



## Community Care and Assisted Living Appeal Board

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### DECISION NO. 2013-CCA-002(a)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act* S.B.C. 2002, c.75

**BETWEEN:** JM, Licensee **APPELLANT**  
(operating Peek a Boo Daycare)

**AND:** Dr. Richard Stanwick, Chief Medical Health Officer, Island Health **RESPONDENT**

**BEFORE:** Alison H. Narod, Acting Chair

**DATE:** Conducted by way of written submissions  
concluding on Wednesday December 11, 2013

**APPEARING:** For the Appellant: Self-represented  
For the Respondent: Kathryn Stuart, Counsel

### PRELIMINARY DECISION: STAY APPLICATION

[1] This decision deals with the Appellant's request for a stay of the Respondent's decision to cancel her license to operate Peek a Boo Daycare, a licensed family child care facility. The Respondent's decision to cancel the license is effective December 14, 2013. The Appellant asks the Community Care and Assisted Living Appeal Board for a temporary suspension of the cancellation decision in order for her to continue to operate the daycare pending a hearing and the determination of her appeal to the Board against the Respondent's decision to cancel her License.

[2] On the evidence before me, I have concluded that I cannot stay the Respondent's decision because I am not satisfied that a stay would not risk the health or safety of a person in care.

[3] The Board has no discretion under section 29(6) of the *Community Care and Assisted Living Act* (the "Act") to stay a decision, "unless it is satisfied, on summary application, that a stay or suspension would not risk the health or safety of a person in care". In considering an application for a stay, the Board must make the determination whether or not to grant a stay on "summary application". This means that the application must not be turned into a full review of the case on the

merits and, if the determination cannot be made without the need for conducting in essence a full review of the merits, then it would not be appropriate to grant a stay.

[4] I wish to emphasize that this decision has been made based on the materials submitted as part of the stay application solely for the purposes of determining whether the cancellation decision should be stayed pending disposition of the appeal. It is not a determination on the merits and in no way affects the Appellant's ability to continue to pursue her appeal of the decision.

[5] I have read the submissions of the parties and note that the Respondent based its decision on its findings that the Appellant had engaged in various contraventions of the *Act* and the *Child Care Licensee Regulation* (the "Regulation").

[6] The issue on this stay application is whether the stay "would not risk the health or safety of a person in care".

[7] The facts that I relied on in denying the Appellant's application are the following:

1. The Appellant was authorized to provide care for up to a maximum of four children under the age of 48 months, provided there was no child younger than 12 months present, pursuant to s.7(1)(b)(i) of the Regulation.
2. The Appellant has admitted that on April 17, 2013 she left six children, five of whom were under the age of 48 months, alone in a parked vehicle for over four minutes while she conducted her banking. The children ranged in age from 23 months to 4.75 years. This contravened both s.39(1) and s.7(1)(b)(i) of the Regulation.
3. The parking lot is said to be a very busy one.
4. Although the Appellant claimed she had the children in sight and therefore did not neglect or fail to supervise them, the Bank's security camera footage is said to show that she could not and did not have them in her line of sight at all times while she was in the bank conducting her banking.
5. The Appellant told Constable Ryan Miller that she had left the children in the parked vehicle for three minutes. In contrast, the Appellant told Licensing on one instance that she was only in the bank for a "quick minute" and on another that she was only there a minute. She did not admit to Licensing that she was there for four minutes until she was shown the Bank's security camera footage which contradicted her account of events.
6. The Appellant supplied Licensing with photographs which she said showed she could see the children in the parked car from where she stood in the bank. However the Bank's security camera footage showed her standing in a different location for much of the time, where she would not have been able to see the children.

7. The Appellant was advised that she contravened s.39(1) and s.7(1)(b)(i) of the Regulation by leaving young children in her vehicle without supervision on April 17, 2013.
8. The Respondent was of the view that the children could have suffered harm. For example, the children could have exited the vehicle or become entangled in their seat belts.
9. The Appellant was told to file an incident report and notify all the parents whose children were left alone and unsupervised in the vehicle, but she did not file the incident report until five months later, on September 22, 2013. She has not yet provided confirmation that all parents have been informed of the incident, as she was required to do.
10. On a follow-up inspection on July 24, 2013, the Appellant had five children in care under the age of 48 months. This also contravened s.7(1)(b)(i) of the Regulation.
11. In a letter dated December 8, 2013 the Appellant says she had numerous inspections during the investigation and she has been compliant with everything that was asked of her.

