

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

In the Matter of the Maltreatment  
Determination and Disqualification of  
Eric W. Nelson

**FINDINGS OF FACT, CONCLUSIONS,  
AND ORDER ON APPLICATION FOR  
ATTORNEY'S FEES AND EXPENSES  
UNDER THE MINNESOTA EQUAL  
ACCESS TO JUSTICE ACT**

On October 28, 2003, the undersigned Administrative Law Judge issued a decision in this matter recommending that the Commissioner reverse the Department's February 18, 2002, maltreatment determination and uphold the Department's February 26, 2002, maltreatment determination regarding Respondent. The ALJ further recommended that Respondent's disqualification be set aside because Respondent did not engage in recurring maltreatment. By order entered on February 13, 2004, the Commissioner adopted the ALJ's findings,<sup>[1]</sup> conclusions, and recommendation and ordered that the Department's determination that Respondent committed maltreatment of a vulnerable adult on February 26, 2002 be upheld, and the Department's determination that Respondent committed maltreatment of a vulnerable adult on February 18, 2002 and Respondent's disqualification be rescinded.

On March 16, 2004, the Respondent filed an application for attorney's fees and expenses pursuant to Minnesota Rule 1400.8401 and the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471 to 15.474. The Department of Human Services filed its response on March 26, 2004, and the record closed on that date.

George L. May, Attorney at Law, May & O'Brien Law Offices, 204 Sibley Street, Suite 202, Hastings, Minnesota 55033, represented Respondent, Eric W. Nelson. Michael E. Burns, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, represented the Department of Human Services.

Based upon the filings of the parties and for the reasons set forth in the attached memorandum, the Administrative Law Judge makes the following:

**STATEMENT OF ISSUES**

The following issues are presented in this matter:

1. Whether or not Respondent is a "party" within the meaning of the Minnesota Equal Access to Justice Act.
2. Whether or not the Department's maltreatment determinations and disqualification of Respondent were "substantially justified" within the meaning of the Minnesota Equal Access to Justice Act.

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

### **FINDINGS OF FACT<sup>[2]</sup>**

1. In February 2002, Respondent worked as a Human Services Technician in an adult group home that is a DHS-licensed foster care facility located in Burnsville, Minnesota.<sup>[3]</sup>

2. By March 1, 2002, Dakota County and DHS received reports alleging that Respondent had committed maltreatment of a vulnerable adult on February 18, 2002, and February 26, 2002.<sup>[4]</sup>

3. The Department of Human Services conducted an investigation into the allegations, which included interviewing the Respondent, staff persons with Chrestomathy who were present during the incidents, and Respondent's supervisor and co-workers.<sup>[5]</sup>

4. In a report dated January 10, 2003, DHS concluded that both allegations of maltreatment were substantiated and that Respondent was responsible for maltreatment under the Vulnerable Adults Act (Minn. Stat. § 626.557).<sup>[6]</sup>

5. Because there was more than one incident of substantiated maltreatment, the Department found that the maltreatment was recurring and the Respondent disqualified from working in programs 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. The Commissioner of Human Services also found that the Respondent posed an imminent risk of harm to persons receiving services and must be immediately removed from a position allowing direct contact.<sup>[7]</sup>

6. The Respondent requested reconsideration of both the maltreatment determinations and his disqualification. The Department's legal unit conducted a review of the record and considered the eight factors regarding "risk of harm" that are set forth in Minn. Stat. § 245A.04, subd. 3b(b) (2002). The Department did not reverse either of the maltreatment determinations or the disqualification.<sup>[8]</sup>

7. The Respondent thereafter requested a contested case hearing and the matter was heard on August 12 and 13, 2003.

8. On October 28, 2003, the Administrative Law Judge issued a decision in this matter wherein she concluded that the Department failed to prove by a preponderance of the evidence that Respondent committed maltreatment with respect to the February 18, 2002, incident, but did prove by a preponderance of the evidence that Respondent committed maltreatment in connection with the February 26, 2002, incident. Based on these conclusions, the ALJ found that the Department failed to establish that the Respondent committed "recurring maltreatment" warranting disqualification. The ALJ recommended that the Commissioner rescind the February 18, 2002, maltreatment determination and uphold the February 26, 2002, maltreatment determination. The ALJ further recommended that the Commissioner set aside Respondent's disqualification because Respondent did not engage in recurring maltreatment.<sup>[9]</sup>

9. On February 13, 2004, the Commissioner adopted the ALJ's recommendations and ordered the Department's maltreatment determination for the February 26, 2002, incident upheld, and the Department's maltreatment determination for the February 18, 2002, incident and Respondent's disqualification rescinded.

