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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1054**

In the Matter of the Appeal
by Kelvin Caga of the Order of the License Revocation
of his Adult Foster Care and Home and Community-Based Services Licenses.

**Filed April 20, 2026
Affirmed
Segal, Judge***

Department of Human Services
File No. 39815

Jason Steck, Brooklyn Center, Minnesota (for relator Kelvin Caga)

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Services)

Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Segal,
Judge.

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this certiorari appeal from an order revoking an adult foster care license and a
home and community-based services license, relator argues that respondent agency erred

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

because it applied an incorrect definition of “primary caregiver,” and that the decision to impose revocation as the sanction for relator’s alleged licensing violation is arbitrary and capricious, among other arguments. We affirm.

FACTS

In June 2019, relator Kelvin Caga obtained an Adult Foster Care License (AFC license).¹ Caga’s AFC license allows him to operate a “[f]amily adult foster care home.” Minn. Stat. § 245A.02, subd. 6f (2024). Adult foster care provides “functionally impaired adults with food, lodging, protection, supervision, and household services in a residence.” *Id.*, subd. 6c (2024). Adults eligible for adult foster care can choose to live in a family adult foster care home or a corporate foster care home.² *See id.*, subd. 6f; Minn. Stat. § 245D.02, subd. 4d (2024). Caga’s AFC license was for a family adult foster care home, which requires (1) appropriate licensure by respondent Minnesota Department of Human Services (DHS), (2) that the home must be the license holder’s primary residence, and (3) that the license holder be the “primary caregiver” for the client-residents. Minn. Stat. § 245A.02, subd. 6f.

¹ The facts are summarized from the testimony and record presented in the contested-case hearing before the administrative-law judge (ALJ).

² A corporate foster care home is a facility that is typically staffed by shift-based employees and where the license holder does not live on the premises. In 2009, the legislature imposed a moratorium on granting new licenses for corporate adult-foster-care settings. *See* 2009 Minn. Laws ch. 79, art. 8, § 8, at 848 (codified at Minn. Stat. § 245A.03, subd. 7 (2024)). The law emphasizes that an AFC license holder must reside at the licensed home as their primary residence and mandates that a failure to comply with this requirement requires license revocation.

Caga also held a Home and Community-Based Services License (HCBS license). An HCBS license is a separate license from the AFC license; it allows the holder to provide certain additional support services. *See* Minn. Stat. § 245D.03 (2024).

In 2021, Caga began operating a five-bedroom family adult foster care home located in Moorhead. His license initially allowed him to house four residents, with three residents housed in above-ground bedrooms and one resident in a basement bedroom. Caga was paid an average of over \$77,000 per month for the four residents. Caga’s licensed capacity was reduced to three residents in 2022 because a September 2021 inspection by the fire marshal found that the basement bedroom lacked a proper means of egress.³

Clay County, which serves as DHS’s designated licensing agent for the home, received a report in 2023 that Caga was not the primary caregiver for the residents in his home and launched an investigation.⁴ The investigation revealed that Caga operated the home through a paid manager, R.S., and that, although Caga slept at the home, he was only on the work schedule for eight hours per day during daytime hours, and that up to ten additional employees worked at the home.⁵ Caga also informed the county licensors that

³ Specifically, the inspection required Caga to obtain a new egress ladder for the room before it could be used as a bedroom.

⁴ DHS designates county agencies to “perform licensing functions” for family adult foster care providers, including conducting investigations to ensure compliance with applicable licensing rules and statutes. Minn. Stat. § 245A.16, subds. 1(a) (Supp. 2025), 2(a) (2024). But the ultimate authority regarding licensing decisions and the imposition of license sanctions lies with DHS. Minn. Stat. §§ 245A.07 (2024 & Supp. 2025), .16, subds. 2-4 (2024).

