

*This opinion is nonprecedential except as provided by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
A24-1641**

Basswood Residence, Inc.,
Relator,

vs.

Department of Human Services,
Respondent.

**Filed July 14, 2025
Affirmed
Ede, Judge**

Department of Human Services

Jason Steck, St. Paul, Minnesota (for relator)

Keith Ellison, Attorney General, Emily B. Anderson, R.J. Detrick, Assistant Attorneys
General, St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Ede, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Relator challenges respondent agency's decision to close its home-and-community-based services (HCBS) license and the commissioner's decision to uphold the license closure, arguing (1) that the statute permitting the commissioner to close relator's license based on inactivity denied relator procedural due process and (2) that the commissioner's decision was arbitrary and capricious. Because we conclude that relator was afforded

procedural due process and that the commissioner’s decision was neither arbitrary nor capricious, we affirm.

FACTS

In May 2023, respondent Minnesota Department of Human Services (DHS) issued relator Basswood Residence Inc. an HCBS license. Basswood is located in northeast Minneapolis and has described itself as offering “a comprehensive array of services designed to enhance the quality of life for [its] clients,” including individualized home support, independent living skills, adult companions, in-home community living support, integrated community support, night supervision, respite care, employment support, chores, and homemaker services.

In January 2024, DHS renewed Basswood’s HCBS license. But in September, DHS mailed Basswood a notice stating that Basswood’s HCBS license was “closed,” effective September 6, 2024, based on the determination of the Minnesota Commissioner of Human Services “that the licensed program ha[d] not been serving any client for a period of 12 months or longer.” The notice also informed Basswood that, under Minnesota Statutes section 245A.055 (2024), it could request reconsideration if it believed that DHS had closed the license in error.

In response, Basswood emailed an HCBS licensor at DHS, claiming that it “had served a client and . . . sent the information to [the licensor].” DHS wrote back to Basswood that a Minnesota Statutes section “245D license allows providers to access the medical assistance funds in the federally approved waiver plans”—such as Medicare—and that “[p]rograms that have not billed for services on the federal waiver plan are considered

inactive.” And DHS explained that Basswood had confirmed in earlier emails that it “had not provided services to anyone on a federally approved waiver in over 12 consecutive months.”

Basswood sent a letter to DHS requesting reconsideration of the license-closure decision, asserting that it had “consistently provided homemaking services to a private cash-paying client.” And Basswood stated that it had “taken significant steps to expand [its] services, including applying for integrated community support (ICS) housing,” for which it was “still [a]waiting approval from DHS to begin offering services to [ICS] clients.” Basswood submitted several documents as attachments, including residential-lease agreements relating to four apartment units that Basswood described as intended for ICS clients. But Basswood also admitted that, over the preceding year, it had not served a client with a Medicare waiver, even after making “diligent efforts” to do so. Basswood maintained that its “inability to serve a federally approved waiver client in the [prior] 12 months [was] beyond [its] control.”

On behalf of the commissioner, an attorney with DHS’s Office of Inspector General sent Basswood a letter that included a written response to Basswood’s request for reconsideration of the license closure. Based on a review of “the relevant laws and all of the information [Basswood] submitted in response to the notice of license closure,” the commissioner decided that “[t]he record [was] sufficient to determine [that Basswood’s] HCBS license was not closed in error.” As support for this decision, the letter states that “[t]he documentation [Basswood] provided on reconsideration did not show [that Basswood] served a client under [its] HCBS license in the previous 12 months.” The letter

adds that Basswood had “provided homemaker/cleaning services only, [which] . . . are not HCBS.” Thus, as a final agency decision, Basswood’s license was closed and it was prohibited from operating its HCBS program, effective September 25, 2024.

Basswood filed this certiorari appeal.

DECISION

Basswood challenges the commissioner’s decision to uphold the closure of its HCBS license, contending (1) that it was denied procedural due process under Minnesota Statutes section 245A.055 and (2) that the commissioner’s decision was arbitrary and capricious.

