

*This opinion is nonprecedential except as provided by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
A23-0371**

John Kamande,
Relator,

vs.

Minnesota Department of Human Services,
Respondent.

**Filed September 11, 2023
Affirmed
Halbrooks, Judge***

Minnesota Department of Human Services
File No. 3142844

John Kamande, St. Paul, Minnesota (self-represented relator)

Keith Ellison, Attorney General, Jacqueline Clayton, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Larkin, Judge; and
Halbrooks, Judge.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this certiorari appeal, relator John Kamande challenges a decision by the
commissioner of respondent Minnesota Department of Human Services (DHS) declining

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

to set aside relator's disqualification from direct-contact employment with licensed facilities. Because substantial evidence supports the commissioner's decision, we affirm.

FACTS

On May 2, 2022, Kamande began work for Nuway, a rehabilitation-services facility licensed by DHS. Kamande's responsibilities included collecting urine samples from patients receiving chemical-dependency treatment to determine whether they were still using chemical substances. In March 2022, Kamande was charged with driving while impaired (DWI), which was a first-degree offense due to three prior misdemeanor DWI convictions. *See* Minn. Stat. § 169A.24, subd. 1(1) (2020) (grading the offense at first degree when an offender has three or more prior qualifying DWI incidents within ten years). Kamande pleaded guilty and was convicted of first-degree DWI in January 2023. Kamande was sentenced to 36 months in prison, stayed for seven years on supervised probation. Kamande was also ordered to undergo chemical-dependency evaluation and treatment, abstain from alcohol and controlled substances, submit to random chemical-substance testing, complete a victim-impact panel, and remain law-abiding.

Nuway requested a background study of Kamande from DHS in January 2023, which was required because Kamande's employment brought him in direct contact with persons receiving care from a DHS-licensed facility. *See* Minn. Stat. § 245C.03, subd. 1(3) (2022) (requiring DHS to conduct background studies of individuals "who will have direct contact with persons served by [a licensed] facility, agency, or program").¹ DHS sent

¹ Intervening amendments to this statute do not affect the analysis.

letters to Kamande and to Nuway in late January 2023, notifying both that Kamande was disqualified from providing direct-contact services or having access to people who receive services and explaining to Kamande that his disqualification resulted from his felony-DWI conviction. *See* Minn. Stat. § 245C.15, subd. 2(a) (2022) (requiring a 15-year disqualification for those convicted of a felony involving alcohol or drug use). A few days later, Kamande filed a request for reconsideration, asking DHS to set aside his disqualification. Kamande checked a box indicating he believed he was “correctly disqualified by DHS.” Nevertheless, he explained that he: deeply regretted his actions; understood the dangers of drinking and driving; was on a path to recovery; completed “an intensive 90-day outpatient treatment” program; and no longer posed a risk of harm to people served at Nuway. Kamande attached several supporting documents to his request for reconsideration, including a certificate showing that he completed the outpatient treatment program and the discharge summary from the facility. The discharge summary noted that Kamande entered the outpatient program on April 23, 2022, and was discharged on July 2, 2022. It also noted that while Kamande “recognize[d] relapse issues and prevention strategies,” he “display[ed] some vulnerability for further substance use or mental health problems.”

In a letter dated February 14, 2023, the commissioner denied Kamande’s request, finding the following considerations determinative. Pursuant to Minn. Stat. § 245C.22, subd. 4(b)(1) (2022), Kamande was “disqualified as a result of felony DWI, which is an intentional and serious offense. The nature of the [DWI] offense is of concern when considering [Kamande was] seeking to care for vulnerable persons.” Pursuant to Minn.

Stat. § 245C.22, subd. 4(b)(5) (2022), “The program[s at Nuway] serve[] adults who are vulnerable as a result of their substance use disorder [and] . . . their mental health.”

Pursuant to Minn. Stat. § 245C.22, subd. 4(b)(7) (2022), “The disqualifying offense was committed less than one year ago on March 7, 2022. As such, it is recent.”

Pursuant to Minn. Stat. § 245C.22, subd. 4(b)(8) (2022), the commissioner stated:

[Kamande] remain[s] on supervised probation with multiple conditions including chemical dependency evaluation/treatment, no alcohol/controlled substance use, random testing, victim impact panel and remain law abiding. [Kamande] submitted a discharge summary and a certificate indicating [he] completed intensive outpatient treatment on July 2, 2022, after being admitted on April 23, 2022. [Kamande] did not submit any documentation from [his] probation officer regarding [his] compliance with the conditions of probation, and [Kamande] did not submit any documentation of [his] sobriety date/the length of [Kamande’s] sobriety. As such, it is too soon to conclude [Kamande] ha[d] undergone changes that would make it unlikely the disqualifying offense would reoccur.

The commissioner also noted that, pursuant to Minn. Stat. § 245C.22, subd. 4(b)(9) (2022), she “must give preeminent weight to the safety of the persons served by [Nuway’s] program[s].”

The commissioner found it was not required to set aside Kamande’s disqualification under Minn. Stat. § 245C.22, subd. 4(d) (2022), because Kamande did not submit documentation of “successful completion of treatment at a program licensed under Minnesota Statutes, section 245G at least one year prior to the date of the request for reconsideration[,]” or documentation of “abstinence from the use of substances for the period of one year prior to the date of the request for reconsideration.”

Kamande appeals from the commissioner's decision declining to set aside his disqualification.

DECISION

Kamande argues that the commissioner erred because he does not pose a risk of harm to patients served at Nuway. The Minnesota Department of Human Services Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2022), provides for disqualification of certain persons from working with licensed programs. Under Minn. Stat. § 245C.15, subd. 2(a), a person is disqualified for 15 years if convicted of a felony crime involving alcohol. A disqualified person may request reconsideration to set aside the disqualification. Minn. Stat. §§ 245C.21, .22.

