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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1934**

Susan Marie Pillatzki,
Relator,

vs.

Commissioner of Health,
Respondent.

**Filed July 15, 2013
Affirmed
Klaphake, Judge***

Minnesota Department of Health
Health Facility ID: 00329

Gregory P. Grajczyk, Boos & Grajczyk, LLP, Milbank, South Dakota (for relator)

Lori Swanson, Attorney General, David Franklin Strohkirch, Assistant Attorney General,
St. Paul, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Ross, Judge; and Klaphake,
Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Susan Marie Pillatzki challenges respondent Commissioner of Health's (commissioner) denial of relator's request to set aside her disqualification from working in a position allowing direct contact or access to persons receiving services at state-licensed health-care facilities. Relator argues that the commissioner erred because her position as a dietary aide involved no direct contact with the residents of Madison Lutheran Home and she presents no substantial risk to vulnerable adults. We affirm.

DECISION

The commissioner's decision about a request for reconsideration of a disqualification is a quasi-judicial decision subject to certiorari review. *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). We "review 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.* (quotation omitted).

The commissioner is required to contract with the Minnesota Department of Human Services (DHS) to conduct background studies of all employees in state-licensed nursing homes. Minn. Stat. § 144.057, subd. 1(3) (2012). If an employee is disqualified, he or she is disqualified "from positions allowing direct contact or access to patients or residents receiving services." *Id.*

DHS must conduct these background studies “in compliance with the provisions of chapter 245C.” *Id.*, subd. 2 (2012). Under chapter 245C, DHS reviews information from the Bureau of Criminal Apprehension and must disqualify the employee from a position allowing direct contact for 15 years if the employee has been convicted of certain enumerated crimes. Minn. Stat. §§ 245C.08, subd. 1(a)(4), .14, subd. 1(a)(1), .15, subd. 2 (2012). That list includes all theft crimes. *See* Minn. Stat. § 245C.15, subd. 2 (requiring disqualification of an employee convicted of theft under Minn. Stat. § 609.52 (2012)).

The commissioner may set aside this type of disqualification if he “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) (2012). To determine whether the employee has met this burden of proof, the commissioner shall 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) (2012). 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. *Id.*, subd. 3 (2012).

Relator first argues that she cannot be disqualified because the commissioner determined that her position as a dietary aide at a nursing home did not require direct contact. We disagree. At oral argument, the commissioner conceded that this is an access case rather than a direct-contact case. But we conclude that this distinction is irrelevant. Relator’s disqualification falls squarely under Minn. Stat. § 144.057, subd. 1(3), which provides that workers who are disqualified under that subdivision are disqualified from “positions allowing direct contact *or access* to patients or residents receiving services.” (Emphasis added.)

Relator also argues that her position as a dietary aide provided “abundant limitations to access” and thus sufficiently limited any risk of harm. We disagree. The commissioner found that the clients relator served were “very vulnerable,” and this finding is supported by the record. The commissioner noted that “persons in the nursing home where [relator] work[s] have significant cognitive and/or physical impairments and cannot care for themselves.” The risk-of-harm assessment completed by the commissioner in this case classifies mentally and physically disabled clients as “very vulnerable.” Functioning adults are “not very vulnerable,” while persons of unequal size and strength are “somewhat vulnerable.” Based on this scale, residents at Madison Lutheran Home—a nursing home—are likely “very vulnerable.”

The commissioner determined that relator failed to submit sufficient evidence to show that she does not pose a risk of harm. The time elapsed without a repeat of the same or similar event is a statutory factor, and the commissioner found that it was “too soon to know if [relator had] made enduring changes to [her] attitude and behaviors in order to prevent similar offenses from reoccurring, particularly against vulnerable adults.” When the commissioner considered relator’s request for reconsideration, only one year had passed since she was convicted of three charges of theft by swindle.

Proof of rehabilitation is also a statutory factor, and the commissioner found that relator had not taken full responsibility for her actions. Relator failed to submit a report from her probation officer, as requested. And in her request for reconsideration, relator shifted some of the blame away from herself, stating that she was “in a bad marriage which led [her] to make a bad decision with regard to money.”

The commissioner also noted factors weighing in relator’s favor, including that the victim of her theft offense—a business—was “not very vulnerable” and that there is “little or no similarity” between the victim and the residents served by Madison Lutheran Home. But preeminent weight must be given to the safety of the residents served and any single factor may be determinative of the commissioner’s decision. Minn. Stat. § 245C.22, subd. 3. Thus, these factors weighing in relator’s favor do not render the commissioner’s decision invalid. We conclude that the record supports the commissioner’s decision refusing to set aside relator’s disqualification.

Affirmed.