

No. A11-754

STATE OF MINNESOTA

IN COURT OF APPEALS

Michael Scott Anderson,

Relator,

vs.

Commissioner of Health,

Respondent.

RESPONDENT'S BRIEF

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LEGAL ISSUES

- I. Whether the Commissioner of Health properly reviewed and decided Relator's request for reconsideration of Relator's disqualification?

The Commissioner correctly applied Minn. Stat. § 245C.24, subd. 2 (2010), which prohibits the Commissioner from setting aside Relator's disqualification based upon a risk of harm analysis.

This issue was preserved for appeal in the Commissioner's final administrative agency action set forth in a letter dated March 30, 2011. *See* Commissioner's Return of Record at Tabs 10 and 12.

Most Apposite Authorities:

Minn. Stat. § 245C.24, subd. 4 (2010)

Minn. Stat. § 245C.29, subd. 2(c) (2010)

Rodne v. Comm'r of Human Servs., 547 N.W.2d 440 (Minn. Ct. App. 1996)

In re: Excess Surplus Status of Blue Cross Blue Shield of Minnesota, 624 N.W.2d 264 (Minn. 2001).

- II. Whether Relator demonstrated beyond a reasonable doubt that the Commissioner of Health's application of Minn. Stat. §§ 245C.22 and .24 (2010), to his request for reconsideration, deprived him of due process?

The Commissioner refused to set aside Relator's disqualification.

This issue was preserved for appeal when Relator filed a petition for a writ of certiorari following the Commissioner's final decision. *See* Petition for Writ of Certiorari.

Most Apposite Authorities:

U.S. Const. amend. V and XIV

Minn. Const. art. I, § 7.

Sweet v. Comm'r of Human Servs., 702 N.W.2d 314 (Minn. Ct. App. 2005)

Mathews v. Eldridge, 424 U.S. 319 (1976).

STATEMENT OF THE CASE

In Minnesota, individuals who work with vulnerable populations in certain facilities that are licensed by the State must undergo a background study by the Minnesota Department of Human Services (“DHS”) pursuant to the Department of Human Services Background Studies Act (hereinafter “Background Study Act”), Minn. Stat. ch. 245C. On December 7, 2010, pursuant to Minn. Stat. §§ 245C.14-.15 (2010), DHS notified Relator that he was disqualified from “a position allowing direct contact from persons receiving services from facilities licensed by” DHS, the Minnesota Department of Health (“Department” or “MDH”), facilities serving children or youth that are licensed by the Department of Corrections, and unlicensed personal care provider organizations. The grounds for Relator’s disqualification are statutory: under the Background Study Act, DHS determined that Relator was convicted of fifth degree criminal sexual conduct, which is a disqualifying characteristic. *See* Minn. Stat. § 245C.14, subd. 1(a)(1) and § 245C.15, subd. 1(a) (2010).

DHS notified Relator that the disqualification permanently barred him from working in certain facilities. *See* Tab 9.¹ It also informed him that if he thought the information used to disqualify him was incorrect, he could ask for reconsideration of the disqualification. *See id.* Relator then requested reconsideration of the disqualification, claiming that he does not pose a risk of harm to persons served at his place of employment. *See* Tab 10. The Department notified Relator, via letter dated March 30, 2011, that his conviction was based upon correct information, that he was prohibited

¹ “Tab” refers to the number of the exhibit in the Index of Administrative Record.

from employment in facilities licensed by MDH or DHS, and that the determination was a final agency decision. *See* Tabs 14 and 17. This appeal followed.

STATEMENT OF FACTS

A. Relator's Criminal History.

There is no dispute that Relator pled guilty to one count of gross misdemeanor fifth degree criminal sexual conduct based upon an incident that occurred on December 9, 2009. *See* Tabs 4 and 6. Relator admitted touching a woman inappropriately on a crowded dance floor while intoxicated. On September 28, 2010, he entered a *Norgaard* plea to that crime in Hennepin County District Court. On December 3, 2010, Hennepin County District Court Judge Patricia Karasov stayed imposition of his sentence, and placed Relator on probation for two years. *See* Relator's Brief at 2.

