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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0842**

Angela Sue Saurdiff,  
Relator,

vs.

Minnesota Commissioner of Health,  
Respondent.

**Filed January 20, 2009  
Reversed  
Stauber, Judge**

Minnesota Department of Health  
File No. 00470

David D. Dusek, Hammarback, Dusek & Associates, P.L.C., 712 DeMers Avenue, Box 4, East Grand Forks, MN 56721-0004 (for relator)

Lori Swanson, Attorney General, Jocelyn F. Olson, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER, Judge**

Relator challenges a decision by the Minnesota Commissioner of Health not to set aside her disqualification from providing direct contact services to persons receiving services from certain licensed facilities. Because the commissioner's conclusion that

relator poses a risk of harm to those in her care is not supported by substantial evidence, we reverse.

## **FACTS**

Since 2006, relator Angela Sue Saurdiff has been employed in various capacities by Riverview Hospital and Nursing Home (Riverview), a healthcare facility licensed by the Minnesota Department of Health (MDH). Relator is a licensed social worker, a licensed alcohol and drug counselor, and a board-certified counselor. She has a bachelor's degree in social work and chemical dependency. Relator currently works as a licensed alcohol and drug counselor for Riverview. Minnesota law requires that background studies be performed on all employees of MDH licensed programs that have direct contact with persons served by these programs. Minn. Stat. § 245C.03, subd. 1(a)(3) (2006). The commissioner is required to disqualify individuals from any position allowing direct contact with persons receiving services from state-licensed facilities when they have been convicted of certain specified crimes. Minn. Stat. § 245C.15 (Supp. 2007).

In December 2007, the Minnesota Department of Human Services conducted a background study of relator, which revealed that she had been convicted of misdemeanor theft in October 2002 and December 2007. In both instances, relator was caught shoplifting items of modest value from retail stores. As a result of these convictions, the commissioner of human services notified relator that she was disqualified. *See* Minn. Stat. § 245C.15, subd. 4 (providing that misdemeanor theft is a disqualifying crime subject to a seven-year disqualification period).

Relator subsequently sought a set-aside of the disqualification from the commissioner of health on the basis that she does not pose a risk to the patients at Riverview. The commissioner denied relator's request, concluding that relator failed to meet her burden under the multi-factor risk-of-harm analysis. *See* Minn. Stat. § 245C.22, subd. 4 (Supp. 2007) (identifying nine factors to be considered in determining whether an individual poses a risk of harm). The commissioner later granted Riverview a one-year variance that, subject to certain conditions, allowed relator to continue her employment at one of its treatment centers. This certiorari appeal followed.

## D E C I S I O N

The denial of relator's set-aside request is a final administrative-agency action subject to certiorari review under Minn. Stat. § 480A.06, subd. 3 (2006). A "party seeking review on appeal has the burden of proving that the agency has exceeded its statutory authority or jurisdiction." *Lolling v. Midwest Patrol*, 545 N.W.2d 372, 375 (Minn. 1996). "Judicial review presumes the correctness of an agency decision." *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006). The party challenging the agency's decision bears the burden of proving that the decision was improperly reached. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 849 (Minn. 1984).

This court will sustain the agency's decision if it is supported by substantial evidence. Minn. Stat. § 14.69(e) (2006); *Meuleners*, 725 N.W.2d at 123. 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.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977).

When considering an individual’s request for reconsideration of a disqualification, the commissioner is statutorily required to weigh nine different factors with regard to the particular position the individual seeks to continue. Minn. Stat. § 245C.22, subd. 4(b) (Supp. 2007). These factors include:

- (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) vulnerability of persons served by the program;
- (6) the similarity between the victim and persons served by the program;
- (7) the time elapsed without a repeat of the same or similar event;
- (8) documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event; and
- (9) any other information relevant to reconsideration.

*Id.*

These factors are not intended to serve as a checklist, and the commissioner’s decision on whether to set aside an individual’s disqualification may be based on “any single factor.” Minn. Stat. § 245C.22, subd. 3 (Supp. 2007). The commissioner is required to “give preeminent weight to the safety of each person served by the . . . applicant . . . over the interests of the disqualified individual.” *Id.*

In concluding that relator posed a risk of harm under the statutory factors, the commissioner emphasized that relator’s 2007 conviction is recent and that relator had

only begun to participate in rehabilitation. While these conclusions are accurate, the weight of the evidence demonstrates that relator does not pose a risk to the safety of the persons served at Riverview. As the commissioner noted, the victims of these thefts were large-scale retail stores who are “[n]ot very vulnerable,” suffered “[n]o lasting damage” from the theft of a few modest items, and have “[l]ittle or no similarity” to the persons served by relator. Relator was only 18 and 23 years of age at the time of the offenses. Relator has taken full responsibility for her actions and sought therapy to address her behavior. Relator’s work history at Riverview also bears mentioning. According to the record, relator is a respected counselor holding several licenses who has worked at Riverview without incident since 2006. Relator’s supervisor and director both supported her request for reconsideration of disqualification and vouched for her good character and competency as a counselor. Immediately after the denial of the set-aside, Riverview applied for a variance to allow relator to continue her employment with one of its treatment facilities. As a whole, there is no evidence to support the conclusion that relator poses a risk to the safety of those in her care. Because the commissioner’s decision is not supported by substantial evidence, we reverse.

**Reversed.**