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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS**

**A07-0734**

**A07-0735**

**Muyuka Mutanga,  
Relator,**

**vs.**

**Commissioner of Human Services,  
Respondent (A07-734),**

**Commissioner of Health,  
Respondent (A07-735).**

**Filed March 18, 2008**

**Affirmed**

**Kalitowski, Judge**

Minnesota Department of Human Services  
License Nos. 206063 245B-WS, 1008091 245B-WS  
Minnesota Department of Health  
Health Facility ID No. 23261

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Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and  
Connolly, Judge.

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

Relator Muyuka Mutanga challenges refusals by the Department of Human Services (DHS) and the Department of Health (MDH) to set aside his disqualification from working in any position allowing direct contact with individuals receiving services from certain state-licensed facilities. Relator argues that the record does not support the commissioners' determinations that he poses a risk of harm to persons served by the licensed entities. We affirm.

### DECISION

When reviewing agency decisions, “we adhere 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) (quotation omitted). But when agency decisions turn on questions of statutory interpretation, this court will review such questions of law de novo. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). Yet, even though an appellate court is not bound by an agency's conclusions of law, the manner in which an agency has construed a statute is nonetheless “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 denial of relator's set-aside request by both the Commissioner of Health and the Commissioner of Human Services are final administrative-agency actions 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 or jurisdiction.” *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 of Human Services to conduct a background study of all persons employed in programs that provide DHS-licensed services. Minn. Stat. § 245C.03, subd. 1(a)(3) (2006). And Minn. Stat. § 144.057 (2006) charges DHS with the additional task of conducting background studies of individuals working at MDH-licensed programs. A person is disqualified from working in positions involving direct contact with those individuals served by certain state-licensed services if a background study shows, by a preponderance of the evidence, that the individual has been convicted of any of several specified criminal acts. Minn. Stat. § 245C.14, subd. 1(2) (2006). But individuals may request reconsideration of their

disqualification by submitting information indicating that the information relied on to disqualify the individual is incorrect or the individual does not pose a risk of harm. Minn. Stat. § 245C.21, subd. 3 (2006).

When considering an individual's request for reconsideration of a disqualification, the commissioner is statutorily required to consider eight different factors with regard to the particular positions the individual seeks to fill. Minn. Stat. §§ 245C.22, subd. 4 (2006). These factors include:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) the similarity between the victim and persons served by the program;
- (6) the time elapsed without a repeat of the same or similar event;
- (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (8) any other information relevant to reconsideration.

Minn. Stat. § 245C.22, subd. 4(b) (2006). These eight factors are not intended to serve as a checklist, and the commissioner's decision on whether to set aside an individual's disqualification may be based solely on "any single factor." Minn. Stat. § 245C.22, subd. 3 (2006). Moreover, the commissioner is required to "give preeminent weight to the

safety of each person served by the . . . applicant . . . over the interests of the disqualified individual.” *Id.*

## I.

Relator does not challenge the correctness of the information on which his disqualification was based, which involved relator’s two guilty pleas to violations of an order for protection. Rather, relator’s set-aside request is based solely on his assertion that he does not pose a risk of harm to any person served by the licensed entities where he works or would like to work.

The record here indicates that both the Commissioner of Human Services and the Commissioner of Health completed risk-of-harm assessments that considered all the factors mandated by Minn. Stat. § 245C.22, subd. 4 (2006), when reviewing relator’s set-aside request. We review the commissioners’ findings with respect to these factors to determine whether the commissioners’ ultimate decisions to deny relator’s set-aside request were supported by substantial evidence and were not arbitrary and capricious.

### *Nature, severity, and consequences of the disqualifying events*

In evaluating this factor, the Commissioner of Human Services found relator’s disqualifying acts to be “intentional.” Because the record indicates that relator was aware of the Order For Protection (OFP) and knew that he was directly violating the terms of that court order by calling and showing up at J.S.’s home, it was reasonable for the Commissioner of Human Services to infer that relator’s disqualifying acts were intentional. When the Commissioner of Health was evaluating this same factor, he found that relator’s behavior was “violent” and likely to cause “serious harm.” Although relator

did not physically assault J.S. when he violated the OFP prohibiting him from contacting her on both June 14, 2006, and October 13, 2006, the record shows that relator's prior behavior toward J.S. was violent and harassing in nature, and included physical abuse, threats, calling 30-40 times a day, and showing up uninvited at her home. Given the conduct on which the predicate OFP was granted, and the fact that relator knowingly and repeatedly violated the OFP, it was reasonable for the Commissioner of Health to conclude that relator's behavior was violent and likely to cause serious harm.

