

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Appeal by Tammy L.  
Koosman of Maltreatment Determination,  
Disqualification and License Revocation

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Barbara J. Case on October 29, 2014.

Anne Fuchs, Assistant Attorney General, appeared on behalf of the Department of Human Services (Department). Respondent Tammy L. Koosman (Respondent) appeared on her own behalf, without counsel.

**STATEMENT OF THE ISSUES**

1. Were the Respondent and the adult foster care facility responsible for maltreatment by financial exploitation under Minn. Stat. §§ 626.557, subd. 9c(b), (d); .5572, subd. 9(b), 15 (2014)?
2. If the Respondent committed financial exploitation of a vulnerable adult and theft, is revocation of the respondent's adult foster care facility license warranted?
3. Did the Department correctly conclude the Respondent was disqualified under Minn. Stat. §§ 245C.15, subd. 4; 609.52 (2014)?
4. If the Respondent is properly disqualified, should the disqualification be set aside?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that the Department has met its burden to show that the Respondent's actions constitute maltreatment; that the Respondent's adult foster care license should be revoked; and the Respondent disqualified. The Administrative Law Judge did not reach the question of the setting aside of the disqualification because, with the revocation of the adult foster care license, that issue became moot.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### PROCEDURAL BACKGROUND

1. On July 29, 2014, a Notice and Order for Prehearing Conference and Hearing in this matter was served on Respondent by mail.<sup>1</sup>

2. Respondent operated a licensed adult foster care facility in her home from October 2009<sup>2</sup> until approximately June 30, 2014.<sup>3</sup>

### FACTUAL BACKGROUND

3. The Vulnerable Adult (VA), who is now deceased had, among other diagnoses, chronic depression, diabetes, obstructive pulmonary disease, cancer and dementia.<sup>4</sup>

4. Over the time the VA lived with the Respondent his dementia became increasingly severe. During the time that the VA was in the Respondent's home he sometimes was very happy with Respondent, and at other times he was upset with and afraid of her.<sup>5</sup> At times he was aggressive, and at times he was afraid to be in the Respondent's home.<sup>6</sup>

5. The VA's sole income was a monthly social security payment of approximately \$959.00.<sup>7</sup>

6. However, the VA was his own guardian and, although he required assistance with his finances, was in control of his own finances.<sup>8</sup> The VA resided in the Respondent's Adult Foster Care home from January 4, 2012<sup>9</sup> until he moved out of her home and into an assisted living facility on February 6, 2013.<sup>10</sup>

7. While the VA lived at the Respondent's adult foster care home, the Respondent took him to the bank each month where he would transfer funds from his account directly into the Respondent's account to pay his portion of the money due to Respondent for his care. He kept the remainder of his monthly check in cash for incidental expenses.<sup>11</sup>

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<sup>1</sup>Notice and Order for Hearing and Affidavit of Service.

<sup>2</sup> Ex. 7 at 33.

<sup>3</sup> Ex. 31.

<sup>4</sup> Ex. 7 at 31; Ex. 24 at 151, 184; Ex.30 at 164.

<sup>5</sup> Testimony of Respondent; Respondent's Ex. 1, letter of Dolores Cunliffe.

<sup>6</sup> Ex. 7 at 31.

<sup>7</sup> Ex. 17, Ex. 19; Test. of Respondent.

<sup>8</sup> Ex. 30 at 164.

<sup>9</sup> Ex. 19 at 79.

<sup>10</sup> Ex. 30 at 164.

<sup>11</sup> Test. of Respondent; Ex. 30.

8. A “Resident Information” form was filled out on or about the time the VA moved into the Respondent’s adult foster care facility.<sup>12</sup> A section of the form titled “Cash Resources” stated that “The resident will manage his/her own financial affairs with the assistance of the following individual: Tammy Koosman to (illegible word, illegible word) VA has savings Acct US Bank Soc Sec checks direct deposited [sic].”<sup>13</sup>

9. Throughout the VA’s tenure at Respondent’s adult foster care facility, the Respondent transported the VA to therapy appointments and often attended them with him. They would occasionally work on their relationship issues in these sessions.<sup>14</sup>

10. Towards the end of the time that the VA lived in the Respondent’s adult foster care facility, the Respondent told the county case manager that she believed the VA needed more care and should be moved to a nursing home. The Respondent observed that the VA’s dementia was getting worse; that he was doing “strange things” and that he was often falling.<sup>15</sup>

11. The Respondent cooperated with the VA’s county case managers to facilitate his move to an assisted living facility. He moved into the facility on the evening of February 6, 2013.<sup>16</sup>

