STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0316

Latresha Faith Dorsey,
Relator,

vs.

Commissioner of Human Services,
Respondent.

Filed January 14, 2013
Reversed and remanded
Crippen, Judge*

Department of Human Services
License No. 800522 R3

Latresha Faith Dorsey, Minneapolis, Minnesota (pro se relator)

Lori Swanson, Attorney General, Gail A. Feichtinger, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Chutich, Judge; and Crippen, Judge.

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

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Relator challenges the decision by the Commissioner of the Minnesota Department of Human Services (DHS) declining to set aside her disqualification from working in direct contact with persons receiving services from licensed facilities. Because the commissioner's decision fails to sufficiently address relator's evidence concerning her claim that she does not pose a risk of harm to persons in licensed facilities and fails to adequately evaluate the required statutory factors for determining risk, we reverse and remand for additional proceedings.

FACTS

In November 2011, following a background study conducted under the Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2010), the DHS issued a notice disqualifying relator Latresha Faith Dorsey from working in any position allowing direct contact with persons receiving services from licensed facilities. Relator was disqualified based on her March 2011 guilty plea to fourth-degree assault of a peace officer, whom she hit after the officer attempted to block relator from blocking a sidewalk outside a Minneapolis night club. The offense was sentenced as a misdemeanor, with stayed execution of a 90-day sentence, including sentence-to-service and one year of probation.

In November 2011, relator requested reconsideration of her disqualification, arguing that she had completed probation requirements to date, with additional volunteer service, and that the offense did not show she posed a risk to children. In December, the commissioner declined to set aside the disqualification. The commissioner stated the

consideration of nine statutory factors listed in Minn. Stat. § 245C.22, subd. 4(b) (2010), but listed three factors as determinative: the vulnerability of the persons relator wished to serve, based on their age, illness, or disability; the risk, based on her prior act, that she would react similarly to their challenging behaviors; and the seven-year statutory period of disqualification listed for her offense, with a statement that it was "too soon to conclude that [she had] changed [her] attitude and behavior." The commissioner also noted additional factors on an accompanying risk-assessment worksheet, including ratings of "lower risk" on the similarity of the victim to program clients and "higher risk" on the time elapsed without a repeat of a same or similar event, noting that less than four years had elapsed since the incident. Relator filed this certiorari appeal.

D E C I S I O N

A commissioner's decision on disqualification is a quasi-judicial agency decision, which is not subject to the Administrative Procedure Act (APA), Minn. Stat. §§ 14.63-.69 (2012). *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). On certiorari appeal from a quasi-judicial agency decision not subject to the APA, this court reviews "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." *Id.* (quoting *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992)).

The Background Studies Act provides that individuals who have engaged in certain conduct or committed certain crimes are disqualified from having direct contact

with persons served by a program that is licensed by the department. Minn. Stat. §§ 245C.01-.34. Under the act, Dorsey's offense of misdemeanor-level fourth-degree assault has a presumptive seven-year disqualification period. Minn. Stat. §§ 245C.14, subd. 1(a)(1), .15, subd. 4(a)(2).

A disqualified person, however, may request reconsideration by submitting information showing that he or she does not pose a risk of harm to persons served by the licensed facility. Minn. Stat. § 245C.21, subds. 1, 3; *see Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 316 (Minn. App. 2005) (noting that the disqualified person has the burden to demonstrate that he or she poses no risk of harm to licensed-facility clients), *review denied* (Minn. Nov. 15, 2005). If the disqualified person "has submitted sufficient information to demonstrate that [he or she] does not pose a risk of harm," the commissioner may set aside the disqualification. Minn. Stat. § 245C.22, subd. 4(a); *Johnson v. Comm'r of Health*, 671 N.W.2d 921, 923 (Minn. App. 2003).

