

*This opinion is nonprecedential except as provided by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
A23-0786**

In the Matter of the Assisted Living Contract Termination of D.W., Petitioner,
by Graceful Lodge Home Care, Respondent.

**Filed February 12, 2024
Affirmed
Smith, Tracy M., Judge**

Minnesota Department of Health
File No. 22-0900-39073

D.W., St. Paul, Minnesota (pro se relator)

Matthew W. Bergeron, Katherine A. Cochran, Larkin Hoffman Daly & Lindgren Ltd.,
Minneapolis, Minnesota (for respondent Graceful Lodge Home Care)

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Minnesota (for respondent Minnesota Department of Health)

Considered and decided by Wheelock, Presiding Judge; Smith, Tracy M., Judge;
and Gaitas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this certiorari appeal, relator D.W. challenges a final order affirming the termination of his assisted-living contract by respondent Graceful Lodge Home Care. We affirm.

FACTS

Graceful Lodge Home Care (Graceful Lodge or the facility) operates assisted-living facilities pursuant to licenses issued by respondent Minnesota Department of Health

(MDH). In July 2022, Graceful Lodge entered into a one-year contract with D.W. to provide him housing and assisted-living services at one of its facilities.

A few months after D.W. moved into the facility, Graceful Lodge received a grievance from another resident alleging that D.W. “continuously accuses” him of using and selling drugs in the facility and of hiding a gun in his room. The resident also alleged that D.W. contacted the resident’s parole officer. The resident described how the accusations affected his mental and physical health. Facility staff searched the resident’s room but did not find any drugs or a gun.

Graceful Lodge scheduled a pretermination meeting¹ based on D.W.’s behavior and sent D.W. a notice of the meeting. In November 2022, Graceful Lodge participated in the meeting with D.W., his case manager, and a representative of the Minnesota Office of Ombudsman for Long-Term Care. A week after the meeting, Graceful Lodge notified D.W. that it intended to terminate his assisted-living contract.

Graceful Lodge then received a grievance from a different resident at the facility alleging that D.W. was “always in [his] fac[e]” and insulting him. The resident stated that he was stressed due to D.W.’s “daily” harassment. Graceful Lodge also documented several incidents between D.W. and facility staff, including an incident in which D.W. allegedly punched a staff member.

¹ Before an assisted-living facility terminates an assisted-living contract, the facility must schedule and participate in a pretermination meeting with the resident and the resident’s representatives to ensure that termination is necessary. Minn. Stat. § 144G.52, subd. 2(a) (2022).

In February 2023, MDH concluded an investigation of an allegation of maltreatment and an evaluation of compliance with licensing standards at Graceful Lodge. MDH had received allegations that Graceful Lodge billed for services not provided and knowingly permitted drug use in the facility. MDH concluded that the allegations were not substantiated.

About two weeks after MDH concluded its investigation, Graceful Lodge issued a notice of expedited termination of D.W.'s assisted-living contract. D.W. appealed to MDH. MDH issued a notice of and order for hearing before the Minnesota Office of Administrative Hearings (OAH), and OAH scheduled an evidentiary hearing.

Following the hearing, an administrative-law judge (ALJ) issued findings of fact, conclusions of law, and a recommendation to the commissioner of health. The ALJ recommended that the commissioner affirm Graceful Lodge's termination of D.W.'s assisted-living contract. The ALJ's recommendation became a final order when the commissioner did not issue a final order within 14 days after receiving the ALJ's recommendation. *See* Minn. R. 4659.0210, subp. 4 (2021).

D.W. appeals.

DECISION

D.W. challenges the final order affirming Graceful Lodge's termination of his assisted-living contract. He appears to make the following five arguments: (1) MDH and OAH lacked authority and jurisdiction to affirm the termination of the contract, (2) the contract was invalid, (3) there was no basis to terminate the contract, (4) D.W. was denied due process, and (5) OAH abused its discretion in its rulings. Both MDH and Graceful

Lodge submitted responsive briefs. MDH briefed the first issue raised by D.W., arguing that the ALJ's decision that MDH and OAH had the necessary authority and jurisdiction was not error. In its brief, Graceful Lodge argues that D.W.'s appeal should be dismissed as moot because D.W. moved out of the facility after he filed this appeal. Alternatively, Graceful Lodge contends that D.W. fails to show that the final order is erroneous. We first address Graceful Lodge's argument that this appeal should be dismissed as moot.

I. This appeal is not moot.

Representing that D.W. moved out of the facility after he filed this appeal, Graceful Lodge argues that the appeal should be dismissed as moot because there is no live controversy. Under the mootness doctrine, "the general rule is that when, pending appeal, an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal should be dismissed as moot." *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). The doctrine requires "a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *Id.*

The question of whether the final order affirming Graceful Lodge's termination of D.W.'s assisted-living contract was erroneous is a live controversy. Even if D.W. has moved out of the facility, we would still be able to grant D.W. effective relief—if we were to reverse the final order, Graceful Lodge may need to provide housing and assisted-living services to D.W. Thus, this appeal is not moot. We therefore turn to D.W.'s five challenges to the order affirming termination of his assisted-living contract.

