

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1621**

In the matter of the Administrative Citation: RFS 14-1071686, June 02, 2016,
4037 Washburn Avenue South, Issued to: Mary Shields

**Filed December 18, 2017
Affirmed
Bratvold, Judge**

Minneapolis Department of Regulatory Services
File No. RFS 14-1071686

Mary Shields, Minneapolis, Minnesota (pro se relator)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney,
Minneapolis, Minnesota (for respondent City of Minneapolis)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and
Hooten, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Relator-homeowner challenges an administrative hearing officer's orders requiring her to repair the siding of her home and pay civil penalties totaling \$1,500. Because the hearing officer's order is supported by substantial evidence, we affirm.

FACTS

This appeal arises from an administrative hearing officer's orders enforcing citations and fines issued by respondent City of Minneapolis (the city) to relator Mary Shields for the failure to maintain or repair her home's exterior. Shields was 92 years old at the time of the hearing and, according to the testimony of her son, Bennett, relied on others to perform home maintenance. Bennett testified at the hearing that, before the issuance of any citations, Shields had the shake siding removed so they could repair rotten wood underneath. Bennett explained that, once the siding was gone, they found hornet nests and chipmunks, which had caused additional damage.

On September 3, 2014, the city cited Shields for violating section 244.500 of the city ordinance code and ordered her to repair or replace the house exterior, giving her one month to cure the defect. Minn. Code of Ordinances (MCO) § 244.500 (2013).

Over the course of two years, the city granted Shields five extensions, allowing her additional time to comply with the ordinance.¹ One extension was granted to allow work to be completed after winter had concluded. Bennett did some repairs and Shields eventually hired a contractor to do additional repairs. The contractor agreed to work under the arrangement that he would be paid after the job was finished and approved by the city.

¹ Before the fifth extension period expired, the city issued another citation to Shields for violating MCO §§ 229.50 (2013), 541.90 (2013), and 541.450 (2015). The citations were for (1) unlawfully storing "tarps, pails, cans, doors, fluid containers, ice boxes, igloos, and any other materials on the entire rear of the property or on the building along the fence and in the rear," (2) "parking inoperable vehicles on property," and (3) "parking an excessive number of vehicles on the property." Shields initially challenged these citations but eventually complied with the ordinances. These citations are not at issue in this appeal.

Neither Bennett nor the contractor finished the repairs. At some point, the contractor stopped working altogether. As a result of Shields's continuous violations, the city issued two fines, one for \$500 and another for \$1,000.² Shields contested the citations and fines, requesting a hearing.

On August 1, 2016, an administrative hearing officer conducted a hearing to resolve the dispute. The city presented testimony by a housing inspector, who stated that he had recently inspected the house exterior and found no change. Additionally, the city's enforcement supervisor testified that the city would "rather that [Shields] take that money [for the fines] and put it on the house instead of paying it to the city. Our goal is not to fine you, but you have to show . . . your mother has to show us that there are some certain steps—to move this along."

Bennett appeared and testified on behalf of his mother, who was present but did not testify. Bennett did not dispute the condition of the home exterior. Instead, Bennett testified regarding why the repairs had not been completed, including the contractor leaving the job, Bennett's inability to do the work himself, and Shields's inability to pay for the work or the fines. Bennett testified that Shields lives on less than \$1,200 per month and he is unemployed. The hearing officer took the violation under advisement.

On August 8, 2016, the hearing officer issued two orders, with nearly identical findings of fact and conclusions of law, but ordering payment of two separate fines. The officer found that Shields had violated section 244.500 for failing to maintain her home's

² Initially, the city imposed a fine of \$250, but it was cancelled after Bennett called the city and requested additional time to make repairs.

“[f]oundations, roofs, exterior walls and surfaces.” The hearing officer also found that Shields had been given “many extensions” and had offered “many excuses” for her failure to comply with the city’s orders. The officer noted that Shields “has little money” and that money spent on a “penalty would be better spent on complying with the city’s orders to fix her house.” In its conclusions of law, the hearing officer expressly considered several factors including the violation itself, Shields’s action or inaction after receiving a notice, the impact of the fine, Shields’s history of prior violations, and the public interest.

The hearing officer ordered Shields to pay two separate fines. The hearing officer ordered Shields to pay a penalty of \$500, of which \$300 was stayed pending three conditions: (1) Shields’s payment of \$200 by September 10, 2016; (2) completed work on Shields’s home to the satisfaction of the city by December 10, 2016; and (3) no additional violations for one year. The hearing officer also stayed a penalty of \$1,000 on the condition that Shields have no additional violations for one year.