## THE INCIDENT AND THE INVESTIGATION

12. The precipitating event in this case, a withdrawal of \$952.00 by the VA from his credit union account, occurred on February 15, 2013.<sup>17</sup>

13. On that date, the Respondent picked up the VA at his new residence and drove him to his credit union so that he could withdraw \$959.00 from his social security check which had been deposited in the credit union on February 13, 2013.<sup>18</sup> At the credit union the VA withdrew \$952.00 in cash, leaving him with an account balance of \$49.16.<sup>19</sup>

14. After the money was withdrawn, the VA offered the Respondent all of the \$959.00. Although she did not know exactly what amount was due to her or the procedure for receiving it,<sup>20</sup> Respondent told the VA that he owed her \$200.00 for rent for the last few days he lived at her adult foster care Home, February 1, 2013 to February 6, 2013.<sup>21</sup> The VA gave the Respondent \$200.00 in cash.<sup>22</sup>

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<sup>12</sup> Ex. 19 (the form was signed and dated by the VA as January, 4, 2011 but as the VA did not live with the Respondent in 2011, it is reasonable to infer that the date was actually January 4, 2012).

<sup>13</sup> Ex. 19 at 82, 85; Ex. 30 at 164.

<sup>14</sup> Ex. 34 (Department interview with Respondent).

<sup>15</sup> Ex. 24; Test. of Respondent.

<sup>16</sup> Ex. 24; Ex. 30; Test. of Respondent.

<sup>17</sup> Ex. 11 at 41; Ex. 14 at 65; Ex. 17 at 75 (Credit Union records).

<sup>18</sup> Ex. 17 at 75.

<sup>19</sup> *Id.*

<sup>20</sup> Ex. 14 at 66, Test. of Respondent.

<sup>21</sup> Ex. 14 at 64-67; Test. of Respondent.

<sup>22</sup> *Id.*

15. After the trip to the credit union to withdraw the VA's money, Respondent drove the VA to Walmart where he purchased some items that cost approximately \$40.00.<sup>23</sup> Respondent then drove the VA back to the assisted living center where she deposited him at its outside entrance. Respondent was in a hurry so she did not escort the VA into his new home. She did not assist him into the facility and she did not make sure that the cash he had withdrawn from the credit union was secured by the VA or by the facility. She did tell the VA to be sure to give the cash to the staff at the facility right away. He left an item he had purchased at Walmart in Respondent's car because he could not carry everything he had purchased.<sup>24</sup>

16. It is unknown what happened to the money remaining from the \$959.00 withdrawal after the \$200.00 received by Respondent and the approximately \$40.00 spent by the VA at Walmart.

17. The Respondent, the county, or the assisted living facility did not change the responsibility for assisting the VA with his financial affairs from the Respondent to the assisted living facility, the county, or any other entity in preparation for the VA's change of residence.<sup>25</sup> On or about the time the VA moved, the Respondent attempted to convince the VA's son to become the representative payee for his father, but the son did not want the responsibility.<sup>26</sup> The assisted living facility reported that the VA had no way to pay his rent to the facility as the "VA had only a savings account and no checking account." On May 1, 2013, a full three months after he had moved into the facility, a staff person at the facility took the VA to the bank to open a checking account so that the VA could write checks to pay his rent.<sup>27</sup>

18. The Department's testimony implied that the Respondent had been told that the assisted living facility would take care of the VA's finances. In fact, the facility owner communicated this to the Respondent sometime after the February 15, 2013, bank outing.<sup>28</sup>

19. The precipitating maltreatment report in this case was received by the county's "Common Entry Point" on May 1, 2013.<sup>29</sup> The Department assigned the matter report number 20131793 on May 9, 2013.<sup>30</sup>

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<sup>23</sup> Ex. 14 at 65.

<sup>24</sup> *Id.*

<sup>25</sup> See, record generally, no evidence that the county or the facility addressed the VA's need for financial management assistance upon his change of residence.

<sup>26</sup> Ex. 14 at 65.

<sup>27</sup> EX. 30 at 164.

<sup>28</sup> Test. of Maggie Hanson.

<sup>29</sup> Ex. 8 at 37; Test. of M. Hanson.

<sup>30</sup> Ex. 9.

