

*This opinion is nonprecedential except as provided by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
A20-1433**

L.J.P.,
Relator,

vs.

Minnesota Department of Health,
Respondent.

**Filed May 24, 2021
Affirmed
Cleary, Judge***

Minnesota Department of Health
Background Study No. 2278064

L.J.P., Pennock, Minnesota (pro se relator)

Keith Ellison, Attorney General, Lindsay K. Strauss, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Cleary,
Judge.

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CLEARY, Judge

In this certiorari appeal, relator L.J.P. challenges Minnesota Department of Health’s (MDH) decision on reconsideration to disqualify her from employment as a healthcare professional, arguing that she does not “pose a risk of harm” to vulnerable persons. Because relator has not shown that MDH’s conclusion that she poses a risk of harm was arbitrary, capricious, or otherwise erroneous, we affirm.

FACTS

In August 2020, relator received notice that she was disqualified from any employment that requires licensure by MDH. The disqualification decision, made by MDH, stemmed from a background study conducted by the Minnesota Department of Human Services (DHS) under the Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2020).¹ The background study on relator revealed three misdemeanor-theft convictions, *see* Minn. Stat. § 609.52, subs. 2(a)(1) (2012), 3(5) (2018), from January 2020, March 2014, and January 2013. As a result, relator was terminated from her position as a certified medical assistant.

One month later, relator requested reconsideration of MDH’s decision and that the disqualification be set aside, claiming that she does not pose a risk of harm to patients.

¹ MDH contracts with DHS to do background studies. MDH then considers requests for reconsideration with regard to programs licensed by it, and issues the final appealable agency decision. *See* Minn. Stat. § 144.057, subs. 2, 3 (2020). The legislature amended Minn. Stat. § 144.057, subd. 3 in 2019. *See* 2019 Minn. Laws 1st Spec. Sess. ch. 9, art. 2, § 12, at 44. This amendment, however, does not affect the issues raised in this appeal.

Upon reconsideration, MDH concluded that relator “failed to show that [she] does not pose a risk of harm” to patients, denied the request, and declined to set aside the disqualification.

This certiorari appeal followed.

DECISION

Relator argues that MDH’s disqualification decision should have been set aside because she presents no risk of harm to the patients she cares for in her employment within the healthcare field. Before turning to relator’s arguments, we first discuss the Background Studies Act and the legal framework governing MDH’s decision to deny relator’s request to set aside the disqualification.

Disqualification under the Background Studies Act

Minnesota law requires performance of background studies on certain individuals seeking employment that requires licensure by MDH or DHS, chiefly in healthcare, childcare, and related fields. *See* Minn. Stat. §§ 245C.02, subd. 12 (defining “license”), .03 (specifying individuals to be studied), 245A.03² (explaining who must be licensed) (2020). When a studied individual has been convicted of certain qualifying criminal offenses, that individual is per se disqualified from maintaining employment that requires such licensure. Minn. Stat. §§ 245C.14, subds. 1(1), 2 (explaining when an individual is disqualified from direct contact with and access to persons receiving services from the license holder), .15, subd. 4(a) (providing for a seven-year disqualification for various criminal convictions).

² The legislature amended section 245A.03 during special sessions in 2019 and 2020. *See* 2019 Minn. Laws 1st Spec. Sess. ch. 9, art. 2, § 22 at 47; 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 5, § 4 at 81-83. But again, the amendments to this provision have no impact here.

A disqualified person may seek to have their disqualification set aside by timely requesting reconsideration. Minn. Stat. § 245C.21, subds. 1, 3. If the studied individual submits sufficient information to show that they do not pose a risk of harm to the persons served in the course of their employment, MDH is afforded the discretion to set aside a disqualification. Minn. Stat. § 245C.22, subd. 4(a). The legislature has enumerated nine statutory factors to guide this inquiry:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (9) any other information relevant to reconsideration.

Id., subd. 4(b). “[A]ny single factor . . . may be determinative of [MDH’s] decision whether to set aside the individual’s disqualification.” *Id.*, subd. 3.

Standard of Review

We have appellate jurisdiction to review MDH’s decision, which is considered a “quasi-judicial” decision, through a petition for certiorari. *Jackson v. Comm’r of Human Servs.*, 933 N.W.2d 408, 413 (Minn. 2019); see Minn. Stat. § 606.01, .06 (2020). We examine a quasi-judicial decision of this sort to determine whether the agency’s decision was “arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or

without any evidence to support it.” *Jackson*, 933 N.W.2d at 413 (quotation omitted). An agency’s decision will generally be upheld unless shown to be “arbitrary and capricious,” lacking the support of substantial evidence, or otherwise erroneous. *Wilhite v. Scott Cty. Hous. & Redevelopment Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009); *see also Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (“Agency decisions are reversed when they reflect an error of law, the findings are arbitrary and capricious, or the findings are unsupported by substantial evidence.”).

With this framework in mind, we now turn our attention to relator’s arguments.

