

*This opinion is nonprecedential except as provided by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
A21-0036**

In the Appeal of Jared Cunningham re:
DHS Appeal for Maltreatment of a Minor.

**Filed December 20, 2021
Affirmed
Bratvold, Judge**

Chisago County District Court
File No. 13-CV-19-1172

Christa J. Groshek, Anna E. Tobia, Groshek Law, P.A., Minneapolis, Minnesota (for appellant Jared Cunningham)

Janet Reiter, Chisago County Attorney, Aimee S. Cupelli, Assistant County Attorney, Center City, Minnesota (for respondent Chisago County Health and Human Services)

Keith Ellison, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges a district court's order affirming respondent-commissioner's decision to dismiss an administrative appeal. In 2019, appellant requested a fair hearing of a 2016 maltreatment determination. Following a decision by a human-services judge (HSJ), the commissioner rejected appellant's request as untimely despite appellant's claim of good cause for making a late request. The district court affirmed the commissioner's decision.

Because the commissioner did not err by dismissing appellant's request as untimely, we affirm.

FACTS

The relevant facts are undisputed and summarized in the HSJ's written decision.

Appellant Jared Cunningham is a licensed nurse. In 2016, Cunningham and his wife had five children; two of Cunningham's children accused him of sexual abuse. As a result of the allegations, Chisago County Health and Human Services (the county) investigated the allegations with assistance from a sheriff's deputy. The state charged Cunningham with criminal sexual conduct in May 2016.

In May 2016, the county notified Cunningham it determined "maltreatment occurred and child protective services [were] needed," and the determination was "considered [e]gregious harm" that could cause "denial of license application or background study disqualification related to employment." The county's letter stated that, if Cunningham disagreed with the maltreatment determination, he should ask for reconsideration and must make any reconsideration request **"in writing within 15 calendar days of receiving this letter."** The letter also stated Cunningham could request a fair hearing from the commissioner and his request "must meet" time limits, including sending his hearing request within 30 days.¹ Finally, the county's letter stated, "the request for a hearing may be sent within 90 days" if Cunningham could show "good cause" for

¹ The letter stated the request for a hearing must be made "only" if a request for reconsideration had been made and that the rehearing request must be made within 30 days "after you received the county agency's response" or "of the date that the county's response was due."

missing the 30-day deadline. Cunningham received the county's letter via certified mail on May 18, 2016.

Cunningham retained an attorney to represent him in the criminal case, the child-protection case, and the maltreatment determination. Cunningham's attorney did not request reconsideration or a fair hearing on the maltreatment determination. In July 2017, a jury acquitted Cunningham of all criminal charges. Cunningham resolved the child-protection case by voluntarily terminating his parental rights to the two children who accused him, with no admission of wrongdoing. The state dismissed the child-protection case involving Cunningham's other three children.

Three years later, in May 2019, Cunningham's employer performed a routine background check and discovered the maltreatment determination. On August 8, 2019, Cunningham appealed to the Minnesota Department of Human Services (DHS) and requested a fair hearing on the maltreatment determination, stating he "was unaware that a maltreatment determination was entered against him" until his employer conducted the background check, and if Cunningham "realized his attorney's mistake," he "would have challenged this determination sooner."

Because it is central to Cunningham's argument on appeal and not contested, we note the record includes a June 2019 letter from the attorney who represented Cunningham. The attorney's letter states Cunningham "attempted through his lawyer" to challenge the maltreatment finding but did not request a fair hearing and "[t]his was an error on my part." The letter repeats, "[f]ailure to ask for a fair hearing was my fault."

The county moved to dismiss Cunningham’s fair-hearing request as untimely. Cunningham argued he had good cause for the delay in making his request because the attorney he hired in 2016 to handle the maltreatment case did not request reconsideration or a fair hearing. Cunningham also argued denying him “the opportunity to challenge the maltreatment determination . . . would go against the interests of justice” and violate his due-process rights.

The HSJ resolved the county’s motion on written submissions and recommended dismissal because Cunningham failed to request reconsideration within 15 days of receiving the maltreatment determination and failed to request a fair hearing within 90 days of the maltreatment determination. The HSJ reasoned that Minnesota law lacks any exception to the 15-day reconsideration timeline, nor is there “statutory or case law authority . . . extending the 90-day period . . . during which a request for a fair hearing must be made.” The HSJ rejected Cunningham’s due-process arguments because the maltreatment determination “did not involve taking away or depriving [Cunningham] of his nursing license,” and any attempt “to discipline or terminate [Cunningham’s] nursing license” would involve a separate hearing process.

