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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0689**

In the Matter of the Appeal
by Souriyathay Adult Daycare Order of License Revocation
License No.: 1108140 (Adult Day Care).

**Filed February 17, 2026
Affirmed
Florey, Judge***

Department of Human Services
File No. 39574

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Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this certiorari appeal, relator Souriyathay Adult Daycare challenges an order by respondent Commissioner of Human Services revoking relator's license to provide adult day care services. Relator argues that (1) the commissioner's determination that relator violated a conditional-license term is arbitrary and capricious and unsupported by

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

substantial evidence, (2) the commissioner's determination that relator violated ten licensing requirements is based on error of law and unsupported by substantial evidence, and (3) the commissioner's application of Minn. Stat. § 245A.07, subd. 1(a) (2024), is affected by an error of law. Because we conclude that the commissioner's decision to revoke relator's license is not arbitrary and capricious, is supported by substantial evidence, and is not affected by an error of law, we affirm.

FACTS

Relator was an adult day care program licensed under Minnesota Statutes chapter 245A (2024 & Supp. 2025). Relator obtained a license in January 2022, but it began operations several months later in October 2022. Relator's program primarily served the Laotian community. Relator had fewer than ten staff members who serve approximately 20 participants at a time.¹

In January 2023, the Minnesota Department of Human Services (DHS) inspected relator's facilities. DHS identified "significant violations of health and safety standards" at the program, including violations related to participant and staff record keeping.

In February, DHS placed relator on a two-year conditional license. The conditional license required relator to adhere to several terms, including a term prohibiting the admission of new participants for six months and only allowing new admissions upon DHS's approval after that time (participant term). The conditional license notified relator

¹ Relator is licensed to serve approximately 48 people.

that noncompliance with licensing requirements or the conditional-license terms could result in sanctions, including revocation of relator's license.

Relator did not request reconsideration of the conditional license. It did, however, request that DHS reconsider the participant term so that relator could admit new participants to the program. DHS declined to remove or change the term, explaining via email that it helps "ensure compliance has been achieved before more admissions are made into the program." DHS further explained that relator could not admit four individuals who were transitioning into the program but had not yet been admitted.

DHS conducted another inspection of relator's facility in May, after which it issued a Notice of Noncompliance with the Terms of a Conditional License and Correction Order. This notice identified six licensing violations and determined that relator had admitted seven new participants in violation of the participant term. Relator did not request reconsideration of the notice.

August Inspection and Revocation

DHS conducted another inspection of relator's program in August. During the inspection, relator asked about the participant term and whether it could admit new participants. DHS informed relator that it still could not admit new participants.

The day after the inspection, DHS received an email from a participant's (P3) case manager which informed DHS that P3 had been consistently attending relator's program since June 2023. The case manager had received a call from relator seeking an alternative billing method for services provided to the participant.

DHS issued relator an Amended Order of License Revocation² based on relator's violation of two conditional-license terms and ten licensing requirements. DHS restated its determination that relator had violated the participant term when it admitted seven new participants following the issuance of the conditional license. DHS determined that relator had violated the participant term again when it admitted P3 to the program.³

Relator timely appealed the revocation order.

Contested Case Hearing and ALJ Recommendation

After an evidentiary hearing, the administrative-law judge (ALJ) issued Findings of Fact, Conclusions of Law, and Recommendation. The ALJ concluded that both violations of the conditional-license terms were supported by the record.⁴ Regarding relator's violation of the participant term, the ALJ determined that relator "admitted new participants despite the [DHS]'s prohibition pending a change in the Conditional License." The ALJ also concluded that DHS had substantiated seven of the ten violations. Regarding the three violations that the ALJ concluded were unsubstantiated, the ALJ determined that

² DHS originally issued relator an Order of License Revocation. It subsequently amended this order to correct certain references to participants in the order.

³ DHS also determined that relator violated term 3 of the conditional license when it failed to submit the date that all participant and personnel records would be brought into compliance and failed to bring all participant and personnel records into compliance by August 16, 2023. On appeal, relator does not contend that the commissioner erred in determining that it violated this term of the conditional license.

⁴ Regarding term 3 of the conditional license, the ALJ determined that the "parties did not offer any evidence demonstrating [that relator] provided the anticipated date of compliance with" the conditional license to DHS.

relator corrected the deficiencies and merely failed to provide documentation of those corrections to DHS during the August 2023 inspection.