⁵ In contrast, the employee roster for Caga’s AFC license listed Caga as the *only* employee, along with three “volunteers,” including R.S., the person identified by Caga as the home’s

the employees were instructed to go to R.S. with issues. One of the residents indicated that he rarely saw Caga, heated up his own microwave meals, ate by himself in his room, and did not get to do things he enjoys outside the home.

During a site visit, the county discovered that Caga still had four residents in the home, including one who was living in the basement bedroom that had an inadequate means of egress. The county licensors observed numerous signs posted on walls with instructions to staff, suggesting to the licensors that the home was being operated more as a corporate site than a family home. They also observed that the dining room table did not have enough chairs for the residents to eat meals together, and they learned that Caga did not typically eat meals with the residents, administer their medications, provide personal care, or take residents to appointments or other activities outside the home.

The county licensors recommended, and DHS issued in June 2023, two correction orders identifying the following issues: (1) operating above licensed capacity; (2) allowing a resident to sleep in a room that was not approved by the fire marshal; (3) the lack of an adequate number of chairs at the dining room table; and (4) a failure to affiliate the HCBS staff who provided adult foster care services with Caga's AFC license under Minn. Stat. § 245C.07 (Supp. 2025). The county also concluded that Caga was not the "primary caregiver" for the home and recommended revocation of his license.

manager. The roster for Caga's HCBS license identified two (and later three) employees, including Caga, and seven "volunteers." The staffing of the home in operation was thus quite different from the rosters submitted for Caga's licenses.

A license, such as Caga’s AFC license, may be revoked or suspended for, among other reasons, a failure “to comply fully with applicable laws or rules.” Minn. Stat. § 245A.07, subd. 3. Before deciding to revoke a license, the DHS 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,” absent certain exceptions not relevant here. *Id.*, subd. 1.

Based on the results of the county’s investigation, DHS issued an order in January 2024 revoking Caga’s AFC license. The revocation order is based on Caga’s failure to serve as the “primary caregiver” at the home in violation of Minn. Stat. § 245A.02, subd. 6f(3). The order also cites the June 2023 correction orders as part of the record considered by DHS in determining whether revocation was appropriate, including the fact that Caga was operating over capacity and allowed a person to sleep in a room not approved by the fire marshal.

Caga’s HCBS license was revoked in the same order. The revocation of Caga’s AFC license triggered an automatic revocation of his HCBS license. *See* Minn. Stat. § 245A.04, subd. 7(d) (Supp. 2025) (providing for automatic revocation of affiliated licenses upon revocation of a license issued under chapter 245A).

The matter progressed to a contested-case hearing before an ALJ. At the hearing, the ALJ received testimony from the manager of foster-care licensing at DHS, two county licensors, the brother of a resident, and Caga. In her findings of fact, conclusions of law, and recommendation, the ALJ found that Caga was not the primary caregiver and thus was in violation of the statutory requirements for an AFC license. The ALJ also found that

Caga was in violation of the four matters covered in the corrective orders issued by DHS. The ALJ thus concluded that DHS “had reasonable cause to sanction [Caga’s] family AFC license,” but found that the rationale in the revocation order “fail[ed] to demonstrate that [DHS] considered the nature, chronicity, or severity of the violations or the effect of the violation on the health, safety, or rights of persons served by the program.” The ALJ thus recommended that “the Commissioner modify the . . . Revocation Order to provide a detailed rationale for the sanction imposed and impose a sanction consistent with the detailed rationale.” (Emphasis omitted.)

The interim DHS commissioner issued a final decision affirming the revocation of Caga’s licenses. In the final decision, the commissioner adopted all of the ALJ’s findings of fact and made one additional finding to the effect that any conclusion of law that “is more properly considered to be a Finding of Fact” is to be adopted as such and incorporated by reference. The commissioner rejected one of the ALJ’s conclusions of law, determining instead that the revocation order’s rationale demonstrated that DHS had considered the nature, chronicity, or severity of the violations and the effect of the violations on the health, safety, or rights of persons served by the program.