II. The final order affirming Graceful Lodge’s termination of D.W.’s assisted-living contract was not erroneous or unsupported by the record.

An agency decision affirming the termination of an assisted-living contract may be appealed by writ of certiorari under Minnesota Statutes sections 14.63 to 14.69 (2022). Minn. R. 4659.0210, subp. 4. When reviewing the agency decision, this court may affirm, remand, reverse, or modify the decision. Minn. Stat. § 14.69. This court 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. Agency decisions “enjoy a presumption of correctness,” and the “agency decision-maker is presumed to have the expertise necessary to decide technical matters within the scope of the agency’s authority.” *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted). Relators have the burden of proof when challenging an agency decision. *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 289 (Minn. App. 2010).

A. Agency Authority and Jurisdiction

D.W. appears to argue that MDH and OAH lacked authority and jurisdiction to affirm Graceful Lodge’s termination of his assisted-living contract. MDH argues that MDH and OAH had the necessary authority and jurisdiction.

Whether an agency has authority and jurisdiction over a matter is a legal question; a reviewing court need not defer to “agency expertise” or the agency’s decision on the issue. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984). “Whether an administrative agency has acted within its statutory authority is a question of law that [appellate courts] review de novo.” *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

MDH regulates assisted-living facilities under Minnesota Statutes chapter 144G (2022) and rules promulgated by MDH. Minn. Stat. § 144G.09, subd. 1; Minn. R. 4659.0010-.0210 (2021). A resident of an assisted-living facility may appeal the facility’s termination of his assisted-living contract to MDH. Minn. R. 4659.0210, subp. 2. Minnesota Statutes section 144G.54 and Minnesota Rule 4659.0210 set forth the procedures for appealing a termination.

The resident must submit a written request for an appeal to MDH. Minn. R. 4659.0210, subp. 2. If the resident requests a hearing, MDH coordinates a hearing for the parties before OAH. *See id.*, subps. 2-3; *see also* Minn. Stat. § 144G.54, subd. 3(a). OAH then holds the hearing. Minn. Stat. § 144G.54, subd. 3(a). Following the hearing, the ALJ issues a recommendation to the commissioner. *Id.*, subd. 3(e). The commissioner may issue a final order within 14 days after receipt of the ALJ’s recommendation. Minn. R. 4659.0210, subp. 4. If the commissioner does not issue a final order within the time allowed, the ALJ’s recommendation becomes the final order. *Id.*

Here, MDH licensed Graceful Lodge’s assisted-living facilities pursuant to Minnesota Statutes chapter 144G. Graceful Lodge entered into an assisted-living contract

with D.W. and later terminated the contract. Therefore, D.W.’s appeal of Graceful Lodge’s termination of his assisted-living contract to MDH was governed by the procedures set forth in section 144G.54 and rule 4659.0210. In accordance with those procedures, MDH and OAH had authority and jurisdiction over the termination of the contract.

D.W. appears to make a related argument that, because he received services at Graceful Lodge that were funded by the Minnesota Department of Human Services (DHS) under his community-access-for-disability-inclusion (CADI) waiver, his appeal of Graceful Lodge’s termination of his assisted-living contract was governed by Minnesota Statutes chapter 245D (2022)² and should have involved DHS. But chapter 144G specifically governs an assisted-living facility’s termination of housing or assisted-living services for residents who receive CADI waiver services at the facility. *See* Minn. Stat. § 144G.52, subds. 2(c), 7(a), 9(c)(2) (requiring additional procedures for residents who receive home and community-based waiver services under Minn. Stat. § 256B.49). Chapter 144G grants authority and jurisdiction to MDH and OAH; it does not grant authority and jurisdiction to DHS.

In sum, MDH and OAH had authority and jurisdiction to affirm Graceful Lodge’s termination of D.W.’s assisted-living contract.

B. Validity of Contract

D.W. also appears to argue that the assisted-living contract was invalid because it “did not contain the mandatory ‘Service Plan.’” An assisted-living contract must contain

² Chapter 245D sets forth the standards for home and community-based services, including CADI waiver services. *See* Minn. Stat. § 256B.49 (2022) (listing home and community-based service waiver programs).

“the resident’s service plan, if applicable.” Minn. Stat. § 144G.50, subd. 1(b)(3). The ALJ noted that D.W.’s “care plan” was not presented at the evidentiary hearing; however, based on D.W.’s testimony at the hearing, the ALJ found that D.W. “requires no assistance with daily life activities.” D.W. does not explain what service plan was applicable to his assisted-living contract or how any such service plan was deficient, nor does he explain how any insufficiency affects the decision to terminate his contract. He therefore fails to establish error. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that error is not presumed on appeal and the appellant has the burden of showing error).