Although the ALJ concluded that relator had violated the two conditional-license terms and seven licensing requirements, the ALJ determined that because the number of licensing violations had decreased from the issuance of the conditional license and that many of the remaining violations related to “a few participants or employees,” those violations “no longer represent a broad systemic problem.” The ALJ recognized, though, that relator’s violation of the participant term was “the most serious violation.” The ALJ characterized this violation as “a blatant disregard of the license term,” and noted that relator “was not forthright in its communications with [DHS] about new participants.” The ALJ stated that this violation was “severe and may, on its own, warrant the most severe sanction.” However, the ALJ noted that “other factors weigh against revocation,” and applied a best-interests-of-the-community consideration and risk-of-harm factors. *See* Minn. Stat. §§ 245A.04, subds. 6(b) (2024), 7(g) (Supp. 2025), 245C.16, subds. 1(b), 2 (2024). Based on the ALJ’s application of this consideration and these factors, the ALJ ultimately recommended that relator continue to operate under the conditional license and pay a fine of \$1,400.

Commissioner’s Order and Reconsideration Decision

After DHS filed exceptions to the ALJ’s recommendation, the commissioner concluded that relator violated both conditional-license terms and committed all ten licensing violations and thus affirmed the revocation.

The commissioner agreed with the ALJ that relator violated the participant term, stating that the violation was “chronic, severe, and of a nature that demonstrates, at best (and as stated by the ALJ) a ‘feigned lack of understanding of who a participant is or when they are admitted.’” The commissioner noted that although she must consider “the effect of the violation on the health, safety, or rights of persons served by the program,” this standard does not require a finding of actual harm or injury to participants. Instead, the commissioner explained that “[a] program operating with too many participants creates a myriad of dangers to health, safety, or rights of persons served by the program.” The commissioner added that by “effectively operating its program over its allotted capacity, and outside of the applicable laws and rules intended to provide appropriate services to vulnerable adults and protect them from harm, participants were placed at a greater risk of harm by [relator].”⁵

The commissioner also struck the ALJ’s application of the best-interests-of-the-community consideration and the risk-of-harm factors as erroneous. The commissioner explained that the former applies only when the action is based on a prior revocation or

⁵ As to the three violations that the ALJ determined were unsubstantiated, the commissioner concluded that relator was required to grant DHS access to the records during the inspection and to store its records in a manner that allows the commissioner access. Because relator did not produce documents to demonstrate its compliance at the time of the inspection, the commissioner concluded that the violations were properly cited. The commissioner further noted that “[r]ecord-keeping requirements protect health and safety and are minimum standards for license holders” which “are essential to keeping vulnerable adults safe at the licensed program and ensuring participants are receiving appropriate services.”

prior license denial and the latter applies only when the matter involves a chapter 245C background-study issue. Neither of these circumstances were present in relator's case.

Relator requested reconsideration. The commissioner determined that relator presented no evidence or arguments warranting reversal and upheld the revocation.

This appeal follows.

DECISION

I. The commissioner's final decision revoking relator's license is not arbitrary and capricious, is supported by substantial evidence, and is unaffected by error of law.

The commissioner "may . . . revoke the license . . . of the program of a license holder who does not comply with applicable law or rule." Minn. Stat. § 245A.07, subds. 1(a), 3(a)(1) (Supp. 2025). The commissioner may also revoke a license for failure to correct violations specified in a conditional license. Minn. Stat. § 245A.06, subd. 3 (2024). When determining whether to revoke a license, the commissioner must 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).

Relator argues that we should reverse the commissioner's decision to revoke its license because (1) the commissioner's determination that relator violated the participant term is arbitrary and capricious and unsupported by substantial evidence, (2) the commissioner's determination that relator violated ten licensing requirements is based on

an error of law and unsupported by substantial evidence, and (3) the commissioner’s application of Minn. Stat. § 245A.07, subd. 1(a), was affected by an error of law.⁶

Our scope of review of agency decisions is narrow. *Indep. Sch. Dist. No. 281 v. Minn. Dep’t of Educ.*, 743 N.W.2d 315, 321 (Minn. App. 2008). Agency decisions “enjoy a presumption of correctness,” and we defer to agencies’ expertise and special knowledge in their field. *Id.* (quotation omitted). We may reverse an agency decision if it violates a constitutional provision, is made in excess of an agency’s statutory authority, is made upon unlawful procedure, reflects an error of law, is unsupported by substantial evidence in view of the entire record, or is arbitrary or capricious. See Minn. Stat. § 14.69 (2024); see also *Minn. Internship Ctr. v. Minn. Dep’t of Educ.*, 996 N.W.2d 34, 46 (Minn. App. 2023),

