

No. A08-1243

State of Minnesota

In Court of Appeals

Glenn Smith,

Relator,

vs.

Minnesota Department of Human Services,

Respondent.

RELATOR'S BRIEF

Paul D. Baertschi (#156966)
Tallen and Baertschi
4560 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612)337-5577

Attorney for Relator

Gail A. Feichtinger (#0267569)
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN 55101
(651) 296-6438

Attorney for Respondent

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	<u>Page #</u>
Table of Authorities	ii
Legal Issue	1
Statement of the Case and the Facts	1
Argument	
I. The Relator, Glenn Smith, is entitled to a fair hearing on whether he committed a disqualifying act	1-2
II Denial of the right to a fair hearing on whether Relator committed a disqualifying act would deny Relator due process of law	2-3
Conclusion	3
Appendix:	
Letter dated March 11, 2008 from Minnesota Department of Human Services	A-1-A-2
Letter Dated June 25, 2008 from Minnesota Department of Human Services	A-3-A-4

TABLE OF AUTHORITIES

Page #

U.S. SUPREME COURT CASES

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976) . . . 2

MINNESOTA APPELLATE COURT CASES

Plocher v. Commissioner of Public Safety, 681 N.W.2d
698, 702 (Minn. App. 2004) 2

MINNESOTA STATUTES

Minn. Stat. §245C.15, Subd. 1 1

Minn. Stat. §245C.27, Subd. 1 1

Minn. Stat. §245C.27, Subd. 1(c) 2

Minn. Stat. §245C.29 2

Minn. Stat. §245C.29, Subd. 2 2

Minn. Stat. §256.045 1

LEGAL ISSUE

Was Relator denied the right to a fair hearing and was the disqualification of Relator arbitrary and capricious.

STATEMENT OF THE CASE AND THE FACTS

On March 11, 2008, the Minnesota Department of Human Services issued an order disqualifying the Relator, Glenn Smith, from direct contact services from various facilities. On March 20, 2008, the Minnesota Department of Human Services received Relator's request for reconsideration. By letter dated June 25, 2008, the Department affirmed the disqualification, denying Relator's request for reconsideration of the disqualification. In the June 25th letter, the Department informed Relator that the decision was a final agency decision subject to further review only by filing a timely petition for Writ of Certiorari with the Minnesota Court of Appeals, which was done. Relator was never afforded a fair hearing on the merits of this disqualification.

ARGUMENT

I. THE RELATOR GLENN SMITH IS ENTITLED TO A FAIR HEARING ON WHETHER HE COMMITTED A DISQUALIFYING ACT.

Minn. Stat. § 245C.15, subd. 1 lists a wide range of offenses that constitute grounds for permanent disqualification from direct contact services. The list of disqualifying crimes or conduct includes assault in the second degree. Relator has never been convicted of assault in the second degree, but was arrested for such offense in 1997. Relator was never even charged with such offense, and consequently, there was never any judicial determination of probable cause for said offense. Minn. Stat. § 245C.27, subd. 1 provides that an individual may request a fair hearing under §256.045 unless the

disqualification is deemed conclusive under §245C.29. Section 245C.29 lists certain situations where disqualification determinations are conclusive. None of those situations apply because they all deal with orders that follow an evidentiary hearing procedure or where the individual did not request reconsideration. Relator believes it is uncontested that he never had the opportunity to request a fair hearing on the factual allegation that he committed a second degree assault.

Minn. Stat. § 245C.27, subd. 1(c) makes it clear that where the disqualification is based upon “a conviction or admission” to a disqualifying crime, that disqualification is a final agency determination. This is in contrast to the provisions of §245C.29, subd. 2 as previously discussed. There is no conviction and no admission by Relator that he is guilty of this crime. In fact, Relator has consistently denied guilt. The clear language of the statutes and public policy dictate the right to an evidentiary hearing on this disqualification.

II. DENIAL OF THE RIGHT TO A FAIR HEARING ON WHETHER RELATOR COMMITTED A DISQUALIFYING ACT WOULD DENY RELATOR DUE PROCESS OF LAW.

The Due Process Clause of the U.S. Constitution requires that a deprivation of this type be preceded by adequate notice and a meaningful opportunity to be heard.

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976). Notice is inadequate if it fails to communicate the interest at stake or is actively misleading. Plocher v. Commissioner of Public Safety, 681 N.W.2d 698, 702 (Minn. App. 2004). Consequently, if the statutes do not in fact provide for an evidentiary hearing, Relator argues that the statutes violate minimum due process standards.

The determination that Relator committed a disqualifying act was not based upon evidence of a conviction, but was based upon a police report. Relator was never charged with any crime based upon the incident alleged to disqualify him from Direct Contact Services. Hence, there was never even a finding of probable cause, let alone actual proof that Relator committed any such act. Relator strenuously asserts that he did not commit a disqualifying act. This disqualification, which deprives Relator of the benefit of his education and experience and denies him employment, is arbitrary and capricious and denies Relator due process of law where it is based on reports that the prosecuting authorities determined were insufficient to justify a criminal charge. Relator believes that a fair hearing would vindicate him and show that he did not in fact commit an assault leading to this disqualification.

CONCLUSION

Based upon the foregoing, Relator respectfully request this Court to find the actions of the respondent to be arbitrary and capricious and to remand this case for a fair hearing.

Dated: Sept 23, 2008

By: 
Paul D. Baertschi, Atty. Reg. No. 156966
TALLEN & BAERTSCHI
4560 IDS Center
80 South 8th Street
Minneapolis, MN 55402
(612) 337-5577
Attorney for Relator