B. Relator's Disqualification

Relator has been employed as a nurse at Minneapolis Children's Hospital for 16 years. *See id.* at 3. DHS conducted a background study on Relator in February 2011 and determined that he had a disqualifying characteristic, which was a conviction for gross misdemeanor fifth degree criminal sexual conduct (Minn. Stat. § 609.3451), a crime listed in Minn. Stat. § 245C.15. In a letter dated December 7, 2010, DHS informed Relator that he was disqualified based upon a conviction for a crime listed at Minn. Stat. § 245C.15, subd. 1, which is a permanent disqualification, and that the Commissioner of Health ("Commissioner") cannot set aside that disqualification. *See* Tab 9. In a letter to the Department dated March 18, 2011, Relator submitted a "request for reconsideration on the risk of harm [Relator] presents to the patients he serves." *See* Tab 15.

C. Commissioner's Reconsideration Of Relator's Disqualification.

The Commissioner reviewed Relator's request for reconsideration and pursuant to Minn. Stat. § 245C.22, subd. 1, determined that the underlying information was correct. *See* Tabs 12 and 17. On March 30, 2011, Stella French, Director of the Office of Health Facility Complaints, sent Relator a letter, noting that the only review available to persons who have been permanently disqualified pursuant to Minn. Stat. § 245C.15, subd. 1, is a correctness review. *See id.* Ms. French noted that Relator did not deny that he had been convicted of gross misdemeanor fifth degree criminal sexual conduct on December 3, 2010, in Hennepin County District Court. *See id.* Ms. French also notified Relator that he could appeal the Department's determination to the "Minnesota Appellate Courts". *See id.* By Writ of Certiorari, filed with this Court on April 26, 2011, Relator appealed the Commissioner's decision.

SCOPE OF REVIEW

Relator's certiorari appeal is before this Court pursuant to Minn. Stat. § 480A.06, subd. 3 (2010), and Minn. Stat. ch. 606 (2010). *See Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. Ct. App. 1996). A decision concerning a request for reconsideration of a disqualification is a quasi-judicial decision. *See id.* at 444-45. An appellate court "may reverse an administrative decision if it is not supported by substantial evidence on the record or is arbitrary and capricious." *See Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. Ct. App. 2005).

Under the substantial evidence standard, the agency's decision will be upheld unless Relator can show that the decision is not supported by evidence that a reasonable

mind, considering the record in its entirety, might accept as adequate to support the Commissioner's conclusion. See *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977). "Substantial evidence" is defined as:

1. [s]uch relevant evidence as a reasonable mind would 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.

See *Sweet*, 702 N.W.2d at 318 (quoting *White v. Minnesota Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. Ct. App. 1997)).

In addition, when considering the appeal of the agency decision, deference should be given to the Commissioner's expertise in administering and enforcing the disqualification statutes. As the Minnesota Supreme Court stated in *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn* (hereinafter "*Blue Cross*"):

When reviewing agency decisions we "adhere to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agency's expertise and their special knowledge in the field of their technical training, education, and experience." The agency decision maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency's authority, and judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision maker in the interpretation of the statutes that the agency is charged with administering and enforcing.

624 N.W.2d 264, 278 (Minn. 2001) (citations and footnote omitted). Moreover, an agency's conclusions are only arbitrary and capricious only if "there is no rational connection between the facts and the agency decision." See *Sweet*, 702 N.W.2d at 318 (citing *Blue Cross*, 624 N.W.2d at 277).

The Commissioner reconsidered Relator's request in compliance with applicable law, which is sections 245C.22 and .24, subd. 2(a). The Commissioner's decision is supported by substantial evidence in the record and by applicable law and is not arbitrary or capricious.

ARGUMENT

I. THE DEPARTMENT OF HEALTH'S DETERMINATION WAS MADE IN COMPLIANCE WITH APPLICABLE LAW, IS SUPPORTED BY SUBSTANTIAL EVIDENCE, AND IS REASONABLE.

The Commissioner is required to review and decide reconsideration requests in accordance with the procedures and criteria contained in the Background Study Act. The Commissioner² properly applied the Background Study Act when he considered Relator's request for reconsideration, and thus his decision must be upheld.

Relator does not dispute that he was convicted of fifth degree criminal sexual conduct. Relator instead argues that the Commissioner should have considered the risk of harm Relator posed to his patients, relying on three statutes: section 245C.21, subd. 3(a)(3); section 245C.22, subd. 4; and section 245C.29, subd. 2(c). Relator misconstrues the Background Study Act by taking these three provisions out of context. Although his arguments are flawed for several reasons, all of them ultimately fail because the statutes he relies upon all address an individual's request for a set aside and the Background Study Act explicitly precludes the Commissioner from granting a set aside to an individual with Relator's criminal record.