20. The Common Entry Point report was sent to the local police department which declined to investigate.<sup>31</sup>

21. On June 18, 2013, the Department investigator asked the assisted living facility to check all of the VA's coats and clothing for the missing money. No money was found.<sup>32</sup>

22. On June 18, 2013, the investigator interviewed the VA. Given the length of time that had past since the event in question, the VA's dementia and his admission during the interview that he did not remember the incident, his hearsay testimony is not credible or reliable.<sup>33</sup>

### **The Department's Post-Investigation Actions**

23. In its June 30, 2014, investigation memorandum concerning the incident, the Department substantiated maltreatment of a vulnerable adult on the part of the Respondent, but determined that the maltreatment was not serious or recurring.<sup>34</sup>

24. It is the Department's protocol to refer a case to its legal unit for a preponderance of evidence review if the case has a finding of maltreatment that does not meet the criteria for disqualification.<sup>35</sup>

25. The Department followed that protocol in this case.<sup>36</sup> On March 31, 2014 the Department performed a "Preponderance of Evidence Review" for the crime of financial exploitation of a vulnerable adult. It determined that the Respondent's actions on February 15, 2013, constituted misdemeanor level financial exploitation of a vulnerable adult.<sup>37</sup>

26. Financial exploitation of a vulnerable adult<sup>38</sup> is included in the list of disqualifying crimes in Minn. Stat. § 245C.15 (2014).<sup>39</sup>

27. When the Department determines that it was more likely than not that a crime was committed, the case is given to the Department's background study division to perform a "risk of harm assessment." On April 17, 2014, the Department performed a risk of harm assessment pursuant to Minn. Stat. § 245C. 16 (2014),<sup>40</sup> and determined that the Respondent posed an imminent risk of harm.<sup>41</sup> The assessment's determination

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<sup>31</sup> Ex. 12 at 48-49.

<sup>32</sup> Ex. 12 at 56-57.

<sup>33</sup> Ex. 13.

<sup>34</sup> Test. of M. Hanson; Ex. 30.

<sup>35</sup> Test. of Brenda Kiepert-Holthaus; see Minn. Stat. § 245C.14, subd. 1(2) (2014).

<sup>36</sup> Test. of M. Hanson.

<sup>37</sup> Ex.1 at 11; Ex. 28 at 159.

<sup>38</sup> Ex. 28; Minn. Stat. § 609.2335, subd. 1(2)(i) (2014).

<sup>39</sup> Ex. 30 at 167.

<sup>40</sup> Compare to Minn. Stat. § 245C.22 (2014).

<sup>41</sup> Ex. 6; Test. of B. Kiepert-Holthaus.

was based primarily on the fact that the victim and the persons served by the licensed program were both vulnerable adults.<sup>42</sup>

28. By letter dated June 30, 2014, the Department revoked the facility's license, notified Respondent of the maltreatment determination, and disqualified the Respondent from direct contact with persons served by Department licensed programs.<sup>43</sup>

29. The Respondent was eligible to continue to operate her adult foster care home during the appeal period; but based on the risk of harm assessment, the Department determined that the Respondent would need to be under continuous, direct supervision of a staff person with a completed Department background study whenever she would be in a position of having direct contact with people in her facility.<sup>44</sup>

30. The Respondent was given 48 hours to obtain someone to supervise her adult foster care.<sup>45</sup> She was unable to meet the county's requirements for her continued operation in that amount of time. As a result, the residents of her facility were removed from her home.<sup>46</sup>

31. The Department's June 30, 2014, letter repeatedly stated that the Department had determined the Respondent to have committed maltreatment by committing an act which met the definition of theft.<sup>47</sup>

32. The Department's Notice and Order for Hearing correctly identified that whether the Respondent had committed financial exploitation of a vulnerable adult was at issue in this case. However, because the Department provided incorrect information in its letter, it pursued the Respondent's disqualification according to the presumption that the crime for which a preponderance of the evidence was found was theft and not financial exploitation of a vulnerable adult. Though the letter was in error, the later issued Notice and Order for hearing clearly set forth the issues.<sup>48</sup>

33. A disqualification from licensure that results from the financial exploitation of a vulnerable adult is a ten-year disqualification and it cannot be set aside for ten years from the date the act was committed.<sup>49</sup> A disqualification that results from theft is a seven year disqualification and it can be set aside.<sup>50</sup>

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<sup>42</sup> Ex. 6; Test. of B. Kiepert-Holthaus

<sup>43</sup> Ex. 30 at 168; Ex. 31.

<sup>44</sup> Ex. 31 at 172; Minn. Stat. § 245C.16.

<sup>45</sup> Ex. 31.

<sup>46</sup> See generally, Respondent's Motion to Dismiss.

<sup>47</sup> Ex. 31.

<sup>48</sup> Test. of B. Kiepert-Holthaus; Notice and Order for Hearing; Ex. 31.

