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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1828**

In the Matter of the Appeal of the Denial for the
Child Foster Care License Application of Shelia Ayres.

**Filed January 14, 2019
Affirmed
Reyes, Judge**

Minnesota Department of Human Services, OAH
File No. 67-1800-34171

Thomas R. Witt, Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota (for
relator Shelia Ayres)

Keith M. Ellison, Minnesota Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Kurt A. Mortenson, Assistant County
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Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from a final order issued by respondent Minnesota Commissioner of
Human Services (the commissioner), relator argues that the commissioner erred in denying
her application for a child foster-care license because she incorrectly interpreted Minn. R.
2960.3060, subp. 3(D) (2017), to require her to ensure her letters of reference were
submitted to the Otter Tail County Human Services (the county). We affirm.

FACTS

On or about May 2016, relator Shelia Dian Ayres sought information about obtaining a child foster-care license. Shortly thereafter, the county visited relator at her home in Fergus Falls, Minnesota, to provide her with an application packet and explain the licensing process. The requirements of relator's application included submission of three letters of reference.

Relator submitted her application to the county. Thereafter, the county mailed a first set of reference forms to each of the three individuals relator identified in her application. A few weeks later, the county notified relator that none of her references had returned the reference forms. The county followed up with a letter to relator outlining the outstanding required documents of her application, and informed her that, if the documents were not received, it would recommend denial of her application to the Minnesota Department of Human Services (the department). Relator contacted the county to request that it resend the reference forms because all three individuals allegedly lost their forms. The county sent the three individuals a second set of forms.

Almost two weeks passed and the reference letters were still outstanding. The county sent a letter to the department recommending denial of relator's application. The county eventually received one reference letter, but informed relator that it had already submitted a negative recommendation to the department. In December 2016, the department issued an order denying relator's application.

Relator appealed the department's decision, and an administrative-law judge (ALJ) held a two-day appeal hearing. Two of the three individuals identified as references in

relator's application testified at the hearing and claimed they had submitted both sets of reference forms sent by the county. The ALJ recommended affirming the denial of relator's application. In October 2017, the commissioner issued a final order, denying relator's application. The commissioner based its denial solely on the fact that relator failed to meet her burden to show compliance with the reference-letter requirement.

Relator filed a request for reconsideration of the commissioner's final decision, enclosing three letters of reference. Relator argued that she "had no reason to believe that [her application] was incomplete." The commissioner denied relator's request for reconsideration, noting that the three reference letters relator submitted with relator's request did not appear to be copies of the reference letters allegedly included in her original application. The commissioner also rejected relator's claim that she had no reason to believe her application was incomplete, noting that during the application process, relator asked the county to resend reference forms because all three of her references allegedly lost their forms. Relator filed this appeal by writ of certiorari.

D E C I S I O N

Relator argues that the commissioner erred in denying her application for a child foster-care license because she incorrectly interpreted Minn. R. 2960.3060, subp. 3(D), to require her to ensure her letters of reference were submitted to the county. We disagree.

Review of an agency's interpretation of its own rules or regulations is a question of law that we review de novo. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 731 N.W.2d 502, 516 (Minn. 2007). Considerable deference is given to an agency's interpretation of its own rules if the relevant

language is unclear or ambiguous. *St. Otto's Home v. Minn. Dep't of Human Servs.* 437 N.W.2d 35, 40 (Minn. 1989) (footnote omitted); *accord Annandale*, 731 N.W.2d at 514, 516-17 (noting regulation is ambiguous if reasonably susceptible to more than one reasonable interpretation.) However, we give no deference to an agency's interpretation of its rule if the language is clear and capable of being understood. *St. Otto's*, 437 N.W.2d at 40.

If a rule is unambiguous, then we must apply its plain and ordinary meaning. *J & W Asphalt, Inc. v. Belle Plaine Twp.*, 883 N.W.2d 827, 829 (Minn. App. 2016) (quoting *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706, 708 (Minn. 2015)). Every word of a rule should be given effect. *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 2331 (1979)). While statutory construction focuses on the language of the provision at issue, we may analyze that provision in the context of surrounding sections to gain clarity on the regulation's operation. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 278 (Minn. 2000).

Minn. R. 2960.3060, subp. 3(D), states that “[t]he applicant *must help* the licensing agency *obtain* at least three letters of reference” (Emphasis added.) Here, while the parties agree that the language is unambiguous, each draws from it a different interpretation of the duty imposed on an applicant. Relator's interpretation appears to rely solely on the word “help.” She interprets Minn. R. 2960.3060, subp. 3(D), to require her to merely identify or direct the county to the three individuals who will provide references for her. The commissioner interprets Minn. R. 2960.3060, subp. 3(D), to require relator to provide

continuous assistance to the county, to ensure that the county ultimately receives the reference letters.

We agree that the language of the rule is unambiguous and subject to only one reasonable interpretation. “Must” indicates an obligation by law, morality, or custom. *The American Heritage Dictionary of the English Language* 1191 (3d ed. 1992). To “help” is to provide assistance. *Id.* at 840. “Obtain” is defined as succeeding in gaining possession of something as a result of planning or endeavor. *Id.* at 1250. Under these definitions, we conclude that the plain and ordinary meaning of Minn. R. 2960.3060, subp. 3(D), imposes an obligation on the applicant to assist the county to successfully gain possession of the reference letters. Put differently, relator’s duty did not end when she identified the three individuals in her application.

Even though further analysis is unnecessary when the language at issue is unambiguous, we note that surrounding sections of Minn. R. 2960.3060, support our interpretation. Minn. R. 2960.3020, subp. 2 (2017), states that an application for a child foster-care license is not complete until an applicant signs the application *and submits all of the required information*. (Emphasis added.) Minn. R. 2960.3060, subp. 3(D), further outlines the information required by an agency for its evaluation of an applicant’s personal characteristics, including information about the applicant’s support system, observations of the applicant’s interaction with children, and the applicant’s ability to accept different points of views. The only way the rule permits collection of this information is through reference letters. It follows, therefore, that an agency’s receipt of information is crucial to an applicant’s advancement in the licensing process.

Because the language of Minn. R. 2960.3060, subp. 3(D), is plain and unambiguous, we need not address relator's remaining two arguments in support of her position that the commissioner incorrectly interpreted the rule.

Affirmed.