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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0902**

Audrey Melody Ashford,
Relator,

vs.

Commissioner of Human Services,
Respondent.

Minnesota Department of Human Services
License No. 1063920 CD CS

**Filed April 10, 2017
Affirmed
Bratvold, Judge**

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Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this certiorari appeal, relator challenges the Minnesota Commissioner of Human
Services' decision denying a request to set aside relator's disqualification from providing

direct care services for her sister in a state-licensed program. Relator does not dispute that a 2014 theft conviction disqualifies her, but argues the set-aside decision must be reversed because it is not supported by substantial evidence and is arbitrary and capricious, and that she was denied procedural-due-process rights to an evidentiary hearing. We affirm the commissioner's decision because her determination that relator failed to prove no risk of harm to program participants is supported by substantial evidence and is not arbitrary and capricious. Additionally, relator was not entitled to an evidentiary hearing because she was disqualified based on a conviction, for which she received ample due process.

FACTS

In September 2015, Community Involvement Programs (CIP) submitted a background request to the Minnesota Department of Human Services (DHS) for relator Audrey Ashford, who had been conditionally approved to provide paid care for her sister, B.A. Ashford has physical and legal custody of B.A., who is 14 years old.

On February 10, 2016, the commissioner notified Ashford that she was disqualified from serving in direct-contact positions for persons receiving services from DHS-licensed programs because of her 2014 misdemeanor-theft conviction.

Ashford requested reconsideration, asking the commissioner to set aside her disqualification and limiting the scope of her request to provide services only for B.A. Ashford acknowledged she pleaded guilty to and was convicted of theft, she received a stayed sentence of one year of probation, and she was discharged in August 2015. Ashford also stated that she took "full responsibility" for her actions, explaining in her affidavit that she attributed her "poor decisions" to a "very stressful time" during which she lost her only

source of income, she was behind on rent and lacked money for food, and the county had removed B.A. from her home to a residential treatment facility, where B.A. was unhappy. Ashford submitted two letters of support: one from B.A.'s social worker/therapist and the other from Ashford's daughter, both stating that Ashford's home was safe and that Ashford was "considerate and responsible" and provided good care for B.A, who is like a sister to Ashford's daughter.

On April 5, 2016, the commissioner denied Ashford's set-aside request, noting that she was required to consider nine statutory factors. While the commissioner discussed all nine factors, she gave four reasons for the denial: (1) the nature of the disqualifying event was that the 2014 theft was an intentional act; (2) CIP participants are "very vulnerable" due to mental and/or physical disabilities; (3) while two years had passed since the theft conviction, it was "too soon" to conclude whether Ashford would commit another "similar act" because she was previously convicted of theft and forgery in 1995; and (4) Ashford's written request to the commissioner attempted to justify the theft, which indicated Ashford was "less likely to change [her] behavior."

Also, regarding the statutory factor for "other information," the commissioner stated that Ashford's support letters did not indicate whether the authors were aware that, in 2013, Ramsey County had determined that Ashford "maltreated [her] sister." The commissioner added that the county had also determined that "someone sexually abused [her] sister" and Ashford would not allow B.A. to return to her home because Ashford was concerned that B.A. "would lie" about the abuser being in her home. The commissioner concluded that

the maltreatment determination and Ashford's failure to protect her sister from the abuser were "relevant to [Ashford's] risk of harm."

Finally, the commissioner stated that CIP caregivers "work unsupervised in the client's home and have unfettered access to the client's property, including money." The commissioner noted that, even though Ashford had narrowed the scope of her reconsideration request to serving B.A., a set aside would allow Ashford to provide services "to anyone receiving services from the program without any restriction." In summary, the commissioner cited the statutory requirement that she must give "preeminent weight to the safety of each person to be served by the program" over other interests, and concluded that Ashford had failed to demonstrate she did not pose a risk of harm.

