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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0282**

Ogechi Faith Charles,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed November 18, 2013
Affirmed
Ross, Judge**

Minnesota Department of Human Services
File No. 98460

Ogechi Faith Charles, St. Paul, Minnesota (pro se relator)

Lori Swanson, Attorney General, Marsha Eldot Devine, Assistant Attorney General, St. Paul, Minnesota; (for respondent)

Considered and decided by Schellhas, Presiding Judge; Hudson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

The Minnesota Department of Human Services disqualified nurse Ogechi Charles from providing direct-contact services in caregiving facilities after she was convicted of wrongfully receiving public assistance, defrauding Ramsey County of more than

\$49,000. Charles requested that the commissioner of human services review her disqualification and grant her a set-aside that would allow her to continue working. The commissioner concluded that Charles is a threat to the vulnerable persons she would work with and denied her request. Because the commissioner properly considered Charles's request and did not violate her constitutional right to substantive or procedural due process, we affirm.

FACTS

Ogechi Charles was studying nursing at Northwest Technical College-Bemidji when she began receiving public assistance from Ramsey County to support her children. Charles sent her children to stay with relatives in Africa, but she continued receiving public assistance provided ostensibly for their care. The state charged Charles with six counts of theft of assistance for payments she received between March 2009 and August 2011. She pleaded guilty to one count.

Three programs that provide caregiving services soon requested background checks on Charles to certify her for positions providing direct care to patients. The checks revealed Charles's criminal conviction. The conviction automatically disqualified her from providing services through programs licensed by the state. *See* Minn. Stat. §§ 245C.14, subd. 1, 245C.15, subd. 3(a) (2012). The department of human services therefore informed Charles that she was ineligible to become employed in the positions to which she had applied and in multiple other facilities and organizations. The department told Charles that she could challenge the disqualification decision or seek to have it set aside.

Charles submitted a request for reconsideration. She admitted having the conviction, but she claimed that her unlawful receipt of public-assistance funds was unintentional, and she emphasized that she planned to repay them. Charles stated that she always treated her patients with respect and never violated any of their rights. Her request also included three character-reference letters. She acknowledged that she had not undergone any training or rehabilitation after her conviction. And she did not provide any arrest or probation records, claiming that she did not have an arrest record and that the court had not assigned a probation officer or ordered her into a rehabilitation program.

The commissioner concluded that Charles continues to pose a risk of harm to those she proposed to serve, denying her request for a set-aside. Charles now appeals by writ of certiorari.

D E C I S I O N

I

Charles argues first that the commissioner's decision to disqualify her before she had a chance to respond violated her right to due process. This argument does not persuade us. Procedural due process rights under the federal Constitution restrict the government's ability to infringe protected liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 901 (1976). The Minnesota Constitution provides an identical restriction. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). We address procedural due process claims by first determining whether a protected liberty or property interest is at stake. *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 566 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995).

If it is, we then balance various factors to decide how much process is due. *Mathews*, 424 U.S. at 335, 96 S. Ct. at 903. We do so weighing the private interest at stake, the risk that the existing procedure will mistakenly infringe that right along with the likely benefit of new or different procedures, and the interests of the government, including the burdens new or different procedures would impose. *Id.* at 335, 96 S. Ct. at 903; *Obara v. Minn. Dep't. of Health*, 758 N.W.2d 873, 878 (Minn. App. 2008).

Charles has a protected liberty interest in pursuing employment as a nurse. We have observed that an individual “has a . . . liberty interest in pursuing private employment” and that this interest extends to employment in the public sector as well. *Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). This of course includes pursuing a career in nursing. *Obara*, 758 N.W.2d at 878. Charles was pursuing a degree in nursing and seeking employment as a caregiver. She has established a constitutionally protected liberty interest. Although the interest to work in one’s chosen profession is not free from government limitations, *Humenansky*, 525 N.W.2d at 566–67, we have concluded that this factor favors the individual interest in the context of employment rights, *Fosselman v. Comm’r of Human Servs.*, 612 N.W.2d 456, 462 (Minn. App. 2000), and we have done so even when the challenger was precluded only from working in state-licensed facilities, *Sweet*, 702 N.W.2d at 320. Charles’s efforts to work in state-licensed caregiving facilities is among the protected interests we have held to weigh in favor of the person seeking work. The first factor favors Charles.

The second factor does not. We ask here whether Charles had “an adequate opportunity to present [her] case.” *Sweet*, 702 N.W.2d at 321. She did. Paper hearings alone are not inherently inadequate. *Id.* And due process does not require that a hearing, if constitutionally required, occur before the government infringes the protected interest. *Gilbert v. Homar*, 520 U.S. 924, 930, 117 S. Ct. 1807, 1812 (1997); *Mertins v. Comm’r of Natural Res.*, 755 N.W.2d 329, 337 (Minn. App. 2008). This is especially so when the administrative decision to interfere with the protected right rests on an underlying criminal conviction that required proof beyond a reasonable doubt. *Sweet*, 702 N.W.2d at 321 (holding that relator convicted of a disqualifying offense had been afforded “the full panoply of rights” during earlier criminal proceedings).