This court “may review an agency’s decision by writ of certiorari when there is no statute or appellate rule that otherwise permits judicial review, provided that the decision being appealed is quasi-judicial or judicial in nature.” *Eneh v. Minn. Dep’t of Health*, 906 N.W.2d 611, 614 (Minn. App. 2018) (citing *Dietz v. Dodge County*, 487 N.W.2d 237, 239 (Minn. 1992)). A proceeding is quasi-judicial “when an agency conducts an investigation into a disputed claim and weighs evidence, applies that evidence to a prescribed standard, and reaches a binding decision on the matter.” *Id.*

“The commissioner may close [an HCBS] license if the commissioner determines that a licensed program has not been serving any client for a consecutive period of 12 months or longer.” Minn. Stat. § 245A.055, subd. 1. “If the license holder believes that the license was closed in error, the license holder may ask the commissioner to reconsider the closure.” *Id.*, subd. 2.

Here, the record reflects that: DHS investigated Basswood’s claim that the commissioner’s decision to close the license was erroneous; the commissioner weighed the evidence, including the documentation that Basswood provided; the commissioner applied that evidence to Minnesota Statutes section 245A.055, a prescribed standard; and the commissioner reached a binding final agency decision that Basswood’s license was closed and that it was prohibited from operating its HCBS program. We therefore conclude that the commissioner’s decision was quasi-judicial and that our review is limited to issues “affecting the jurisdiction of the [agency], the regularity of its proceedings, and . . . whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Dietz*, 487 N.W.2d at 239 (quotation omitted).

I. Basswood was afforded procedural due process under Minnesota Statutes section 245A.055.

Basswood first asserts that it was denied procedural due process under Minnesota Statutes section 245A.055 because the statute permitted DHS “to strip Basswood of both its good name as an HCBS license-holder and its substantial investment in obtaining eligibility for licensure without any opportunity for Basswood to explain” its circumstances to a neutral fact-finder. And Basswood contends that, to vindicate its procedural-due-process rights, it should have been permitted to appeal the license closure to an administrative hearing; absent such process, Basswood claims that reversal of DHS’s decision to close the license is appropriate. DHS counters that the license closure under section 245A.055 did not contravene Basswood’s right to procedural due process because

Basswood does not have a protected interest in maintaining an inactive license and because the reconsideration process is constitutionally adequate given the limited effect of an administrative closure.

“[T]he due process protections granted under the United States and Minnesota Constitutions are identical.” *Fosselman v. Comm’r of Hum. Servs.*, 612 N.W.2d 456, 461 (Minn. App. 2000). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). “This court reviews de novo the procedural due process afforded a party.” *Thompson v. Comm’r of Health*, 778 N.W.2d 401, 403 (Minn. App. 2010) (quotation omitted).

Appellate courts “conduct a two-step analysis to determine whether the government has violated an individual’s procedural due process rights.” *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012). At the first step, appellate courts “identify whether the government has deprived the individual of a protected life, liberty, or property interest.” *Id.* “If the government’s action does not deprive an individual of such an interest, then no process is due.” *Id.* But “if the government’s action deprives an individual of a protected interest, then the second step requires [appellate courts] to determine whether the procedures followed by the [government] were constitutionally sufficient.” *Id.* (quotation omitted). “To determine the constitutional adequacy of specific procedures, the Supreme Court of the United States established a three-factor balancing test in *Mathews*” *Id.*

In *Mathews*, the Supreme Court explained that “identification of the specific dictates of due process generally requires consideration of three distinct factors”: (A) “the private

interest that will be affected by the official action”; (B) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (C) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335.

The statutory scheme relevant to Basswood’s procedural-due-process rights provides as follows. “The commissioner shall regulate the provision of [HCBS] to persons with disabilities and persons age 65 and older pursuant to this chapter.” Minn. Stat. § 245D.03, subd. 1(a) (2024). HCBS “means the services identified in section 245D.03, subdivision 1, and as defined in . . . the federally approved waiver plans governed by United States Code, title 42, section 1396 et seq.” or “the alternative care (AC) program under section 256B.0913.” Minn. Stat. § 245D.02, subd. 10 (2024). These services include: basic support services necessary to ensure a person’s welfare such as in-home and out-of-home respite care services; adult companion services; 24-hour emergency assistance; night-supervision services; homemaker services; and intensive support services such as ICS. *See* Minn. Stat. § 245D.03, subd. 1(b)(1)–(5), (c)(8) (2024).

The licensing standards set forth in Minnesota Statutes chapter 245D “govern the provision of basic support services and intensive support services.” *Id.*, subd. 1(a). “A license holder governed by this chapter is also subject to the licensure requirements under chapter 245A.” *Id.*, subd. 2(a) (2024).