On November 19, 2019, the commissioner adopted the HSJ’s recommendation without change and dismissed Cunningham’s appeal as untimely. Cunningham appealed the commissioner’s decision to the district court, which affirmed the commissioner’s order.

This appeal follows.

DECISION

I. The commissioner did not err by dismissing Cunningham’s untimely request for a fair hearing.

“[T]his court reviews the commissioner’s order independently, giving no deference to the district court’s review.” *Zahler v. Minn. Dep’t of Hum. Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001) *rev. denied* (Minn. June 19, 2001). “An administrative agency’s decision enjoys a presumption of correctness.” *In re Wazwaz*, 943 N.W.2d 212, 216 (Minn. App. 2020), *rev. denied* (Minn. June 30, 2020). On appeal from an agency decision, this court “may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision” if the appellant’s “substantial rights . . . may have been prejudiced because the administrative finding, inferences, conclusion or decisions are: (a) in violation of constitutional provisions; or . . . (d) affected by other error of law.” Minn. Stat. § 14.69 (2020).

Cunningham does not dispute his request for a fair hearing was untimely. He argues this court should reverse the maltreatment determination or overturn the commissioner’s dismissal and remand for a hearing because Cunningham had good cause for the untimely request. Cunningham first contends he had good cause because he “hired an attorney and trusted that attorney to preserve his appellate right,” but his attorney “failed to preserve that right” and provided ineffective assistance of counsel. Cunningham next argues a fair hearing should be available by analogy to criminal and civil post-judgment relief, as well as in the interests of justice. Lastly, Cunningham asserts that dismissing his fair-hearing request violates his due-process rights. We address each argument in turn.

A. No good-cause exception applies to Cunningham’s delay in making a fair-hearing request.

The commissioner determined Cunningham requested a fair hearing on August 8, 2019, “approximately three years and three months after [Cunningham] received the maltreatment determination.” Cunningham concedes he did not request reconsideration or a rehearing before August 8, 2019. Cunningham contends, however, his attorney’s failure to seek reconsideration and a fair hearing, despite Cunningham’s clear instructions to do so, “demonstrates excusable neglect” and entitles Cunningham to a fair hearing. The county argues “no good cause exception exists when a request for hearing is made more than 90 days from receipt of written notice of the agency action.”

As explained below, Minnesota Statutes govern the timelines for requesting reconsideration and a fair hearing for a maltreatment determination. “Statutory interpretation is a question of law that we review de novo.” *J.D. Donovan, Inc. v. Minn. Dep’t of Transp.*, 878 N.W.2d 1, 4 (Minn. 2016). Our goal when interpreting a statute is to give effect to the legislature’s intent. *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013). If the legislature’s intent is clearly discernable from plain and unambiguous language, “statutory construction is neither necessary nor permitted and [we] apply the statute’s plain meaning.” *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

A final determination of maltreatment may be challenged by seeking reconsideration by the agency. Minn. Stat. § 626.556, subd. 10i(a) (2016).² A “request for reconsideration must be submitted in writing” within 15 calendar days of receipt of the maltreatment determination. *Id.* If the agency denies or fails to reply to the request, the affected individual may submit a written request for a fair hearing. *Id.*, subd. (b) (2016). An affected individual may contest an agency decision “by submitting a written request for a hearing to [the department] within 30 days” of receiving notice of the maltreatment determination. Minn. Stat. § 256.045, subd. 3(i) (2016).³ There is an exception to the 30-day deadline when a written request for a hearing is submitted “within 90 days of such written notice if the applicant . . . shows good cause . . . why the request was not submitted within the 30-day time limit.” *Id.*⁴ The statute also provides, “hearings specified under this

² Minn. Stat. Chapter 626, governing reporting maltreatment of minors, was recodified into Minn. Stat. Chapter 260E in 2019, though the language remains substantially the same. We cite the 2016 version of Chapter 626 as it was in effect at the time of Cunningham’s maltreatment determination.

³ The current version of this statute remains substantially the same as the 2016 version. We cite the 2016 version as it was in effect at the time of Cunningham’s maltreatment determination.

⁴ Minn. Stat. § 256.0451, subd. 13 (2016) identifies six circumstances under which good cause can be found in relation to fair hearings:

- (1) a death or serious illness in the person’s family;
- (2) a personal injury or illness which reasonably prevents the person from attending the hearing;
- (3) an emergency, crisis, or unforeseen event which reasonably prevents the person from attending the hearing;
- (4) an obligation or responsibility of the person which a reasonable person, in the conduct of one’s affairs, could reasonably determine takes precedence over attending the hearing;

section are the only administrative appeal” of reconsideration requests. Minn. Stat. § 626.556, subd. 10i(b) (2016); *see* Minn. Stat. § 256.045, subd. 3(b) (2016) (stating a hearing on a maltreatment determination is “the only administrative appeal to the final agency determination”).