<sup>49</sup> Minn. Stat. § 245C.24, subd. 3 (2014)

<sup>50</sup> Minn. Stat. § 245C.15, subd. 3. (Pursuant to a preponderance of evidence review, the period is ten years since the individual committed the act or admitted to committing the act and in this case the time should run from the date of the act as there was no admission as such.)

34. When a license holder appeals a maltreatment determination and a disqualification and a license revocation, the requestor has a right to a contested case hearing. If the license holder exercises their right to a contested case hearing, the Department does not perform a reconsideration of their disqualification.<sup>51</sup>

35. If the hearing officer recommends that the maltreatment determination be upheld, and that therefore the license revocation should be upheld, then the disqualification set aside consideration becomes moot because set asides are only done with respect to a particular program.<sup>52</sup>

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Minnesota Department of Human Services have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. §§ 14.50, 245A.08 (2014).

2. Minn. Stat. § 245A.07, subd. 3 (2014), allows the Commissioner of Human Services (Commissioner) to suspend or revoke a license, or impose a fine if a license holder fails to comply with the applicable laws or rules. Notice of any such action must be given by certified mail and must state the reasons for the sanction.

3. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled.

4. Under Minn. Stat. § 245A.08, subd. 3, the burden of proof first lies with the Commissioner, who may demonstrate reasonable cause for the action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the Commissioner demonstrates that reasonable cause existed, the burden shifts to the license holder to demonstrate by a preponderance of the evidence that she was in full compliance with those laws or rules allegedly violated, at the time that the Commissioner alleges the violations occurred.

5. When applying licensing sanctions, the Commissioner must “consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.”<sup>53</sup>

6. Before revoking a license, the Commissioner is required to consider facts, conditions, or circumstances concerning the program's operation, the well-being of

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<sup>51</sup> Ex. 31 at 178.

<sup>52</sup> Minn. Stat. § 245C.22, subd. 5.

<sup>53</sup> Minn. Stat. § 245A.07, subd. 1 (2014).

persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the license-holder.<sup>54</sup>

7. The Commissioner made the necessary considerations before applying sanctions in this case.

8. Minnesota Statutes section 626.5572.21, subdivision 21(a)(1) (2014) defines a vulnerable adult as “any person age 18 years of age or older who is a resident or inpatient of a facility.”

9. The VA was a vulnerable adult at all times relevant to this proceeding by consequence of living in an assisted living facility.<sup>55</sup>

10. Under the Minnesota Vulnerable Adults Act, “maltreatment” is defined to include abuse, neglect, or financial exploitation.<sup>56</sup> “Financial exploitation” is defined to include the willful use, withholding, or disposition of funds or property of a vulnerable adult in the absence of legal authority.<sup>57</sup> Maltreatment by financial exploitation is substantiated if a preponderance of the evidence shows that an act that meets the definition of financial exploitation occurred.<sup>58</sup> A preponderance of the evidence requires that the issue be proven to the point where it is more likely than not.<sup>59</sup>

11. On February 15, 2013, Respondent maltreated a vulnerable adult when she financially exploited the VA by using his funds in the absence of legal authority and failed to safeguard his remaining funds.<sup>60</sup>

12. When substantiated maltreatment is determined to have been committed by an individual who is also the facility license holder, both the individual and the facility must be determined responsible for the maltreatment, and both the background study disqualification standards under section 245C.15, subdivision 4, and the licensing actions under section 245A.06 or 245A.07 (2014) apply.<sup>61</sup>

13. In addition to making a license conditional under Minn. Stat. § 245A.06, the Commissioner may suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule. When applying sanctions authorized under this section, the Commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

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<sup>54</sup> Minn. Stat. § 245A.04, subd. 6 (2014).

<sup>55</sup> Minn. Stat. § 626.5572, subd. 9(b)(1).

<sup>56</sup> Minn. Stat. § 626.5572, subd. 15 (2014) (““Maltreatment” means abuse as defined in subdivision 2, neglect as defined in subdivision 17, or financial exploitation as defined in subdivision 9.”).

<sup>57</sup> Minn. Stat. § 626.5572, subd. 9(b)(1).

<sup>58</sup> Minn. Stat. 626.5572, subd. 19 (2014).

<sup>59</sup> See *City of Lake Elmo v. Metropolitan Council*, 685 N.W. 2d 1, 3-4 (Minn. 2004).

<sup>60</sup> Test. of Respondent.

<sup>61</sup> Minn. Stat. § 626.557, subd. 9c(d).