Residential and nonresidential programs for persons with disabilities or age 65 and older must obtain a license . . . to provide home and community-based services defined in the

federal waiver plans governed by United States Code, title 42, sections 1396 et seq., or the state’s alternative care program according to section 256B.0913, and identified in section 245D.03, subdivision 1.

Minn. Stat. § 245A.042, subd. 1 (2024). As discussed above, “[t]he commissioner may close [an HCBS] license if the commissioner determines that a licensed program has not been serving any client for a consecutive period of 12 months or longer.” Minn. Stat. § 245A.055, subd. 1. And, “[i]f the license holder believes that the license was closed in error, the license holder may ask the commissioner to reconsider the closure.” *Id.*, subd. 2. “The commissioner’s disposition of a request for reconsideration is final and not subject to [administrative] appeal under chapter 14.” *Id.*, subd. 3.

Because it does not alter our ultimate decision to affirm, we assume without deciding at the first step of the procedural-due-process analysis that the license closure deprived Basswood of a protected property interest.¹ *See Sawh*, 823 N.W.2d at 632. We next apply the three-factor *Mathews* balancing test in evaluating Basswood’s procedural-due-process claim.

¹ *Cf. Sweet v. Comm’r of Hum. Servs.*, 702 N.W.2d 314, 320 (Minn. App. 2005) (acknowledging that “the commissioner’s decision [did] not limit relator’s ability to seek and obtain employment as a counselor in the private sector,” but concluding “[n]onetheless[] . . . that relator ha[d] a property interest to pursue employment as a counselor in the public sector”), *rev. denied* (Minn. Nov. 15, 2005). *But see Sunshine Childcare Ctr., LLC v. Ramsey County*, 7 N.W.3d 611, 618 (Minn. App. 2024) (concluding that “appellants were not deprived of a protected property interest” when DHS temporarily suspended Child Care Assistance Program (CCAP) payments and temporarily revoked appellants’ authorization to receive CCAP payments during an investigation into allegedly inaccurate attendance records when “those actions [did] not prevent appellants from operating a licensed childcare center during the investigation”), *rev. granted* (Minn. Sept. 17, 2024) and *appeal dismissed* (Minn. Dec. 20, 2024).

A. Basswood's Interest

Although there are aspects of Basswood's asserted interest that do not implicate procedural-due-process concerns, we conclude that this factor weighs slightly in favor of Basswood's argument.

On the one hand, apart from the contention that the license closure deprived Basswood of its "good name as an HCBS license-holder," Basswood has not shown how the final agency decision damaged its reputation. In *Fosselman*, we concluded that an agency's action "tainted" the good names and reputations of relators when three medical professionals who had been working in a "residential, intermediate-care facility for individuals with developmental disabilities" were disqualified "from working in direct contact with individuals receiving services from (1) programs licensed by DHS or the Department of Health or (2) unlicensed personal-care-provider organizations." 612 N.W.2d at 458–59, 461. "Because relators [were] disqualified for alleged failure to carry out the provisions of a law embodying an important policy—that of protecting children's health and welfare—it [was] clear to us that disqualification ha[d] tainted their good names and reputations." *Id.* at 461. By contrast, the closure of Basswood's HCBS license did not result from a determination that Basswood failed to uphold an important policy comparable to the child maltreatment issue in *Fosselman*—rather, Basswood's license was closed because of inactivity. And Basswood has not otherwise identified any evidence in the record reflecting actual damage to its reputation.

Moreover, at the time that DHS closed the HCBS license, Basswood was providing only homemaking services to one client. That client paid Basswood privately rather than

through a state or federally funded waiver program requiring licensure under Minnesota Statutes section 245D.² Thus, Basswood cannot demonstrate that the closure of its HCBS license affected its interest in the employment status of its personnel. *See Fosselman*, 612 N.W.2d at 462 (concluding that this factor weighed “heavily” in relators’ favor when they had successfully argued that the agency’s action “preclude[d] them from working in their chosen field for seven years and render[ed] their opportunity to re-enter that field at the discretion of the commissioner”). And while we acknowledge Basswood’s contention that the closure harmed its “substantial investment in obtaining eligibility for licensure,” an HCBS license holder is not prohibited from reapplying if their license is closed. *See Minn. Stat. § 245A.055, subd. 1.*