In performing a risk-of-harm analysis, the commissioner must consider the following statutory factors: (1) "the nature, severity, and consequences of the event or events that led to the disqualification"; (2) whether more than one disqualifying event occurred; (3) the victim's age and vulnerability; (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 amount of elapsed time without a similar event occurring; (8) documentation of the disqualified individual's successful completion of training or rehabilitation pertinent to the event; and (9) any other relevant information. Minn. Stat. § 245C.22, subd. 4(b). The commissioner gives "preeminent

weight to the safety of each [client] served." Minn. Stat. § 245C.22, subd. 3. But all statutory factors must be addressed. *Johnson*, 671 N.W.2d at 923.

In her reconsideration request, relator made numerous assertions of fact to suggest, first, that she was rehabilitated from the circumstances that led to her offense and second, that the offense was not related to her chosen vocation in caring for infant children, the work for which she seeks licensing. As to the offense, she says she knows that she was wrong; that she made a big mistake when failing to follow an officer's instructions and reacting to forceful provocations; that her act caused no harm to others; and that the offense occurred in a weak moment when she was evicted from a club as a companion of a relative who was involved in an altercation. She reports that she has successfully completed all requirements for rehabilitation and has grown to understand that such behavior harms others and herself; she states the wish to further volunteer for police youth activities. Respecting child care, she reports that she loves her work with infants and notes that her childcare employer submitted a letter to the commissioner supporting reconsideration. In sum, she asserts that she is not at risk at her childcare job or elsewhere and that she would "never harm" anyone, particularly an infant or child or vulnerable person.

The commissioner's order does not address relator's assertions, either that she is rehabilitated or that her offense does not relate to her childcare work. The order cites the vulnerability of the persons for whom relator wished to provide services as one determinative factor in the decision not to set aside the disqualification. The commissioner also cites, as another determinative factor, that the one-year elapsed time

period since the offense, which had a seven-year presumptive disqualification period, was "too soon" to determine that relator had changed her behavior and attitude. The commissioner's evaluation on this factor, based only on the presumptive disqualification period, does not coincide with the statutory requirement that the commissioner find the sufficiency of relator's submitted information to show that she does not pose a risk to those she wishes to serve.

The commissioner also finds determinative that, "due to your history of assault, there is a greater risk that you would react in a similar manner to challenging behavior by your clients." This is conclusory and appears to be speculative, without particular reference to relator's wrongful act or the work that she does. *See, e.g.*, *Johnson*, 671 N.W.2d at 924 (concluding that relator's injuring her grown teenage son during an altercation "does not, of itself, demonstrate that she poses a risk to the safety of the elderly and ill people she serves as a healthcare professional"). The commissioner's statement on this factor also appears inconsistent with the ratings in the risk-assessment document, which assigned relator as "lower risk" on the similarity of the offense victim to program clients, the number of prior incidents, and the victim's age and vulnerability.

Although the commissioner reports in the risk-assessment document that relator "accepts some responsibility" for her actions, assigning a "medium risk" level to that factor, as well as a "medium risk" level on the factor of rehabilitation, the commissioner fails to more particularly address relator's unrefuted evidence that she has completed all probationary requirements to date and that her childcare employer has endorsed her as a

responsible, dependable employee.[1] And although the risk-assessment document states that the offense did "little harm" and that the consequences to the victim were "short term," the commissioner does not explain how those factors were insignificant in the decision not to set aside the disqualification.

Despite the recitation of statutory factors examined, the commissioner's decision fails to reflect consideration of relator's assertions that she would not pose a risk of harm to vulnerable populations in her work at a licensed facility. Similarly, the commissioner's decision fails to address relator's evidence as it relates to other statutory factors. Under these circumstances, we cannot sustain the decision declining to set aside relator's disqualification. We reverse and remand to the commissioner for determination of findings and reasons in compliance with statutory requirements.

Reversed and remanded.

[1] We may also take judicial notice of district court records, which show that relator's probation ended in March 2012 and that a pending theft charge noted on the risk-assessment document was continued for dismissal in December 2011, a week after the commissioner's decision. *See Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) (stating that appellate court has inherent power to take judicial notice of public records where the orderly administration of justice commends it).