STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1742

C. L.,
Appellant,

vs.

State of Minnesota Department of Human Services,
Respondent,

Hennepin County Human Services,
Respondent,

Touchstone Mental Health,
Respondent.

Filed August 19, 2013
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CV-10-7869

C.L., Richfield, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Patricia A. Sonnenberg, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Michael Freeman, Hennepin County Attorney, Kim Mammedaty, Assistant Hennepin County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services)

Mary K. Martin, South St. Paul, Minnesota (for respondent Touchstone Mental Health)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Worke, Judge.

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

WORKE, Judge

Appellant, an adult with "serious and persistent mental illness" as defined by the Minnesota Comprehensive Adult Mental Health Act, Minn. Stat. §§ 245.461-.486 (2012), challenges a district court order affirming a decision by respondent Department of Human Services that reduced her services and transferred her to a different case management program. Appellant argues that she was entitled to remain in the program and to change her case manager, and that her due-process rights were violated during the administrative hearing. We affirm.

FACTS

In February 2008, appellant C.L. was referred by Hennepin County Adult Behavioral Services to Touchstone, a provider of mental-health services. At that time, Touchstone was only providing targeted case-management services. In April 2008, C.L. began complaining about the quality of care she was receiving from Touchstone. In June or July 2008, a state ombudsman met with C.L. and Touchstone representatives. Together, they drafted a grievance protocol designed to facilitate the resolution of C.L.'s concerns.

In August 2008, Touchstone added intensive community rehabilitative services (ICRS) to its program, and C.L. agreed to take part in this new program. The purpose of the program was to provide clients with significant treatment needs an opportunity to remain in the community. Clients were expected to meet with members of their

treatment team at least four times a month, but more typically four to eight times per month as needed.

After transitioning to the new program, C.L. continued to complain about the programming and staff. Due to her dissatisfaction with the program, the team discussed with C.L. the possibility of transferring her to a different service provider. The team also offered to help her move to the next step in her grievance protocol, but C.L. chose not to send a written complaint. During this time, C.L. did not communicate with her treatment team and was uncooperative with their treatment efforts. C.L.'s case manager was unable to contact her until October 2008. C.L. refused to meet with her case manager after a comment was made that C.L. perceived as sarcastic and insulting. In February 2009, C.L. met with her psychiatrist who prescribed a medication that C.L. refused to take. C.L. was also upset that the psychiatrist made a comment about her speaking style that she found insulting, and she refused to meet with him again. C.L. again contacted the ombudsman's office to complain that her team was not helping her enough financially. In March 2009, the team attempted to contact C.L. to reengage her in services. At this time, C.L. requested to work with a different case manager. C.L.'s treatment team discussed changing C.L.'s case manager and concluded it was not clinically appropriate.

C.L. met with a team member for the last time in early April 2009. C.L.'s treatment team leader asked C.L. to meet her at a different facility and to move the meeting up ten minutes for the convenience of another client. C.L. was irate because she was unable to finish the computer work she was doing and because she was asked to assist with cleaning the facility before she left. C.L. demanded an apology, and

subsequently refused to meet with any of her team members. On April 24, 2009, Touchstone sent C.L. notice of its decision to transfer her back to Hennepin County Adult Behavioral Services. On May 6, 2009, C.L. appealed the decision to the Department of Human Services (DHS). During the pendency of C.L.'s appeal to the agency, her treatment team unsuccessfully attempted to contact her to provide services.

A daylong hearing was held before an administrative-law judge (ALJ) on C.L.'s appeal. C.L. appeared pro se, and testified throughout the proceeding while also questioning witnesses. Several members of C.L.'s treatment team and Touchstone's staff testified, including Touchstone's executive director, Touchstone's director of outpatient services, C.L.'s psychiatrist, case manager, and nurse consultant. At the close of the hearing, the ALJ left the record open, and accepted a written closing statement from C.L.

Following the hearing, the ALJ issued a decision affirming the agency's transfer of C.L. The ALJ concluded that, although the county was required to provide case-management services to C.L., the law did not require that C.L. receive those services from Touchstone, and that C.L. was not entitled to receive ICRS services. C.L. requested reconsideration, which was denied. DHS issued an order adopting the ALJ's decision, and C.L. appealed to the district court. In May 2011, the district court issued a decision remanding the matter back to the agency for further consideration. The district court concluded that the ALJ failed to consider the appropriate issue, which was whether C.L.'s failure to participate in the program justified the reduction in services.

On remand, the ALJ again affirmed the agency's transfer decision, concluding that C.L.'s participation was "not at a level which would allow her to materially benefit from

the program." The ALJ also concluded that there was no evidence to support C.L.'s claim that she was being retaliated against, and that the decision not to change case managers was clinically appropriate. DHS adopted the ALJ's decision, and C.L. again appealed to the district court. The district court affirmed, concluding that the ALJ's decision was supported by substantial evidence. This appeal followed.