The commissioner had to disqualify Charles after her background check revealed her conviction. Minn. Stat. § 245C.15, subd. 3(a). Charles could have contested the disqualification, however, by challenging the accuracy of the underlying facts and by proving that she poses no risk of harm despite her conviction. Minn. Stat. § 245C.21, subd. 3(a)(1), (3) (2012). She sought reconsideration but did not contest the accuracy of the evidence that mandated her disqualification. In fact, she admitted that she had been convicted of wrongfully receiving financial assistance. Charles was afforded all the process she was due during the underlying criminal proceedings. She also had the opportunity to dispute the facts in writing in the administrative proceeding after her disqualification, and she took advantage of that opportunity. Requiring that Charles be allowed to challenge her disqualification *before* the decision would not have measurably reduced the risk that the government would erroneously infringe her right to work as a

nurse. And given the substantial importance of the state’s interest in protecting vulnerable individuals who receive direct-care services, *see Sweet*, 702 N.W.2d at 321, the state has the authority to act quickly to thwart perceived threats (such as those statutorily defined), even *first* disqualifying an applicant from her chosen profession and *then* holding a hearing. This factor solidly favors the state.

The final *Mathews* factor—the government’s interests—also weighs in favor of the decision. “The governmental interest in protecting the public, especially vulnerable individuals . . . is of paramount importance.” *Obara*, 758 N.W.2d at 878 (quotation omitted). This includes protecting patients in direct-contact facilities. *Fosselman*, 612 N.W.2d at 464. Also important is the state’s interest in efficiently allocating its time and resources by resolving disqualification proceedings quickly. *Obara*, 758 N.W.2d at 878. Additional administrative hearings or procedures might merely duplicate the criminal process, leading to extra burdens with no meaningful benefit. *See id.* at 878–79. Charles had an adequate opportunity to contest the facts supporting the charges before she pleaded guilty. She had already admitted to the offense before the case reached the commissioner’s office. And the sooner the government can reasonably prevent a threat to vulnerable individuals the better. Charles’s procedural due process rights were not violated.

II

Charles next argues that chapter 245C, which requires the commissioner to disqualify individuals who wrongfully obtain financial assistance, as applied here, violates her substantive due process rights. Specifically, she contends that disqualification

is not rationally related to her merely financial crime. She offers that a conditional disqualification restricting access to client funds would have been more rational. The constitutionality of a statute is a question of law, and we review it de novo. *Hamilton v. Comm’r of Pub. Safety*, 600 N.W.2d 720, 722 (Minn. 1999). A strong presumption of constitutionality accompanies each statute. *Everything Etched, Inc. v. Shakopee Towing, Inc.*, 634 N.W.2d 450, 453 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). We apply only the rational basis test to a substantive due process challenge unless the challenged statute affects a fundamental right. *In re Individual 35W Bridge Litigation*, 806 N.W.2d 820, 830 (Minn. 2011). As it regards disqualifying individuals from providing direct-contact services, section 245C.15 does not affect any constitutionally protected fundamental rights. We therefore apply the rational basis test here.

A statute fails the rational basis test only if it is not rationally related to a legitimate government interest. *Anderson v. Comm’r of Health*, 811 N.W.2d 162, 167 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). The state can regulate health-related professions. *Humenansky*, 525 N.W.2d at 566. And chapter 245C intends “to protect the health and safety of individuals who are vulnerable due to their age or their physical, mental, cognitive, or other disabilities.” *Obara*, 758 N.W.2d at 879.

We easily reject Charles’s argument that disqualifying her from providing direct-contact services because of a conviction for wrongfully obtaining public assistance is not rationally related to the public purpose of a statute designed to protect the health and safety of vulnerable individuals. Vulnerable persons rely on others for their care. Disqualifying people who illegally receive public assistance from providing direct-

contact care to these vulnerable individuals is a rational means to keep the untrustworthy from them. Charles asserts that she is not a threat to vulnerable patients because she has no access to their funds. But the commissioner observed that the factual assertion is unsupported because Charles's employers did not restrict her access to funds. The commissioner reasoned also that, although the victim of Charles's crime, Ramsey County, is different in nature from the patients she wished to serve, the well-being of those patients would depend on Charles's exercise of the sound judgment she lacked when she pilfered funds collected to help the needy. And the commissioner deemed persuasive the fact that only six months had passed since the conviction and Charles offered no evidence of her rehabilitation.

The commissioner's conclusion that Charles posed a risk to potential patients based on her conviction for wrongfully obtaining assistance is constitutionally rational. Denying Charles's request for a set-aside therefore did not violate Charles's substantive due process rights.

Affirmed.