² In this case, the Commissioner acted through his delegates, the Appeals Coordinator and the Director of the Office of Health Facility Complaints.

A. The Commissioner Properly Applied The Background Study Act.

The Background Study Act requires a background study on an individual when the individual works, or applies to work, in a position that involves direct contact with or access to people served by certain licensed facilities, agencies or programs. *See* Minn. Stat. § 245C.03 (2010). The Department contracted with DHS to conduct the background studies for individuals who apply to work in facilities licensed by the Department. *See* Minn. Stat § 144.057 (2010). Requests for reconsideration involving facilities licensed by the Department are reviewed by the Commissioner. *See id.*

Under the Background Study Act, disqualified individuals can request reconsideration by submitting information showing that: 1) the disqualification is based upon incorrect information; 2) if the disqualification is based upon a maltreatment finding, the maltreatment was not serious or recurring; or 3) the disqualified individual does not pose a risk of harm to any person that the disqualified person would serve. *See* Minn. Stat. § 245C.21, subd. 3 (2010). Section 245C.21, Subdivision 3, merely tells an individual seeking reconsideration what he must submit for review. It does not govern the Commissioner's evaluation of the request for reconsideration, and thus does not support Relator's argument that he has a statutory right to a risk of harm review based upon that statute.

The Commissioner, when reviewing requests for reconsideration, must rescind a disqualification if he finds that it was based upon incorrect information. *See* Minn. Stat. § 245C.22, subd. 2. This provision is not at issue in the instant case because Relator has never contested the fact of his criminal conviction. An individual may also ask the

Commissioner to set aside the disqualification if the Commissioner determines that the individual does not pose a risk of harm, based upon factors enumerated in the law. *See* Minn. Stat. § 245C.22, subd. 4. An individual who receives a set aside may work despite the disqualification. If the Commissioner sets aside a disqualification, that set aside applies only to the program or facility studied. *See* Minn. Stat. § 245C.22, subd. 5 (2010).

In 2005, the Background Study Act was amended to limit the Commissioner's authority to grant set asides. *See* 2005 Minn. Laws, 1st Sp., ch. 4, art. 1, § 39. Specifically, when an individual has been disqualified for acts or crimes enumerated in section 245C.15, subd. 1(a), that person is permanently disqualified, and the Commissioner is prohibited from setting aside the disqualification. *See* Minn. Stat. § 245C.24, subd. 2. Relator's conviction for fifth degree criminal sexual conduct (Minn. Stat. § 609.3451) is a crime specified at section 245C.15, subd. 1, and thus he is permanently disqualified from working in certain health care programs and facilities licensed by the Department. Because of his conviction, section 245C.24 clearly and unambiguously provides that the Commissioner "may not set aside the disqualification." *See id.*

Substantial evidence in the record supports the Commissioner's determination that Relator's disqualification was based upon correct evidence, and there is no question that Relator was appropriately disqualified pursuant to section 245C.15, subd. 1(a)(2010). *See* Tabs 4, 6 and 9. Because the risk of harm analysis only applies when the Commissioner is considering a request to set aside a disqualification, and because

section 245C.24 prohibits the Commissioner from setting aside Relator's disqualification, the Commissioner was not required to perform any risk of harm analysis.

B. Relator Is Not Entitled To A Risk Of Harm Review.

As noted above, section 245C.22 outlines the procedures that the Commissioner is to follow when reviewing a request for reconsideration, including the risk of harm factors that the Commissioner must consider when deciding whether to set aside a disqualification. Relator misunderstands the purpose of a risk of harm review, which applies to only those cases where the disqualification can be set aside, and he erroneously argues that sections 245C.22, subd. 4 and 245C.29, subd. 2(c), give him a right to a risk of harm review. *See* Relator's Brief at 11 and 12. That argument fails, however, because granting a set aside under sections 245C.22 or 245C.29 to a person who has been permanently disqualified would nullify section 245C.24, subd. 2, and thus violate the rule of statutory construction that requires every law to be construed to give effect to all of its provisions. *See* Minn. Stat. § 645.16. Relator's argument also would result in two irreconcilable provisions within the Background Study Act. Section 245C.22, Subdivision 4, is a general set aside provision that was adopted in 2003. *See* 2003 Minn. Laws, c. 15, art. 1, § 22. It is trumped by the more specific and more recent section 245C.24, subd. 2, which makes unambiguously clear that the Commissioner cannot set aside Relator's permanent disqualification. *See* Minn. Stat. § 645.26, subs. 1 and 4 (2010)