The commissioner also added seven conclusions of law related primarily to interpreting the statutory requirement that the license holder be the “primary caregiver.” The most significant of the added conclusions stated that the phrase “primary caregiver” as set out in the AFC statute, Minn. Stat. § 245A.02, subd. 6f(3), “is clear, unambiguous, and not subject to more than one reasonable interpretation—that ‘primary caregiver’ in subd. 6f(3) can only be reasonably interpreted to mean the ‘majority’ of the actual care

being provided to the adult clients residing in the license holder’s family adult foster care home.”

In the memorandum accompanying the decision, the commissioner cited the testimony of the DHS licensing manager discussing the significance of the “family” and “home” aspects of the AFC program as allowing for more familiarity with “each resident’s evolving needs[,] . . . help[ing] identify developments as they occur in the home, provid[ing] flexibility in addressing individual residents’ care needs, and giv[ing] the comfort of a household setting.” The commissioner noted that, “[i]n choosing an AFC home,” it is the residents’ “right and they deserve the family setting they elected to receive.”

DECISION

In his appeal, Caga argues that the commissioner’s decision is affected by an error of law because it applied an improper definition of “primary caregiver.” He additionally argues that the decision is arbitrary and capricious because the commissioner treated license revocation as mandatory rather than discretionary and because of deficiencies and errors in the commissioner’s analysis of the appropriateness of revocation as a sanction.⁶

⁶ DHS argues that this court lacks jurisdiction because Caga’s petition for a writ of certiorari was not timely filed. To obtain review of a final decision in a contested-case proceeding, an aggrieved person must file with this court and serve on all parties a petition for a writ of certiorari within “not more than 30 days after the party receives the final decision and order of the agency.” Minn. Stat. § 14.63 (2024).

DHS argues that Caga received DHS’s final decision by email on May 23, 2025, making his June 26, 2025, filing of a petition for writ of certiorari untimely. We accepted jurisdiction of Caga’s appeal based on his representation that he received DHS’s final decision May 27, and DHS did not assert the jurisdictional issue until it was granted

The Minnesota Administrative Procedure Act governs appellate review of the commissioner’s final decision. *See* Minn. Stat. § 14.63. Under the act, an appellate court “may reverse or modify [a final] decision [in a contested case] if the substantial rights of the petitioner[] may have been prejudiced because,” as relevant here, the decision is affected by an error of law, “unsupported by substantial evidence,” or “arbitrary or capricious.” Minn. Stat. § 14.69 (2024).

I. The final decision was not affected by an error of law.

Caga first argues that the commissioner applied an incorrect definition of “primary caregiver” under Minn. Stat. § 245A.02, subd. 6f(3). In early 2021, DHS issued a “policy clarification” document to county adult foster care licensing staff that defined the statutory requirement of being a “primary caregiver” as meaning that the license holder must personally provide a “majority of the care to residents receiving services in the home.” *See In re Petition of Minn. Ass’n of Residential Servs. Homes (MARSH)*, No. A24-1562, 2025 WL 1922283, at *1, *7 (Minn. App. July 14, 2025).⁷ In *MARSH*, we agreed with DHS’s interpretation based on the plain and unambiguous meaning of the phrase “primary caregiver.” We concluded that, “[b]ecause the term ‘primary’ means the majority, and

permission to submit a second brief. Although we acknowledge that the record includes a certificate of service indicating that DHS served the final decision on counsel for Caga via electronic mail on May 23, DHS fails to provide information indicating that counsel for Caga or Caga himself *actually received* service of the final decision—either electronically or through physical mail—before May 27. Therefore, we decline to dismiss this matter as untimely filed.

⁷ Nonprecedential decisions may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01.

‘caregiver’ is defined in the adult-foster-care context as one who ‘gives care,’ there is no reasonable interpretation of the ‘primary caregiver’ requirement where the license holder does not provide the majority of the care.” *Id.* at *7.