⁶ Relator also raises two due-process claims. First, relator argues that “the commissioner deprived relator of fair notice and process by relying on matters outside the scope of the licensing orders and statutory framework.” Relator highlights “broader ‘staff qualifications,’” “management inexperience,” and the redefinition of “admit” as grounds for revocation that the commissioner relied upon that relator did not have fair notice of. But the commissioner must consider “information about the qualifications of the personnel employed by the applicant or license holder” in determining whether to revoke a license. Minn. Stat. § 245A.04, subd. 6(a)(4) (2024). The revocation order explained this requirement and cited the applicable statute.

Second, relator argues that DHS’s failure to provide language interpreters during inspections and interviews violated due-process requirements. An assignment of error in a brief based on “mere assertion” and not supported by argument or authority is forfeited unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Relator offers no legal authority supporting this due-process claim and prejudicial error is not obvious upon mere inspection. Notably, the violations that led to relator’s license revocation were based on relator’s record keeping and failure to follow terms of the conditional license and not any interviews with or statements given by participants. This argument is therefore forfeited.

aff'd, 10 N.W.3d 178 (Minn. 2024). An agency decision is arbitrary and capricious if the agency:

- (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). An agency's conclusions are not arbitrary and capricious if there is a "rational connection between the facts found and the choice made." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted); *see also In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646-47 (Minn. 2023) (stating that the arbitrary-or-capricious standard considers whether the agency has not "genuinely engaged in reasoned decision-making" (quotations omitted)).

"With respect to factual findings made by the agency in its judicial capacity, if the record contains substantial evidence supporting a factual finding, the agency's decision must be affirmed." *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 290 (Minn. App. 2010) (quotation omitted). Appellate courts must not substitute their judgment for that of the administrative body when the agency's findings are properly supported by evidence in the record. *In re Denial of Eller Media Co.'s Applications for Outdoor Advert. Device Permits*, 664 N.W.2d 1, 7 (Minn. 2003). So long as an agency engages in reasoned decision-making, an appellate court "will affirm, even though it may have reached a

different conclusion had it been the fact[-]finder.” *Cable Commc’ns Bd. v. Nor-West Cable Commc’ns P’ship*, 356 N.W.2d 658, 669 (Minn. 1984).

“The substantial-evidence standard addresses the reasonableness of what the agency did on the basis of the evidence before it.” *In re Expulsion of A.D.*, 883 N.W.2d 251, 259 (Minn. 2016) (quotation omitted); *see also In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (describing that the substantial-evidence analysis determines “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable” (quotation omitted)). A decision is supported by substantial evidence when it is supported by “(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted). “The substantial evidence test requires a reviewing court to evaluate the evidence relied upon by the agency in view of the entire record as submitted.” *Cable Commc’ns Bd.*, 356 N.W.2d at 668. Appellate courts defer to the agency’s findings “regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony.” *Cannon*, 783 N.W.2d at 189 (quotation omitted).

A. The commissioner’s determination that relator violated the participant term is not arbitrary and capricious and is supported by substantial evidence.

Relator first argues that the commissioner’s determination that relator violated the participant term of the conditional license is arbitrary and capricious and not supported by

substantial evidence in the record. Relator contends that “admission” is an undefined term and that the record reflects that relator merely “screened” new participants rather than “admitting” them.⁷ Relator argues that the proper remedy for this alleged error is reversal of the commissioner’s final decision.

The conditional license included a term that prohibited relator from admitting new participants for a period of time. It stated:

You may not admit new participants to your program from the date of this order until you have successfully demonstrated to DHS compliance with the terms of the conditional license and have maintained substantial compliance with all licensing standards. At a minimum, you may not admit new participants to your program for a period of six months from the date of this conditional license. Prior to admitting any new participant during the duration of the conditional license, you must notify your licensor of the name and admission date of the new participant.