***Number of disqualifying events***

Both the BCA record and relator's own admissions show that relator pleaded guilty to two offenses involving violations of an OFP. Each of these violations is listed in Minn. Stat. § 245C.15 as a disqualifying crime. Minn. Stat. §§ 245C.15, subd. 3(a), subd. 4(a) (2006). Moreover, the Commissioner of Health's assessment form indicates that, "[a]lthough there have been two actual convictions for violation of an order for protection, police and court records indicate that there may have been more actual incidents where [relator] violated the order for protection." Indeed, police and court records support this assessment. Accordingly, there is sufficient evidence to support the commissioners' finding that relator committed more than one disqualifying event.

***Age and vulnerability of the victim***

In addressing this statutory factor, the Commissioner of Human Services found that the victim, J.S., was "somewhat vulnerable (i.e.: unequal size)" at the time of the disqualifying offenses. Similarly, the Commissioner of Health determined that the victim was "[s]omewhat vulnerable; unequal size, strength, subordinate position, weight, etc."

Because the record shows that the victim was relator's ex-girlfriend and that she had obtained an OFP against relator because of his prior violent and harassing behavior, the inference that the victim was "somewhat vulnerable" was reasonable.

***Harm suffered by the victim***

The victim here was frightened, but not physically harmed, as a result of relator's violations of the OFP. Thus, it was reasonable for the Commissioner of Human Services and the Commissioner of Health to conclude that relator's violations of the OFP caused the victim to suffer "short-term damage."

***Similarity between the victim and persons served by the programs***

The Commissioner of Human Services found that the victim and the persons served by the programs at which relator wanted to work had "some similarity." Because J.S. was somewhat vulnerable as a result of prior abuse and harassment by relator, and because the persons served by the licensed programs at issue here are somewhat vulnerable as a result of their physical and mental impairments, this finding is supported by the record. The Commissioner of Health found that J.S. and the persons served by the programs had "little or no similarity." Because J.S. was in good health and living independently, it was reasonable for the Commissioner of Health to conclude that she bore little similarity to the physically and mentally impaired patients served by these particular programs. It is irrelevant that the commissioners came to differing findings with respect to this statutory factor, as both their findings are reasonable conclusions that can be drawn from the facts in the record. Moreover, since the factors listed in Minn. Stat. § 245C.22, subd. 4, do not serve as a checklist, this particular finding need not be

determinative of the commissioners' decisions to deny relator's set-aside request. *See* Minn. Stat. § 245C.22, subd. 3 (2006).

***Time elapsed***

Relator first violated the OFP in June of 2006, and then again in October of 2006. Accordingly, the commissioners did not err in concluding that relator's disqualifying offenses were decidedly "recent," since less than four years elapsed since relator's last similar offense.

***Successful completion of training or rehabilitation***

Although relator received some training, he failed to timely complete domestic abuse counseling as required as a condition of his probation and failed to accept full responsibility for his violations of the OFP. While relator recently participated in a domestic-violence program, he did not begin participating until March of 2007, and thus his participation was not part of the administrative record before the commissioners at the time of their review. Accordingly, we cannot consider evidence of relator's domestic-abuse counseling in addressing relator's appeal. *See Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992). Because domestic-abuse counseling is extremely relevant to relator's disqualifying offenses, and because the record indicates that relator continues to blame his OFP violations on his ex-girlfriend and their ongoing custody dispute, it was reasonable for the Commissioner of Health to conclude that it was too soon to determine whether relator is successfully rehabilitated. Similarly, it was reasonable for the Commissioner of Human Services to find that relator attended no training or

rehabilitation program pertinent to his disqualifying events, and that relator accepted only some responsibility for his actions.

***Other relevant information***

In addressing this final, catch-all statutory factor, both commissioners noted that relator had received a previous set-aside from MDH on December 14, 2006. But because relator was convicted of violating the OFP a second time after the department granted that variance, it was reasonable for the commissioners to give this prior set-aside determination limited weight in their evaluation of relator's risk of harm.

***Relator's record as a whole***

As a whole, the record here indicates that the commissioners' findings with respect to each of the factors mandated by Minn. Stat. § 245C.22, subd. 4, were reasonable, and that their ultimate decisions to deny relator's set-aside request were reasonable and supported by the record. Accordingly, we conclude that the decisions of the Commissioner of Health and the Commissioner of Human Services to deny relator's set-aside request were supported by substantial evidence and were not arbitrary and capricious.

**Affirmed.**