Relator’s Risk of Harm

The sole issue in this appeal is whether MDH’s quasi-judicial determination that relator poses a risk of harm to patients was arbitrary, capricious, or otherwise erroneous in terms of the facts or the law. Agency rulings are 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.

Id. Moreover, substantial evidence supports an agency’s decision “if it is supported by such relevant evidence as a reasonable mind might accept as adequate to support the conclusion.” *Minn. Ctr. for Env’tl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 468 (Minn. 2002).

Here, MDH determined that relator was disqualified from maintaining her employment in the healthcare field because of her three misdemeanor-theft convictions.

See Minn. Stat. § 245C.15, subd. 4(a) (prescribing seven-year disqualification for, among other crimes, misdemeanor theft in violation of Minn. Stat. § 609.52 (2018)). In support of that decision, MDH considered each of the nine statutory factors and found that they established that relator poses a risk of harm to patients in her role as a certified medical assistant. We consider each of the nine factors in turn.

Factor one considers “the nature, severity, and consequences” of the events that led to relator’s disqualification. Minn. Stat. § 245C.22, subd. 4(b)(1). In denying relator’s set-aside request, MDH stated, “In all of your offenses, you stole from retail stores.” Relator shares in her brief that she understands the nature and impact of her actions, but she does not directly challenge this factor. MDH reasserts here that the nature and relative recentness of relator’s offenses amply demonstrates that relator poses a risk of harm to patients because these circumstances raise concern that she might steal from patients or exercise poor judgment while patients are in her care.

Because the record confirms that relator has several misdemeanor-theft convictions, including the third January 2020 conviction, MDH’s concern—that relator’s criminal conduct exhibits a risk that she might exploit patients or exercise poor judgment while patients are in her care—is not unreasonable. Thus, given the rational connection between the facts and the agency’s decision, MDH’s reasoning is neither arbitrary nor capricious and its determination is supported by substantial evidence. See *In re Review of 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009).

The second factor regards the number of disqualifying events underlying MDH's decision. *See* Minn. Stat. § 245C.22, subd. 4(b)(2). MDH found on reconsideration, and relator concedes here, that she has "a pattern of theft offenses" based on her three theft convictions. Because even one such conviction is alone disqualifying, there is substantial evidence supporting MDH's determination that three theft offenses establish a pattern of criminality. Minn. Stat. § 245C.15, subd. 4(a). We discern no arbitrary or capricious decision-making on MDH's part in relation to the second factor.

Factor three relates to the age and vulnerability of the victims, and factor four considers any harm they suffered. Minn. Stat. § 245C.22, subd. 4(b)(3), (4). On reconsideration, MDH acknowledged that relator's victims were businesses that suffered financial harm because of relator's theft crimes. And relator again concedes this fact to be true in her brief. But she urges that she only steals or breaks the law while "high" on drugs and she insists that she has never harmed or stolen from another person. In response, MDH argues that relator "seems to minimize her culpability" through her assertions that her substance use led to her offenses and that the affected businesses were able recoup their losses at the time of each offense.

Relator's assertions are unpersuasive because, despite her justification, she has not shown that MDH's consideration of the third and fourth factors was arbitrary or capricious or otherwise unsupported by substantial evidence. *See Citizens Advocating Responsible Dev.*, 713 N.W.2d at 832.

The fifth factor pertains to the vulnerability of the persons relator served in the course of her employment as a certified medical assistant. Minn. Stat. § 245C.22, subd.

4(b)(5). MDH found, and relator again concedes, that the population she serves in her employment includes vulnerable persons with cognitive and physical impairments who rely on professional assistance with daily living activities and, as a result, those persons are susceptible to theft. MDH stresses in its brief that background studies are designed to protect vulnerable individuals, which is why the statute requires that “preeminent weight” be given to the safety of the persons who would be served by relator, *see id.*, subd. 3.

We have held that background studies on Minnesota workers are indeed necessary to protect the health and safety of vulnerable individuals and therefore this interest is of “paramount importance.” *Obara v. Minn. Dep’t. of Health*, 758 N.W.2d 873, 880 (Minn. App. 2008) (citing Minn. Stat. § 245C.22, subd. 3; *Sweet v. Comm’r of Human Servs.*, 702 N.W.2d 314, 321 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005)). Once more, we conclude that MDH’s consideration of factor five was rationally connected to substantial evidence in the record. *See Sweet*, 702 N.W.2d at 318 (explaining that an agency decision is arbitrary and capricious when not rationally connected to the facts). We also agree with MDH that its decision rested on “its experience and knowledge of the maltreatment of vulnerable adults,” and, therefore, MDH properly evaluated the risk of harm posed by relator’s employment.

The sixth factor focuses on the similarity between the victims of relator’s crimes and the persons served by relator. Minn. Stat. § 245C.22, subd. 4(6). MDH recognized that the victims here were businesses, while the persons served by relator are patients with significant health problems. Despite this dissimilarity, MDH asserts that proper patient care demands responsibility, “the exercise of sound judgment,” and “wise decision-making

skills.” Relator’s claim that she has never harmed or stolen from another person is implicitly related to this factor. So is her insistence that, with continued sobriety, she will be able to exercise appropriate judgment moving forward and properly care for her patients.

