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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0838**

Angie Rachel Ford,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed December 9, 2013
Reversed and remanded
Kalitowski, Judge**

Minnesota Department of Human Services
License No. 1048780 R31

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Relator Angie Rachel Ford challenges the department of human services' (DHS) refusal to set aside her disqualification from an academic internship at Valhalla Place, Inc. (Valhalla), a state-licensed facility. Relator argues that (1) the commissioner's basis for her disqualification is not supported by substantial evidence and is arbitrary and

capricious, and (2) she has a due-process right to an evidentiary hearing to challenge her disqualification. Because the commissioner's decision fails to sufficiently address relator's evidence explaining her disqualifying events and establishing that she does not pose a risk of harm to Valhalla's clients during her semester-long internship, we reverse and remand for additional proceedings.

DECISION

I.

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 (2012). On appeal, this court examines the record to determine whether the commissioner's decision "was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012) (quotation omitted). 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).

When considering an individual's request for reconsideration of a disqualification, the commissioner is statutorily required to weigh nine factors. Minn. Stat. § 245C.22, subd. 4(b) (2012). These factors are:

- (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." *Id.*, subd. 3 (2012). But an agency's action must be consistent with its statutes and not based on mere whim or will. *Sleepy Eye Care Ctr. v. Comm'r of Human Servs.*, 572 N.W.2d 766, 770 (Minn. App. 1998) (citations omitted). And this court will intervene "where there is a combination of danger signals which suggest the agency has not taken a 'hard look' at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984) (quotations and citations omitted).

We conclude that here, the commissioner failed to take a "hard look" at relator's evidence indicating that she is rehabilitated from the circumstances that led to her disqualifying offenses and at the evidence regarding the possibility that the internship relator sought at Valhalla would create a risk of harm to Valhalla's clients.

In her request for reconsideration, relator submitted evidence that her disqualifying offenses occurred during a three-year period when she was chemically dependent. A majority of her theft offenses were against large retail businesses, and her

drug offenses occurred because of her chemical dependency. Relator explained that she stole from stores such as Target, Best Buy, and Mills Fleet Farm so that she could support herself, her family, and her habit during those years. She accepted responsibility for her past crimes and stated that she has since rehabilitated her behavior and now lives a sober lifestyle. And relator submitted letters from recent former employers specifically stating that relator has successfully cared for high-risk, vulnerable adults as a personal care assistant following her rehabilitation.

Relator further explained that she is seeking a set-aside so that she can complete an internship, which is required as part of her pursuit of a degree in chemical-dependency counseling at Century College. The college requires students to complete a clinical internship as part of its program. Relator would be fully supervised at this internship, and would not be working in the capacity of a chemical-dependency counselor. And relator stated that she cannot complete her education or obtain her degree until she has successfully completed the clinical requirement. The commissioner's decision fails to reflect that it considered these specific circumstances.

Moreover, the factors that the commissioner recites in its determination indicate the arbitrary manner in which relator's case was reviewed. For example, the order cites to the vulnerability of the persons served at Valhalla in its decision not to set aside relator's disqualification. But this is inconsistent with the rating the commissioner assigned in its risk assessment form, indicating that Valhalla's clients are "not very vulnerable" because they are nonresidential, chemically dependent patients. And it does not recognize that relator would be working in a supervised internship.

With regard to the time that has elapsed since relator's last disqualifying offense, the commissioner stated that her offenses required disqualification for 15 years and it was therefore "too soon to conclude that [relator had] changed [her] attitude and behavior." And as to the nature and severity of the offenses relator committed, the order states that relator's felony drug offenses automatically invoke a 15-year disqualification period, indicating that relator poses a "significant risk of harm . . . to vulnerable adults." The commissioner's evaluation on these factors is based solely on the presumptive disqualification period and, as indicated in its order, the "legislature's judgment that certain offenses warrant longer disqualifications than others." This reasoning fails to comply with the statutory requirement that the commissioner base its determination on independent judgment in considering the criteria listed in Minn. Stat. § 245C.22, subd. 4(b).

Moreover, the commissioner's response to relator's letters of support further indicates the arbitrary manner in which relator's case was decided. Relator submitted numerous letters of support including letters from (1) her probation officer; (2) four individuals who recently employed her as a personal care attendant for vulnerable adults; (3) a teacher who supervised her first internship; (4) the coordinator of the Century College Chemical Dependency Program; (5) the internship coordinator at Century College; and (6) her AA sponsor. The commissioner summarily dismissed these letters because "these persons were not witnesses to or victims of the disqualifying acts which [relator] committed." We conclude that it is not reasonable for the commissioner to determine that letters from the victims of relator's past offenses, namely Mills Fleet

Farm, Target, or Best Buy, would somehow provide greater insight as to whether relator currently poses a risk of harm. Moreover, the record does not support the commissioner's reasoning. Relator submitted letters from her probation officer, her mother, and a friend who had known relator for over 20 years. These individuals were all aware of relator's disqualifying offenses and her behavior during that time. We conclude that the commissioner's reasoning indicates that relator's evidence was not adequately reviewed or considered.

On this record we cannot sustain the commissioner's decision. We reverse and remand to the commissioner for a determination based on findings and reasoning indicating it appropriately considered relator's individual circumstances, including both her evidence of sobriety and the risk of harm she poses considering the nature of her requested set-aside.

II.

Relator argues that the denial of an evidentiary hearing where relator may challenge her disqualification violates her right to procedural due process of law. See Minn. Stat. § 245C.27, subd. 1(c) (2012) (stating that an individual disqualified under Minn. Stat. § 245C.15, subd. 2 (2012), is not entitled to an evidentiary hearing on a motion to set aside the commissioner's disqualification). Relator acknowledges that this argument has been previously considered by this court. See *Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 322 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). But relator argues that the caselaw governing the issue has been wrongly decided and that relator's case illustrates the need for an evidentiary hearing. We disagree.

We do not overturn our precedent without a compelling reason. See *State v. Martin*, 773 N.W.2d 89, 98 (Minn. 2009); *State v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (explaining that “[w]e are extremely reluctant to overrule our precedent under principles of *stare decisis*”). In this case, relator had the right to submit all evidence she thought the commissioner should consider in her written submission. Relator would have submitted the same evidence regardless of whether her case was presented orally or in writing. Moreover, relator does not assert that she had any evidence of her innocence that she did not have an opportunity to present in her criminal proceedings. Cf. *Fosselman v. Comm’r of Human Servs.*, 612 N.W.2d 456, 463 (Minn. App. 2000) (holding that, when evidence supporting the commissioner’s disqualification is in dispute, a relator may have a due-process right to a hearing). As such, relator has not given us a compelling reason to overturn our precedent.

We conclude that the commissioner did not err by failing to provide an evidentiary hearing and it is not required to provide an evidentiary hearing on remand.

Reversed and remanded.