D E C I S I O N

Minnesota law authorizes the district court to review decisions made by DHS. Minn. Stat. § 256.045, subd. 7 (2012). And, a party may appeal the district court's review of a DHS decision to this court, as in other civil cases. Minn. Stat. § 256.045, subd. 9 (2012). The scope of judicial review is governed by the Minnesota Administrative Procedures Act (MAPA). *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). Pursuant to MAPA, we may affirm, or reverse and remand if the "substantial rights of the petitioner may have been prejudiced" because the decision was affected by an "error of law" or "unsupported by substantial evidence." Minn. Stat. § 14.69 (2012). "Substantial evidence is defined as: (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

On appeal, we "review[] the commissioner's order independently, giving no deference to the district court's review." *Zahler*, 624 N.W.2d at 301 (citation omitted).

The burden is on the party challenging the agency decision to prove that the decision violated the MAPA. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 118 (Minn. 2009). An administrative agency's decision enjoys a presumption of correctness; we defer to the agency's expertise and special knowledge in its field. *In re Annandale NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 514 (Minn. 2007). "[This court] defer[s] to an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

The ALJ's decision was supported by substantial evidence

C.L. argues that there was insufficient evidence to support the decision to transfer her out of the program. Touchstone's program description provides that the program is voluntary; that "[c]lients may be referred to less intensive services (i.e. brokered case management)", and that "if the client continues to refuse services and is not under the auspices of a civil commitment, the case is closed and the client is considered a 'non-completer.'" Participants in Touchstone's ICRS program are expected to meet with their case manager at least once a month, and to meet with at least one team member on a weekly basis. The record shows that C.L. met with her case manager only twice between August 2008 and April 2009, and met with other team members an average of twice monthly; therefore, the record supports the ALJ's conclusion that C.L. did not participate in the program.

C.L. argues that her lack of participation was justified by the fact that she had numerous dental appointments and other conflicts that prevented her from meeting with her treatment team. But, C.L. never informed any of the team members that she was having difficulty attending appointments, despite numerous opportunities to provide the team with this information. Moreover, C.L. admitted that she deliberately refused to meet with her case manager and her team leader because she was "mad" about some of the decisions they made. We conclude that C.L.'s deliberate refusal to participate in Touchstone's program was a reasonable basis for her transfer.

The evidence does not show that the decision was discriminatory

C.L. also argues that Touchstone's denial of her request to change case managers violated the Americans with Disabilities Act (ADA) and the Minnesota Human Rights Act (MHRA). The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132 (2012). To make a prima facie discrimination claim under the ADA, the claimant "must show: 1) he is a person with a disability as defined by statue; 2) he is otherwise qualified for the benefit in question; and 3) he was excluded from the benefit due to discrimination based upon disability." *Randolph v. Rodgers*, 170 F.3d 850, 858 (8th Cir. 1999). Claims under the ADA and MHRA are sufficiently similar such that they may be considered together, and cases interpreting the

ADA are applicable to the interpretation of the MHRA.[1] *See Bahl v. County of Ramsey*, 695 F.3d 778, 783 (8th Cir. 2012); *Somers v. City of Minneapolis*, 245 F.3d 782, 788 (8th Cir. 2001) ("Claims under the MHRA are analyzed the same as claims under the ADA.").

Although we assume that C.L.'s mental impairment qualifies as a disability within the scope of the ADA and MHRA, and that C.L. was qualified for services from Touchstone, we conclude that her services were not reduced because of her disability. Members of C.L.'s care team testified that C.L. was recommended for transfer because she was not utilizing their services or participating to the full extent required by the program, despite their attempts to accommodate C.L.'s disability by offering services to assist her with the anxiety she was experiencing with regard to her interactions with Touchstone staff. Their recommendation was to return her to the brokerage level of care she was receiving prior to participating in Touchstone's program.

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[1] The MHRA provides:

> It is an unfair discriminatory practice to discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of . . . disability . . . or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation. In determining whether providing physical and program access would impose an undue hardship, factors to be considered include:
> (1) the type and purpose of the public service's operation;
> (2) the nature and cost of the needed accommodation;
> (3) documented good faith efforts to explore less restrictive or less expensive alternatives; and
> (4) the extent of consultation with knowledgeable disabled persons and organizations.

Minn. Stat. § 363A.12, subd. 1 (2012).

