

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2298**

June Vanessa Flowers,  
Relator,

vs.

Commissioner of Human Services,  
Respondent.

**Filed February 4, 2013  
Affirmed  
Kalitowski, Judge**

Minnesota Department of Human Services  
License Nos. 1051717 R203, 804772 245B-RH

June Vanessa Flowers, Virginia, Minnesota (pro se relator)

Lori Swanson, Attorney General, Cynthia B. Jahnke, Assistant Attorney General, St.  
Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Kalitowski, Judge; and  
Crippen, Judge.\*

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Pro se relator June Vanessa Flowers appeals the determination of the  
Commissioner of Human Services denying her request for reconsideration of a

---

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

disqualification due to a criminal offense. Relator argues that she has been rehabilitated and poses no risk of harm. We affirm.

## DECISION

A commissioner's decision concerning a request for reconsideration is a final administrative-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 "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012).

The Department of Human Services Background Studies Act (Background Studies Act) provides that individuals who have engaged in certain conduct or committed certain crimes are disqualified from having direct contact with, or access to, persons served by a program that is licensed by the department. Minn. Stat. §§ 245C.01-.34 (2012).<sup>1</sup> The commissioner must disqualify an individual if a background study shows a conviction, admission, or Alford plea within the past 15 years to a felony-level controlled-substance crime. Minn. Stat. §§ 245C.14, subd. 1(1), .15, subd. 2(a). In August 2011, relator pleaded guilty to felony fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025 (2010). This crime is a disqualifying offense. Minn. Stat.

---

<sup>1</sup> The relevant portions of the Background Studies Act in effect at the time of the commissioner's decision have not changed. For ease of reference we refer to the current version of the statute throughout this opinion.

§ 245C.15, subd. 2(a). As a result, relator's employment as a certified nurse's assistant was terminated.

The commissioner may set aside a disqualification if she "finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm." Minn. Stat. § 245C.22, subd. 4(a). To make this determination, the commissioner considers nine statutorily defined 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). The commissioner must give preeminent weight to the safety of the clients served, but any single factor may be determinative of the commissioner's decision whether to set aside a disqualification. *Id.*, subd. 3.

Relator seeks reconsideration from this court on the ground that she currently poses no risk of harm. But as an appellate court, we review the commissioner's decision to determine whether there was any evidence to support it. *Anderson*, 811 N.W.2d at 165. The commissioner determined that relator failed to demonstrate in her request for reconsideration that she did not pose a risk of harm and denied relator's request. We

conclude that the record contains sufficient evidence to support the commissioner's decision.

The commissioner first found that the clients relator served were vulnerable because of their physical and/or mental disabilities; this finding is supported by the record. Relator disclosed in her request for reconsideration to the commissioner that she bathed, fed, and administered medications to developmentally disabled and elderly clients who resided in group homes or other types of residential care facilities. The Risk of Harm Assessment utilized by the department—and completed by the commissioner in this case—classifies disabled clients as “very vulnerable.” In contrast, nonresidential chemical dependency clients are “not very vulnerable,” while residential chemical dependency clients are “somewhat vulnerable.” Based on this scale, elderly clients in residential care facilities are likely considered at least “somewhat vulnerable,” but more likely “very vulnerable.” Thus, the commissioner's finding that the disabled and elderly clients served by relator were vulnerable is supported by the evidence.

The commissioner also found that it was “too soon to conclude that [relator had] changed [her] attitude and behavior” because relator's offense occurred within the past year. The time elapsed without a repeat of the same or similar event is a statutory factor. When the commissioner considered relator's request for reconsideration, less than one year had passed since the offense. Thus, this finding is supported by the record. The commissioner also referenced the statutorily mandated 15-year disqualification period for a controlled substance crime. Although we consider it improper to compare the length of time since the offense with the length of the disqualification period for purposes of

determining the recency of the disqualifying offense, the commissioner's conclusion regarding this factor was supported by other evidence—including that the offense had occurred within the prior year and when relator requested reconsideration relator had not yet been sentenced for the offense, had not undergone treatment or rehabilitation, and had not accepted responsibility for her conduct. Thus, any error in relying on the disqualification period was harmless.

Proof of rehabilitation is a statutory factor, and the commissioner's finding that relator had not completed any treatment or rehabilitation nor explained why she believed she had been rehabilitated is supported by the record. Relator does not dispute that at the time she requested reconsideration she had not completed rehabilitation. And relator's statement in her request for reconsideration that she saw life differently since being out of work and that she appreciated her job more did not indicate that she had been rehabilitated because the statement did not relate to the offense committed. Additionally, relator's assertion now that since the commissioner's decision she has completed treatment and continues with aftercare is not properly before us; on appeal, we examine the agency record to review the commissioner's decision.

The commissioner noted other relevant information—another statutory factor—such as relator's failure to take responsibility for her actions and a letter of support submitted by relator's probation officer. In her request for reconsideration, relator shifted blame away from herself, denied that she committed the charged offense, and claimed that she “had to plead guilty” so that she could participate in drug court. These facts support the commissioner's finding that relator had not accepted responsibility for her

actions. And the commissioner did not improperly discredit the probation officer's letter; the probation officer had supervised relator for only five months when the letter was submitted and relator's conduct with her probation officer was not conclusive evidence that relator posed no risk of harm to clients. Likewise, although the commissioner failed to address a letter submitted on relator's behalf by her former employer, which stated that relator would be eligible for employment after clearing the background study and drug test, this letter was also inconclusive as to whether relator posed a risk of harm to clients.

The commissioner also considered the nature, severity, and consequences of the disqualifying event. The commissioner inferred that the long disqualification period "reflects the legislature's judgment that certain offenses warrant longer disqualifications than others, because of the seriousness of the offense and the significant risk of harm posed to vulnerable adults and minors." Although the commissioner does not cite conclusive evidence supporting this statement, the statute does mandate a significant disqualification period for the offense relator committed. *See* Minn. Stat. §§ 245C.14, subd. 1(1), .15, subd. 2a (mandating a 15-year disqualification period for felony fifth-degree possession of a controlled substance). And the "public purpose of [the Background Studies Act] is to protect the health and safety of individuals who are vulnerable due to their age or their physical, mental, cognitive, or other disabilities." *Obara v. Minn. Dep't of Health*, 758 N.W.2d 873, 879 (Minn. App. 2008). Thus, the commissioner's conclusion is reasonable.

The commissioner noted that the remaining considerations—that the offense caused no harm, involved no victims, and was the only disqualifying event—weighed in

relator's favor. But preeminent weight must be given to the safety of the clients served and any single factor may be determinative of the commissioner's decision. Minn. Stat. § 245C.22, subd. 3. Therefore, the factors weighing in relator's favor do not render the commissioner's decision invalid. We conclude that the record supports the commissioner's decision to decline to set aside relator's disqualification.

Finally, relator appears to argue that because she ultimately received a stay of adjudication and therefore was not convicted of a disqualifying offense, her disqualification must be set aside. But at the time relator requested reconsideration, relator had not yet been sentenced and therefore this issue was not before the commissioner. Thus, it is not reviewable on appeal. *See Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an appellate court "must generally consider only those issues that the record shows were [previously] presented and considered" (quotation omitted)).

**Affirmed.**