10. On March 16, 2004, Respondent filed this application for attorney's fees and expenses pursuant to the Minnesota Equal Access to Justice Act<sup>[10]</sup> and Minnesota Rule 1400.8401. Respondent seeks \$13,514.70 in attorney's fees and \$1,124.29 in expenses.

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

### **CONCLUSIONS OF LAW**

1. Minnesota law gives the Administrative Law Judge authority to conduct proceedings and to make findings, conclusions, and a final order.<sup>[11]</sup>

2. The Minnesota Equal Access to Justice Act restricts the definition of "party" to include only small businesses, those with not more than 500 employees or annual revenues over seven million dollars.<sup>[12]</sup>

3. Respondent is neither a small business nor a small business owner within the definition of "party" under the Minnesota Equal Access to Justice Act.

4. Respondent cannot recover under the Equal Access to Justice Act because he does not fall within the definition of a party entitled to recover fees and expenses under the Act.

5. Respondent has the burden of proving by a preponderance of the evidence that the Department's maltreatment determinations and disqualification were not substantially justified.<sup>[13]</sup>

6. Respondent has failed to establish by a preponderance of the evidence that the Department maltreatment determinations and disqualification were not substantially justified.

7. The Department's maltreatment determinations and disqualification of Respondent had a reasonable basis in law and fact, based on the totality of the circumstances before and during the contested case proceeding and were therefore substantially justified.<sup>[14]</sup>

8. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is hereby incorporated in these Conclusions by reference.

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

### **ORDER**

IT IS HEREBY ORDERED:

That Respondent's application for attorney's fees and expenses is DENIED.

Dated this 2nd day of April 2004.

/s/ Barbara L. Neilson  
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BARBARA L. NEILSON  
Administrative Law Judge

## MEMORANDUM

Respondent has submitted an application for attorney's fees and costs in this matter pursuant to the Minnesota Equal Access to Justice Act.<sup>[15]</sup> Respondent maintains that the Department failed to conduct a proper investigation in this matter and failed to prove that he committed acts of maltreatment that were either serious or recurring as alleged. Consequently, Respondent contends that the Department's position was not substantially justified. Respondent seeks \$13,514.70 in attorney's fees and \$1,124.29 in costs and disbursements.

The Equal Access to Justice Act authorizes an award of attorney fees and costs to a prevailing party in contested cases. However, because the Act is a limited waiver of sovereign immunity, courts strictly construe its language.<sup>[16]</sup> Party is defined in a restrictive fashion in the Act to include only small businesses, those with not more than 500 employees or annual revenues over seven million dollars.<sup>[17]</sup> Recovery is available only against the state,<sup>[18]</sup> and only in cases where the state's position is represented by counsel and does not have a reasonable basis in law and fact.<sup>[19]</sup> And recovery is not available in proceedings to fix rates or in proceedings to grant or renew licenses.<sup>[20]</sup>

Under the Equal Access to Justice Act,<sup>[21]</sup> "party" is defined as follows:

- (a) Except as modified by paragraph (b), "party" means a person named or admitted as a party, or seeking and entitled to be admitted as a party, in a court action or contested case proceeding, or a person admitted by an administrative law judge for limited purposes, and who is:
  - (1) an unincorporated business, partnership, corporation, association, or organization, having not more than 500 employees at the time the civil action was filed or the contested case proceeding was initiated; and
  - (2) an unincorporated business, partnership, corporation, association, or organization whose annual revenues did not exceed \$7,000,000 at the time the civil action was filed or the contested case proceeding was initiated.
- (b) "Party" also includes a partner, officer, shareholder, member or owner of an entity described in paragraph (a), clauses (1) and (2).
- (c) "Party" does not include a person providing services pursuant to licensure or reimbursement on a cost basis by the department of health or the department of human services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures or methodology applicable to those services.

Respondent cannot recover under the Equal Access to Justice Act because he does not fall within the definition of a party entitled to recover fees and expenses under the Act. At the time of the allegations involved in this case, the Respondent worked as a Human Services Technician in an adult group home that is a DHS-licensed foster care

facility located in Burnsville, Minnesota. Respondent is neither a small business nor an owner of a small business. Because the Equal Access to Justice Act is limited to small businesses, Respondent does not meet the definition of “party” under the Act.<sup>[22]</sup>

In addition, the fact that the Administrative Law Judge found that the Department failed to prove by a preponderance of the evidence that Respondent committed one of the two alleged acts of maltreatment, does not render the Department’s position not substantially justified within the meaning of the Act.<sup>[23]</sup> The Equal Access to Justice Act defines “substantially justified” to mean that the state’s position “had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation or contested case hearing.”<sup>[24]</sup> In *Donovan Contracting of St. Cloud, Inc. v. Minnesota Dept. of Transportation*,<sup>[25]</sup> the Minnesota Court of Appeals construed “substantially justified” to mean “justified to a degree that could satisfy a reasonable person” rather than “justified to a high degree.”

