

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0871**

L. M. P.,
Relator,

vs.

Minnesota Department of Human Services,
Respondent,

Minnesota Department of Health,
Respondent.

**Filed March 15, 2021
Affirmed
Connolly, Judge**

Minnesota Department of Human Services
Case Study No. 2068647

Russell A. Squire, Southern Minnesota Regional Legal Services, St. Paul, Minnesota (for relator)

Keith Ellison, Attorney General, Kaitrin Vohs, Assistant Attorney General, St. Paul, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Relator challenges the decision of the Minnesota Department of Health (MDH) that relator is disqualified under the Background Studies Act from providing services to persons in licensed facilities, arguing that: (1) Minnesota Department of Human Services (DHS) decisions of May 2018 and February 2020 are reviewable by this court under *Jackson v. Comm’r of Human Servs.*, 933 N.W.2d 408 (Minn. 2019); and (2) the MDH May 2020 decision is arbitrary and unsupported by substantial evidence. Because we see no violation of *Jackson* and the MDH decision is not arbitrary and is supported by substantial evidence, we affirm.

FACTS

In November 2013, relator L.M.P. was a passenger in a car that had been reported stolen and was being driven by her then-boyfriend, who had been on probation for burglary. Police who stopped the car found a crow bar, bolt cutters, keys, butane torches, a glass pipe, large pliers, and some personal items that were determined to have been stolen. In relator’s purse, they found a center punch tool, used for breaking windows.¹ Relator was arrested for, but not charged with, felony possession of stolen property and felony possession of burglary tools.

In March 2018, a request for a Background Studies Act report on relator was received by the Anoka County Human Services Division (ACHSD) because relator wanted

¹ Relator claimed the tool would enable her to get out of an underwater vehicle while ice fishing.

to rent a room in a home where a licensed facility was operated. ACHSD received information about the November 2013 incident from the Minnesota Bureau of Criminal Apprehension and the Roseville Police Department.

In April 2018, ACHSD determined that relator had committed an act defined as a felony level possession of burglary tools and was subject to a disqualification; ACHSD notified relator of her disqualification. She submitted a request for reconsideration, which was forwarded to the DHS, together with a request for the information used to disqualify relator.

In May 2018, DHS notified relator that she had been disqualified, that it would not set her disqualification aside because she posed a risk of harm to persons in the licensed program, and that it would grant her a time-limited variance to the disqualification until January 1, 2020, because there were conditions that minimized the risk. Relator was also informed that she could appeal the DHS decision by requesting a hearing within 30 days of receipt of the notice. Relator never requested a hearing.

In February 2020, relator wanted to enroll in a nursing program at an area college. Under the Background Studies Act, the college requested a background study on relator. DHS again notified relator of her disqualification. Relator's attorney requested reconsideration from the MDH, which was responsible for deciding this reconsideration request under Minn. Stat. § 144.057, subds. 2, 3 (2020). The attorney disputed both the correctness of relator's disqualification and the decision not to set the disqualification aside; relator submitted an affidavit and 13 exhibits in support of the reconsideration request.

In April 2020, MDH notified relator that: (1) her disqualification had been correct, based on a preponderance of the evidence from the November 2013 incident, but (2) her disqualification was set aside with respect to the college because relator did not pose a risk of harm to those at the college.² In May 2020, relator's attorney asked MDH for clarification of its determination of the correctness of relator's disqualification, and MDH sent a letter that superseded its April 2020 letter. This letter informed relator that: (1) both the supplementary information sent with the request for reconsideration and the information originally used to disqualify relator had been reviewed in finding the disqualification to be correct; (2) relator's disqualification was final because she had not requested a hearing within 30 days of her May 2018 notification of the disqualification; and (3) relator's disqualification had been set aside with respect to R.C. because relator did not pose a risk of harm to those at the college.

On appeal, relator challenges the May 2018 and February 2020 DHS decisions that a preponderance of the evidence showed that relator had committed an act that met the definition of felony possession of burglary tools and the May 2020 MDH decision on the ground that it was arbitrary and unsupported by substantial evidence.

DECISION

1. Review of the May 2018 and February 2020 DHS Decisions

Relator devotes much of her brief and her reply brief to challenging these decisions, both of which state that a preponderance of the evidence supports relator's disqualification

² A disqualification is set aside only with respect to a particular, specified entity. Minn. Stat. § 245C.22 (2020).

under the Background Studies Act. But “[c]ertiorari ordinarily is available only when the order from which the appeal is taken is a final determination of the parties’ rights, rather than an interlocutory or intermediate order.” *Hickman v. Comm’r of Human Servs.*, 682 N.W.2d 697, 699 (Minn. App. 2004); *see also* Minn. R. Civ. App. P. 103.03 (providing that appeals must be from final judgments or orders).

Neither of these decisions was a final determination of relator’s rights. The May 2018 decision provided that, if relator wanted to challenge the disqualification, she could seek a hearing within 30 days under Minn. Stat. § 256.045; the February 2020 decision provided that relator could request reconsideration if she believed either that the information used to disqualify her was incorrect or that she would not pose a risk of harm.

