditional stay order, the FHA's June 22, 2007 investigation report is comprehensive and the FHA reconsideration decision under appeal appears to have been thoughtfully undertaken in a procedurally fair manner. The licensing history involved is extensive and the appellant, under section 29(12) of the CCALA, "bears the burden of proving that the decision under appeal was not justified".

[8] The Board has also reminded the appellant that it is her responsibility to maintain compliance with the CCALA, the Regulation and the terms of the conditional stay order.

[9] Section 29(6) of the CCALA provides that the Board may not stay or suspend a decision unless it is satisfied, on summary application, that doing so would not risk the health or safety of a person in care. The Board has already noted in an earlier decision in this matter that risk to the health or safety of the children who attend Happy Hearts Daycare is therefore an indispensable, and the single most important, consideration for the Board in deciding whether to stay, or continue to stay, the cancellation of a facility licence while that decision is under appeal.

[10] A stay order is a safe and fair holding pattern pending the hearing and disposition of the appeal that is at stake. Applications around whether to grant or continue a stay order are not the place to hear and decide the merits of the appeal and a stay order should not be made or continued if its management requires inordinate diversion of the parties' attention or resources away from the progress of the appeal itself.

[11] The question of whether the appellant is suitable and governable as a licensee was central to the FHA licence cancellation decision that is under appeal. In the Board's view, it has also become central to the manageability of the conditional stay order. The appellant has demonstrated marked difficulty in coming to grips with the requirement for strict compliance with the CCALA, the Regulation and the terms of its stay order, while marshaling the merits of her appeal for early hearing which is a condition of the stay order. She has requested approximately five more weeks prepare for the hearing of the appeal, with a continuation of the conditional stay order in the meantime. The appellant's submissions to the Board indicate that she is taxed by responsibilities that are not limited to operating Happy Hearts Daycare or preparing her appeal to the Board.

[12] The Board recognizes the importance of the appellant being able to put her best foot forward on her appeal and has decided to grant later hearing dates. The Board Director will consult the parties shortly about dates for hearing the appeal in late November or December and about resultant adjustments to the schedule for exchange of the parties' written submissions in advance of the hearing date.

[13] The Board has also decided that its order staying the licence cancellation decision under appeal will be revoked effective at **midnight on Friday, October 19, 2007**. As of that time and date, the FHA licence cancellation decision will resume and Happy Hearts Daycare will not be licensed to operate a community care facility pending the outcome of the appeal. (The appellant's ability under the CCALA to care for up to two children or one sibling group not related to her on an unlicensed basis will not be affected.)

[14] This will give families of children in care at Happy Hearts Daycare two weeks to make other arrangements. It will also ensure that the appellant need not compromise her efforts on her appeal or her responsibilities to her own family in favour of the discharge of her child care responsibilities at Happy Hearts Daycare, or *vice versa*.

[15] A decision under appeal may not be stayed unless the Board is satisfied that doing so would not risk the health or safety of a person in care. This is the standard that must be applied. The Board is concerned about the combined unmanageability of the current pressures on the appellant. It is not satisfied that setting later hearing dates while permitting Happy Hearts Daycare to continue to operate, even under restrictive conditions, would be an adequate response in the circumstances

or, indeed, that it would be appropriate to measure risk to the health or safety of children in care against the needs of the appellant in his way.

[16] The Board recognizes that this decision to revoke the stay order is not the solution the appellant wants. The Board also recognizes that the appellant, and the parents who support her, appear to strenuously object to virtually all the conclusions in the FHA's decision to cancel the facility licence. It is the appellant's right to take that position and it is her right to advance that position forcefully and effectively on her appeal. These matters will be fairly heard and decided in due course by a designated panel of the Board, not on an interim application pending the hearing of the appeal.

October 5, 2007

Susan E. Ross, Chair