Cunningham does not argue these statutes are ambiguous. Rather, Cunningham claims he is not barred from requesting “reconsideration or a fair hearing late” because the “legislature did *not* specifically include any language that states an Appellant *cannot* request late reconsideration for the interests of justice or good cause.” (Emphasis added.)

We are not persuaded because the applicable statutory language unambiguously provides a request for reconsideration must be made within 15 days, and a request for a fair hearing must be made within 30 days, or 90 days for good cause shown. Minn. Stat. §§ 626.556, subd. 10i(a); 256.045, subd. 3(i). Cunningham’s argument asks us to recognize a good-cause exception beyond the 90-day period for requesting a fair hearing. We cannot, however, add words to a statute that “the legislature purposely omits or inadvertently overlooks.” *Thomas v. Indep. Sch. Dist. No. 2142*, 639 N.W.2d 619, 621 (Minn. App. 2002) (internal quotation omitted), *rev. denied* (Minn. May 14, 2002).

Because Cunningham’s fair-hearing request was made outside the statutory time limit we need not determine whether Cunningham’s attorney’s failure was excusable

(5) lack of or failure to receive timely notice of the hearing in the preferred language of the person involved in the hearing; and

(6) excusable neglect, excusable inadvertence, excusable mistake, or other good cause as determined by the human services judge.

neglect that would have established good cause had his fair-hearing request been made within 90 days. *See* Minn. Stat. § 256.045, subd. 3(i).⁵ Thus, the commissioner's determination that Cunningham's fair-hearing request was untimely is not affected by an error of law because no good-cause exception applies to a request made more than 90 days after a final maltreatment determination.

Echoing his good-cause argument, Cunningham also contends he received ineffective assistance of counsel so his maltreatment determination should be vacated, or the matter should be remanded to DHS for a "fair trial." But Cunningham raises this argument for the first time on appeal and this court generally does not consider new issues on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding a reviewing court generally considers only issues presented and considered by the district court). Even so, we conclude Cunningham's ineffective-assistance-of-counsel argument lacks merit.

Cunningham concedes no caselaw addresses ineffective assistance of counsel in maltreatment matters. While the Sixth Amendment guarantees effective assistance of counsel, Cunningham does not have an ineffective-assistance-of-counsel claim because

⁵ Cunningham challenges the district court's decision for failing to give his rebuttal evidence "the weight it deserved." We note that in its review of an administrative determination that "a district court has the discretion to expand the record only for the purpose of discovering whether the agency properly resolved the matter based on facts in existence at the time of its decision. *In re Kindt*, 542 N.W.2d 391, 398 (Minn. App. 1996). Cunningham's rebuttal evidence, however, does not address whether the agency properly resolved his fair-hearing request. Rather, his rebuttal evidence addresses whether Cunningham had good cause because of his attorney's neglect, an issue we do not reach based on our statutory analysis. Because evidence of Cunningham's attorney's neglect is not relevant to the timeliness of his fair-hearing request, the district court did not abuse its discretion by declining to discuss Cunningham's rebuttal evidence.

this constitutional right does not apply outside criminal proceedings. *See* U.S. Const. amend. VI (providing a defendant effective assistance of counsel “[i]n all criminal proceedings”). Statutes also can provide for effective assistance of counsel in noncriminal proceedings. *See, e.g.*, Minn. Stat. § 260C.163, subd. 3(a)(2020) (granting parents the right to effective assistance of counsel in child-protection proceedings); Minn. Stat. § 253B.07, subd. 2c (2020) (granting patients the right to be represented by counsel in judicial commitment proceedings). No such statutory guarantee exists, however, for maltreatment determinations. Thus, we reject Cunningham’s request to vacate his maltreatment determination based on ineffective assistance of counsel.

B. Relief from a final maltreatment determination is unavailable under civil and criminal provisions granting relief from final judgment.

Cunningham contends he should be afforded relief from the maltreatment determination based on relief available under Minnesota Rule of Civil Procedure 60 and criminal postconviction-relief statutes. The county disagrees and argues Cunningham cites no caselaw supporting his claim that these avenues of relief apply to final administrative decisions.

