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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0539**

Vanessa Dawn Moore,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed February 12, 2008
Affirmed; motion granted in part
Kalitowski, Judge**

Minnesota Department of Human Services
File No. 1003879 R3

Vanessa Dawn Moore, 1627 Christie Place, St. Paul, MN 55106 (pro se relator)

Lori Swanson, Attorney General, Kerri Stahlecker Hermann, Assistant Attorney General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2127 (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Muehlberg, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Vanessa Dawn Moore appeals from the Commissioner of Human Services' denial of her request to reconsider her disqualification from working in any

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

position allowing direct contact with individuals receiving services from certain state-licensed facilities. Relator argues that the commissioner erred in denying her request because (1) the predicate conviction on which her disqualification is based is ten years old; (2) the disqualification has caused her financial hardship; (3) she has proven that she does not pose a risk of harm; and (4) her former employer is eager to have her return to work. We affirm.

DECISION

Relator contends that the commissioner erred in denying her request for reconsideration of her disqualification. But because relator's felony first-degree-assault conviction was supported by substantial evidence in the record, and because Minn. Stat. § 245C.24 (2006) prohibits the commissioner from setting aside a disqualification stemming from any of the crimes enumerated in Minn. Stat. § 245C.15 (2006), we disagree.

When reviewing agency decisions, this court “adhere[s] to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). But when agency decisions turn on questions of statutory interpretation, we review such questions of law de novo. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). Nonetheless, even though we are not bound by an agency's conclusions of law, the manner in which an agency has construed a statute is “entitled to some weight when the statutory language is technical in nature and the

agency's interpretation is one of longstanding application." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996).

The commissioner's denial of relator's request for reconsideration of her disqualification is a final administrative-agency action subject to certiorari review under Minn. Stat. § 480A.06, subd. 3 (2006); *see also Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996). A "party seeking review on appeal has the burden of proving that the agency has exceeded its statutory authority." *Lolling*, 545 N.W.2d at 375.

An appellate court may reverse an administrative decision if it is not supported by substantial evidence or is arbitrary and capricious. *In re Excess Surplus Status*, 624 N.W.2d at 277; *Johnson v. Comm'r of Health*, 671 N.W.2d 921, 923 (Minn. App. 2003). Substantial evidence is "1. [s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. [m]ore than a scintilla of evidence; 3. [m]ore than some evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety." *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). An agency's conclusion is arbitrary and capricious if there is no rational connection between the facts and the agency's decision. *In re Excess Surplus Status*, 624 N.W.2d at 277.

The Human Services Licensing Act requires the commissioner to conduct a background study of all persons employed in programs that provide licensed services. Minn. Stat. § 245C.03, subd. 1 (2006). An individual is disqualified from providing

licensed services if a background study shows that the individual has been convicted of any of several specified criminal acts. Minn. Stat. § 245C.14, subd. 1(1) (2006).

Although the commissioner may in some instances set aside a person's disqualification based on sufficient proof that the individual does not pose a risk of harm, the Human Services Licensing Act does not allow the commissioner to set aside the disqualification of individuals shown to be convicted of the crimes enumerated in Minn. Stat. § 245C.15, subd. 1 (2006). Minn. Stat. § 245C.24, subd. 2 (2006). And first-degree assault in violation of Minn. Stat. § 609.221 is listed as one of the crimes that permanently disqualifies an individual from any position allowing direct contact with persons receiving services from certain state-licensed facilities. *Id.* Thus, when reviewing a disqualification, the commissioner is required to disqualify any individual whose background study shows a conviction of or an admission to one or more of the crimes specified in section 245C.15, subdivision 1, regardless of how much time has passed since the offense occurred. *Id.*

Here, relator has failed to show that the commissioner's denial of her request for reconsideration of her disqualification lacked evidentiary support or was arbitrary and capricious. Although relator requested reconsideration of her disqualification, she did not dispute the accuracy of her felony first-degree-assault conviction or submit any information to the commissioner demonstrating that the information relied on to disqualify her was incorrect. And by putting forth relator's BCA record, the Department of Human Services established that relator was convicted of felony first-degree assault on June 22, 1998.

Moreover, relator's attempts to demonstrate that she does not pose a risk of harm are unavailing. Minn. Stat. § 245C.24, subd. 2(a), removes the commissioner's discretion to set aside the disqualifications of individuals convicted of certain serious crimes. *Id.* Because it is undisputed that relator committed a crime that permanently bars her from working in a position that has direct contact with individuals receiving services at certain state-licensed facilities, the statements and documents relator submitted to the court in an effort to demonstrate that she does not pose a risk of harm are irrelevant.

Because the commissioner's denial was mandated by the express language of Minn. Stat. § 245C.24, supported by substantial evidence in the record, and not arbitrary and capricious, we conclude that the commissioner did not err in denying relator's request for reconsideration of her disqualification.

Finally, respondent filed a motion to strike parts of relator's brief and appendix on the ground that they pertain to matters outside the record on appeal. This "court will strike documents included in a party's brief that are not part of the appellate record." *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *rev'd on other grounds*, 504 N.W.2d 758 (Minn. 1993). Respondent's motion to strike is granted in part with respect to the letter dated March 16, 2007, and all subsequent documents attached to relator's brief, as they were not part of the administrative record at the time the commissioner reviewed relator's set-aside request. But respondent's motion to strike parts of relator's pro se brief is denied.

Affirmed; motion granted in part.