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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0872**

Christy Marie Owens,  
Relator,

vs.

Commissioner of Human Services,  
Respondent.

**Filed April 15, 2008  
Affirmed  
Connolly, Judge  
Concurring specially, Minge, Judge**

Minnesota Department of Human Services  
File No. 1038429 R3

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

**UNPUBLISHED OPINION**

**CONNOLLY**, Judge

Relator appeals respondent's decision denying her request to set aside her  
disqualification from working in any position allowing direct contact with individuals

receiving services from certain state-licensed facilities. Relator argues that respondent erred in denying her request because the respondent's decision (1) violated relator's right to procedural due-process, (2) was arbitrary and capricious, (3) was influenced by an error of law, and (4) was not supported by substantial evidence. We affirm.

## **FACTS**

Relator Christy M. Owens has two prior convictions for misdemeanor theft. These convictions occurred on June 26, 2003, and January 15, 2004. On May 1, 2006, she began work as a preschool teacher with Bright Horizons Family Solutions. Bright Horizons is licensed by the Minnesota Department of Human Services (DHS). Minnesota law requires that background studies be performed on all employees of DHS licensed programs that have direct contact with persons served by these programs. Minn. Stat. § 245C.03, subd. 1(a)(3) (2006). The commissioner is required to disqualify anyone who has been convicted of certain specified crimes. Minn. Stat. § 245C.15 (2006). Misdemeanor theft is a disqualifying crime subject to a seven-year disqualification period. Minn. Stat. § 245C.15, subd. 4.

A background study was conducted on relator because of her employment with Bright Horizons. This background study indicated that relator had two prior convictions for misdemeanor theft. As a result of these convictions, the commissioner notified relator that she was disqualified from any position allowing direct contact with persons receiving services from facilities licensed by DHS. On December 11, 2006, relator used the suggested form for reconsideration provided by DHS to request that the commissioner set aside her disqualification. The commissioner advised relator that her disqualification had

not been set aside. The commissioner informed relator that the five bases for the decision were (1) the statutorily specified period for disqualification had not yet passed, (2) relator's two qualifying offenses, (3) relator's failure to provide evidence of rehabilitation or training pertinent to the offense, (4) relator's failure to take responsibility for her actions, and (5) relator's failure to submit a requested probation-officer report.

### DECISION

A commissioner's decision to grant or to deny a request for reconsideration of a disqualification based upon a conviction is a final administrative agency action. Minn. Stat. § 245C.27, subd. 1(c) (2006). An aggrieved party may seek review by this court by writ of certiorari. Minn. Stat. §§ 480A.06, subd. 3; 606.01 (2006). Upon review, this court inspects the record to review

questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

*Rodne v. Comm'r of Human Serv.*, 547 N.W.2d 440, 444-45 (Minn. App. 1996) (citations omitted).

An agency decision may be reversed if the substantial rights of a party are prejudiced because the decision was

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or

- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69 (2006).

When reviewing agency decisions, this court “adhere[s] 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) (citation omitted). A “party seeking review on appeal has the burden of proving that the agency has exceeded its statutory authority.” *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996).

**I. The commissioner’s decision did not violate relator’s right to procedural due-process.**

Procedural due-process issues are reviewed de novo. *Plocher v. Comm’r of Public Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004). The due-process clause requires that deprivations of life, liberty, or property by adjudication be preceded by adequate notice and a meaningful opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976). The primary function of notice is to inform a party of how government action affects the party’s interests. *Schulte v. Transp. Unlimited, Inc.*, 354 N.W.2d 830, 834 (Minn. 1984). Notice is adequate if a party knows or has reason to know of the adverse consequences of governmental action. *Comm’r of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). Notice is inadequate if it fails to communicate the interest at stake or is actively misleading. *Plocher*, 681 N.W.2d at 705.

Relator first argues that the commissioner's notice and instructions for requesting reconsideration violated her right to procedural due-process because they (1) did not notify her of the consequences of her decision and her right to be heard, and (2) contained confusing and inadequate instructions. Relator's argument is not supported by the record. The commissioner's letter of disqualification clearly advised relator that her disqualification would have an impact on her present and future employment by disqualifying her from certain positions at licensed facilities.<sup>1</sup> The commissioner's letter also clearly advised relator how she could request a reconsideration of her disqualification.<sup>2</sup> In fact, relator used the commissioner's recommended method to request a reconsideration of her disqualification.

Turning to the instructions provided by the commissioner, we cannot say that they violated relator's procedural due-process rights. Relator argues that "rehabilitation," as used by the recommended form, is confusing. We disagree. "Rehabilitation" is a

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<sup>1</sup> DHS's December 4, 2006 letter stated:

This conviction disqualifies you from any position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health, from facilities serving children or youth licensed by the Department of Corrections, and from unlicensed Personal Care Provider Organizations.

<sup>2</sup> Under the heading "what you can do about your disqualification," DHS's December 4, 2006 letter explained to relator that if she believed the information used to disqualify her was incorrect, she could "send a letter that identifies what information was wrong, explain why the information was wrong, and send in the correct information." (Emphasis removed.) The letter also explained that, if relator felt she was not at risk of harming the people she worked with, then she could "use the enclosed form [to] request [a] reconsideration of [her] disqualification."

common word with an easily discernible meaning. It was not used on the recommended form in any special, technical, or legal sense.

Relator also takes issue with the form's request for a probation-officer report. Relator argues that, because she did not have a probation officer, it was a violation of her right to procedural due-process to request one. This argument is without merit. While it is true that the form requested a probation-officer report, relator had the opportunity to explain she did not have one because she was on administrative probation. Under the circumstances, this is sufficient to satisfy her procedural due-process rights.