D.W. also asserts that Graceful Lodge failed to enter into a “[Home and Community-Based Services] Medicaid Contract” with him. He cites the licensure requirements of chapter 245D. But those requirements apply to facilities licensed under Minnesota Statutes chapter 245A (2022). *See* Minn. Stat. § 245D.02, subd. 15 (defining “license holder” and referring to Minn. Stat. § 245A.02, subd. 9). Graceful Lodge is not licensed under chapter 245A; it operates assisted-living facilities licensed under chapter 144G.

D.W. has not shown that the affirmance of Graceful Lodge’s termination of his assisted-living contract was erroneous because the contract was invalid.

C. Basis for Termination of Contract

D.W. appears to argue that substantial evidence does not support the termination of his assisted-living contract. Under Minnesota Statutes section 144G.52, subdivision 5(a),

[a] facility may initiate an expedited termination of housing or services if:

(1) the resident has engaged in conduct that substantially interferes with the rights, health, or safety of other residents;

(2) the resident has engaged in conduct that substantially and intentionally interferes with the safety or physical health of facility staff; or

(3) the resident has committed an act listed in section 504B.171^[3] that substantially interferes with the rights, health, or safety of other residents.

In the expedited-termination notice, Graceful Lodge explained its termination of D.W.’s assisted-living contract, listing the following three “determining factors” for the termination: (1) D.W.’s “aggressive conduct and persistent harassment substantially interfere[d] with the rights, health, or safety of other residents”; (2) D.W.’s “aggressive conduct towards Graceful Lodge staff . . . substantially and intentionally interfere[d] with their safety and physical health”; and (3) D.W.’s “continuous outlandish and untrue accusations against staff members . . . caused reduced motivation, voluntary resignation and interference with their safety and health.” The ALJ determined that D.W.’s “conduct substantially and intentionally interfered with the rights of other residents” because D.W.’s “unsubstantiated allegations of illegal drug use and sale caused a resident’s room to be searched in the absence of an emergency.”

D.W. appears to suggest that Graceful Lodge terminated his assisted-living contract to retaliate against him because of the allegations of drugs, a gun, and maltreatment at the facility. Retaliation by an assisted-living facility against a resident is prohibited. Minn. Stat. § 144G.92, subds. 1-2.

³ See Minn. Stat. § 504B.171 (2022) (disallowing certain unlawful activities on leased residential premises).

Substantial evidence supports the ALJ's determination that the termination was based on sufficient reasons and was not retaliatory. At the evidentiary hearing, the ALJ admitted into evidence a grievance form setting forth the allegation that D.W. was continuously accusing a resident of using and selling drugs in the facility. The facility staff member who handled the grievance testified that the resident informed him that D.W. contacted the resident's parole officer and repeated the accusations. The staff member noted in the grievance form that facility staff searched the resident's room and other parts of the facility but did not find any drugs. The staff member testified that the resident temporarily moved out of the facility due to the accusations. The ALJ also admitted into evidence a report issued by MDH of its investigation. In the report, MDH discussed a search of the facility by law enforcement officers who were investigating allegations that a resident smelled drugs in the facility. MDH noted that the officers stated that they found no evidence of drugs in the facility. D.W.'s challenge to the basis for the termination fails.

D. Due Process

D.W. appears to argue that he was denied due process, claiming that the ALJ did not rule on his demand for a jury trial. By statute, the hearing in an assisted-living contract-termination matter is generally not a formal contested case proceeding. Minn. Stat. § 144G.54, subd. 3(c). Rather, the hearing is "limited to the amount of time necessary for the participants to expeditiously present the facts about the proposed termination." *Id.*, subd. 3(e). ALJs have no authority to grant a jury trial in these administrative hearings under section 144G.54 or rule 4659.0210. Accordingly, in considering D.W.'s demand for

a jury trial, the ALJ denied a jury trial at the evidentiary hearing. D.W. cites no authority for the proposition that he was entitled to a jury trial.

D.W. also contends that he was unable to adequately review and respond to the evidence presented at the hearing. But the record demonstrates that the ALJ recessed for 15 minutes to allow D.W. the opportunity to review Graceful Lodge's exhibits, after which D.W. testified about his concerns regarding each exhibit. In addition, the record remained open after the hearing for the parties to submit written closing arguments. D.W. submitted his written closing argument three days later.

Therefore, D.W. has not shown that he was denied due process.

E. Agency Decision

Finally, D.W. appears to argue that OAH abused its discretion in its rulings by relying on what he characterizes as a fraudulent video that depicted a confrontation between D.W. and a staff member at the assisted-living facility. But the ALJ did not discuss the video in her recommendation. Further, the ALJ determined only that Graceful Lodge had a permissible basis to terminate D.W.'s assisted-living contract based on the rights of other residents at the facility—not that termination was warranted based on the safety or physical health of facility staff. D.W. has not shown that the final order affirming Graceful Lodge's termination of his assisted-living contract was erroneous because OAH abused its discretion in its rulings.

Affirmed.