STATE OF MINNESOTA
IN COURT OF APPEALS
A07-703

Melissa Charles, R.N., petitioner,
Appellant,

vs.

State of Minnesota Department of Health,
Respondent.

Filed May 21, 2008
Affirmed
Willis, Judge

Ramsey County District Court
File No. C8-06-1684

Kathleen K. Rauenhorst, Daniel K. Rauenhorst, Rauenhorst & Associates, P.A., 1700 West Highway 36, Suite 820, Roseville, MN 55113 (for appellant)

Lori Swanson, Attorney General, Audrey Kaiser Manka, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Willis, Judge; and Poritsky, Judge.*

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

WILLIS, Judge

Appellant challenges the district-court order affirming the determination of the commissioner of the department of health that the department proved by a preponderance

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

of the evidence that appellant neglected a vulnerable adult, arguing that the decision is unsupported by substantial evidence and is arbitrary or capricious. We affirm.

FACTS

Appellant Melissa Charles is a registered nurse who began working at Trevilla of New Brighton, a nursing home, in 2003. On April 6, 2004, P.R., a resident of the nursing home, reported to Trevilla staff that, at about 6:15 a.m., she had suffered a seizure that lasted approximately two minutes. The seizure was not witnessed by any nursing-home staff. At approximately 7:00 a.m., a nursing assistant entered P.R.'s room and saw that P.R.'s arms and legs were twitching. The nursing assistant asked Charles for help. Although Charles was not the nurse assigned to care for P.R., the commissioner found that Charles "quickly assessed [P.R.], lowering the bed and taking other precautions so that [P.R.] would not injure herself." Charles then returned to the nursing station and said that she "did not know what to do." Trevilla's Assistant Director of Nursing, Linda Neumann, told Charles to return to P.R.'s room and attempt to use a "vagal nerve stimulator" (VNS), which is a device designed to stop seizures.

Charles spent approximately ten to 15 minutes reviewing P.R.'s chart and familiarizing herself with use of the VNS. She then returned to P.R.'s room and used the VNS, but the device did not stop P.R.'s seizures. Sometime between 7:20 a.m. and 7:30 a.m., Charles telephoned Dr. Robert Jacoby, the nursing home's on-call neurologist. Dr. Jacoby was not immediately available, and he returned Charles's call approximately five to ten minutes later. Dr. Jacoby advised Charles to call an ambulance to have P.R. taken to a hospital. Charles immediately called for an ambulance.

When paramedics arrived at 7:50 a.m., P.R. (1) was unresponsive and in a generalized tonic-clonic seizure with labored breathing and (2) had a temperature of 103 degrees, a pulse of 166, and a low oxygen level in her blood. Paramedics cleared P.R.'s airway, administered oxygen, and treated her intravenously with a medication to stop the seizure. At 8:11 a.m., P.R. was transported to the hospital, where she was admitted to the intensive-care unit in critical condition.

As a result of this incident, respondent State of Minnesota Department of Health began an investigation to determine whether Charles had neglected P.R. The investigation concluded that Charles's actions on April 6, 2004, met the "current statutory definition of neglect" in Minn. Stat. § 626.5572, subd. 17 (2002). After an administrative hearing, a referee with the department of human services recommended upholding the finding of neglect. Charles appealed to the commissioner of the department of health, who, acting through her representative, the assistant commissioner of health, issued an order affirming the department's neglect determination. The commissioner concluded that Charles neglected P.R. because (1) it took Charles "ten to fifteen minutes to return to the room after her first visit during which she learned [that P.R.] was seizing" and (2) Charles failed to "promptly call for emergency assistance." The commissioner concluded that Charles "should have recognized that [P.R.] needed immediate help when her seizure exceeded three or four minutes and sought that help immediately instead of continuing to treat the seizure herself."

Charles sought review of the commissioner's determination in the Ramsey County District Court. The district court affirmed the commissioner's order, and this appeal follows.