⁷ To the extent that relator seeks to challenge the order of conditional license, that issue is not properly before us. A conditional license must state the following in plain language: “(1) the conditions that constitute a violation of the law or rule; (2) the specific law or rule violated; (3) the time allowed to correct each violation; and (4) . . . the length and terms of the conditional license, and the reasons for making the license conditional.” Minn. Stat. § 245A.06, subd. 1 (2024). The license holder may request reconsideration of the order of conditional license by notifying the commissioner in writing within ten calendar days after the license holder receives the order, or ten calendar days after the commissioner issues the order if it is issued through the provider hub. *Id.*, subd. 4 (2024). Although relator requested reconsideration of the participant term to have it removed from the conditional license, it did not request further definition of the term within the conditional license. Relator had the opportunity to challenge the terms when DHS issued, and relator received, the conditional license. Accordingly, relator’s apparent challenge to aspects of terms in the conditional license is not properly before us. *Cf. In re Serenity Adult Day Ctr.*, No. A23-0860, 2024 WL 1714237, at *4 (Minn. App. Apr. 17, 2024) (holding that relator’s claim that conditional-license terms were not written in “plain language” was not properly before the court).

Both the ALJ and the commissioner determined that relator violated this term. Finding 34 of the ALJ’s recommendation states, “The record also demonstrates [relator] admitted new participants despite [DHS]’s prohibition pending a change in the Conditional License. A new participant . . . was admitted June 1 and continued attending the facility following the June Order.” The commissioner amended this finding by adding “[t]he record further reflects that the [relator] repeatedly asked [DHS] about admitting new participants to its program and [DHS] repeatedly told the [relator] that adding new participants was not permitted under the conditional license.” The commissioner also amended one of the ALJ’s conclusions to say:

The most serious violation is [relator’s] failure to comply with the term of the Conditional License which prohibited admitting new participants. The significance of this violation is two-fold: it was a blatant disregard of the license term, and [relator] was not forthright in its communications with [DHS] about new participants. *Thus, [relator’s] behavior in relation to the new participant issue is severe and, on its own, warrants the most severe sanction.*

(Emphasis added.)

DHS has promulgated a rule that governs “intake screening” for adult day care centers like relator’s program.⁸ Minnesota Rule 9555.9700, subpart 1 (2023), states:

⁸ Relator relies on inapplicable law to support its argument that it was merely “screening” prospective participants rather than admitting them. Relator relies on Minn. Stat. § 245A.143, subds. 4-5 (2024), which governs the admission screening and evaluation process for “family adult day service[]” facilities. These licenses are “only . . . issued when the services are provided in the license holder’s primary residence,” and “[t]he license holder may not serve more than eight adults at one time.” *Id.*, subd. 1 (2024). Relator did not provide family adult day services but instead provided out-of-home adult day care services to approximately 20-48 individuals.

Before admitting a participant, the center shall conduct an intake screening to determine how or whether the center can serve the individual, based on the center's licensure, the center's policies and services, and the individual's needs and condition. If possible, the screening shall include an interview with the participant and with the participant's caregiver. The center shall notify the individual of the outcome no more than five working days after the screening process begins.

This rule only contemplates that the adult day care service provider will conduct a screening process "to determine how or whether the center can serve [an] individual."

Minn. R. 9555.9700, subp. 1. It does not include actual provisions of services in the screening process. Here, relator went beyond screening by providing services to P3 between June 1 and August 17. Additionally, evidence that relator sought to bill P3 for services provided suggests that this person had passed any screening phase and had been admitted. And as the commissioner notes in its brief to our court, Minn. R. 9555.9700, subp. 1, requires the center to "notify the individual of the outcome no more than five working days after the screening process begins." Nothing in the record reflects that relator provided such notification, and even if it did, P3 continued to receive services as if he had been admitted. This evidence supports the commissioner's determination that relator admitted P3 in violation of the participant term.

DHS had also previously cited relator for admitting seven participants to the program in violation of the participant term, and relator did not exercise its right to request reconsideration of that determination. *See* Minn. Stat. § 245A.06, subd. 2(a) (Supp. 2025). This evidence also supports the commissioner's determination that relator violated the participant term.

Ultimately, the commissioner concluded that DHS justifiably revoked the license because relator violated the participant term of the conditional license. The commissioner's findings are supported by substantial evidence in the record and demonstrate that relator failed to satisfy the requirements of the conditional license. The record also reflects that the commissioner's decision was neither arbitrary nor capricious.

