

*This opinion is nonprecedential except as provided by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
A21-1393**

In the Matter of the Appeal by John Casterton
of the Order of License Revocation Adult Foster Care License.

**Filed July 25, 2022
Affirmed
Smith, John, Judge***

Minnesota Department of Human Services
File No. 37003

Erik F. Hansen, Elizabeth M. Cadem, Burns & Hansen, P.A., Minneapolis, Minnesota (for relator)

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent department)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the decision of the Minnesota Commissioner of Human Services revoking relator's family adult foster care license because the decision correctly applied the law and is supported by substantial evidence in the record.

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

FACTS

Relator John Casterton and a business partner co-own a business licensed to provide adult foster care (AFC) services under the Minnesota Home and Community-Based Services Standards. Minn. Stat. §§ 245D.01-.33 (2020 & Supp. 2021). In August 2017, they obtained the separate Minnesota Human Services Licensing Act (MHSLA) family AFC license necessary to care for vulnerable adults in a residential setting for a home in North Branch (the North Branch home), listing both their names. Minn. Stat. §§ 245A.01-.66 (2020 & Supp. 2021). Shortly thereafter, they began to inquire about licensing another AFC home and purchased a home in Finlayson (the Finlayson home) in May 2018. In April 2019, a county employee visited the Finlayson home as a final step in the licensing process. Casterton affirmed that he would be living there, as required by Minnesota law, with hired staff providing care when he was not there. *See* Minn. Stat. § 245A.03, subd. 7. Casterton was issued an AFC license under the MHSLA for the Finlayson home, and his name was removed from the license for the North Branch home.

Casterton hired additional staff to provide care when he was not at the Finlayson home, including a full-time, live-in staff person who moved into the Finlayson home in May 2019. In August 2019, a neighbor of the Finlayson home informed the county that he believed Casterton did not reside at the Finlayson home. In early September, a behavioral incident with one of the residents resulted in law enforcement being called to the Finlayson home. The law enforcement report following the incident “raised some red flags” because it identified only the employee as living at the home, not Casterton.

The county employee and a department of human services (DHS) consultant made an unannounced visit to the Finlayson home to investigate who lived there on October 10, 2019. Casterton was not at the home. The live-in employee showed them around the house. When asked about whether Casterton had any personal items there and where he slept, the employee could not show them any personal items “like [a] toothbrush or anything like that” “in a specific room or in the bathroom.” The employee showed the county employee and DHS consultant a “loft type area” where Casterton slept when he was at the Finlayson home and informed them that Casterton had “some clothes there, but he also brings a[n] overnight bag.” After the visit, the county employee and DHS consultant met with Casterton, who “adamantly stated that . . . it is his home. He lives there, but he’s the overnight staff” at the North Branch home.

The county recommended that respondent commissioner of human services (the commissioner) revoke Casterton’s AFC license, which the commissioner did in July 2020. Casterton appealed the revocation, and an administrative law judge (ALJ) conducted a contested-case hearing. The ALJ issued recommended findings of fact and conclusions of law affirming the AFC license revocation, which the commissioner adopted.

DECISION

Upon timely administrative appeal, an AFC license holder whose license has been revoked pursuant to Minn. Stat. § 245A.07 has the right to a contested-case hearing. Minn. Stat. § 245A.07, subd. 3(b). A “contested case” is “a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.” Minn. Stat. § 14.02, subd. 3 (2020). The

Minnesota Administrative Procedure Act allows judicial review of an agency's final decision in a "contested case." Minn. Stat. § 14.63 (2020); *Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611, 613 (Minn. App. 2018).

On a certiorari appeal from a contested case, we may affirm, remand, reverse, or modify the agency's decision. Minn. Stat. § 14.69 (2020). We may reverse or modify the decision

if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Id.

