



Community Care and Assisted Living Appeal Board

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DECISION NO. CCALB-CCA-21-A003(b)

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

BETWEEN:	Ghalia Rebei Adlani (Moonlight Daycare)	APPELLANT
AND:	Dr. Emily Newhouse, Medical Health Officer, Fraser Health Authority	RESPONDENT
BEFORE:	A Panel of the Community Care and Assisted Living Appeal Board Richard Margetts, Q.C., Panel Chair Shelene Christie, Member Donald Storch, Member	
DATE:	Conducted by way of oral submissions concluding on April 13, 2022	
APPEARING:	For the Appellant: Kenneth D. Craig, Counsel For the Respondent: Robert P. Hrabinsky, Counsel	

Decision Regarding Application to Lift Temporary Suspension

INTRODUCTION

[1] This appeal pertains to the cancellation of the daycare license of Ghalia Rebel Adlani, operating as Moonlight Daycare, by Medical Health Officer (“MHO”) Dr. E. Newhouse through her June 9, 2021 Reconsideration Decision.

[2] On October 21, 2021, prior to the hearing of this matter, Chair Narod granted the Appellant’s application for a temporary suspension of the licence cancellation in Decision No. CCALB-CCA-21-A003(a) (the “Temporary Suspension Decision”). At the conclusion of the Temporary Suspension Decision, Chair Narod gave leave to the Respondent to “apply to the Board, or the Panel seized with this case, to revisit the terms of this decision on an expedited basis if circumstances change”.

[3] The oral hearing of this appeal commenced on December 8, 2021, and concluded on April 13, 2022, after nine days of hearing. On the last hearing day, in its concluding submissions, the Respondent applied to the Panel to revisit the terms

of the Temporary Suspension Decision, and requested that this Panel lift the temporary suspension of the Appellant's licence cancellation.

[4] This decision deals with the Respondent's application to lift the temporary suspension.

[5] In the Temporary Suspension Decision, Chair Narod took into consideration a multiplicity of factors in directing that the cancellation be suspended pending the hearing of the appeal. In particular, she was satisfied that the terms and conditions placed on the Appellant's license were sufficient to ensure the safety of the children in the Appellant's care pending the outcome of the appeal. She further took into consideration the proximity of the hearing date, and in particular that the cancellation of a license pending an appeal is "often the death knell to the underlying business even if an appellant is successful on the merits of an appeal".

[6] Chair Narod expressed her reservation in granting the temporary suspension due to the seriousness of the allegations as follows (Temporary Suspension Decision at para 35):

[35] I have made this decision with some reservation, given the seriousness of the allegations and counter-allegations and point out to the Appellant the importance of forth-rightness and collegiality with Licensing, and compliance with the Act and Regulations.

[7] While she was cognizant of the seriousness of the allegations and counter-allegations against the Appellant, it can be said that Chair Narod's decision gave the benefit of the doubt to the Appellant.

POSITIONS OF THE PARTIES

[8] The Respondent argues that circumstances have indeed changed since the Temporary Suspension Decision, and points to a January 14, 2022 inspection report showing the Appellant operated in contravention of the terms placed on her license even after the granting of the temporary suspension.

[9] Further, the Respondent points to evidence that this Panel heard from Dr. Newhouse about Dr. Newhouse's significant immediate concerns with the health and safety of the children in the Appellant's care.

[10] The Appellant argues in response, that it would be premature for this Panel to lift the Temporary Suspension as this Panel has not yet decided the merits of the appeal.

DECISION

[11] For the following reasons, this Panel has decided to lift the temporary suspension of the cancellation of the Appellant's license **effective May 31, 2022**.

[12] The test for granting a suspension of the Reconsideration Decision in the present appeal is set out in section 29(6) of the *Community Care and Assisted Living Act*, SBC 2002, c 75 (the "Act"), as follows:

(6) The board may not stay or suspend 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.

[13] Chair Narod's focus on granting the temporary suspension was that she was satisfied that the conditions on the Appellant's license were sufficient to protect the health and safety of children in the Appellant's care. In particular, Chair Narod found that (Temporary Suspension Decision at para 28):

[T]he conduct given rise to the examples that the Respondent relies on appears to have been curtailed. The child left unattended was a school age child, as were the children left in care of the person who was not permitted to supervise them. There is no evidence that the Appellant continues to care for school age children, directly or indirectly. [emphasis added]

[14] A subsequent inspection report provided to this Panel shows that in January 2022, the Appellant was providing care to a school-aged child in contravention of one of the conditions on her license. It is deeply troubling to this Panel that the Appellant was found to be operating in contravention of the conditions on her license even after the issuance of the Temporary Suspension Decision where Chair Narod clearly emphasized the importance of compliance with the Act, the Regulations and with the Conditions placed on her licence.

[15] Further Chair Narod also relied on the fact that the duration of the temporary suspension would be short due to the hearing being scheduled for December 2021. However, the hearing of this matter has taken significantly longer than originally anticipated, and the Panel has yet to issue its decision on the merits of the appeal.

[16] This Panel is of the view that as evidenced by her failure to follow them, the conditions on the Appellant's license are inadequate to protect the health and safety of the children in her care. Further, the Panel is of the view that the Temporary Suspension is no longer of short duration.

[17] Nothing in this decision should be taken as the Panel having made any final findings on the merits of the Appeal.

[18] Additionally, the Appellant should not read anything into the provision of approximately four weeks' notice of the effective cancellation date. Such notice is given for the benefit of allowing parents and caregivers the opportunity of making alternative arrangements for their children upon the closure of Moonlight daycare.

[19] Those conditions set out and confirmed in paragraph nine of Chair Narod's decision will continue to apply. In particular:

- a. the licensee must not provide care to school-age children,
- b. the licensee must not accept or enroll any new children into her care, and
- c. the licensee must continue to provide Licensing a list of all children currently in attendance, and the dates and times they attend, and must notify licensing in advance if there is any deviation from the schedule.

[20] Needless to say, the Appellant must immediately advise parents of children in her care that she will no longer be able to provide care as of May 31, 2022.

“Richard Margetts”

Richard Margetts, Q.C., Panel Chair

“Shelene Christie”

Shelene Christie, Member

“Donald Storch”

Donald Storch, Member

May 2, 2022