Likewise, section 245C.29, subd. 2, does not give Relator a right to a review based upon risk of harm. Rather, it specifies when a disqualification determination becomes

“conclusive” for purposes of the Background Study Act.³ Disqualifications based upon criminal convictions are not deemed to be conclusive. *See* Minn. Stat. § 245C.29, subd. 2 (2010). Accordingly, Relator’s disqualification, based upon a criminal conviction, does not fall within the ambit of section 245C.29, subd. 2 because, while based upon correct facts, it is not conclusive for purposes of the Background Study Act. In addition to being trumped by the more recent, more specific section 245C.24, section 245C.29, as discussed below, is inapplicable to the instant case.⁴

In the context of the Background Study Act, section 245C.29, subd. 2(c), addresses those cases where a person is disqualified, the person’s disqualification has been rendered “conclusive,” and the person is eligible for a set aside under section 245C.22. Conclusive determinations as described at section 245C.29, subd. 2(a) are those disqualifications where the applicant is entitled to a hearing under section 256.045, subd. 3(10), (known as the Fair Hearing Law), but either a hearing has been held or the applicant did not timely request a hearing.⁵ *See* Minn. Stat. § 245C.29, subd. 2(a) (2010). Relator, however, is not entitled to a fair hearing under section 256.045, because his disqualification is based upon a criminal conviction.

³ Section 245C.29, Subdivision 2(a) (2010) provides a disqualification is conclusive when (1) the information was “correct based on serious or recurring maltreatment;” (2) a preponderance of evidence determination; or (3) “the individual failed to make required reports under sections 626.556, subdivision 3, or 626.557, subdivision 3.”

⁴ Section 245C.29 was adopted in 2004. *See* 2004 Minn. Laws, c.288, art. 1, § 74.

⁵ Section 256.045, Subdivision 3(10) (2010) authorizes fair hearings for disqualifications based upon (1) “serious or recurring maltreatment;” (2) “a preponderance of evidence” determination; or (3) “failing to make reports required under section 626.556, subdivision. 3, or 626.557, subdivision 3.”

Specifically, if an individual is “disqualified based on a conviction of, an admission to, or an Alford Plea to the crimes listed in section 245C.15, subdivision 1 to 4, . . . the reconsideration decision under section 245C.22 is the final agency determination . . . and is not subject to a hearing under section 256.045.” *See* Minn. Stat. § 245C.27, subd. 1(c) (2010).⁶

II. THE PERMANENT DISQUALIFICATION OF RELATOR UNDER THE BACKGROUND STUDIES ACT IS CONSTITUTIONAL.

The parties agree that the due process protection provided under the Minnesota Constitution is identical to the due process guaranteed by the United States Constitution. The parties also agree that a three-part balancing test is used to determine if an individual’s right to procedural due process has been violated. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Sweet v. Comm’r of Human Servs.*, 702 N.W.2d at 319-320 (Minn. Ct. App. 2005). As discussed below, when the *Mathews* standard is applied to the facts of this case, Relator’s procedural due process argument fails. Relator’s disqualification was based on correct information, and he was provided a

⁶ A disqualification may last for seven, ten, or fifteen years, or permanently, (*see* Minn. Stat. § 245C.15), and a background study is required every time a person applies for a job at certain facilities. *See* Minn. Stat. § 245C.04. Accordingly, it is possible that the Commissioner would be asked to reconsider an individual’s disqualification multiple times. When there are multiple requests for reconsideration, section 245C.29, subd. 2(c) provides that the Commissioner need only review a disqualification for correctness on one occasion, and after that, if the determination regarding the underlying facts is considered “conclusive,” and the Commissioner need only conduct a risk of harm analysis to determine whether the disqualification should be set aside. *See* Minn. Stat. § 245C.29. Thus, section 245C.29, subd. 2(c) actually *limits* an applicant to one hearing based on correctness, rather than giving an applicant a right to a risk of harm review as suggested by Relator.

meaningful opportunity to challenge the disqualification. He thus received all of the process due to him under the law.