Because we conclude that the commissioner's decision is not arbitrary or capricious and is supported by substantial evidence, we need not reach relator's second argument that the commissioner's decision that relator violated ten licensing requirements is based on an error of law and unsupported by substantial evidence. As described above, the commissioner determined that violation of the participant term alone warranted revocation. "[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [and] the burden of showing error rests upon the one who relies upon it." *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944); *see also In re Decision to Deny Petitions for a Contested Case Hearing*, 924 N.W.2d 638, 643 (Minn. App. 2019) (applying *Waters* in the administrative-law context), *rev. denied* (Minn. Apr. 24, 2019). Relator does not dispute the commissioner's amended conclusion of law addressing the participant term. Nor does relator offer any legal authority establishing that violation of a conditional-license term, like the participant term, is insufficient grounds to support revocation. Although the commissioner had multiple reasons for revoking relator's license, we need only address and affirm on one of those grounds if it is sufficient to support the commissioner's final decision. *Cf.* Minn. Stat. § 245A.07, subd. 1(a) (authorizing the commissioner to revoke a license when a "license holder does not comply with applicable

law or rule”); *Cable Commc’ns Bd.*, 356 N.W.2d at 669 (“If an administrative agency engages in reasoned decision-making, [appellate courts] will affirm . . .”). Because we conclude that the commissioner’s determination that relator violated the participant term was not error, that is sufficient grounds for us to affirm the commissioner’s decision such that we need not address relator’s second argument.

B. The commissioner’s nature, severity, chronicity, and effect analysis under Minn. Stat. § 245A.07, subd. 1(a), was not affected by an error of law.

Relator next argues that the commissioner did not conduct a nature, severity, and chronicity, and effect analysis sufficient to satisfy the requirements of Minn. Stat. § 245A.07, subd. 1(a). Specifically, relator contends that the statute requires the commissioner to make a finding of actual harm or an “imminent risk” of harm.

Minnesota Statutes section 245A.07, subdivision 1(a), requires the commissioner to “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” when imposing sanctions under this chapter. Because relator disputes the commissioner’s application of the statute, this issue poses a question of law which we review de novo. *Yaggie v. Schmidt*, 855 N.W.2d 769, 771 (Minn. App. 2014).

The commissioner recognized her duty under Minn. Stat. § 245A.07, subd. 1(a). The commissioner struck the ALJ’s conclusion that DHS overstated the nature, chronicity, and severity of relator’s violations. The commissioner then noted that the statute “does not require a showing from [DHS] proving that persons served in a licensed facility were harmed or injured.” The commissioner explained that “[a] program operating with too

many participants creates a myriad of dangers to the health, safety, or rights of persons served by the program.” Further elaborating this point, the commissioner stated that relator placed its participants “at a greater risk of harm” by ignoring the participant term, operating its program over its allotted capacity, and acting “outside of the applicable laws and rules intended to provide appropriate services to vulnerable adults and protect them from harm.”

Neither the Minnesota Supreme Court nor our court has ever decided whether Minn. Stat. § 245A.07, subd. 1(a), requires a court to make a finding of actual harm. We have stated, although in a nonprecedential decision, that “[i]t is not necessary that one or more residents *actually* suffers harm because of relators’ non-compliance.” *In re Leon Hanson–GaMacann, Inc.*, No. A12-2253, 2013 WL 5508250, at *4 (Minn. App. Oct. 7, 2013) (emphasis added) (applying Minn. Stat. § 245A.07, subd. 1(a)), *rev. denied* (Minn. Dec. 17, 2023).⁹ We acknowledged that procedural and record-keeping violations “may make it impossible to know whether residents are receiving proper care.” *Id.* Although not binding on our decision, we find the reasoning persuasive here. The participant term in relator’s conditional license related to the health, safety, and rights of participants because it helped ensure relator corrected issues in the program and met the needs of current participants before it added new ones.

Similarly supporting this conclusion is an appellate court’s practice of extending “judicial deference . . . to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.”

⁹ We may cite nonprecedential opinions of this court for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Mattice v. Minn. Prop. Ins. Placement, 655 N.W.2d 336, 340 (Minn. App. 2002) (quotation omitted); *see also* Minn. Stat. §§ 245A.01, .02, subd. 5 (2024) (identifying chapter 245A as the “Human Services Licensing Act” and defining “commissioner” to mean the commissioner of human services). An appellate court may defer to an agency’s reasonable interpretation of a statute when its language is ambiguous. *Denial of Contested Case Hearing Requests*, 993 N.W.2d at 646. To the extent the statute is ambiguous, we defer. Based on our decision in *Leon* and our deference to agency interpretation of certain statutes, we conclude that the commissioner did not misapply Minn. Stat. § 245A.07, subd. 1(a), when it determined that relator’s violation of the participant term had a negative effect on the “health, safety, or rights of persons served in the program” without finding actual harm or an “imminent risk” of harm. This determination is also supported by substantial evidence in the record.

Affirmed.