Caga contends that the phrase “primary caregiver” does not require that an individual directly provide the majority of the care. He asserts that a “primary caregiver” can be the person who has the “greatest responsibility” for the operation of the home. Caga argues that he fulfilled this requirement because “he was the ultimate decision-maker, responsible for all coordination of care and the management of staff.” But for the reasons set out in our *MARSH* opinion, we reject Caga’s argument and conclude, as we did in *MARSH*, that the phrase “primary caregiver,” as set out in Minn. Stat. § 245A.02, subd. 6f(3), unambiguously means that the license holder must personally provide a majority of the care.

Caga also argues that, even if *MARSH* is correct in its interpretation of the phrase “primary caregiver” under Minn. Stat. § 245A.02, subd. 6f(3), that interpretation is not controlling here, because Caga held not just an AFC license but also an HCBS license. He contends that we should look to the definition of “primary caregiver” in DHS’s rules for HCBS license holders. *See* Minn. R. 9525.1800, subp. 20 (2023). The definition in the HCBS rules provides that a “primary caregiver” for the purposes of HCBS licensing is “a person other than a member of the person’s family who has primary responsibility for the assistance, supervision, or training of the person in the person’s residence.” *Id.*

We reject this argument because the two licensing programs are very different. The HCBS program provides funding for services to disabled individuals, regardless of whether

they live in their own home or elsewhere. *See, e.g.*, Minn. Stat. § 256B.092 (Supp. 2025). The definition of “primary caregiver” in the rules under the HCBS program mainly serves to distinguish a caregiver paid under the HCBS program from a member of the recipient’s own family. *See* Minn. R. 9525.1800, subp. 20. By contrast, the phrase “primary caregiver” under the AFC statute is to distinguish the nature of the residential setting—a family-home setting—from corporate residential providers. *See* Minn. Stat. § 245A.02, subd. 6f. In addition, the violations forming the basis for the revocation decision were all under the AFC licensing statute, not because of any independent violations of the HCBS statute or rules. *See* Minn. Stat. § 245A.04, subd. 7 (Supp. 2025) (requiring revocation of any other licenses of the holder issued under chapter 245A, which includes HCBS licenses).

Caga additionally notes that “caregiver,” as defined in Minnesota Rule 9555.5105, subpart 8 (2023), is inapplicable because a rule that it references—Minnesota Rule 9555.6125, subpart 4 (2023)—contemplates multiple caregivers. Assuming that rule 9555.6125, subpart 4, is relevant to interpreting the statutory meaning of “primary caregiver,” Caga’s argument relies on the false assumption that there cannot be a “primary caregiver”—a person who performs a majority of the care—when there are multiple caregivers. We thus affirm the commissioner’s interpretation of the “primary caregiver” requirement as unambiguously requiring that the license holder must personally provide a majority of the care.

We also affirm the commissioner’s determination that Caga was not the “primary caregiver.” Caga does not dispute the relevant findings of fact on this issue. He himself

acknowledged that he could not personally provide the requisite level of care for four residents but housed and received reimbursement for four residents (even though he was only licensed for three residents).⁸ Caga further admitted that he does not typically distribute medications, cook or eat meals with the residents, provide personal care for the residents, clean the house, or take residents to appointments, but generally relies on staff to perform these activities. Based on these undisputed facts, the commissioner's decision that Caga was not the "primary caregiver" within the meaning of Minn. Stat. § 245A.02, subd. 6f(3), was not in error.

II. The imposition of revocation as a sanction is not arbitrary and capricious and there is substantial evidence to support that the commissioner considered the rights of residents in deciding to revoke Caga's license.

Caga next argues that the decision to impose revocation as a sanction is arbitrary and capricious and that the record is lacking substantial evidence to support that the commissioner considered the rights of the residents in deciding that revocation was appropriate, among several other arguments.