On April 6, 2016, Ashford submitted four additional support letters. Like the support letters initially provided, the additional letters stated that Ashford was an attentive caregiver who provided a safe home for B.A and put B.A.'s best interests first.¹

On May 3, 2016, Ashford challenged the commissioner's denial of her set-aside request in a letter, disputing the facts regarding the maltreatment and sexual-abuse allegations, which Ashford described as false and unsubstantiated. Ashford included a Ramsey County Community Human Services letter stating, "it has been determined that the finding of maltreatment was incorrect and you did not neglect the child" and that the

¹ The letters were from a school social worker, who stated that Ashford is "very responsive" to B.A.'s emotional and behavioral needs; B.A., who called Ashford her "mom"; a minister, who stated that Ashford had "knocked down" doors to obtain good care for B.A.; and Ashford's friend of 10 years, who said that Ashford always put B.A.'s "best interest[s] first."

county “did not meet the burden of proof necessary to substantiate the allegation [of maltreatment].” Ashford also included the county’s “case closing plan,” which stated that B.A’s sexual-abuse allegations “were fabricated and the real issue was her mental health.” Ashford also requested a hearing, stating that the commissioner had made findings about maltreatment and abuse without notice and an opportunity to dispute the evidence.

The commissioner responded on June 3, 2016, stating that she reviewed Ashford’s additional evidence, including the information from the county and support letters. While the commissioner revised the analysis of the statutory factors to consider “new information,” the commissioner reaffirmed Ashford’s disqualification and the decision to deny a set aside, in part by noting that Ashford only challenged one statutory factor but “any one” of the statutory factors discussed in the April 5, 2016 letter may be determinative. The reasons given were the same as those listed in the April 5, 2016 letter, with the exception that there was no reference to maltreatment or sexual abuse. The commissioner stated that Ashford was not entitled to a hearing because her disqualification was based on a conviction. This certiorari appeal follows.²

² Ashford filed a petition for writ of certiorari on June 2, 2016, seeking review of the commissioner’s April 5, 2016 decision. The commissioner’s statement of the case discussed the revised decision, issued on June 3, 2016. Moreover, the commissioner’s itemized list of the administrative record included the June 3 revised decision. Both Ashford and the commissioner address the commissioner’s April 5 and June 3 decisions in their respective appellate briefs. *See generally* Minn. R. Civ. App. P. 115.04, subd. 1 (stating that Minn. R. Civ. App. P. 110 generally applies to certiorari appeals); Minn. R. Civ. App. P. 110.01 (stating the record on appeal includes all documents, exhibits, and transcripts filed).

DECISION

I. The commissioner's decision denying Ashford's request to set aside her disqualification is supported by substantial evidence and is not arbitrary and capricious.

This court may reverse an agency decision denying a set aside if it is not supported by substantial evidence or is arbitrary and capricious. *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444–45 (Minn. App. 1996). Substantial evidence is (1) “relevant evidence that reasonable mind[s] might accept as adequate to support a conclusion,” (2) “[m]ore than a scintilla of evidence,” (3) “[m]ore than some evidence,” (4) “[m]ore than any evidence,” and (5) “[e]vidence considered in its entirety.” *White v. Minn. Dep’t of Nat. Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). A decision is not arbitrary and capricious if there is a “rational connection between the facts found” and the agency’s decision. *In re Excess Surplus Status of Blue Cross and Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001). Stated somewhat differently, an agency’s decision is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) “entirely failed to consider an important aspect of the problem”; (c) offered an explanation that runs counter to the evidence; or (d) the “decision is so implausible that it could not be” explained as a difference in view or the result of the agency’s expertise. *In re Appeal of Staley*, 730 N.W.2d 289, 295 (Minn. App. 2007).

A. Statutory framework

The DHS must complete a background study on any person who seeks to provide direct-contact services to clients served in programs administered by DHS. Minn. Stat. § 245C.03–.04 (2016). In completing a background study, DHS must review records from

the Bureau of Criminal Apprehension, other law enforcement agencies, and the courts. Minn. Stat. § 245C.08, subd. 1(a)(1)–(6) (2016). The department also reviews its own “records relating to the maltreatment of minors . . . as indicated through the social service information system.” *Id.*, subd. 1(a)(2). A person who has been convicted of any crime listed in Minn. Stat. § 245C.15 is automatically disqualified from providing direct-contact services. Minn. Stat. § 245C.14, subd. 1(a)(1) (2016). The disqualification period varies in length from seven years to permanent. Minn. Stat. § 245C.15 (2016).