[8] In her Notice of Appeal, the Appellant argues that the Respondent's decision should be changed for various breaches of administrative process. In support of her application for a stay, among other things, she says that granting the order would not risk the health or safety of any children in care as the concerns of the Respondent have been addressed by way of correction on the part of the Appellant.

[9] Additionally, she says that if the order is not granted, then the parents of the children in her care will be without care for the appeal period (up to 120 days), particularly through the holiday season, when it is more necessary for the parents, and that her livelihood, including the welfare of her two children and her home mortgage, will be irreparably harmed during the appeal period.

[10] With respect to her first reason, the Appellant admits she made a bad decision on April 17, 2013 and says it was a lack of judgment. She also says she will not leave the children alone again while running her errands and that she now uses the van only for emergencies, going everywhere with the children on foot. She further states in her submissions that "I have been taking care of the children while the investigation was in effect since April 2013 with no danger to their safety or health always with diligent supervision". She notes that she has had numerous inspections during this time, has complied with anything asked of her and she is sorry for her lack of judgment in April. She also provides letters from parents expressing confidence in her child-care abilities.

[11] With respect to her second reason, it does not relate to the health and safety of children in care. Rather, it relates to the needs and convenience of their parents and the livelihood and convenience of the Appellant. The balance of convenience and potential irreparable harm that may be incurred if the stay is not granted are factors the Board may only consider when exercising its discretion to grant a stay

after the threshold question of whether there is any risk to the health or safety of a person in care has been determined and the Board is satisfied a stay would not present such a risk. The parents' testimonials do not relieve the Board from its obligation to first determine whether it can be satisfied that if a stay is granted the Appellant will not put the health and safety of children in care at risk, such as by failing to adequately supervise children or by having an excessive number of children in care again, as well as by not complying with the *Act* and Regulation.

[12] With respect to the Appellant's contention that the Respondent's concerns have been corrected, I note that the Respondent's concerns include the fact that the Appellant had more than the maximum number of small children in her care and that she had left those children without supervision in a vehicle in a busy parking area. Additionally, the Respondent is concerned that the Appellant deliberately attempted to mislead it during the course of its investigation by mis-describing the incident and by supplying pictures taken from a misleading position. She minimized the significance of her actions and did not appear to take her obligations seriously. She did not admit the true facts until confronted with the Bank's video recording which contradicted her version of events.

[13] The evidence before me does not give me confidence that there is no risk that the Appellant will avoid putting children in care at risk to their health and safety or that she will be honest and forthright about it if she does put them at risk. She engaged in serious contraventions of the *Act* and Regulation on April 17, 2013 by having too many small children in care and leaving them unsupervised in a van parked in a busy parking lot. She then was not honest and forthright about it during Licensing's investigation and she minimized the incident. She repeated one of the serious contraventions on July 24, 2013 when she again had too many small children in care. In her submissions in this application, she said she had been compliant since April 2013. She is either not being honest or forthright about the contravention in July 2013 or she does not consider it significant.

[14] The foregoing is sufficient for me to conclude that there is a risk that the Appellant may engage in another contravention of the *Act* and Regulation should there be a stay. There is evidence which shows that she does not take her obligations to ensure the health and safety of children in care seriously and she is willing to neglect these obligations. Moreover, she has not been forthright and does not appear to comprehend the seriousness of her obligations. Her misleading statements to Licensing and in her submissions for a stay suggest a lack of willingness to own up to misconduct unless she is compelled to address it.

[15] I dismiss the Appellant's application for a stay of the decision to cancel her licence pending a hearing of the appeal.

"Alison Narod"

Alison H. Narod, Acting Chair  
Community Care and Assisted Living Appeal Board

December 13, 2013