D E C I S I O N

Judicial review of the commissioner's decision is authorized by Minn. Stat. § 256.045, subd. 7 (2006). This court independently reviews the decision, and accordingly, we need not give deference to the district court's decision. *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). When reviewing the decision of an administrative agency, the decision "enjoy[s] a presumption of correctness, and deference should be shown by the courts to the agenc[y's] expertise." *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). This court's scope of review is governed by Minn. Stat. § 14.69 (2006). *See Zahler*, 624 N.W.2d at 301. Under section 14.69, we will reverse the commissioner's decision if, among other things, it is unsupported by "substantial evidence" or is "arbitrary or capricious." *See* Minn. Stat. § 14.69 (e), (f).

Charles challenges the commissioner's conclusion that the department of health proved by a preponderance of the evidence that she neglected P.R., who was a vulnerable adult. The Vulnerable Adults Act, Minn. Stat. §§ 626.557-.5572 (2002),[1] protects vulnerable adults, a term that includes individuals who are residents of nursing homes and individuals who possess physical or mental infirmities that impair their ability to care

[1] Although the Vulnerable Adults Act has since been amended, the 2002 version of the Act applies here because it was in effect on April 6, 2004, the date of the incident.

for themselves and protect themselves from maltreatment. Minn. Stat. § 626.5572, subd. 21. "Maltreatment" as defined in the act includes "neglect," which means

> (a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:
>
> (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and
>
> (2) which is not the result of an accident or therapeutic conduct.
>
> (b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

Minn. Stat. § 626.5572, subds. 15, 17.

I. The commissioner's decision is supported by substantial evidence.

Charles contends first that the commissioner's decision is not supported by substantial evidence. "Substantial evidence" means "(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; and (5) evidence considered in its entirety." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 563 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). The substantial-evidence test requires that this court evaluate the evidence on which the

commissioner relied "in view of the entire record as submitted." *See White v. Minn. Dep't of Natural Res.*, 567 N.W.2d 724, 730 (Minn. App. 1997) (quotation omitted). And as long as it appears that the commissioner engaged in "reasoned decisionmaking," an appellate court will affirm, even though it may have reached a different conclusion had it been the fact-finder. *See Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984).

Charles's argument that the commissioner's decision is not supported by substantial evidence is unpersuasive. The record contains undisputed testimony from Charles and other witnesses that approximately 40 minutes elapsed between the time that Charles first realized that P.R. was seizing and the time that she called for emergency assistance. And by the time paramedics arrived at 7:50 a.m., it is undisputed that approximately 50 minutes had elapsed since the nursing assistant first asked for Charles's help. This timeline is supported by Charles's own testimony.

The record also contains evidence that allowing P.R. to seize for 40 minutes before seeking emergency care was not reasonable and involved a "failure or omission by a caregiver to supply a vulnerable adult with care or services, including . . . health care." Minn. Stat. § 626.5572, subd. 17. For example, Dr. Svoboda, P.R.'s treating neurologist, testified that emergency medical attention is necessary if a seizure lasts for "more than a few minutes, usually three to five minutes." In addition, Charles herself presented evidence indicating that emergency care is necessary if "the seizure lasts longer than 2 to 3 minutes or if repeated seizures occur (over any amount of time)." And it is undisputed that the policy of the nursing home requires staff to "[n]otify the Physician and family or

legal representative immediately if there is a significant change in condition" regardless of the time of day when the change in condition occurs. Finally, Dr. Svoboda also testified that P.R.'s brain function is lower now than it was before the incident and that the incident affected P.R.'s ability to participate in her own daily care. The record supports the commissioner's determination that Charles neglected P.R. by failing to seek emergency care for 40 minutes. *Cf. In re O'Boyle*, 655 N.W.2d 331, 334-35 (Minn. App. 2002) (affirming finding that a caregiver neglected a vulnerable adult when the caregiver failed to call for medical assistance, which was the "reasonable and necessary" course of conduct under the circumstances); *J.R.B. v. Dep't of Human Servs.*, 633 N.W.2d 33, 37 (Minn. App. 2001) (affirming finding of neglect when caregiver, among other things, failed to call for emergency care), *review denied* (Minn. Oct. 24, 2001).