A disqualified individual may request reconsideration. Minn. Stat. § 245C.21, subd. 1 (2016). Upon receiving a reconsideration request, the commissioner may affirm or rescind the disqualification, or may “set aside” the disqualification, which allows the individual to work in a specified program, “if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served” by the DHS program. Minn. Stat. § 245C.22, subds. 4–5 (2016). In determining whether to grant a set aside, the commissioner must consider nine statutory factors under Minn. Stat. § 245C.22, subd. 4(b)(1)–(9).

The individual seeking a set aside bears the burden of establishing that he or she does not pose a risk of harm to persons served by the program. *Id.* subd. 4(b). Any one of the nine statutory factors may be determinative of the commissioner’s decision whether to grant a set aside. *Id.*, subd. 3. The commissioner must give “preeminent weight to the safety of each person served by the license holder, applicant, or other entities . . . over the interests of the disqualified individual.” *Id.*

A set aside, unlike a variance, does not allow the commissioner to place restrictions on the conditions of the individual's employment. *Compare* Minn. Stat. § 245C.22, subd. 5 (2016) (describing scope of set aside and stating disqualified person “remains disqualified, but may hold a license and have direct contact with or access to persons receiving services”) *with* Minn. Stat. § 245C.30, subd. 1(a) (2016) (authorizing commissioner to grant a time-limited variance to a license holder that allows a disqualified individual to provide direct services under specified conditions).

B. Commissioner's reasons for the decision

Preliminarily, misdemeanor theft is a seven-year disqualifying conviction, beginning from discharge of the sentence imposed. Minn. Stat. § 245C.15, subd. 4(a) (2016) (citing Minn. Stat. § 609.52 (2016)). Ashford does not dispute the disqualifying conviction or that the disqualification period has not expired. The commissioner found four statutory factors determinative in her decision to deny Ashford's set-aside request. Because Ashford contests each factor, we will address each in turn.

1. Nature, severity, and consequences of the disqualifying event

In analyzing the first statutory factor, the commissioner found that Ashford's 2014 theft was intentional. Ashford concedes this fact, but argues that the offense was “only a misdemeanor,” at the “low end of the severity spectrum,” and thus weighs in favor of a set aside. Ashford's points are not well-taken because the commissioner related the theft conviction to the risk of harm by examining the intent involved, the recency of the conviction, and Ashford's “unfettered access” to client property while performing program services. The commissioner is required to consider the risk of harm to “any person” served

by the relator if a set aside is granted. Minn. Stat. § 245C.22, subd. 4(a). Thus, the first statutory factor weighs in favor of denying a set aside and the commissioner’s analysis is supported by substantial evidence.

2. Vulnerability of persons served by the program

In considering the fifth statutory factor, the commissioner found that “[t]he program clients are very vulnerable.” Ashford argues that the commissioner repeated the statutory language and the finding is “antithetical” to the commissioner’s finding under the sixth statutory factor that the victim of the 2014 theft and the program clients are dissimilar. Ashford’s arguments are not persuasive because the commissioner considered Ashford’s affidavit, which stated that B.A. is “very vulnerable” because of her “age, past history of trauma and abuse, and significant mental health problems.”³ The commissioner also found that, if a set aside was granted, Ashford would be unsupervised in performing services, a finding that Ashford does not dispute. Thus, the fifth statutory factor weighs in favor of denying a set aside and the commissioner’s analysis is supported by substantial evidence.

3. The time elapsed without a repeat of the same or similar event

In analyzing the seventh statutory factor, the commissioner found, while two years had passed since the 2014 theft, Ashford’s 1995 convictions for theft and forgery show “a

³ The commissioner asks us to take judicial notice of CIP’s website for evidence of client vulnerability. Ashford opposes this request. We decline to take judicial notice of the website. See *Graphic Commc’ns Local 1B Health & Welfare Fund “A” v. CVS Caremark Corp.*, 850 N.W.2d 682, 686 n.2 (Minn. 2014) (declining to take judicial notice and noting courts should act cautiously when asked to take judicial notice of a fact); *In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007) (cautioning against taking judicial notice of facts on websites), *review denied* (Minn. Sep. 23, 2008).

pattern of crimes involving dishonesty,” and therefore it was “too soon” to conclude that Ashford was unlikely to commit another similar act. Ashford argues that the commissioner’s reliance on her 1995 convictions was unreasonable because the convictions are 20 years old and dissimilar to her 2014 conviction. We disagree. In both instances, Ashford shoplifted and intentionally took something that did not belong to her. In the case of the forgery, she used a co-worker’s stolen credit card to make purchases. Dishonesty is a common theme in all three offenses, making the passage of time less significant.