The Department based its maltreatment determinations and its denial of Respondent’s request for reconsideration on its investigation, eyewitness testimony, review of documents submitted by Respondent, and application of statutory criteria to the facts of this case. In the memorandum accompanying her October 28, 2003, decision, the ALJ explained that, while she found the state’s witnesses to be credible with respect to the February 18<sup>th</sup> maltreatment allegation, she simply was not persuaded that the Department showed by a preponderance of the evidence that Respondent’s conduct was, in fact, maltreatment. That is, although there was evidence to support the Department’s position, the ALJ concluded it was insufficient to meet the preponderance standard. After considering the hearing record in this matter, the ALJ concludes that the Department’s positions on both alleged incidents of maltreatment and the related disqualification were substantially justified within the meaning of the Equal Access to Justice Act.

Because Respondent does not meet the definition of a “party” under Minn. Stat. § 15.471, subd. 6, and because the Department’s maltreatment determinations and disqualification were substantially justified within the meaning of the Minnesota Equal Access to Justice Act, Respondent’s application for fees and expenses is denied.

B.L.N.

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<sup>[1]</sup> The Commissioner amended Finding of Fact 22.

<sup>[2]</sup> See, Minnesota Rule 1400.8401, subp. 7. The Administrative Law Judge takes judicial notice of the entire record in this matter, including exhibits and testimony offered in the August 12 and 13, 2003, contested case hearing. Accordingly, some of the Findings contained in this decision are derived from the record of the contested case hearing.

<sup>[3]</sup> Finding No. 3 of ALJ’s October 28, 2003, decision.

<sup>[4]</sup> Findings 22-24 of ALJ’s October 28, 2003, decision.

<sup>[5]</sup> Finding No. 27 of ALJ’s October 28, 2003, decision.

<sup>[6]</sup> Finding No. 29 of ALJ’s October 28, 2003, decision.

<sup>[7]</sup> Finding No. 31 of ALJ’s October 28, 2003, decision.

<sup>[8]</sup> Findings No. 32-33 of ALJ’s October 28, 2003, decision.

- <sup>[9]</sup> See, Conclusions 11 and 12 of ALJ's October 28, 2003 decision.
- <sup>[10]</sup> Minn. Stat. §§ 15.471 - 15.474.
- <sup>[11]</sup> Minn. Stat. §§ 14.50, 14.62, and 15.472; Minn. Rule 1400.8401, subp. 7.
- <sup>[12]</sup> Minn. Stat. § 15.471, subd. 6.
- <sup>[13]</sup> Minn. Stat. § 15.472; Minn. Rule 1400.7300, subp. 5. See, *Donovan Contracting of St. Cloud v. Minnesota Department of Transportation*, 469 N.W.2d 718, 720 (Minn. App. 1991), *review denied* (Minn. August 2, 1991).
- <sup>[14]</sup> See, Minn. Stat. § 15.471, subd. 8.
- <sup>[15]</sup> Minn. Stat. §§ 15.471 - 15.474.
- <sup>[16]</sup> *Donovan Contracting of St. Cloud, Inc. v. Minnesota Department of Transportation*, 469 N.W.2d 718 (Minn. App. 1991), *review denied* (Minn. August 2, 1991).
- <sup>[17]</sup> Minn. Stat. § 15.471, subd. 6.
- <sup>[18]</sup> Minn. Stat. § 15.472; See, *City of Mankato v. Mahoney* 542 N.W.2d 689 (Minn. App. 1996).
- <sup>[19]</sup> Minn. Stat. § 15.472; See, *Donovan Contracting*, *supra* note 16, 469 N.W.2d 718.
- <sup>[20]</sup> Minn. Stat. § 15.471, subd. 3.
- <sup>[21]</sup> Minn. Stat. § 15.471, subd. 6.
- <sup>[22]</sup> See, *McMains v. Comm'r of Pub. Safety*, 409 N.W.2d 911, 914 (Minn. App. 1987) (statutory definition of "party" under the Act includes only small business entities and individuals when acting as or on behalf of small business entities.)
- <sup>[23]</sup> *Donovan Contracting*, 469 N.W.2d at 720-21 ("No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail." *Quoting*, Minn. R. 1400.8401, subp. 3(A)(2)(c) (1989).)
- <sup>[24]</sup> Minn. Stat. § 15.471, subd. 8.
- <sup>[25]</sup> 469 N.W.2d 718, 720 (Minn. App. 1991).