We begin by considering the provisions Cunningham cites. A district court may relieve a party from final judgment in a civil action and order a new trial or other relief if it would be just to do so, for example, because of “[m]istake, inadvertence, surprise, or excusable neglect.” Minn. R. Civ. P. 60.02 (a). “[O]rdinarily, courts are loath to punish the innocent client for the counsel’s neglect.” *Charson v. Temple Israel*, 419 N.W.2d 488, 491 (Minn. 1988); *see also Finden v. Klaas*, 128 N.W.2d 748, 750 (Minn. 1964). A party may

seek relief from judgment under rule 60 based on their counsel’s neglect if (1) the party has “a reasonable defense on the merits,” (2) the party has “a reasonable excuse for [its] failure or neglect to answer,” (3) the party “acted with due diligence after notice of the entry of judgment, and” (4) the party shows “no substantial prejudice will result to the other party.” *Finden*, 128 N.W.2d at 750 (*Finden* factors); *see also Gams v. Houghton*, 884 N.W.2d 611, 619–20 (Minn. 2016). Cunningham claims he has satisfied all four *Finden* factors.

Cunningham also points out that a petitioner can seek postconviction relief from a criminal judgment of conviction, even after the two-year time limit expires, if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5) (2020). “To establish the exception a petitioner must allege an injustice that caused the delay in filing the petition.” *Hannon v. State*, 957 N.W.2d 425, 436 (Minn. 2021) (internal quotations omitted). The interests-of-justice exception is reserved for “extraordinary situations,” and there is a non-exclusive list of factors a court considers. *State v. Green*, 747 N.W.2d 912, 918 (Minn. 2008). Cunningham claims he has shown his untimely request for a fair hearing should be heard in the interests of justice.

Cunningham makes this postconviction-petition argument for the first time on appeal. As mentioned above, this court generally does not review issues for the first time on appeal. *See Thiele*, 425 N.W.2d at 582. Even so, we conclude Cunningham’s argument lacks merit. No Minnesota caselaw suggests either rule 60 or postconviction petitions may

provide relief from a final administrative decision. Cunningham appears to contend a change in the law should provide comparable relief from final administrative decisions.

We are sympathetic to Cunningham’s request for review given his attorney has admitted responsibility for failing to file a timely reconsideration and fair-hearing request.⁶ But we are an error-correcting court “without authority to change the law.” *Lake George Park, LLC v. IBM Mid-Am. Emp. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998). This court’s function is “primarily decisional and error correction, rather than legislative or doctrinal.” *Stubbs v. N. Mem’l Med. Ctr.*, 448 N.W.2d 78, 83 (Minn. App. 1989). As a result, we reject Cunningham’s request to review his case by analogy to rule 60 and postconviction petitions.⁷

⁶ Still, we observe Cunningham’s acquittal in his criminal case is no guarantee that his maltreatment determination would have been overturned, given the differences in the burden of proof required for criminal and civil cases. *Compare State v. Sap*, 408 N.W.2d 638, 641 (Minn. App. 1987) (quoting the jury-instruction guideline stating proof beyond a reasonable doubt is “a doubt based on reason and common sense,” not including a fanciful or capricious doubt, “nor does it mean beyond all possibility of doubt.”), *with City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004) (“The preponderance of the evidence standard requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists.”).

⁷ Cunningham also makes a public-policy argument asking this court to create a “safety net” for people who fail to make a timely reconsideration request of a maltreatment determination. Cunningham contends Minn. Stat. § 626.556, subd. 10i(b) (2016) gives county agencies a “safety net” by allowing a maltreatment determination to stand even if the agency fails to respond to a reconsideration request. Cunningham is correct that Minn. Stat. § 626.556, subd. 10i(b), states, “if the investigating agency denies the [reconsideration] request or fails to act upon the request within 15 working days after receiving the request for reconsideration, the person or facility entitled a fair hearing . . . may submit” a request for a fair hearing to the commissioner. As discussed, however, Minnesota statutes lack an exception for fair-hearing requests beyond the 90 days. It is inappropriate for this court to create such an exception, given its role as an

C. Dismissal of Cunningham’s fair-hearing request does not violate due process.

Cunningham argues “[d]epriving [him] of a hearing . . . [is] a due process violation because the Supreme Court has consistently held that some form of hearing is required before an individual is finally deprived of a property interest.” (Quotations omitted.) Cunningham contends a “fair hearing is the only forum in which [he] can litigate the significant property interest” in his nursing license because the “maltreatment determination involves [his] ability to work, his ability to make money and his ability to further himself.” The county argues dismissal of Cunningham’s fair-hearing request did not violate due process because Cunningham received notice of the administrative reconsideration available to him and failed to make a timely request.

