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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1452**

Delores Lexus Stennis,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed April 22, 2008
Affirmed
Stoneburner, Judge**

Minnesota Department of Human Services
License No. 811027R31

Delores Lexus Stennis, 2724 Xylon Avenue North, Apartment 3, New Hope, MN 55427
(pro se relator)

Lori Swanson, Attorney General, Kerri Stahlecker Hermann, Assistant Attorney General,
445 Minnesota Street, Suite 900, St. Paul MN 55101-2127 (for respondent)

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Relator challenges respondent commissioner's refusal to set aside relator's
disqualification from working in direct contact with persons served by programs licensed

by the Minnesota Department of Human Services (DHS) based on her eight convictions for theft-related offenses. We affirm.

FACTS

The DHS commissioner is required to perform background studies for all employees and volunteers who have direct contact with persons served by DHS-licensed programs. Minn. Stat. § 245C.03 (2006). If a background study reveals that an individual has been convicted of specified criminal conduct, including theft-related crimes, the commissioner must disqualify the individual from such contact. Minn. Stat. § 245C.14, subd. 1 (2006).

A disqualified individual may request that the commissioner reconsider the disqualification on the grounds that (1) the information relied on to disqualify the individual was incorrect or (2) despite the disqualifying characteristic, the individual does not pose a risk of harm to the persons served by the particular DHS program involved. Minn. Stat. § 245C.21, subds. 1, 3 (2006). If the commissioner finds that the person does not pose a risk of harm to persons served by a licensed program, the commissioner may set aside the disqualification for that program. Minn. Stat. § 245C.22, subd. 4 (2006). The commissioner's decision to grant or deny a set-aside request is subject to review by writ of certiorari to this court. Minn. Stat. § 245C.27, subd. 1(c) (2006); Minn. R. Civ. App. P. 115.01.

Relator Delores Lexus Stennis worked for Turning Point Male Residence Program (Turning Point) before it submitted a request for a background study to DHS. DHS disqualified Stennis from working for the program after the background study revealed

that she has eight convictions for theft-related offenses. In 2001, Stennis was convicted of wrongfully obtaining assistance, financial transaction card fraud, and aggravated forgery. In 2002, Stennis was convicted of felony check forgery on three occasions. And in 2006, Stennis was convicted of felony issuance of dishonored checks and felony check forgery. DHS notified Turning Point and Stennis of the disqualification. Stennis sought reconsideration under Minn. Stat. § 245C.21, arguing that she does not pose a risk of harm to the individuals served by Turning Point. DHS denied Stennis' request to set aside her disqualification. This pro se certiorari appeal followed.

DECISION

An appellate court may reverse an administrative decision if it is not supported by substantial evidence or is arbitrary and capricious. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001); *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) (emphasis added), *review denied* (Minn. Oct. 31, 1997).

A decision will be deemed arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Nat'l Audubon Soc. v. Minn. Pollution Control Agency, 569 N.W.2d 211, 215 (Minn. App. 1997) (quotation omitted), *review denied* (Minn. Dec. 16, 1997).

The DHS commissioner may rescind a disqualification if the commissioner finds that the information submitted by the disqualified individual demonstrates that the individual does not pose a risk of harm to persons served by the license holder. Minn. Stat. § 245C.22, subd. 4(a) (2006). In evaluating whether the individual poses a risk of harm, the commissioner must consider eight factors:

- (1) the nature, severity, and consequences of the event or events that led to the disqualification;
- (2) whether there is more than one disqualifying event;
- (3) the age and vulnerability of the victim at the time of the event;
- (4) the harm suffered by the victim;
- (5) the similarity between the victim and persons served by the program;
- (6) the time elapsed without a repeat of the same or similar event;
- (7) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (8) any other information relevant to reconsideration.

Minn. Stat. § 245C.22, subd. 4(b) (2006).

In reviewing a request for reconsideration of a disqualification, “the commissioner shall give preeminent weight to the safety of each person served by the licenseholder” over the interests of the disqualified individual, and “any single factor under subdivision 4, paragraph (b), may be determinative of the commissioner’s decision whether to set aside the individual’s disqualification.” Minn. Stat. § 245C.22, subd. 3.

Here, DHS completed a risk of harm assessment which indicates that: (1) the nature/severity of disqualifying events was “intentional”; (2) those events caused “short-term damage”; (3) Stennis has eight disqualifiers; (4) Stennis’ victims were “somewhat vulnerable”; (5) the victims suffered “moderate harm”; (6) Turning Point’s clients are “somewhat” vulnerable; (7) Turning Point clients are “very similar” to the victims of Stennis’ eight offenses; (8) less than four years has elapsed since Stennis’ most recent conviction; (9) Stennis has successfully completed counseling for her offenses; (10) Stennis has been employed in health or human services for less than two years; and (11) Stennis accepts responsibility for her convictions. The assessment demonstrates that DHS considered all eight statutory factors. Moreover, Stennis does not dispute the factors DHS found determinative: she has eight convictions for theft-related offenses, her most recent conviction was less than one year before her set-aside request, and the persons served by Turning Point are similar to the victims of her offenses. We conclude that substantial evidence supports the denial of Stennis’s request to set aside her disqualification and that the decision was not arbitrary or capricious.

Affirmed.