On October 7, 2016, one month after the payment deadline on the \$500 fine, Shields sought review by writ of certiorari.

D E C I S I O N

I. The record supports the administrative hearing officer’s decision.

Shields primarily argues that the administrative hearing officer’s decision is not supported by the evidence, and is arbitrary, capricious, and oppressive.

On certiorari review of a governmental entity’s quasi-judicial administrative decision, our inquiry is limited to questions of jurisdiction, regularity of the proceedings, and “as to merits of the controversy, whether the order or determination . . . was arbitrary,

oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992) (quoting *State ex. rel. Ging v. Bd. of Educ.*, 213 Minn. 550, 571, 7 N.W.2d 544, 556 (1942) (quotation omitted)). “As a reviewing court, we will not retry facts or make credibility determinations, and we will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken.” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted). “An agency’s decision is arbitrary and capricious when it represents the agency’s will and not its judgment.” *Brinks, Inc. v. Minn. Pub. Utils.*, 355 U.S.2d 446, 452 (Minn. App. 1984).

The administrative hearing officer issued an order requiring Shields to comply with Minneapolis Code of Ordinances § 244.500 regarding foundations, roofs, exterior walls and surfaces. The ordinance provides, as follows:

(a) . . . [E]very exterior wall, chimney, foundation and roof shall be reasonably weathertight, watertight and rodentproof; and shall be kept in a professional state of maintenance and repair. Exterior walls shall be maintained and kept free from dilapidation by cracks, tears or breaks or from deteriorated plaster, stucco, brick, wood or other material that is extensive and gives evidence of long neglect.

(b) The protective surface on exterior walls of a building above ground level shall be maintained in good repair so as to provide a sufficient covering and protection of the structural surface underneath against its deterioration.

MCO § 244.500(a)-(b) (2013). An administrative hearing officer is authorized to determine whether a violation has occurred and to impose, reduce, stay, or waive a fine. MCO § 2.100(h) (2010). When imposing a fine for a violation, the hearing officer may consider

several factors, including the duration of the violation, the seriousness of the violation, the history of the violation, the good faith effort by the violator to comply, the economic impact of the fine on the violator, and the impact of the violation upon the community. *Id.*

At Shields's request, we have carefully reviewed the record of the August 1, 2016 hearing. The city offered evidence that Shields had made no progress in repairing her home exterior despite multiple citations and numerous extensions. The hearing officer reviewed photographs of the property and heard testimony from both sides. In his testimony, Bennett admitted that the siding had been removed and had never been replaced. Bennett testified, as follows:

The shakes were removed to repair rotted wood underneath. . . . [O]riginally, the project started out as a painting project. . . . And then . . . there was some hornets nests that were found in the wall. They were quite large. . . . It may not look like much has been done, but the wood has been removed. The hornet nests have been removed. . . . I think there were some chipmunks that did some stuff. Those were gotten out of there and repaired. . . . The tar paper has been exposed to the weather, So that has to be replaced, siding and then paint.

While testifying, city officials expressed understanding for Shields's situation, but also explained that Shields had received additional time to do the work. A housing inspector testified that he had stopped by the home and reinspected it on the day of the hearing; he found that there had been "no change at all." Shields offered Bennett's testimony that she had hired a contractor to replace the siding. The city's witnesses, however, noted that no one had obtained a permit for the work, Shields did not notify the city of any progress, and Shields did not make a timely request for more time.

We conclude that the hearing officer's decision is supported by substantial evidence. The officer ordered Shields pay a \$500 fine, staying a significant portion on reasonable conditions, and provided Shields with a four-month window in which to complete the repairs. The officer also stayed a \$1,000 fine on the condition that Shields have no further violations for one year. Because the hearing officer's decision demonstrates consideration of the duration of the violation, Shields's conduct after multiple notices, and Shields's financial situation, the decision is not oppressive, arbitrary, or capricious.

II. Relator forfeited her constitutional argument.

Shields argues that the fines violate article I, section 5 of the Minnesota Constitution, which prohibits excessive fines. Shields does not provide any argument or legal authority. Because her assertion is unsupported by argument or legal authority, it "need not be considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (citing *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971), review denied (Minn. Apr. 26, 2017)). We discern no obvious error, and therefore deem this issue forfeited. See *Scheffler*, 890 N.W.2d at 451.

Affirmed.