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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-173**

In re the Maltreatment Finding
of Kay Marie Beckman and Maltreatment
Finding and Order to Forfeit a Fine for
New Horizon Child Care Center, Inc.

**Filed April 29, 2008
Reversed and remanded
Willis, Judge**

Department of Human Services
File No. 12-1800-17193-2

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Considered and decided by Toussaint, Chief Judge; Willis, Judge; and Crippen,
Judge.*

UNPUBLISHED OPINION

WILLIS, Judge

In this certiorari appeal, relator challenges a determination by the Commissioner of the Minnesota Department of Human Services that relator is culpable of two instances of maltreatment of a minor. We reverse and remand.

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

FACTS

Relator New Horizon Child Care Center, Inc. (New Horizon) operates several child-care facilities licensed by the Minnesota Department of Human Services (DHS). In November 2003, a child at a New Horizon child-care center (the center) suffered chemical burns on his legs and bottom after sitting on a toilet seat. In March 2004, another child at the center also suffered chemical burns on her legs and bottom after sitting on a toilet seat. Following an investigation, DHS determined that the burns were caused by a cleaning product used by New Horizon and that New Horizon was culpable of two instances of maltreatment by neglect arising out of the incidents. New Horizon requested a contested-case hearing before an administrative-law judge (ALJ). After a four-day hearing, the ALJ issued findings of fact, conclusions, and a recommendation that the Commissioner of the Department of Human Services reverse the determinations of maltreatment. DHS filed exceptions to the ALJ's recommendation.

By order dated December 20, 2006, the commissioner adopted most of the ALJ's findings and conclusions but modified or deleted several of the findings and upheld the determinations of maltreatment against New Horizon.¹ This certiorari appeal follows.

DECISION

An appellate court presumes the correctness of an agency decision, and the party challenging the decision bears the burden of proving that it was improperly reached. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 849 (Minn. 1984). We may

¹ DHS initially determined that the center's director, Kay Beckman, was also culpable of one instance of maltreatment, but that determination was reversed by the commissioner and is not at issue here.

reverse an agency decision if it is “arbitrary or capricious.” Minn. Stat. § 14.69(f) (2006). A decision is not arbitrary and capricious “if a rational connection between the facts found and the choice made is articulated.” *Fine v. Bernstein*, 726 N.W.2d 137, 142 (Minn. App. 2007), *review denied* (Minn. Apr. 17, 2007). But a decision is arbitrary and capricious if it is “devoid of articulated reasons.” *Mammenga v. State Dep’t of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989).

New Horizon challenges the commissioner’s decision to modify several of the factual findings of the ALJ. Minn. Stat. § 245A.08, subd. 5 (2004), provides that in cases such as this, “[a]fter considering the findings of fact, conclusions, and recommendations of the administrative law judge, the commissioner shall issue a final order. The commissioner shall consider, but shall not be bound by, the recommendations of the administrative law judge.” The agency decisionmaker owes no deference to the findings, conclusions, or recommendations of the ALJ. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). But “when an agency significantly deviates from a reviewing authority’s conclusions, it must explain the deviation. Failure to do so evidences the agency’s desire to exercise its will and not its judgment.” *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001) (citation and quotation omitted), *review denied* (Minn. Nov. 13, 2001). “At a minimum, a business owner with property rights in the form of government licenses is entitled to know the reasons for adverse action” *Id.* *But see In re Med. License of Friedenson*, 574 N.W.2d 463, 465-68 (Minn. App. 1998) (concluding that a decision was not arbitrary and capricious, even though the decision failed to explain the reasons for

deviating from the ALJ's findings and conclusions, because the reviewing court was satisfied that the decision was "the exercise of . . . careful and prudent judgment"), *review denied* (Minn. Apr. 30, 1998).

Here, the commissioner modified or deleted several findings of the ALJ. While some of the modified findings include citations to the record, others do not. And none of the modifications or deletions is accompanied by an explanation either in the order or the accompanying memorandum. The commissioner is free to deviate from the findings and conclusions of the ALJ, but in order to survive the arbitrary-and-capricious standard the commissioner must explain his reasons for altering the ALJ's findings. *See CUP Foods*, 633 N.W.2d at 565. We therefore reverse and remand in order for the commissioner to provide the necessary explanations.

Reversed and remanded.