But on the other hand, “[e]mployment in an individual’s chosen field is significant and weighs heavily in the individual’s favor.” *Sweet*, 702 N.W.2d at 320. In *Sweet*, the relator challenged the commissioner’s denial of his “request to set aside his disqualification from working as a counselor in a state-licensed program because of his criminal record.” *Id.* at 315. We observed that the “relator’s interest [was] less restricted than the employees’ interest in *Fosselman*” because the relator was “not disqualified from working in every position in his profession.” *Id.* at 320. “But [because] continued employment in the public sector is a significant interest[,] . . . we conclude[d] that the first [*Mathews*] factor

² The homemaking services allowed by HCBS licensing standards are “homemaker services as defined under the community access for disability inclusion, brain injury, community alternative care, developmental disabilities, and elderly *waiver plans, excluding providers licensed by the Department of Health under chapter 144A and those providers providing cleaning services only.*” Minn. Stat. § 245D.03, subd. 1(b)(5) (emphasis added).

weigh[ed] in relator’s favor.” *Id.*; see also *Thompson*, 778 N.W.2d at 406–07 (recognizing that a relator subject to disqualification from certain employment could “continue working in . . . [a] position because of [a] set-aside,” but still concluding that the first *Mathews* factor “weigh[ed] in his favor, although . . . it d[id] not weigh as strongly as it weighed in favor of the relators in *Sweet* and *Fosselman*,” and agreeing with relator’s argument that, because “his employment [was] restricted, and, if he [sought] work elsewhere, he [would] be required to seek reconsideration again and the potential employer [would] be informed of the disqualifying characteristic”).

We therefore conclude that this factor favors Basswood’s procedural-due-process argument, though only slightly.

B. The Risk of An Erroneous Deprivation of Basswood’s Interest Through the Procedures Used

Basswood contends that Minnesota Statutes section 245A.055, subdivision 1, “gives DHS an easy end-run around the procedural and substantive protections permitted to license-holders in license-revocation proceedings, empowering DHS to strip a license from a license-holder without any showing of wrongdoing by the license-holder.” And Basswood insists that “DHS need only either instruct its county officials to refrain from placing HCBS clients with the targeted license-holder or, as here, refuse to process the license-holder’s ICS application.” DHS responds that “Basswood’s central complaint would not be remedied by the contested hearing it seeks” because “Basswood fundamentally seeks a change in statute—it does not think the [c]ommissioner should be entitled to close its license for the non-provision of services.” According to DHS, the

additional process that Basswood is seeking would not reduce the risk of erroneous deprivation because such a hearing would not alter the commissioner's authority to close an inactive program. We agree with DHS.

Basswood has neither shown that the procedures used risked erroneous deprivation of its interest nor that there is any probable value of the additional or substitute procedural safeguard it has requested—a contested administrative hearing. This is because such a hearing would not have changed the commissioner's decision to close Basswood's HCBS license. Under the controlling statute, the reason for a license-holder's inability to serve a client for a consecutive period of 12 months or longer is not relevant to the commissioner's HCBS license-closure decision based on inactivity. *See* Minn. Stat. § 245A.055, subd. 1. As a result, Basswood cannot establish any “probable value . . . of additional or substitute procedural safeguards.” *Mathews*, 424 U.S. at 335.

The process of closing Basswood's HCBS license began with a notice of reinspection. Only after Basswood presented documentation showing that it was not providing HCBS did the commissioner close Basswood's license. Basswood had the opportunity to prove that it was complying with HCBS license standards when DHS mailed the notice of reinspection. In requesting reconsideration, Basswood asserted that the license closure was unwarranted by maintaining that it had served a client for a consecutive period of 12 months or longer, such that subdivision 1 of section 245A.055 should not apply. As DHS persuasively contends, “[t]o the extent Basswood held any constitutionally-protected interest in its inactive license, reconsideration is a constitutionally-adequate process.” We

discern no risk of erroneous deprivation through these procedures and no probable value of additional or substitute procedural safeguards. *See id.*

Thus, we conclude that this factor does not favor a determination that DHS's decision to close the HCBS license violated Basswood's right to procedural due process.