It is undisputed that relator did not seek a hearing within 30 days of notification of the May 2018 decision. “A disqualification is conclusive for purposes of current and future background studies if: . . . (3) the individual did not timely request a hearing on the disqualification under . . . [Minn. Stat. §] 256.045 after previously being given the right to do so.” Minn. Stat. § 245C.29, subd. 2 (a) (2020). Relator relies on *Jackson*, which she says contradicts Minn. Stat. § 245C.29, subd. 2(a)(3) and holds that “a correctness challenge may be made regardless of whether a determination disqualifying an individual has become ‘conclusive’ under Minn. Stat. § 245C.29, subd. 2(a)(3).” She argues that, under *Jackson*, this court may review “all determinations made by DHS and MDH,” including the May 2018 and February 2020 DHS determinations that a preponderance of the evidence supports relator’s disqualification.

But *Jackson* noted that the Background Studies Act provides a

presumption of correctness once a disqualification becomes conclusive because the reconsideration process puts the evidentiary burden on the disqualified individual to put forth evidence of the incorrectness of the decision. . . . [F]or conclusively disqualified individuals, DHS is not required to prove to a neutral decision-maker that a preponderance of evidence supports its decision.

Jackson, 933 N.W.2d at 416 n.2. Thus, relator had the burdens of proving in her request for reconsideration that the evidence supporting her disqualification was incorrect and of producing new evidence that would justify the contrary finding that she had not committed an act defined as felony possession of burglary tools. *Cf. In re Welfare of J.W.*, 807 N.W.2d 441, 445 (Minn. App. 2011) (holding that, to rebut a presumption of palpable unfitness to be a parent, a party must produce evidence to rebut or meet the presumption). Relator did not submit new information that would justify a contrary determination. *Jackson* does not entitle relator to appellate review of the DHS May 2018 and February 2020 decisions that she committed a disqualifying act.

2. The MDH May 2020 Reconsideration Determination

Relator also argues that the May 2020 MDH decision failed to follow *Jackson* because it was “devoid of findings of fact and contain[ed] no reasoning of how the conclusion was reached that [relator] committed a felony-level offense”; it simply stated that MDH had reviewed the information relator submitted and the information used to disqualify her. But *Jackson* does not require that MDH reconsideration notices provide

factual findings or legal analysis to justify a disqualification or the denial of a request to remove the disqualification.

A decision concerning a request for reconsideration of a disqualification is a quasi-judicial decision. *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. App. 1996).

An appellate court may reverse an administrative decision if it is not supported by substantial evidence or if it is arbitrary and capricious. Substantial evidence is 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; and 5. evidence considered in its entirety. An agency's conclusion is arbitrary and capricious if there is no rational connection between the facts and the agency's decision.

Sweet v. Comm'r of Human Servs., 702 N.W.2d 314, 318 (Minn. App. 2005) (citation omitted), *review denied* (Minn. Nov. 15, 2005). A quasi-judicial decision is arbitrary and capricious if there is no rational connection between the facts and the decision. *Id.*

Relator argues that there was not substantial evidence to support her disqualification because she was not convicted of felony possession of burglary tools. But conviction of a particular crime is only one alternative reason for disqualification, *see* Minn. Stat. § 245C.14, subd. 1(a)(1) (2020); another alternative is that “a preponderance of the evidence indicates the individual has committed an act or acts that meet the definition” of the crime. Minn. Stat. § 245C.14, subd. 1(a)(2) (2020). The MDH was provided with and reviewed evidence from the Roseville Police Department, the Anoka County Attorney's Office, and the Minnesota Bureau of Criminal Apprehension, as well as the 13 exhibits and the affidavit provided by relator and the letters provided by her attorney. The

preponderance of this evidence indicated that relator had committed an act or acts that met the definition of felony possession of burglary tools. The determination that the evidence “[did] not cause [relator’s] disqualification to be changed” was supported by substantial evidence.

Relator also argues that the MDH decision was arbitrary and capricious because it did not provide either findings of fact based on the evidence or legal analysis supporting the disqualification. But the Background Studies Act provides detailed information on what must or must not be disclosed to whom and when. *See, e.g.*, Minn. Stat. §§ 245C.17, subd. 2 (2020) (stating what the commissioner must disclose to the subject of a study who has been disqualified from direct contact with persons served by a licensed program), 245C.23 (2020) (stating what the commissioner must tell an applicant and a license holder on a reconsideration determination), 245C.22, subd. 7(c)(3) (2020) (prohibiting the disclosure of certain information), and 256.0451 (2020) (stating what information must be provided in the decision following a fair hearing). The legislature did not see fit to require findings of fact or legal analysis in MDH responses to requests for reconsideration when the disqualification is not rescinded. This court may not supply “that which the legislature purposely omits or inadvertently overlooks.” *Wallace v. Comm’r of Taxation*, 184 N.W.2d 588, 594 (Minn. 1971). The failure to include materials not required in its response did not make the MDH response arbitrary and capricious.

Affirmed.