

COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD

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

APPELLANT: PC, Licensee
(operating Wee Care Family Daycare)

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

PANEL: Susan E. Ross, Chair

Conditional Stay Order Pending Disposition of Appeal

[1] The appellant operates a licensed community care facility called Wee Care Family Daycare in Chilliwack, British Columbia ("Daycare"). In a reconsideration decision dated October 17, 2007, under section 17 of the *Community Care and Assisted Living Act* ("CCALA"), the Fraser Health Authority ("FHA") confirmed the August 31, 2007 decision of its licensing officer to cancel the appellant's licence to operate the Daycare. The licence cancellation was initially to be effective November 2, 2007, but the reconsideration decision varied the effective date to midnight on Friday, November 16, 2007.

[2] On October 30, 2007, the appellant filed an appeal of the reconsideration decision. She also requested an order staying the cancellation of the licence until the completion of her appeal.

[3] The Board's authority to stay the cancellation decision and to attach terms or conditions to its order comes from sections 15, 26(9) and 50(2) of the *Administrative Tribunals Act* ("ATA") and section 29(6) of the CCALA. Sections 15, 26(9) and 50(2) of the ATA empower the Board (or the Board Chair or her delegate) to make interim orders and to attach terms or conditions on orders. 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.

[4] The Board has the appellant's notice of appeal and request for a stay of the licence cancellation under appeal (6 pages), the FHA's October 17, 2007 reconsideration decision that confirmed cancellation of the licence (9 pages), the

FHA's August 31, 2007 investigation report and licence cancellation decision (31 pages plus 12 Appendices), the appellant's September 27, 2007 response to the investigation report and appendices, the FHA's November 1, 2007 response to the request for a stay order and the appellant's November 2, 2007 reply to the FHA's response. All of these materials have been reviewed, with the exception of detailed perusal of the voluminous appendices to the August 31, 2007 report.

[5] The Daycare was first licensed on February 7, 1991. In 2007, the FHA conducted a review of the recent and past licensing history of the Daycare due to alleged recurring non-compliance of minimum standards set out in the legislation. The purpose of the August 31, 2007 investigation report was to provide an overview of the operational history of the Daycare and review all documentation pertaining to the licensing file from November 1, 2002 until June 22, 2007.

[6] The August 31, 2007 investigation report described compliance concerns over the past five years in regard to:

- supervision of children in care and staffing qualifications;
- ages of children in care/number of children in care;
- manager's time away from the facility; and
- suitability of licensee and standards to be maintained.

[7] In her September 27, 2007 response to the investigation report and notice of appeal of the reconsideration decision, the appellant disputes many facts and conclusions in the report.

[8] The FHA supports a stay of the cancellation decision pending the completion of the appeal on specified conditions aimed at reducing any risk to children in care:

Fraser Health does believe that the evidence on the file does indicate a risk to the health and safety of children in [the appellant's] care particularly in respect to supervision practices and taking additional children into care. Licensing's concern is based on [the appellant's] inability to maintain compliance with the regulations over time when the level of licensing monitoring is not as frequent and she is expected to independently maintain compliance.

However, Fraser Health Licensing also recognizes that [the appellant] demonstrates a pattern of remaining in compliance after she has been found in non-compliance and when monitoring by licensing staff is increased. If a Stay is granted, Licensing will be monitoring this facility on a regular and more frequent basis, therefore, Licensing is of the opinion that [the appellant] will maintain compliance with the regulations over the short term.

[9] The conditions proposed by the FHA are that:

- a) the appellant remains on site and operates the Daycare 100% of the time that it is in operation, except in the event of an emergency, at which time she must use a fully qualified substitute under the Child Care Licensing Regulation; and
- b) there are no new enrollments during the period of the stay.

[10] In reply to the FHA's conditional support of her request for a stay of the license cancellation pending completion of her appeal, the appellant stated that she agreed to the FHA's proposed condition b) and to increased monitoring, but she requested that the FHA inspections be conducted by a different licensing officer than the one who prepared the August 31, 2007 investigation report and made the initial licence cancellation decision. The appellant disputes the reasonableness, need for and workability of FHA's proposed condition a) on the following grounds:

I do have a problem with [the respondent's] request that I be home 100% of the time as I do provide pickups and drop offs at schools and from homes. I also take children out for outings such as drop in centre at CCRR (Chilliwack Community Resource and Referral). I will offer that I will use only my daughter or my partner for short periods while I am out of the center.

[11] Having considered the materials provided by the parties in respect of the stay application, the Board is satisfied that, pending the final disposition of this appeal, a conditional interim stay of the decision to cancel the appellant's license to operate the Daycare would not risk the health or safety of a person in care.

[12] The Board intends to schedule the hearing of the merits of this appeal for early 2008. Having regard to off-site transportation and field trip services the appellant may provide to children in care at the Daycare and her ability to maintain compliance with licensing requirements when subject to monitoring, the Board will not impose FHA's proposed condition a).

[13] The Board declines to impose a condition or restriction of any kind on the identity of the FHA staff involved in monitoring the Daycare. The FHA is responsible for work assignment amongst its staff and for determining the frequency and adequacy of monitoring of licensed facilities. It is the appellant's obligation to maintain compliance with the CCALA, the Child Care Licensing Regulation and this order and to cooperate with the FHA's compliance monitoring including with any licensing officer that the FHA assigns to the task.

[14] Under section 29(6) of the CCALA and sections 15, 26(9) and 50(2) of the ATA, the Board orders that the cancellation decision under appeal is stayed until February 15, 2008, the final disposition of the appeal or until further order of the Board, whichever comes sooner, on the following conditions:

- a) There will be no new or additional enrollments to the Daycare.

- b) The appellant will be absent from the Daycare when it is in operation only for the purpose of providing transport to children in care to and from the Daycare, their home, school or a recreational facility. A fully qualified substitute under the Child Care Licensing Regulation will be onsite at the Daycare whenever the appellant is off-site while it is operating.
- c) The appellant will fully cooperate with all continued monitoring by the FHA.
- d) The appellant will comply strictly with this order and any existing conditions attached to the Daycare license.
- e) The appellant will ensure that the Daycare is in full compliance with the CCALA and the Child Care Licensing Regulation.
- f) The appellant will comply with all Board case management and scheduling requirements for the hearing of the appeal.

[15] The FHA may request the Board to vary or lift this order if it has reason to believe that the conditions of the stay are not being complied with in a material respect or that, on any new information, the continued operation of the Daycare pending the disposition of the appeal of the cancellation decision puts at risk the health or safety of a person in care at the facility.

[16] The Board thanks the parties for their submissions to date and reminds them that this order is limited to whether the licence cancellation decision should be stayed pending disposition of the appeal and is not a determination or reflection on its merits.

November 8, 2007

Susan E. Ross, Chair