Whether an appellant received procedural due process is an issue this court reviews de novo. *State v. Biron*, 123 N.W.2d 392, 398 (Minn. 1963). The United States and Minnesota Constitutions “provide that no person shall be deprived of ‘property without due process of law.’” *Staeheli v. City of St. Paul*, 732 N.W.2d 298, 304 (Minn. App. 2007) (citing U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7). “Due process requires adequate notice and a meaningful opportunity to be heard.” *Id.* (citing *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976)). “[T]here is no due process violation if an aggrieved party fails to take advantage of an appeals process.” *Smith v. Minn. Dep’t of Hum. Servs.*, 764 N.W.2d 388, 392 (Minn. App. 2009).

error-correcting court. See *Lake George Park*, 576 N.W.2d at 466; *Stubbs*, 448 N.W.2d at 83.

Even if we assume dismissal of Cunningham’s fair-hearing request deprived him of a property interest, we are not persuaded his due-process rights were violated. Cunningham received adequate written notice of the maltreatment determination on May 18, 2016. Cunningham does not contest this and claims he provided the notice to his attorney in 2016 right after receiving it. The notice explained the timeline for requesting reconsideration and the process for appealing the maltreatment determination and obtaining a hearing if reconsideration was rejected. Thus, Cunningham had an “opportunity to be heard at a meaningful time and in a meaningful manner” through the reconsideration request and fair-hearing process. *See Matthews*, 424 U.S. at 333 (quotations omitted). Cunningham, however, failed to timely request reconsideration or a fair hearing.

Our analysis of the issue closely tracks this court’s decision in another appeal challenging the commissioner’s decision. In *Smith*, relator was permanently disqualified from providing direct-contact services in facilities licensed by DHS because the department found by a preponderance of evidence that relator had committed an act that met the definition of second-degree assault. 764 N.W.2d at 391. After relator untimely requested reconsideration, DHS confirmed the disqualification and informed relator he could request a fair hearing within 30 days, or 90 days with good cause. *Id.* at 390. Relator requested a fair hearing more than 90 days later and, after a hearing, an administrative-law judge dismissed relator’s fair-hearing request as untimely. *Id.* DHS issued relator another notice of permanent disqualification after relator applied for a direct-contact job, and relator again requested reconsideration and a fair hearing. *Id.* DHS informed relator this was a final

agency decision, and he had no right to a hearing because he failed to timely request a fair hearing. *Id.* at 390–91.

In the certiorari appeal of *Smith*, this court first determined relator failed to meet the statutory time limitation for a fair-hearing request, so he was not entitled to a hearing and he was conclusively and permanently disqualified. *Id.* at 392. We next determined no due-process violation occurred because relator failed “to take advantage of an appeal process.” *Id.* We noted relator was notified of his disqualification, informed of his right to a fair hearing, provided with information about “the timing and means” to appeal, but relator failed to timely request a hearing. *Id.* “Under these circumstances, relator was afforded procedural due process.” *Id.*

The timing requirements and process for requesting reconsideration and a fair hearing in *Smith* are similar to the timing requirements and process for requesting reconsideration and a fair hearing in this case.⁸ *See id.* While it does not affect our analysis, we note Cunningham’s situation differs from the relator’s in *Smith*. Relator “admitted that he had no good reason for failing to pursue an appeal.” *Id.* In contrast, Cunningham asserts he had good cause for his untimely request for a fair hearing because of his attorney’s neglect. Still, the due-process analysis is the same. Cunningham, like the relator in *Smith*,

⁸ A permanently disqualified person can request reconsideration of the determination within 30 days of the disqualification decision; persons disqualified through a preponderance of evidence rather than a conviction also have a right to request a fair hearing within 30 days of receiving the disqualification notice or within 90 days for good cause shown. Minn. Stat. § 245C.21, subd. 2; .27 subd. 1(a) (2008). Failure to challenge a permanent disqualification decision causes the determination to become conclusive. Minn. Stat. § 245C.29, subd. 2(a)(2)(iii) (2008); *see Smith*, 764 N.W.2d at 391–92.

“fail[ed] to take advantage of [the] appeals process,” so “there is no due process violation.”

See id.

Thus, the commissioner’s decision to dismiss Cunningham’s request for a fair hearing as untimely does not violate his due-process rights because Cunningham had notice and an opportunity for a fair hearing but failed to take advantage of available review by making a timely request.

Affirmed.