While we do not doubt that relator’s sobriety will lead to better decision-making, MDH’s disqualification decision is nonetheless based on the record evidence and persuasively highlights a valid risk of harm relative to relator’s criminal conduct. In essence, MDH conveys that relator’s criminal record establishes that she is sometimes unable to exercise prudent judgment critical for patient care. Though relator’s shortcomings may largely be tied to substance abuse, the record supports MDH’s informed conclusion. Relator has not shown that MDH’s consideration of the sixth factor was arbitrary or capricious or otherwise erroneous.

Factor seven addresses the duration of time since the disqualifying events. *Id.*, subd. 4(b)(7). In addressing this factor, MDH pointed to the length of the disqualification period designated by statute, which is seven years in this case. Relator points out that she is currently on *unsupervised* probation in relation to her January 2020 conviction, which seems to allude to the fact that her actions were not severe enough for supervised probation. In response, MDH argues that “it had not even been a year since her last offense” when relator requested reconsideration, noting also that she was still on probation at the time of the request.³ MDH maintains that too little time has passed to minimize relator’s risk of harm.

³ MDH seems to have misread the language of this statutory factor by relying on the date of relator’s conviction rather than the date of the theft offense underlying her conviction.

The record establishes that when relator requested reconsideration in mid-September 2020, just over one year had elapsed since her September 2019 theft offense. It was not unreasonable, arbitrary, or capricious for MDH to determine that the recentness of relator's offense and resulting conviction warranted disqualification. In fact, relator's disqualification was statutorily mandated and presumptively will remain in place until seven years have passed since the discharge of her probation from the most recent offense. Minn. Stat. §§ 245C.14, subd. 1(1) (requiring disqualification for certain convictions), .15, subd. 4(a) (explaining seven-year disqualification for theft convictions under Minn. Stat. § 609.52). While relator had the right to request reconsideration within the seven-year period, we agree with MDH that the requested set aside came too soon. Factor seven therefore supports MDH's conclusion.

The eighth factor addresses relator's successful completion of training or rehabilitation in connection with the disqualifying events. Minn. Stat. § 245C.22, subd. 4(b)(8). Here, relator was not ordered to complete treatment as part of her January 2020 sentence and, as stated in her brief, she went to treatment voluntarily and she willingly disclosed treatment records to MDH. Relator also emphasizes that she now has more than 300 days of sobriety and has taken various positive steps to further her addiction recovery

Factor seven concerns "the time elapsed without a repeat of the same or similar event." Minn. Stat. § 245C.22, subd. 4(b)(7). "[T]he relevant date is the date of the event, not the date of its judicial disposition." *Johnson v. Comm'r of Health*, 671 N.W.2d 921, 924 n.1 (Minn. App. 2003) (examining identical factors under a similar statutory scheme). Relator's most recent offense occurred September 16, 2019, and resulted in conviction on January 22, 2020. Accordingly, the time elapsed between the offense and relator's request for reconsideration—which was filed September 24, 2020—was about one year. This distinction, however, has little effect on MDH's overall evaluation of this factor.

process. MDH acknowledged relator's efforts in rendering its decision, but again found her efforts "very recent" and determined that it was "too soon to know if [she has] made long-term changes to [her] behavior."

Although relator's rehabilitative efforts are commendable and deserve recognition, those efforts do not entitle her to relief on the record before us. Despite relator taking positive steps in the interest of her health and profession, she has not shown that MDH's consideration of the eighth factor was arbitrary or capricious. Moreover, substantial evidence supports MDH's determination that relator's request to set aside the disqualification came too soon—as the request was made mere months after her completion of treatment. We also note again that the disqualification here was mandated by statute and is presumed to remain in place for seven years beyond the point at which she is discharged from supervision on her most recent criminal conviction. *See* Minn. Stat. § 245C.15, subd. 4. Relator requested a set aside just months after completing treatment and only after about one year since her latest criminal offense. Relator was unable to show that she has mitigated the risk she poses to patients during that brief period.

The final factor considers any other relevant information bearing on the disqualification decision. Minn. Stat. § 245C.22, subd. 4(b)(9). MDH reiterated the same points already discussed in support of this factor, specifically reemphasizing the relatively short amount of time that has passed since relator's most recent offense. We understand relator's brief as a request for us to consider "the whole picture," and to give weight to the more positive aspects of her life not directly captured within the record. Still, the points reexamined by MDH on this factor are supported by substantial evidence in the record and

do not appear arbitrary or capricious. And relator's request for consideration of any aspects not contained in the record are not properly raised in this appeal. *Pfoser v. Harpstead*, 939 N.W.2d 298, 316 n.13 (Minn. App. 2020) ("We do not generally consider matters outside the record on appeal."), *aff'd*, 953 N.W.2d 507 (Minn. 2021); *see also* Minn. R. Civ. App. P. 110.01, 115.04, subd. 1.

In sum, relator has not demonstrated that MDH committed reversible error by declining to set aside her disqualification from employment in the healthcare field.

Affirmed.