An agency's decision is arbitrary and capricious when "it is an exercise of the agency's will, rather than its judgment, or if the decision is based on whim or is devoid of articulated reasons." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *rev. denied* (Minn. Nov. 13, 2001). An "agency's conclusions are not arbitrary and capricious so long as a rational connection between the facts found and the choice

⁸ Testimony in the record indicated that there are also significant tax advantages to operating a family adult foster care home under an AFC license as opposed to a corporate foster care license.

made has been articulated.” *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (quotation omitted). In this vein, “[i]f there is room for two opinions on a matter, [an agency’s] decision is not arbitrary and capricious, even though the court may believe that an erroneous conclusion was reached.” *Id.*

Caga argues that the decision to impose revocation as the sanction is arbitrary and capricious because the commissioner essentially treated a violation of the “primary caregiver” requirement as requiring a mandatory license revocation. Caga notes, correctly, that the only *mandatory* basis for revocation of an AFC license is a violation of the “primary residence” requirement. *See* Minn. Stat. § 245A.03, subd. 7. We are not persuaded, however, that DHS made this error.

Both the revocation order and the commissioner’s decision cite the correct provision relating to sanctions—Minn. Stat. § 245A.07, subd. 1—and discuss both factors that must be considered when determining the appropriate sanction—the “nature, chronicity, and severity” of the violations and “the effect of the violation on the health, safety, or rights” of the residents. The revocation order and the commissioner’s decision reference not just the current violation, but the two prior correction orders, including Caga’s operation of the facility above licensed capacity.

Similarly, the commissioner’s decision discusses the effect of the violation on the rights of the residents, citing the testimony of the DHS licensing manager about the importance of there being a family atmosphere in an AFC home and the testimony of the brother of one of the residents who indicated that he chose an AFC home for his brother

because he wanted a smaller, family-style home instead of a larger corporate setting.⁹ The commissioner's decision also contains findings related to one of the residents who rarely saw Caga, prepared his own meals by heating them up in the microwave, and ate by himself in his room. We are thus satisfied that the commissioner applied the correct standard and did not treat the revocation decision as if it was mandatory.

Caga argues next that the record lacks substantial evidence demonstrating that DHS considered the effect of the violation on the "rights of persons served by the program" before imposing the sanction of revocation, as required by Minn. Stat. 245A.07, subd. 1. A finding is supported by "substantial evidence," when there is "(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." *In re Admin. Ord. Issued to Wazwaz*, 943 N.W.2d 212, 216-17 (Minn. App. 2020) (quotation omitted), *rev. denied* (Minn. June 30, 2020). Under this standard, we will not disturb an agency's decision if "it has adequately explained how it derived its conclusion and that conclusion is reasonable in the basis of the record."

⁹ Caga criticizes the reliance on the testimony of the brother because the core of the brother's testimony was that the brother was generally pleased with the home and that it was much better than the facilities where his brother had previously resided because staff got his brother to appointments without issue and showed flexibility in being able to accommodate getting him to appointments if an earlier time became available, and he was able to speak to Caga directly to help resolve matters instead of going through a nurse or other staff. The brother did, however, express in his testimony that he did not always talk to Caga, but also spoke with R.S. and other staff who actually provided care for his brother. This does not undermine the fact that the brother desired a smaller, family-style home for his sibling and that, while Caga's home was an improvement over the sibling's prior residence, the sibling was entitled to all the benefits of a true adult foster care home.

In re Application of Enbridge Energy, Ltd. P'ship for Certificate of Need, 964 N.W.2d 173, 189 (Minn. App. 2021) (quotations omitted), *rev. denied* (Minn. Aug. 24, 2021).

Here, the commissioner's decision describes consideration of the effect of the violation on the rights of the residents. As noted above, the commissioner cited the testimony of DHS's manager of foster-care licensing about the benefits of the "'family' and 'home' aspects of an AFC program" in helping "residents to build relationships with the AFC license holder, enabl[ing] more familiarity with each resident's evolving needs and help[ing] identify developments as they occur in the home, provid[ing] flexibility in addressing individual residents' care needs, and giv[ing] the comfort of a household setting."¹⁰ And in addition to the information from one of the residents and the brother's testimony noted above, the commissioner also cited Caga's description of the residents as "homebodies" and that one resident was a "loner."