A decision on a request for reconsideration of a disqualification is a quasi-judicial decision. *Rodne v. Comm'r of Hum. 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. *Sweet v. Comm'r of Hum. Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005), *rev. 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.*

We first consider the support and substantial evidence for each factor that the commissioner found determinative under Minn. Stat. § 245C.22, subd. 4(a)-(b). Then, we turn to whether Minn. Stat. § 245.22, subd. 4(d), required the commissioner to set aside Kamande's disqualification.

I. Substantial evidence supports the commissioner’s decision declining to set aside Kamande’s disqualification.

“The commissioner *may* set aside the disqualification if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant,” Minn. Stat. § 245C.22, subd. 4(a) (emphasis added), based on these factors:

- (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.

Minn. Stat. § 245C.22, subd. 4(b). The burden rests on the individual to show that he does not pose a risk of harm. *Id.* In reviewing the request, the commissioner “*shall* give preeminent weight to the safety of each person” served by the program. *Id.*, subd. 3 (emphasis added). In addition, “any *single* factor under subdivision 4, paragraph (b), may be determinative” of the commissioner’s decision on a request to reconsider a disqualification. *Id.* (emphasis added).

Factor 1: The nature, severity, and consequences of the event or events that led to the disqualification.

The commissioner noted that Kamande had been convicted of a felony-DWI offense, which was an “intentional and serious offense[,]” and that the nature of this offense was “concerning” because Kamande’s position at Nuway involved care for “vulnerable persons.” Due to Kamande’s three prior misdemeanor-DWI offenses, he was charged and convicted of a first-degree DWI. While we commend Kamande for his progress since the offense, we note that this is the most severe grade of DWI. Therefore, the commissioner reasonably determined that this factor supported denying the set-aside and that determination is supported by substantial evidence in the record.

Factor 5: Vulnerability of persons served by the program.

The commissioner noted that Nuway serves adults who are vulnerable due to their substance-use disorder and their mental health. This fact is rationally connected to the denial because the quality of patient treatment, including the accuracy of urine-sample testing, could be compromised if the tester was under the influence of alcohol or exercising poor judgment. This is a relevant factor for the commissioner to consider, particularly in light of the commissioner’s mandate to “give preeminent weight to the safety” of the people served. Minn. Stat. § 245C.22, subd. 3. The commissioner reasonably determined that this factor supported denying the set-aside, which is supported by substantial evidence in the record.

Factor 7: The time elapsed without a repeat of the same or similar event.

The commissioner noted that since Kamande committed the DWI offense less than a year prior to reconsideration, the offense was “recent.” The commissioner reasonably relied on this substantial evidence in denying the set-aside.

Factor 8: Documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event.

The commissioner acknowledged that Kamande completed an “intensive outpatient program” that he entered on April 23, 2022 and from which he was discharged on July 2, 2022. However, the commissioner also noted Kamande remained on supervised probation with multiple conditions, such as abstention from alcohol and controlled substances, submission to random chemical-substance testing, completion of a victim-impact panel, and to remain law-abiding, and that Kamande did not submit any documentation demonstrating compliance with these conditions. The commissioner specifically noted that Kamande did not provide documentation of his “sobriety date/the length of [his] sobriety.” And Kamande’s discharge report from his outpatient treatment program states that, while Kamande “recognized relapse issues and prevention strategies,” he “display[ed] some vulnerability for further substance use or mental health problems.” Without diminishing Kamande’s apparent progress since his felony DWI, we conclude that, absent documentation of Kamande’s ongoing compliance with his probation conditions, substantial evidence supports the commissioner’s determination that it was too soon to know whether Kamande had “undergone changes that would make it unlikely the disqualifying offense would reoccur.”

II. Minn. Stat. § 245C.22, subd. 4(d), did not require the commissioner to set aside Kamande’s disqualification.

DHS does not dispute that section § 245C.22, subdivision 4(d), applies to Kamande as an individual seeking employment in the substance-use-disorder field. However, DHS argues the commissioner correctly determined it was not required to set aside Kamande’s disqualification.

For individuals seeking employment in the substance-use-disorder treatment field, “the commissioner *shall* set aside the disqualification” provided the following criteria are satisfied:

(1) the individual is not disqualified for a crime of violence as listed under section 624.712, subdivision 5, except for the following crimes: crimes listed under section 152.021, subdivision 2 or 2a; 152.022, subdivision 2; 152.023, subdivision 2; 152.024; or 152.025;

(2) the individual is not disqualified under section 245C.15, subdivision 1;

(3) the individual is not disqualified under section 245C.15, subdivision 4, paragraph (b);

(4) the individual provided documentation of successful completion of treatment, *at least one year prior to the date of the request for reconsideration*, at a program licensed under chapter 245G, and has had no disqualifying crimes or conduct under section 245C.15 after the successful completion of treatment;

(5) the individual provided documentation demonstrating abstinence from controlled substances, as defined in section 152.01, subdivision 4, *for the period of one year prior to the date of the request for reconsideration*; and

(6) the individual is seeking employment in the substance use disorder treatment field.

Minn. Stat. § 245C.22, subd. 4(d) (emphases added).

Here, Kamande completed his 90-day outpatient program in July 2022 and requested reconsideration less than a year later in January 2023. And Kamande submitted no documentation alleging his abstinence from alcohol for one year prior to his request for reconsideration. Therefore, substantial evidence supports the commissioner's determination that Kamande did not satisfy Minn. Stat. § 245C.22, subd. 4(d)(4)-(5), and that the commissioner was not required to set aside his disqualification.

Affirmed.