STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0982

Heather Anne Callahan,
Relator,

vs.

Commissioner of Minnesota Department of Health,
Respondent.

Filed April 22, 2008
Affirmed
Connolly, Judge

Minnesota Department of Health
Background Study No. 21359635

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Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Relator challenges the Commissioner of the Minnesota Department of Health's decision not to set aside her disqualification from providing direct contact services to

persons receiving services from certain licensed facilities. Relator argues that the commissioner erred in denying her request because the commissioner's decision (1) violated due process, and (2) was affected by an error of law. We affirm.

FACTS

On April 14, 2006, relator Heather Anne Callahan was notified by the Minnesota Department of Health (MDH) that she was "disqualified from any position allowing direct contact with, or access to, persons receiving services from facilities licensed by the Department of Human Services and the Minnesota Department of Health . . . and from unlicensed Personal Care Provider Organizations." The disqualification stems from MDH's finding, dated March 7, 2006, that a preponderance of the evidence proved that relator financially exploited a vulnerable adult. The exploitation occurred while relator was employed at Country Villa, an assisted-living/home-care provider. The victim was an elderly resident at Country Villa. He complained that relator entered his room on the night of October 5, 2005 and removed $40 from his wallet while he pretended to be sleeping. He also complained that, on two earlier occasions, relator removed $40 and $60 from his wallet. When interviewed by the police regarding this incident, relator stated: "Well, if they say I did it, I guess I did it. I'm not going to dispute it." Relator elected to pay $140 in restitution rather than face a charge of misdemeanor theft. Relator now contends that she was merely borrowing the money from a friend.

The victim was a vulnerable adult, as defined by the vulnerable-adult act. Minn. Stat. §§ 626.557-.5572 (2006).[1] Minn. Stat. § 245C.15, subd. 4(b)(2) (2006) requires that an individual be disqualified for seven years from the determination that she committed "substantiated serious or recurring maltreatment of a . . . vulnerable adult." Maltreatment includes financial exploitation. Minn. Stat. § 626.5572, subd. 15. Financial exploitation includes situations in which a person "willfully uses, withholds, or disposes of funds or property of a vulnerable adult." Minn. Stat. § 626.5572, subd. 9(b)(1). Recurring maltreatment "means more than one incident of maltreatment for which there is a preponderance of evidence that the maltreatment occurred and that the subject was responsible for the maltreatment." Minn. Stat. § 245C.02, subd. 16 (2006).

Following her initial disqualification of April 14, 2006, relator requested that MDH set aside her disqualification. This request was denied on April 18, 2006. On November 29, 2006, relator was again disqualified based upon her earlier disqualification. She again requested that the department set aside her disqualification. On March 27, 2007, the department rejected her request. This appeal follows.

D E C I S I O N

A commissioner's decision to grant or deny a request for reconsideration of a disqualification based upon serious or recurring maltreatment is a final administrative agency action. Minn. Stat. § 245C.27, subd. 1(c) (2006). An aggrieved party may seek

[1] The victim met Minn. Stat. § 626.5572, subd. 21's definition of a vulnerable adult because he "receive[d] services from a home care provider required to be licensed under section 144A.46." Country Villa was required to be licensed by Minn. Stat. § 144A.46 (2006).

review by this court through a writ of certiorari. Minn. Stat. §§ 480A.06, subd. 3, 606.01 (2006). Upon review, this court inspects the record to review

> questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without evidence to support it.

Rodne v. Comm'r of Human Servs., 547 N.W.2d 440, 444-45 (Minn. App. 1996) (quotation omitted). When reviewing agency decisions, this court "adhere[s] to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001) (quotation omitted). A "party seeking review on appeal has the burden of proving that the agency has exceeded its statutory authority." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996).

I. The commissioner's decision did not violate due process.

"The construction of a statute or a regulation is a question of law to be determined by the court." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). Procedural due-process issues are reviewed de novo. *Plocher v. Comm'r of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004). The Due Process Clause of the U.S. Constitution requires that deprivations of life, liberty, or property by adjudication be proceeded by adequate notice and a meaningful opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S. Ct. 893, 902 (1976). To be meaningful, due process requires that adequate notice be given of the individual's opportunity to be heard.

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656-57 (1950). The primary function of notice is to inform a party of how government action affects the party's interests. *Schulte v. Transp. Unlimited, Inc.*, 354 N.W.2d 830, 834 (Minn. 1984). Notice is adequate if a party knows or has reason to know of the adverse consequences of governmental action. *Comm'r of Natural Res. v. Nicollet County Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 31 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). Notice is inadequate if it fails to communicate the interest at stake or is actively misleading. *Plocher*, 681 N.W.2d at 705.

Relator attempts to challenge the underlying maltreatment determination by arguing that (1) she is not prohibited by statute from challenging the maltreatment determination at this stage in the administrative process, and (2) it is a violation of due process to deny her the opportunity the challenge the maltreatment determination at this stage in the administrative process.

Under Minnesota law, a determination that an individual has committed maltreatment is deemed conclusive unless that individual requests a hearing on the maltreatment decision. Minn. Stat. § 245C.29, subd. 1(3) (2006) ("Unless otherwise specified in statute, a maltreatment determination or disposition under section 626.556 or 626.557 is conclusive, if . . . the individual did not request a hearing of the maltreatment determination or disposition under section 256.045."). Relator's maltreatment determination was made under Minn. Stat. § 626.557 (2006). She did not request a determination under Minn. Stat. § 256.045 (2006); thus, absent an applicable exception,

under the plain language of Minn. Stat. § 245C.29, subd. 1(3), relator's maltreatment determination should be treated as conclusive.