The commissioner emphasized in her decision that it is the right of residents who choose to live in an AFC home to have a family, homelike setting where the license holder not only lives in the home but serves as the primary caregiver, instead of a "corporate-style

¹⁰ Caga asserts that the manager provided opinions that should have been noticed as expert opinions, but that DHS provided no such notice. Caga objected to this testimony before the ALJ as being outside the manager's personal knowledge. But as the manager of foster-care licensing for DHS, an understanding of the benefits for the residents of a family adult foster care home versus a corporate foster care home is well within her personal knowledge and the ALJ correctly overruled his objection. In addition, the manager's testimony was consistent with the legislature's moratorium on the issuance of new corporate foster care licenses. Finally, evidentiary rules are significantly more relaxed in administrative proceedings. *See* Minn. Stat. § 14.60, subd. 1 (2024) ("In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs.").

or community residential setting” with a “more shift-based staff.” Moreover, the statute requires only that DHS must *consider* the effect on the rights of residents, not that it is a controlling factor. *See, e.g., The American Heritage Dictionary of the English Language* 392 (5th ed. 2018) (defining consider as “[t]o think carefully about (something), especially before making a decision”); *see also Larson v. Nw. Mut. Life Ins. Co.*, 855 N.W.2d 293, 301 (Minn. 2014) (“[Appellate courts] often look to dictionary definitions to determine the plain meanings of words.”). Based on the evidence presented, we are satisfied that there is substantial evidence in the record to support that DHS considered the effect on the rights of residents.

Caga further argues that the decision is arbitrary and capricious because the commissioner overturned one of the ALJ’s credibility determinations without explanation. The commissioner, as the final decision-maker, has a duty to independently weigh all the evidence in the record, but must nevertheless explain significant deviations from an ALJ’s recommendations. *See Minn. Stat. § 14.62, subd. 1* (2024); *see also CUP Foods*, 633 N.W.2d at 565. Caga points to the fact that the ALJ found that the evidence in the record that the residents were harmed by the number of staff working on site was “speculative.” Yet, in the memorandum explaining her decision, the commissioner placed reliance on the testimony of DHS’s manager that having shift-based staff—instead of the primary care being provided by the license holder—was less beneficial to residents who choose to live in an AFC. Even assuming that this involves an alteration of a credibility finding, the commissioner explained her reason for the change—namely, that a recipient of services who chooses to live in an AFC as opposed to a corporate foster care facility, has a right to

live in the setting chosen by the resident, i.e., a home where the license holder is the primary caregiver.

The commissioner further explained that “[t]he ‘primary caregiver’ violation is not just a ‘technical’ violation or mere paperwork oversight, but a serious violation that directly affects the health, safety, and rights of program recipients and violates the whole purpose of the legislature imposing a moratorium on corporate-style facilities.” Indeed, the “primary residence” and “primary caregiver” requirements are the only requisites set out in the statutory definition of a family adult foster care home, aside from the requirement of “appropriate licensure.” *See* Minn. Stat. § 245A.02, subd. 6f. The commissioner thus explained her reasons for agreement with the manager’s testimony.

Finally, Caga argues that his rights to due process were violated because DHS’s allegations about the effect of the violation on the rights of the residents were not included in the revocation order. “[P]rocedural due process guarantees reasonable notice and a meaningful opportunity to be heard.” *In re Rental Dwelling Lic. held by Khan*, 804 N.W.2d 132, 137 (Minn. App. 2011). Assuming without deciding that Caga preserved this argument for our review, we discern no such procedural due-process violation here. The revocation order clearly set out the violation relied upon as the basis for the revocation and the prior violations that were considered in determining the appropriate sanction. The revocation order also advised that DHS had considered the nature, chronicity, and severity of violations and the impact on the residents. We thus reject this argument.

Affirmed.