Finally, relator argues that it was unclear which questions on the form were discretionary. The form provided that "all the required questions must be answered," but did not specify which questions were required. In this case, the requirements of procedural due-process were met by giving relator the opportunity to answer all of the questions. Additionally, even if there was some confusion surrounding this particular instruction, it does not rise to the level of a due-process violation.

Relator next argues that her right to procedural due-process was violated by the commissioner's use of the police reports relating to her January 15, 2004, theft conviction. Specifically, relator takes issue with the commissioner's consideration of the inconsistencies between the police report and her explanation of events on the form for reconsideration. Relator argues that by using the statement from the police report, the commissioner was making the determination that relator committed a crime of which she was never convicted. This argument fails because the commissioner only used the police report as evidence of relator's inconsistency in explaining the events surrounding her

conviction. This is a permissible use of such information under the statutory framework. See Minn. Stat. § 245C.22, subd. 4(b)(8) (2006) (allowing the commissioner to consider all other information relevant for consideration).

## **II. The commissioner's decision is not arbitrary and capricious.**

An appellate court may reverse an administrative decision if it is arbitrary and capricious. *In re Excess Surplus Status*, 624 N.W.2d at 277. An agency's conclusion is arbitrary and capricious if there is no rational connection between the facts and the agency's decision. *Id.* "An agency decision may be arbitrary or capricious if the decision is based on whim or is devoid of articulated reasons." *Mammenga v. State Dep't of Human Serv.*, 442 N.W.2d 786, 789 (Minn. 1989).

Relator points to the suggested form's request for the probation officer's report as evidence that the commissioner's decision is arbitrary and capricious. Relator's argument is not persuasive. Although it is true that she did not have a probation officer because she was placed on administrative probation rather than court-supervised probation, the results of the background study indicated that relator was still on probation. It did not specify that she was on court-supervised probation. As a result, the commissioner requested a probation-officer report. While relator did not have a probation-officer report, she did have the opportunity to explain why one did not exist. Instead, she failed to address the issue. As a result of these circumstances, the commissioner had a legitimate reason to expect that relator would either provide a probation report or explain why one was not available. Thus, there was a rational connection between relator's failure to explain why she was not providing a probation

report and the commissioner's decision to factor the failure to provide a probation report against her.

### **III. The commissioner's decision is not influenced by an error of law.**

When an agency bases its decision on statutory interpretation, this court is presented with a question of law, which it reviews de novo. *In re Staley*, 730 N.W.2d 289, 297 (Minn. App. 2007). While administrative interpretations are entitled to great respect, they are not binding on the court. *Indep. Sch. Dist. No. 621 v. Pub. Employment Relations Bd.*, 268 N.W.2d 410, 412 n.5 (Minn. 1978).

Relator contends the commissioner's decision that she did not prove rehabilitation is an error of law. The "documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event" is one of eight statutory factors the commissioner must consider when deciding whether to grant a request for reconsideration. Minn. Stat. § 245C.22, subd. 4(b)(7). Relator contends that by using the phrase "pertinent to the event" the legislature intended that the commissioner only consider court-ordered programming. Thus, relator feels the commissioner erred by considering aspects of her rehabilitation that were not court ordered.

Relator's interpretation of the statute is incorrect. The statute makes no mention of court-ordered rehabilitation. Instead, it uses the word "pertinent" which has a broader meaning than court-ordered. To substitute "court-ordered" for "pertinent" would narrow the applicability of the statute as drafted by the legislature, a step we decline to take here.

#### **IV. The commissioner's decision is supported by substantial evidence.**

The commissioner may set aside an individual's disqualification only if he "finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by" the program for which the individual is seeking employment. Minn. Stat. § 245C.22, subd. 4(a). In making this determination, the commissioner shall consider

- (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.

*Id.*, subd. 4(b). Any single factor can be dispositive. *Id.*, subd. 3 (2006). The commissioner must give preeminent weight to the safety of the persons being served by the program over the interests of the disqualified individual. *Id.*

An appellate court may reverse an administrative decision if it is not supported by substantial evidence. *In re Excess Surplus Status*, 624 N.W.2d at 277. 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).

The commissioner's decision not to set aside relator's disqualification is supported by substantial evidence. The nature and severity of relator's acts support disqualification. Relator's two separate and intentional criminal acts call into question her ability to exercise the appropriate level of care. Reinforcing this conclusion is the fact that relator's criminal acts involved dishonesty. Dishonesty poses a higher risk of harm in a daycare setting where caretakers must be counted on to honestly explain the facts surrounding any potential accidents or incidents they might be involved in.

The number of relator's disqualifying acts clearly supports the commissioner's decision to not set aside relator's disqualification. Relator has more than one disqualifying crime. That relator has committed two intentional criminal acts of dishonesty is an indication that she poses a risk of harm to the children served by DHS licensed facilities.

The time elapsed since relator's disqualifying acts clearly supports the commissioner's decision to not set aside relator's disqualification. Both of relator's criminal acts carry a seven-year disqualification period. This period does not begin to run until an individual has discharged their sentence. Only two years have passed since the discharge from probation of relator's most recent offense. Relator's disqualification will not expire until January 15, 2012. The brief period of time between the discharge of relator's probation and the request to set aside her disqualification supports the commissioner's decision that she poses a risk of harm.

Based upon the factors discussed above, the commissioner's decision not to set aside relator's disqualification is supported by substantial evidence.

**Affirmed.**

**MINGE**, Judge (concurring specially)

I join in the opinion of the court except for Part I of the decision. With respect to Part I, I concur with the result.