Casterton argues that his AFC license was revoked upon unlawful procedure because the commissioner did not "consider the nature, chronicity, or severity" of the Finlayson home not being his primary address and "its impact on the health, safety, or rights" of the persons served, as required for revocation pursuant to Minn. Stat. § 245A.07, subd. 1(a). Casterton alternatively argues that his revocation is unsupported by substantial evidence in the record.¹

¹ Casterton also argues that the commissioner erred in revoking his license for failing to report that the live-in employee lived at the Finlayson home. Because we conclude that the commissioner properly revoked Casterton's license because the Finlayson home was not his primary residence, we do not address this argument.

I. The commissioner was not required to consider the nature, chronicity, or severity of the Finlayson home not being Casterton’s primary address and its impact on the health, safety, or rights of the persons served.

Whether the commissioner must consider the factors listed in section 245A.07, subdivision 1(a) when revoking an AFC license because the licensed address is not the license holder’s primary residence pursuant to section 245A.03, subdivision 7(a) presents a question of statutory interpretation.

“The first step in interpreting a statute is to determine whether the language is clear and unambiguous.” *Broadway Child Care Ctr., Inc. v. Minn. Dep’t of Hum. Servs.*, 955 N.W.2d 626, 631 (Minn. App. 2021). If the language is clear, courts must follow the plain meaning of the statute, but, if the statute is susceptible to more than one reasonable interpretation, it is ambiguous, and courts may turn to other interpretive tools. *Harkins v. Grant Park Ass’n*, 972 N.W.2d 381, 386 (Minn. 2022). “[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage” unless they have acquired a technical meaning or are defined by statute. Minn. Stat. § 645.08(1) (2020). When interpreting laws, we presume the legislature intended every provision to be effective, if possible. Minn. Stat. § 645.16 (2020). If a general and a specific provision of the law conflict, “the two shall be construed, if possible, so that effect may be given to both.” Minn. Stat. § 645.26, subd. 1 (2020). If effect cannot be given to both, “the special provision shall prevail and shall be construed as an exception to the general provision,” unless the general provision was enacted later, and the legislature intended that it prevail. *Id.*

Section 245A.07, subdivision 1(a), states that “the commissioner may suspend or revoke the license, impose a fine, or secure an injunction against the continuing operation of the program of a license holder who does not comply with applicable law or rule.” This power is discretionary. Minn. Stat. § 645.44, subd. 15 (2020) (“‘May’ is permissive.”). This section also provides factors to guide the commissioner’s discretion: “When applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.” Minn. Stat. § 245A.07, subd. 1(a).

Section 245A.03, subdivision 7(a) requires the commissioner to “revoke the license according to section 245A.07” if the license holder’s primary residence changes away from the licensed address. The legislature intends “shall” to be mandatory, meaning the commissioner has no discretion on whether to act or what action to take when a license holder’s primary residence changes away from the licensed address. Minn. Stat. § 645.44, subd. 16 (2020) (“‘Shall’ is mandatory.”).

Because section 245A.03, subdivision 7(a) requires the commissioner to revoke a license but refers generally to section 245A.07, including the discretionary revocation and its associated factors in subdivision 1(a), we discern an ambiguity in the statutes for purposes of this case. Section 245A.03, subdivision 7(a) requires the commissioner to revoke an AFC license in one specific circumstance: when the license holder changes his or her primary residence away from the licensed address. This section was enacted in 2009. *See* 2009 Minn. Laws ch. 79, art. 8, § 8, at 848. In contrast, section 245A.07, subdivision

1(a), grants the commissioner a general power to impose a sanction for the violation of any applicable law or rule and determine what authorized sanction to impose, if any. This section already existed in 2009. *See* Minn. Stat. § 245A.07, subd. 1(a) (2008). Thus, we interpret the specific, more recently enacted, mandatory revocation pursuant to section 245A.03, subdivision 7(a), as an exception to the preexisting general requirement that the commissioner consider the nature, chronicity, or severity of a violation and its impact on the health, safety, or rights of the persons served before revoking a license pursuant to section 245A.07. Minn. Stat. § 645.26, subd. 1.