The commissioner concedes that the denial letters erroneously stated that Ashford was convicted of 12 counts of theft and forgery. In fact, Ashford was charged with 10 separate counts, but convicted of one count of theft and one count of forgery. Because Ashford does not dispute that she was convicted of theft and forgery in 1995, the commissioner’s error in stating the number of convictions appears to be harmless and does not undermine the substantial evidence supporting the determination that Ashford’s history shows a pattern of crimes involving dishonesty. We conclude that the seventh statutory factor weighs in favor of denying a set aside and the commissioner’s analysis is supported by substantial evidence.

4. Other information relevant to reconsideration

Under the ninth statutory factor, the commissioner concluded that Ashford attempted to justify her theft, making it less likely that she would change her behavior. Ashford argues that the commissioner mischaracterized her affidavit and disregarded evidence about the steps she had taken since her conviction. The commissioner’s written

decision specifically noted that Ashford had been discharged from probation and had not had any subsequent disqualifying events. Thus, Ashford's claim that the commissioner disregarded her rehabilitative information is incorrect. We conclude that the ninth statutory factor weighs in favor of denying a set aside and the commissioner's analysis is supported by substantial evidence.

Ashford makes several additional arguments, none of which overcome the deference we must show to the commissioner's findings when supported by substantial evidence. First, Ashford argues that the commissioner's denial of her set-aside request was based on "false" facts about alleged maltreatment and sexual abuse of B.A. The commissioner, however, revised the findings and removed all references to these allegations from the final decision. Also, as already discussed, any single statutory factor is sufficient to support the commissioner's decision to deny a set aside and the commissioner's revised decision identified four statutory factors without making any reference to the maltreatment and sexual-abuse allegations.

Second, Ashford contends that the commissioner's decision is arbitrary because the commissioner failed to consider that Ashford is the primary caregiver for B.A. But both the April and June written decisions expressly acknowledged that the commissioner considered all of Ashford's submissions and that Ashford is seeking to provide care only to B.A.

Third, Ashford argues that there is no evidence to establish that CIP would allow her to serve other program clients. The record establishes that the commissioner considered that a set aside would allow Ashford to provide services to other program clients under

Minn. Stat. § 245C.22, subd. 5(a). The plain language of the statutory provision provides a broad scope for a set-aside decision and supports the commissioner’s conclusion. Also, Ashford’s argument rests on a false premise. Ashford, not the commissioner, had the burden of proof for the set-aside request and Ashford offered no evidence that she would be unable to provide services to others if her set-aside request was granted.

Finally, Ashford argues that the commissioner ignored her support letters. But the commissioner’s revised decision noted that the information she reviewed included letters of support from “your sister and other persons who state that you keep your sister safe.”

In sum, the record establishes that the commissioner considered all of the evidence and her decision to deny Ashford’s request for a set aside flows from the “preeminent weight” given to the safety of “each person” served by the state program. Minn. Stat. § 245C.22, subd. 3. The commissioner was only required to find one statutory factor determinative of her decision to deny the request, yet found four statutory factors weighing against Ashford’s request. Based on our review of the record, we conclude that substantial evidence supported the commissioner’s decision.

II. The commissioner’s decision to deny Ashford an evidentiary hearing did not violate due process.

The due process provided under the Minnesota Constitution “is identical to the due process guaranteed” under the U.S. Constitution. *Sartori v. Harnischfeger Corp.*, 432 N.W.2d 448, 453 (Minn. 1988). This court reviews de novo the procedural due process given to a party. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). To determine whether an

individual's right to procedural due process has been violated, this court first assesses whether a protected liberty or property interest is implicated and then determines what process is due by applying the balancing test from *Mathews v. Eldridge*. *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994) (citing *Mathews*, 424 U.S. 319, 332 (1976)), *review denied* (Minn. Feb. 14, 1995).