A. All Statutes are Presumed Constitutional.

The Court presumes all statutes are constitutional, and the power to declare a statute unconstitutional “should be exercised with extreme caution and only when absolutely necessary.” *See Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 298-99 (Minn. 2000); *see also In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). “A party challenging a statute carries the heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional.” *See Unity Church of St. Paul v. State*, 694 N.W.2d 585, 591 (Minn. Ct. App. 2005); *see also Skeen v. State*, 505 N.W.2d 299, 312 (Minn. 1993). An individual challenging a law must establish beyond a reasonable doubt that the statute violates a constitutional right. *See In re Conservatorship of Foster*, 547 N.W.2d 81, 85 (Minn. 1996). Moreover, a court, when determining the constitutionality of a statute, cannot substitute its judgment for that of the legislature. *See Skeen*, 505 N.W.2d at 312.

B. This Court Has Upheld The Background Study Act From Procedural Due Process Challenges.

Relator’s due process challenge to the Background Study Act is not a case of first impression in this Court. The statute was upheld against procedural due process challenges in *Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314 (Minn. Ct. App. 2005)

and *Obara v. Minnesota Dep't of Health*, 758 N.W.2d 873 (Minn Ct. App. 2008).⁷ As discussed below, the principles announced in *Sweet* and *Obara* are applicable to the arguments raised by Relator, and, as occurred in those cases, Relator's procedural due process challenge should be rejected by this Court.

In *Sweet*, a DHS background study revealed that Sweet had been convicted of crimes listed in section 245C.15 (i.e., disqualifying crimes). *See* 702 N.W.2d at 316. As a result, DHS notified Sweet that he was disqualified from his counseling job at a drug and alcohol counseling service. *See id.* Sweet submitted a written request for reconsideration and, in accordance with section 245C.27, subd. 1(c), was given no opportunity to request an evidentiary hearing on DHS' decision refusing to set aside his disqualification. *See id.* at 316-17. On appeal, Sweet argued that section 245C.27, subd. 1(c), deprived him of procedural due process.

In rejecting Sweet's procedural due process challenge, the court initially noted that Sweet had a property interest in his ability to pursue employment as a counselor in state-licensed programs. *See Sweet*, 702 N.W.2d at 320. The court then applied the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 322, 335 (1976). The factors that must be balanced are: (1) the private interest that will be affected

⁷ Relator also cites *Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456 (Minn. Ct. App. 2000). *Fosselman* is distinguished from the instant case because it addressed whether the appellants had the right to a hearing as part of the reconsideration process under the facts of that case. In *Fosselman*, the appellants did not have the ability to challenge the facts underlying the maltreatment determination. The instant case differs from *Fosselman* in that Relator does not seek a hearing, (*See* Relator's Brief at 9) and he had the ability to challenge the correctness of the facts that were the basis for his disqualification.

by the government action; (2) the risk of an erroneous deprivation of such interest through the procedures used; and (3) the government's interest, including the fiscal and administrative burdens that additional procedural requirements would entail. *See Sweet*, 702 N.W.2d at 320.

The court found that, as to the first *Mathews* factor, Sweet had a significant interest in pursuing employment as a counselor in state-licensed programs and that this interest weighed in his favor. *See id.* The court determined, however, that the second factor (the risk of erroneous deprivation) weighed in favor of DHS. The court found the following items to be significant in its analysis: (1) that Sweet had the burden of proof under section 245C.22, subd. 4, to show that he is not disqualified by the statutory criteria and that he does not pose a risk of harm; (2) that Sweet "had the unfettered right to present all evidence, including letters of support, that he thought the commissioner should consider in his written submission"; and (3) that the agency presented no controverted testimony, and thus a hearing was not necessary to permit cross-examination of witnesses. *See id.* at 321.

Finally, as to the third *Mathews* factor (the burden on the government of requiring more process), the court in *Sweet* found that the government's interests weighed in favor of the Commissioner because of the important governmental interest in protecting vulnerable individuals, as well as the government's interest in reconsidering disqualifications quickly and efficiently. *See id.* at 321-22.

After considering all three factors, the court in *Sweet* concluded that "an evidentiary hearing was not required to afford relator with procedural due process"

See id. at 322. The court held that “the statutory language contained in Minn. Stat. § 245C.27, subd. 1(c) is not unconstitutional on its face or as applied to relator.” *See id.*

The court in *Obara* also upheld the Background Study Act against a due process challenge for a disqualification based upon a criminal conviction. In *Obara*, the court noted:

Importantly, relator does not assert that he had any evidence of his innocence that he had not had an opportunity to present in his criminal proceedings. . . . Because relator’s convictions required proof of guilt beyond a reasonable doubt, he was afforded due process of law incident to a criminal proceeding. This minimized the risk of an erroneous decision. With this minimized risk and the burden of duplicative evidentiary hearings, we conclude that procedural due process does not require that DHS provide relator an evidentiary hearing on his disqualification.