14. The Department met its burden to show that Respondent did not comply with an applicable law or rule when she committed financial exploitation of a vulnerable adult and that, therefore, the Department met its burden to show that it was reasonable to revoke Respondent's Adult Foster Care license.

15. Minnesota Statutes section 609.52, subdivision 2(a)(4) defines theft as "by swindling, whether by artifice or trick, device, or any other means, obtains property or service from another person. . . ."

16. The Department met its burden to show that the Respondent committed an act that met the elements of misdemeanor theft and that, therefore, the Respondent is disqualified for a period of seven years.<sup>62</sup>

17. The Respondent failed to meet her burden to show that she was in compliance with all applicable laws and rules at the time in question and, therefore, she is disqualified for seven years.

18. Because the Respondent's adult foster care license is revoked, there is no program from which the disqualification can be set aside and the application of that standard is moot.

19. The Respondent may apply for a disqualification set aside for any other program for whom she works or with whom she seeks employment.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the Commissioner revoke the Respondent's adult foster care license and disqualify her for a period of seven years.

Dated: December 26, 2014

s/Barbara J. Case  
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BARBARA J. CASE  
Administrative Law Judge

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<sup>62</sup> Minn. Stat. § 245C.15, subd. 4.

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Human Services (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Debra Schumacher, Administrative Law Attorney, PO Box 64998, St. Paul MN 55164, (651) 431-4319 to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014). In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1 (2014), the Commissioner is required to serve her final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The Department alleges that Respondent committed maltreatment by financially exploiting a former resident of her adult foster care home. The Department's primary responsibility is to protect the safety of the persons served by its programs, rather than to the interests of the license holders.<sup>63</sup> The Department asserts that Respondent should have her adult foster care License revoked and be disqualified from providing direct contact services in programs licensed by the Department for a period of seven years. Although the Department found that the maltreatment was not recurring or serious, it contends that the severity of the maltreatment is heightened because the Respondent is the license holder.

The Respondent had a prior relationship with the VA that included her being responsible for assisting him with his finances and taking him to the bank each month. The Respondent did not intend to maltreat the VA, she simply wanted to be paid for the last six days that the VA resided at her home. There is no evidence that the county, or the assisted living facility, created new documents to make clear who was responsible for the VA's finances. Nonetheless, the Respondent should have realized that since she was no longer the VA's foster care provider and was not his guardian or representative payee, she had no legal authority to "help" him with his finances or to take money from

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<sup>63</sup> See Minn. Stat. § 245C.22, subd. 3.

him in the absence of other authority. Her actions were not a continuation of the protocol she had followed in the past when all of the VA's money was electronically transferred into the Respondent's account and he was left with under \$100 for spending money. Regardless of her intention, or the lack of a clear transition of responsibility on the part of those who were responsible for the VA, the Respondent did exploit the vulnerable adult by taking money from him without authority and by failing to secure the money that he had remaining.

Financial exploitation is defined in relevant part to mean the willful use or withholding of a vulnerable adult's funds or property.<sup>64</sup> The Minnesota Court of Appeals has interpreted "willful" in other contexts to mean something more than intentional; a willful act is one of unreasonable character that is intentionally done in disregard of obvious risk and usually accompanied by a conscious indifference to the consequences.<sup>65</sup> Taking, without legal authority, \$200.00 from a vulnerable adult whose care plan stated that he needed significant assistance in managing his finances fits this definition. However, because the Department called the action theft in its notice to respondent it is seeking to impose the disqualification period of theft, seven years, rather than the disqualification for financial maltreatment, ten years.

Moreover, the disqualification for theft can be set aside, but a disqualification for financial exploitation cannot be set aside. The Administrative Law Judge did not set aside the disqualification of the Respondent because a set-aside analysis is always performed in relationship to a specific program. Here, because the Administrative Law Judge is upholding the license revocation, there is no analysis to be done. However, were the Respondent seeking a set-aside for another program the Administrative Law Judge believes it would be reasonable in any imaginable case to set the disqualification aside because the Department found that the maltreatment was not serious and was not recurring. The Department's rationale for the sanctions in this case is: where the program license holder is also the service provider, their access to and authority over vulnerable adults is heightened and oversight of their actions is diminished. Were the Respondent to work for another agency, both of these concerns would be alleviated.

### **B. J. C.**

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<sup>64</sup> Minn. Stat. § 626.5572 (2014).

<sup>65</sup> *Zeno v. Turning Point, Inc.*, 2004 WL 1152751, No. A03-1246 (Minn. App. May 25, 2004), *rev. denied* (Minn., August 17, 2004), *citing*, *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. Ct. App. 2001).