The legislature has provided fair hearing rights in certain circumstances after the commissioner's reconsideration decision. A disqualified individual may be entitled to a fair hearing when the disqualification is based on a preponderance of the evidence the individual committed an act that is a crime, substantiated maltreatment, or for failure to make required reports. Minn. Stat. § 245C.27, subd. 1(a). On the other hand, no hearing is permitted for disqualification of an individual based on a conviction, admission, or judicial determination. Minn. Stat. § 245C.27, subd. 1(c). When an individual is disqualified based on both a preponderance and a judicial determination, the individual may request a fair hearing. Minn. Stat. § 245C.27, subd. 1(e).

Ashford agrees that no hearing is required for the “first prong” of the reconsideration process, whether an individual is disqualified based on a conviction. *See* Minn. Stat. § 245C.27, subd. 1(c) (2016). But Ashford contends that the denial of an evidentiary hearing violated her due process rights because the commissioner's decision turned on the “second prong,” whether she poses a risk of harm to program participants.⁴ The

⁴ Ashford does not challenge the constitutionality of chapter 245C because she challenges the procedural due process in terms of the particular process she received and does not ask the court to strike down any statutory provision.

commissioner responds that this court rejected a similar challenge when it held that section 245C.27, subdivision 1(c), did not offend due process by denying an evidentiary hearing for reconsideration of a disqualification based on a conviction. *See Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005).

We agree with the commissioner that precedent guides our analysis. In *Sweet*, the relator was disqualified for providing direct-care services in a state-licensed chemical-dependency program because he was convicted of disqualifying crimes and the commissioner denied his request for reconsideration and set aside. *Id.* at 315–17. Relator appealed, arguing, in relevant part, that section 245C.27 deprived him of procedural due process because he did not receive an evidentiary hearing. *Id.* at 319. This court applied the *Mathews* factors, initially concluding on the first factor that relator had a protected property interest in pursuing public-sector employment. *Id.* at 320. Similarly, we conclude that Ashford has a protected interest here.

In considering the second *Mathews* factor, *Sweet* examined the set-aside procedures set out in chapter 245C and the potential risk of an erroneous decision and concluded there was “no likely value to an evidentiary hearing.” *Id.* at 321. Because the relator had “the unfettered right to present all evidence, including letters of support” and relator had “the full panoply of rights in the criminal proceedings leading up to his convictions,” we held that written submissions provided relator with an adequate opportunity to present his case and affirmed the commissioner’s decision. *Id.* On the third *Mathews* factor, *Sweet* identified the government’s interests as two-fold: protecting the public, especially

vulnerable individuals, and saving time and money by reconsidering disqualification quickly and efficiently. *Id.* We concluded that the costs of an evidentiary hearing outweighed the limited benefit. *Id.* at 321–22. Thus, *Sweet* held that section 245C.27 provided procedural due process.

Sweet's reasoning was applied in *Obara v. Minn. Dep't of Health*, where Obara was disqualified from working as a nurse because he had been convicted of terroristic threats and third-degree assault. 758 N.W.2d 873, 876–77 (Minn. App. 2008). Among other things, Obara argued that lack of an evidentiary hearing deprived him of procedural due process. *Id.* at 877. We concluded that Obara's criminal trial provided him with due process and "was an evidentiary hearing." *Id.* at 879. Thus, this court affirmed the commissioner's denial of a set-aside request. *Id.* at 881.

Ashford argues that her case is more like other cases in which appellants were granted evidentiary hearings. See *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011 (1970); *Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456 (Minn. App. 2000). But Ashford's case is not like *Goldberg* and *Fosselman* because neither case involved a previous evidentiary hearing or judicial determination, nor did those appellants have any opportunity to dispute the facts. 397 U.S. at 258–60, 90 S. Ct. at 1015–16; 612 N.W.2d at 460–61. As stated in *Sweet*, when a criminal conviction is used as the disqualifying event, "[r]elator has already been afforded the full panoply of rights." 702 N.W.2d at 321. Here, Ashford, like the relators in *Sweet* and *Obara*, received full procedural due process in the criminal proceedings as well as in the written submissions to the commissioner. And, like the relator in *Sweet*, Ashford had the opportunity to submit the "same evidence" in writing

that she would have submitted at an evidentiary hearing. Thus, Ashford's challenge fails on the second *Mathews* factor.