C. The Government's Interest

Basswood does not address the government's interest, the function involved, or the fiscal and administrative burdens that an additional or substitute procedural requirement would entail. *See id.* But our review of this factor leads us to conclude that it does not favor determining that a procedural-due-process violation occurred here.

"Financial cost alone is not a controlling weight in determining whether due process requires a particular procedural safeguard prior to some administrative decision." *Id.* at 348. "But the Government's interest, and hence that of the public, in conserving scarce fiscal and administrative resources is a factor that must be weighed." *Id.*

Maintaining an HCBS license requires the agency to allocate administrative resources toward the monitoring of license holders. As a result, the closure of an inactive license conserves governmental time and funds. Thus, both DHS and the public have interests in conserving scarce fiscal and administrative resources that weigh against a determination that Basswood has suffered a procedural-due-process harm here. *See id.* And Basswood has not justified the need for DHS to incur additional costs via the provision of an evidentiary hearing under these circumstances. As DHS points out, requiring the commissioner to initiate a contested-case proceeding "would put an additional administrative burden on DHS." Given the lack of any probable value of additional or

substitute procedural safeguards that we explain above, the fiscal and administrative burdens entailed by such additional or substitute procedural requirements counsels against Basswood's procedural-due-process claim.

Two of the three *Mathews* factors run contrary to a procedural-due-process determination for Basswood, and one factor only slightly favors it. Application of the *Mathews* balancing test therefore results in our conclusion that an administrative hearing was not required to afford Basswood with procedural due process and that "the procedure followed by the commissioner in this matter was appropriately tailored to the circumstances and meets the requirements of procedural due process." *Sweet*, 702 N.W.2d at 322. Basswood's procedural-due-process claim therefore does not establish that DHS's determination was unreasonable or made under an erroneous theory of law. *See Dietz*, 487 N.W.2d at 239.

II. The commissioner's decision to uphold the closure of Basswood's HCBS license was not arbitrary and capricious.

Basswood last argues that DHS "abused its discretion and engaged in arbitrary and capricious decision-making by ignoring its own responsibility for Basswood's inability to provide HCBS." DHS contends that the commissioner's decision was not arbitrary and capricious, maintaining that the reason a program is not providing HCBS "is not a relevant consideration" under Minnesota Statutes section 245A.055, subdivision 1. Here too, we agree with DHS.

An agency makes an arbitrary and capricious decision if: it relies on factors not intended by the legislature; it entirely fails to consider an important aspect of the problem;

it offers an explanation that is contrary to the evidence; or if its decision “is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.” *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted).

In requesting reconsideration, Basswood provided documentation showing that it had entered into leases for four residential units that it claimed were intended for the provision of ICS services. But Basswood also admitted that, in the prior 12 consecutive months, it had only provided homemaking services to a private paying client. And Basswood conceded that, in the preceding year, it had not served a client with a Medicare waiver, even after making “diligent efforts to engage potential clients with Medicare waiver[s].” The statute’s language is plain and unambiguous. “The commissioner may close a license if the commissioner determines that a licensed program has not been serving any [HCBS] client for a consecutive period of 12 months or longer.” Minn. Stat. § 245A.055, subd. 1. Basswood does not dispute these facts on appeal. And Basswood has failed to identify evidence in the record establishing it had provided HCBS, as defined by the statute, within the applicable period. Although Basswood maintains that the commissioner ignored its pending application for an ICS license, the statute does not require the commissioner to consider such information.

But even if we were to consider the merits of Basswood’s argument about its inability to obtain an ICS license, we would still conclude that it is unavailing. Basswood’s initial license, issued in May 2023, covered the following basic-support HCBS: “24-hour emergency assistance; adult companion services; homemaker; individual community living support; individualized home supports; night supervision; personal support; [and]

respite care, in home or out-of-home.” When Basswood renewed its license the next year, the license covered those basic support services, as well as: “individualized home supports with family training; individualized home supports with training; semi-independent living skills”; and “employment services.” In other words, Basswood was licensed to provide a range of HCBS to the community in the 12 consecutive months before its license closure and its ability to comply with section 245A.055 was not limited to the provision of ICS services. Thus, even considering the pendency of Basswood’s ICS application, we respectfully disagree that the commissioner bore responsibility for Basswood’s failure to provide HCBS.

For these reasons, we conclude that the commissioner’s decision was neither arbitrary nor capricious.

Affirmed.