However, relator argues that the commissioner "is required to look at the correctness of the underlying decision, even where a relator has failed to request a reconsideration of the maltreatment determination and can no longer seek administrative hearing review." As support for this argument, relator cites to Minn. Stat. § 245C.21, subd. 3 (2006), and Minn. Stat. § 245C.29, subd. 2(c) (2006). Section 245C.21, subd. 3(2) provides that "[t]he disqualified individual requesting reconsideration must submit information showing that . . . for maltreatment, the *information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect*." (Emphasis added.) Minn. Stat. § 245C.29, subd. 2(c) provides:

> *If a determination that the information relied upon to disqualify an individual was correct* and is conclusive under this section, and the individual is subsequently disqualified under section 245C.15, the individual has a right to request reconsideration on the risk of harm under section 245C.21. Subsequent determinations regarding the risk of harm shall be made according to section 245C.22 and are not subject to another hearing under section 256.045 or chapter 14.

(Emphasis added.) Relator points to Minn. Stat. § 245C.21, subd. 3(2)'s use of "incorrect" and Minn. Stat. § 245C.29, subd. 2(c)'s use of "correct" as support for her argument that the statutory framework permits the commissioner to revisit the accuracy of the maltreatment decision despite Minn. Stat. § 245C.29, subd. 1(3)'s direction that such determinations are conclusive. Essentially, relator argues that "correct" and

"incorrect" refer to the accuracy of the underlying determination that maltreatment occurred.

Relator's argument is not persuasive. As used in the statute, "correct" and "incorrect" do not refer to the accuracy of the underlying maltreatment decision; instead, they refer to whether the commissioner accurately determined that the conclusively established maltreatment meets the definition of "serious" in Minn. Stat. § 245C.02, subd. 18 (2006) or the definition of "recurring," in Minn. Stat. § 245C.02, subd. 16 (2006). Thus, Minn. Stat. § 245C.21 (2006) and Minn. Stat. § 245C.29 (2006) would allow relator to challenge whether her actions were serious or recurring, but not whether they actually amounted to maltreatment.

This interpretation of "correct" and "incorrect" is in accord with the overall statutory framework in this section which favors the speedy and efficient resolution of administrative cases. It is also supported by Minn. Stat. § 245C.21, subd. 3(2)'s use of the phrase "information the commissioner relied upon in determining that maltreatment was serious or recurring is incorrect." The information referred to in this section is the information that the maltreatment was serious or recurring, not the information that led to the maltreatment determination. Finally, relator's reliance on Minn. Stat. § 245C.29, subd. 2(c)'s phrase "[i]f a determination that the information relied upon to disqualify an individual was correct" is misplaced. In the present case, relator was disqualified because of recurring and serious maltreatment of a vulnerable adult. Relator argues that "correct" refers to the correctness of the underlying maltreatment determination. We disagree. While the statute is somewhat ambiguous as to what "correct" means, the more

plausible interpretation in this context is that "correct" refers only to whether the determination that the maltreatment was serious or recurring was accurate and not whether the maltreatment had in fact occurred.

Next, relator argues that it would violate her right to procedural due process to deny her the opportunity to challenge the maltreatment determination at this stage in the administrative proceeding. This argument is without merit. In a letter dated April 18, 2006, MDH provided relator with a written notice explaining that she could request a hearing to challenge the maltreatment determination. The letter explained that the conclusion relator "maltreated a vulnerable adult receiving services from Country Villa, Golden Valley, is proper and will not be changed." The letter went on to inform relator that "[i]f you wish to request a fair hearing, you must submit a written request for such within 30 days to [the MDH Division of Compliance Monitoring.]" This letter satisfies the requirements of procedural due process in this case because it notified relator both of MDH's decision and of her opportunity to request a fair hearing. She failed to request such a hearing.

II. The commissioner's decision was not affected by an error of law.

Relator takes issue with the commissioner's decision that her maltreatment was serious and recurring. An appellate court may reverse an administrative decision if it is not supported by substantial evidence. *In re Excess Surplus Status*, 624 N.W.2d at 277; *Johnson v. Comm'r of Health*, 671 N.W.2d 921, 923 (Minn. App. 2003). Substantial evidence is "1. [s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. [m]ore than a scintilla of evidence; 3. [m]ore than some

evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety." *White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997).

The commissioner's decision that relator has committed serious and recurring maltreatment is supported by substantial evidence. First, as discussed above, Minnesota law requires that the underlying maltreatment determination be treated as conclusive by the commissioner. This provides the commissioner with substantial evidence that the maltreatment occurred. Second, turning to the issue of whether the maltreatment was serious or recurring, the police report which is part of the record outlines how, on three separate occurrences, relator took money from a vulnerable adult. The report was based on interviews with the victim, relator, and another Country Villa employee. It indicates that the victim informed the investigating officer that he saw relator in his room at midnight on the same night that $40 went missing from his wallet. The victim also informed the officer that he suspected relator had taken money in a similar fashion on two separate occasions. When faced with these allegations, the investigating officer reports that relator stated: "Well, if they say I did it, I guess I did it. I'm not going to dispute it." Therefore, the commissioner's decision that the maltreatment was serious or recurring is supported by substantial evidence.

Affirmed.