Ashford argues her case is distinguishable from *Sweet* because the commissioner found new disputed facts that were not related to her 2014 conviction without any notice to her. Ashford refers to the commissioner's reliance on maltreatment and sexual-abuse allegations. Ashford's argument lacks merit because she received notice of the commissioner's review of these allegations in the April 5 decision and then disputed the facts by submitting additional documentation. The commissioner reconsidered all of Ashford's evidence, reassessed and revised her decision, and removed all references to the disputed facts. After concluding that Ashford's 2014 theft conviction was determinative, the commissioner affirmed the denial of a set aside. Because the commissioner considered Ashford's objection to allegations of maltreatment and sexual abuse and did not rely on those disputed facts in its final decision, Ashford fails to distinguish her case from *Sweet*.

Ashford next argues that *Sweet* should be reexamined because "the second basis for requesting a set aside has distinct risks of erroneous deprivation that lead to a different *Mathews* analysis." Ashford essentially argues that every time a relator contends that a set aside does not pose a threat to program clients, an evidentiary hearing is required. Ruling in Ashford's favor would require us to overrule our own precedent. *Sweet* concluded that the costs and burdens of holding an evidentiary hearing for every individual disqualified for criminal convictions "outweighs the limited benefit, if any, of providing an evidentiary hearing." 702 N.W.2d at 321–322.

We overrule precedent only when a compelling reason exists to do so. *State v. Martin*, 773 N.W.2d 89, 98 (Minn. 2009). Compelling reasons include when precedent is unsound, “contrary to principles of equity,” or is at odds with other decisions of the court. *Cargill, Inc. v. Ace Am. Ins. Co.*, 784 N.W.2d 341, 352 (Minn. 2010). *Sweet* is not at odds with other decisions of this court; in fact, we have repeatedly relied on *Sweet*’s analysis and holding. *Thompson v. Comm’r of Health*, 778 N.W.2d 401, 405–08 (Minn. App. 2010) (discussing *Sweet* and holding relator was entitled to an evidentiary hearing where disqualification was not based on criminal conviction); *Obara*, 758 N.W.2d at 878–79.⁵ We discern no compelling reason to overturn *Sweet* and therefore conclude that all three *Mathews* factors, on balance, establish that the commissioner’s decision to deny Ashford an evidentiary hearing did not violate due process.

Finally, Ashford argues that the commissioner was not an “impartial decision-maker” because the agency reconsidered its own decision to disqualify Ashford. “Parties to an administrative proceeding are entitled to a decision by an unbiased decisionmaker.” *Buchwald v. Univ. of Minn.*, 573 N.W.2d 723, 727 (Minn. App. 1998), *review denied* (Minn. Apr. 14, 1998). A decision-maker is biased if their “situation could tempt ‘the average [person]’ as a judge to forget the burden of proof required to rule against an alleged violator.” *In re Khan*, 804 N.W.2d 132, 137 (Minn. App. 2011) (quoting *Tumey v. Ohio*,

⁵ Indeed, in unpublished decisions, we have expressly rejected the claim that *Sweet* was wrongly decided. See *Ford v. Comm’r of Human Servs.*, No. A13-0838, 2013 WL 6391181, at *3 (Minn. App. Dec. 9, 2013); *McMoore v. Comm’r of Human Servs.*, No. A09-1801, 2010 WL 1966199, at *4–5 (Minn. App. May 18, 2010), *review denied* (Minn. Aug. 10, 2010).

273 U.S. 510, 532, 47 S. Ct. 437, 444 (1927)). This argument is without merit for two reasons. First, Ashford's premise is incorrect. Because Ashford was automatically disqualified by her 2014 theft conviction, her "reconsideration" request gave the commissioner the first opportunity to consider whether to set aside her disqualification. Second, Ashford fails to explain why or in what way the commissioner was biased. See *Withrow v. Larkin*, 421 U.S. 35, 46–47, 95 S. Ct. 1456, 1464 (1975) (rejecting "contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication"); accord *Dep't of Health & Human Servs. v. R.C.*, 249 S.W.3d 797, 806 (Ark. 2007) (rejecting argument that appellant was denied due process of law merely because administrative decision-maker and prosecutor "were employees of the same agency").

Because the commissioner's decision was supported by substantial evidence, was not arbitrary and capricious, and did not violate Ashford's procedural due process rights, we affirm the decision to deny Ashford's request to set aside her disqualification.

Affirmed.