Charles claims that the decision is unsupported by substantial evidence for two additional reasons: First, the commissioner "failed to consider the testimony" of Dr. Jacoby, who, after reviewing the record, opined that (1) he did not consider P.R.'s condition at 7:00 a.m. to be a medical emergency, (2) Charles had not neglected P.R. by not immediately calling for emergency assistance, (3) it was appropriate to examine P.R.'s chart and to attempt to use the VNS, and (4) no one could conclusively determine that P.R. had any deterioration in neurologic status specifically because of the April 6, 2004 incident. Second, Charles asserts that the commissioner "failed to consider that [P.R.] had seizures of this kind and duration before."

Both of these claims essentially ask this court to reweigh the evidence and to disregard the commissioner's credibility determinations. But appellate courts "defer to

an agency's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *See In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001); *CUP Foods*, 633 N.W.2d at 562 ("Where the evidence is conflicting or more than one inference may be drawn from the evidence, findings must be upheld."). We also note that Charles's contention that the commissioner "failed to consider" P.R.'s medical history is inaccurate; P.R.'s medical history is in the record, and the commissioner specifically found that P.R. had a history of seizures.

Because (1) the record contains significant evidence—including Charles's testimony—to support the decision, (2) the decision was reasonable, and (3) this court will not reweigh evidence or make credibility determinations, we conclude that the commissioner's decision is supported by substantial evidence.

II. The commissioner's decision was not arbitrary or capricious.

Charles also contends that the commissioner's decision was arbitrary or capricious. An agency's decision is arbitrary or capricious if the agency (1) relied on factors that the legislature had not intended it to consider, (2) entirely failed to consider an important aspect of the problem, (3) offered an explanation for the decision that runs counter to the evidence, or (4) rendered a decision that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995). Additionally, an agency's decision is arbitrary or capricious if it reflects the agency's will and not its judgment. *Blue Cross & Blue Shield*, 624 N.W.2d at

278. But a decision is not arbitrary or capricious if the agency, presented with opposing points of view, reaches a reasoned decision that rejects one point of view. *See CUP Foods, Inc.*, 633 N.W.2d at 565.

Charles claims that the commissioner's "failure to apply the [therapeutic-conduct] exception to a finding of neglect" was arbitrary or capricious. Charles contends that she was "engaging in therapeutic conduct" by (1) lowering P.R.'s bed, (2) reviewing P.R.'s chart, (3) seeking out assistance from Linda Neumann, (4) using the VNS, and (5) calling the on-call neurologist.

Under the therapeutic-conduct exception to the Vulnerable Adults Act, a caregiver cannot be found to have neglected a vulnerable adult if the caregiver provides health care "in good faith in the interest of the vulnerable adult." Minn. Stat. § 626.5572, subd. 20; *see also J.R.B.*, 633 N.W.2d at 37.

Here, the commissioner concluded that the therapeutic-conduct exception did not apply:

> For the therapeutic conduct exception to apply when the [vulnerable adult] suffers harm that requires a physician's care, that care must be provided in a *timely* fashion as dictated by the [vulnerable adult's] condition. Here, [P.R.] was suffering a generalized tonic-clonic seizure. She required immediate medical treatment. Charles failed to act timely.

The commissioner's refusal to apply the therapeutic-conduct exception was not arbitrary or capricious. Although there is no finding that Charles acted in bad faith and Charles correctly notes that she provided some care to P.R., her conduct was not timely in light of the evidence that brain damage can occur within minutes after a seizure. It is clear that

the commissioner considered the evidence—much of it undisputed—and determined that Charles did not act in the "interest of the vulnerable adult" when she took actions that resulted in allowing P.R. to seize for nearly 40 minutes before seeking emergency care. *See J.R.B.*, 633 N.W.2d at 38 (stating that the commissioner of health "has medical and scientific expertise in matters involving the health care of vulnerable adults" and that this court will defer to that expertise). Because the commissioner correctly applied the law and carefully examined the applicability of the therapeutic-conduct exception, the commissioner's decision was not arbitrary or capricious. *See CUP Foods, Inc.*, 633 N.W.2d at 565 (stating that an agency decision is not arbitrary or capricious if the agency reaches a reasoned decision).

Affirmed.