C.L. nevertheless argues that her lack of participation was caused by her mental illness because meeting with certain team members exacerbated her anxiety, and that she was entitled to a new case manager as a reasonable accommodation. C.L. must show that Touchstone was obligated to accommodate her disability by demonstrating that the accommodation would be reasonable and would not "fundamentally alter the nature of the service, program, or activity," or "impose an undue hardship." *See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 592, 119 S. Ct. 2176, 2183 (1999) (quotation omitted); Minn. Stat. § 363A.12, subd. 1. Touchstone argues that changing C.L.'s case manager is not a reasonable accommodation because her treatment team concluded it was inconsistent with her treatment. Moreover, the change would overburden the program because Touchstone has only four case managers, each with a full case load. And, relaxing the participation requirements to accommodate C.L.'s preference for infrequent meetings would fundamentally alter the nature of Touchstone's program, which requires intense rehabilitative services. We agree. "Although a public entity must make 'reasonable accommodations' it does not have to provide a disabled individual with every accommodation he requests or the accommodation of his choice." *McElwee v. County of Orange*, 700 F.3d 635, 641 (2nd Cir. 2012).

C.L. also argues that her transfer was the result of retaliation following numerous complaints, and that Touchstone was eager to get rid of her. However, C.L. cites no evidence in support of this argument. To the contrary, the evidence indicates that Touchstone sought to resolve C.L.'s complaints by instituting a grievance protocol

specifically for her, and that they repeatedly attempted to contact C.L. to provide services, but C.L. was uncooperative.

Hearing did not violate due process requirements

C.L. also argues that she is entitled to a new hearing because her due-process rights were denied. Specifically, she argues that, as a pro se party, the ALJ did not sufficiently aid her in her efforts to state her case, and that she was denied opportunities to cross-examine witnesses, rebut Touchstone's case, and provide additional evidence. State law provides a right to a hearing before an ALJ anytime a recipient of a program of social services has his or her assistance reduced or terminated. Minn. Stat. § 256.045, subd. 3(a)(1) (2012). Furthermore, the law requires the ALJ to "take appropriate steps to identify and develop in the hearing relevant facts necessary for making an informed and fair decision" when one party appears pro se. Minn. Stat. § 256.0451, subd. 20 (2012). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976) (quotation omitted).

We conclude that C.L. had ample opportunity to be heard. C.L. called numerous witnesses and was permitted to examine each of them. C.L. also testified throughout the proceeding. The ALJ consistently asked C.L. for permission before moving on to the next witness or the next series of questions. The ALJ considered C.L.'s objections and motions, and permitted C.L. to testify over Touchstone's relevancy objections. The ALJ permitted the hearing to extend for the duration of the work day, and left the record open to accommodate C.L.'s written submissions. Despite C.L.'s contentions, there is no

evidence that the ALJ told C.L. that the hearing needed to conclude at a certain time or that C.L. was denied the opportunity to examine witnesses or offer other evidence.

C.L. also asserts that the ALJ should have continued the hearing rather than concluding it at the end of the day. "When a hearing extends beyond the time which was anticipated, the hearing shall be rescheduled or continued from day-to-day until completion." Minn. Stat. § 256.0451, subd. 15 (2012). C.L. points out that the ALJ repeatedly warned her that the hearing was getting long and that she wanted to finish by 4:00 pm. However, nothing in the record suggests that the hearing was not complete at the end of the day. Following the agency's closing argument, C.L. asked for and was provided with an opportunity to give a rebuttal statement. In closing, the ALJ asked C.L. if she was done, to which she responded, "[o]kay." C.L. never requested a continuance. Therefore, we conclude that the ALJ did not err by concluding the hearing when she did.

C.L. also argues that she was denied a fair hearing because the ALJ was biased due to the fact that the ALJ is employed by respondent DHS. However, the evidence does not support this view. "Absent a factual basis establishing [a decision-maker's] partiality as to the specific issues appealed, [the appellate court] cannot conclude that . . . [the decision-maker was not] a fair and impartial decision-maker to hear the appeal." *Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 563 (Minn. App. 2003), *review denied* (Minn. Aug. 5, 2003). C.L. must "allege . . . facts that demonstrate[] an interest or bias" by the decision-maker. *Cannon*, 783 N.W.2d at 195. At the start of the hearing, the ALJ stated:

> My job in this process is that of an independent reviewer. I don't work for Touchstone. I work for . . . Minnesota; the State Department of Human Services[,] and all I do is hold hearings on appeals that come into our office and I make recommended decisions to the commissioner of the Department of Human Services based only on the evidence that I receive during the appeal[] process.

C.L. alleges that the ALJ conducted the hearing in a manner that clearly favored Touchstone and prejudiced C.L. We disagree. The record shows that the ALJ went to great lengths to accommodate C.L. and ensure that she had every opportunity to ask questions and present evidence and testimony.

Affirmed.