See Obara, 758 N.W.2d at 879. Likewise, in the instant case, Relator was provided with the opportunity to challenge the correctness of the underlying conviction, and, as described below, that opportunity provides sufficient procedural process under the law.

C. The Department Provided Due Process To Relator.

An analysis of the *Mathews* factors in the instant case demonstrates that Relator’s procedural due process rights have not been violated. First, although Relator may have a property interest in his ability to pursue employment, under *Sweet*, the loss of that interest, when weighed against the other two factors specified in *Mathews*, does not violate due process.

The second *Mathews* factor, whether there was an erroneous deprivation due to the procedures used, weighs heavily in favor of the Department. Relator twice was given the opportunity to present evidence on the issue of correctness. His first opportunity to

challenge correctness was during the criminal case; his second opportunity was during the disqualification reconsideration process. He failed to challenge the correctness of the underlying facts on either occasion. Indeed, Relator acknowledges that he entered a guilty plea to fifth degree criminal sexual conduct. *See* Rel. Brief at 2. Contrary to Relator's assertion that there has been an erroneous deprivation of his property interest, the record shows that his disqualification was based upon correct information, and thus this factor weighs in favor of the Department. *See Obara*, 758 N.W.2d at 879. The court's conclusion in *Sweet* applies to the instance case: the Relator "has already been afforded the full panoply of rights in the criminal proceedings leading up to his convictions." *See Sweet*, 702 N.W.2d at 321; *see also Obara* 758 N.W.2d at 879 (relator in that case had been "afforded due process of law incident to a criminal proceeding"). There is no showing by Relator that he has been erroneously deprived of his rights because of the procedures used in the reconsideration process.

The third *Mathews* factor, the burden that additional process would impose on the government, also strongly weighs in favor of the Department. As noted in *Sweet*:

[T]he governmental interest in protecting the public, especially vulnerable individuals attending counseling for drug and alcohol addiction, is of paramount importance. Minn. Stat. § 245C.22, subd. 3. The government also has an interest in saving time and money by considering disqualifications quickly and efficiently, without the additional time, expenses, and personnel required to provide evidentiary hearings to disqualified individuals. If an individual disqualified for criminal convictions were due an oral evidentiary hearing, the commissioner would need to hold one on the same issue every time the same individual was hired or re-hired by a state-licensed program.

See Sweet, 702 N.W.2d at 321-22.

Relator wrongly suggests that the State would not incur any added expense or administrative burden in setting aside his disqualification because there is no need for an evidentiary hearing. *See* Rel. Brief at 10. The Background Study Act plainly states, however, that the Commissioner “may not set aside the disqualification of any individual disqualified pursuant to this chapter, regardless of how much time has passed, if the individual was disqualified for a crime listed in section 245C.15, subd. 1.” *See* Minn. Stat. § 245C.24, subd. 2. It would be an unnecessary expenditure of government resources to conduct a risk of harm analysis to consider requests that cannot be granted because the applicable law specifically prohibits the Commissioner from setting aside certain disqualifications. The Legislature, by specifying categories of individuals who are permanently disqualified from working with vulnerable populations, and prohibiting the Commissioner from setting aside those disqualifications, has already simplified the administrative process and thus has reduced the costs and burdens on the State. Accordingly, the third *Mathews* factor strongly supports the process used by the Commissioner in reviewing Relator’s case.

In applying the *Mathews* factors as described in *Sweet* and *Obara*, it is clear that Relator received adequate process, and thus his due process challenge fails. The procedural due process that was afforded Relator under the Background Study Act is constitutionally sufficient because it gave Relator a “meaningful opportunity to present his case.” *See Mathews*, 424 U.S. at 349. Relator has not met his heavy burden of showing that section 245C.24, subd. 2(c) is unconstitutional beyond a reasonable doubt.

See Sweet, 702 N.W.2d at 319 (challenger must show statute is unconstitutional beyond a reasonable doubt). Accordingly, Relator's procedural due process argument fails.

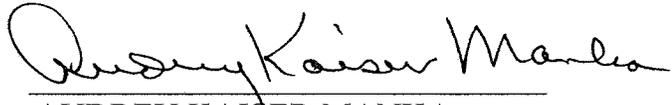
CONCLUSION

Based upon the foregoing, the Department of Health respectfully requests this Court affirm the Commissioner's decision.

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Respectfully submitted,

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