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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2025**

Lynn Torregano,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed August 6, 2012
Affirmed
Schellhas, Judge**

Minnesota Department of Human Services
Agency No. 97984

Lynn Torregano, St. Paul, Minnesota (pro se relator)

Lori Swanson, Attorney General, Max Kieley, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Kalitowski, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Arguing that she does not pose a risk of harm, relator challenges respondent's denial of her request to set aside her disqualification from working in positions in which she would be in direct contact with or have access to persons served by state-licensed facilities. We affirm.

FACTS

Between 2003 and 2009, relator Lynn Torregano was convicted of five misdemeanor thefts, one gross-misdemeanor theft, one felony theft, and one aiding and abetting misdemeanor theft. Relator's prospective employer requested a background study for Torregano from respondent Minnesota Commissioner of Human Services, and, on July 13, 2011, the commissioner informed Torregano that she was disqualified from working in a position where she would have direct contact with or access to persons receiving services from a state-licensed facility. Based on Torregano's eight convictions between 2003 and 2009, the commissioner determined that she "pose[d] an imminent risk of harm to persons receiving services" from the prospective employer because she had "a disqualification from a previous background study which has not been set aside," she had a "number of disqualifying characteristics," and her "disqualifying characteristics" had a "repeated nature."

Arguing that she did not pose a risk of harm, Torregano asked the commissioner to set aside her disqualification, but the commissioner sustained her disqualification in September 2011. Torregano then submitted to the commissioner copies of various expungement petitions she had filed in district court. In November 2011, the commissioner reaffirmed the sustainment of the decision not to set aside Torregano's disqualification.

This certiorari appeal of the commissioner's September 2011 set-aside denial follows.

DECISION

A commissioner's decision to sustain a disqualification is a final agency action subject to certiorari review. *Hickman v. Comm'r of Human Servs.*, 682 N.W.2d 697, 699 (Minn. App. 2004). On appeal, we examine the record to determine whether the commissioner's decision is affected by an error of law, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 14.69 (c)–(e) (2010); *see Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005) (discussing standard of review for administrative decisions), *review denied* (Minn. Nov. 15, 2005).

The Department of Human Services Background Studies Act, Minn. Stat. §§ 245C.01–.34 (2010), requires the commissioner of health to conduct background studies on individuals who are “in direct contact with persons receiving services at state-licensed health-care facilities.” *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012); *see* Minn. Stat. § 245C.03 (listing individuals on whom commissioner must conduct background studies). To conduct the study, the commissioner must review an individual's records from the Minnesota Bureau of Criminal Apprehension, Minn. Stat. § 245C.08, subd. 1(a)(4), and must disqualify individuals for either 15 years or 7 years from the discharge of the sentence for certain crimes, Minn. Stat. §§ 245C.14, subd. 1(a)(1), .15, subds. 2, 4. Torregano's 2003 felony theft conviction disqualifies her for 15 years from the discharge of her sentence, and her misdemeanor theft convictions in 2003, 2006, and 2009 disqualify her for 7 years from the discharge of her sentences. Minn. Stat. § 245C.15, subds. 2(a), 4(a).

A disqualified individual may request reconsideration of the disqualification by showing that the commissioner relied on incorrect information or that the individual does not pose a risk of harm to any person served by the licensed facility. Minn. Stat. § 245C.21, subs. 1, 3(a)(1), (3). If the commissioner “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 [individual],” the commissioner may set aside the disqualification. Minn. Stat. § 245C.22, subd. 4(a). In determining whether the individual poses a risk of harm, the commissioner must consider nine factors:

- (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) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (9) any other information relevant to reconsideration.

Id., subd. 4(b). In considering the factors, the commissioner must “give preeminent weight to the safety of each person served by the license holder.” *Id.*, subd. 3. And “any single factor under subdivision 4, paragraph (b), may be determinative of the commissioner’s decision whether to set aside the individual’s disqualification.” *Id.*

In her September 2011 letter, the commissioner stated that she had “applied and weighed all of the . . . nine factors” and had “given preeminent weight to the safety of

each person to be served by the program.” The commissioner found four factors to be determinative: the vulnerability of the people for whom Torregano wished to provide direct-contact services, her 15-year disqualification because of her felony offense, the less-than-two-year period since her latest disqualifying offense, and the number of disqualifying offenses. On appeal, Torregano makes various arguments that she does not pose a risk of harm, but she does not argue that the information about her disqualifying offenses was incorrect. We therefore analyze Torregano’s arguments in light of the four factors that the commissioner identified as determinative.

First, the commissioner found that the clients Torregano sought to serve were “vulnerable because of their physical and/or mental disabilities.” The “vulnerability of persons served” is a risk-of-harm factor under the statute. *Id.*, subd. 4(b)(5). In her request for reconsideration, Torregano stated that she wanted to care for her granddaughter, who “is a young child with disabilities.” On appeal, Torregano argues that her crimes were against stores and not against her clients and that she never harmed or stole from any of her clients. The fact that Torregano’s crimes were committed against stores and not individuals does not affect the correctness of the commissioner’s determination that the clients Torregano sought to serve are vulnerable because of their disabilities. We conclude that substantial evidence supports the commissioner’s finding.

Second, the commissioner found that Torregano’s felony theft conviction disqualified her for 15 years after completion of her sentence and that “[t]his long time period reflects the legislature’s judgment that certain offenses warrant longer disqualification than others, because of the seriousness of the offenses and the significant

risk of harm posed to vulnerable adults and minors.” “[T]he nature [and] severity . . . of the event . . . that led to the disqualification” is a statutory risk-of-harm factor. *Id.*, subd. 4(b)(1). Under Minn. Stat. § 245C.15, subd. 2(a)(2), Torregano’s felony theft conviction disqualifies her for 15 years from completion of her sentence. Torregano argues that the commissioner should have set aside her disqualification because she completed her probation for the felony theft conviction in October 2008. Her argument is unavailing in light of the 15-year disqualification period. We conclude that substantial evidence supports the commissioner’s finding.

Third, the commissioner found that Torregano committed her latest offense less than two years before the commissioner decided her case, that the offense disqualifies her for seven years, and that “[i]t is therefore too soon to conclude that [Torregano has] changed [her] attitude and behavior.” “[T]he time elapsed without a repeat of the same or similar event” is another statutory risk-of-harm factor. Minn. Stat. § 245C.22, subd. 4(b)(7). Based on Torregano’s history of committing eight offenses in six years, we conclude that substantial evidence supports the commissioner’s decision that insufficient time has passed to ensure that Torregano will remain law abiding.

Fourth, the commissioner found “[t]he number of disqualifying offenses” to be a disqualifying factor. One statutory risk-of-harm factor is “whether there is more than one disqualifying event.” *Id.*, subd. 4(b)(2). Here, Torregano had eight disqualifying events, consisting of eight theft convictions. Although Torregano argues that she has received or is seeking expungements of her convictions, the expungement documents in the record do not pertain to any of the eight convictions for which she was disqualified. And most of

the documents pertain to older convictions. We conclude that substantial evidence supports the commissioner's finding.

The commissioner noted that upon review of all nine statutory risk-of-harm factors, some factors may "indicate a lesser risk of harm," but based on the four findings discussed above, the commissioner determined that Torregano failed to demonstrate that she did not pose a risk of harm. The commissioner's determinative findings reflect consideration of the statutory factors and are supported by substantial evidence in the record.

Affirmed.