Requiring the commissioner to consider the discretionary factors would render either the “shall” in section 245A.03, subdivision 7(a), ineffective by making revocation less than mandatory or the factors themselves ineffective by requiring revocation regardless of what the factors indicate. Interpreting mandatory revocation pursuant to section 245A.03, subdivision 7(a), as an exception to the factors which must be considered for discretionary revocation pursuant to section 245A.07, subdivision 1(a) thus gives effect to both provisions. Moreover, this interpretation does not render the section 245A.03, subdivision 7(a) requirement that the license be revoked “according to section 245A.07” superfluous because it gives effect to the procedural rules for license revocation, including the right to a contested-case hearing where a licensee may challenge the factual basis for revocation, as Casterton did here.

II. Substantial evidence in view of the record as a whole supports the commissioner’s conclusion that the Finlayson home is not Casterton’s primary residence.

At a contested-case hearing, the commissioner must first demonstrate “reasonable cause” for the action taken, then “the burden of proof shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.” Minn. Stat. § 245A.08, subd. 3(a).

Casterton argues that “the preponderance of the evidence clearly shows that the Finlayson home was always [his] primary residence after his licensure of the home in 2019,” and the commissioner’s contrary conclusion is not supported by substantial evidence in the record and is arbitrary and capricious.²

The substantial-evidence standard is met if “a reasonable mind might accept [the evidence] as adequate to support a conclusion.” *In re NorthMet Project Permit to Mine Application Dated Dec. 2017*, 959 N.W.2d 731, 749 (Minn. 2021) (quoting *Cable Commc’ns Bd. v. Nor-W. Cable Commc’ns P’ship*, 356 N.W.2d 658, 668 (Minn. 1984)). The evidence must be “more than a scintilla, some, or any.” *Id.* (quotations omitted). The

² Casterton presents tax and family law cases to define and illustrate what constitutes a “primary residence.” See *Suleski v. Rupe*, 855 N.W.2d 330, 335 (Minn. App. 2014) (“Based upon this common meaning and usage, a child’s ‘primary residence’ is the principal dwelling or place where the child lives.”); *State v. Enyeart*, 676 N.W.2d 311, 319 (Minn. App. 2004) (“The most significant factor in determining domicile is the person’s intent to remain in a fixed place.”), *rev. denied* (Minn. May 18, 2004). Casterton does not argue that the commissioner applied an incorrect definition of “primary residence,” so we need not determine the definition in this appeal.

“singular legal principle” underlying a substantial-evidence analysis is that an agency must “adequately explain[] how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *Id.* (quotation omitted). In a similar vein, an agency’s decision is not arbitrary and capricious so long as there is a “rational connection between the facts found and the choice made.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted). “[Appellate courts] defer to an agency’s conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001).

The commissioner concluded that she had reasonable cause to revoke Casterton’s license and that he failed to meet his burden to prove that he was in compliance. In reaching this conclusion, the commissioner found, among other things, that Casterton did not have a regular bedroom at the Finlayson home, carried an overnight bag when he stayed at the home, and regularly spent the night at the North Branch home. The record supports these findings.

The county employee and DHS consultant discovered on their home visit that Casterton did not have a regular bedroom, but, when he was there, slept in a “loft type area.” They asked to be shown Casterton’s “personal items” such as “his toothbrush, his deodorant, that kind of thing,” but Casterton did not have such items in the house and the live-in employee informed them that Casterton “usually brings them in a[n] overnight bag.” At the contested-case hearing, Casterton testified that throughout his life he has “kind of

been a nomad . . . living out of a bag,” and admitted that he carried an overnight bag between the North Branch house and the Finlayson house. Casterton also testified that he spent the night at the North Branch house “[m]ore often than not” and was at the Finlayson house “some weeks seven, some weeks three, four days a week.” On this record, a reasonable mind could conclude that the Finlayson home was not Casterton’s primary residence, and there is a rational connection between the facts found and conclusions drawn from them. Therefore, the commissioner’s conclusion is supported by substantial evidence and is not arbitrary and capricious.

Affirmed.