STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0334

Felicia Marie Thomas,
Relator,

vs.

Commissioner of Human Services,
Respondent.

Filed October 1, 2018
Affirmed
Stauber, Judge[*]

Department of Human Services
File No. 900247

Felicia Marie Thomas, St. Louis Park, Minnesota (pro se relator)

Lori Swanson, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

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

STAUBER, Judge

In this certiorari appeal, relator challenges the commissioner's decision refusing to set aside relator's disqualification from direct-care work in licensed facilities. We affirm.

FACTS

Relator Felicia Marie Thomas challenges the determination of respondent Commissioner of Human Services (the commissioner) that she is disqualified from any position involving direct contact with persons receiving services in a program licensed by the Minnesota Department of Human Services (the department) or the Minnesota Department of Health, as well as the Minnesota Department of Corrections youth and child programs and unlicensed personal-care provider organizations.

In January 2014, Thomas's boyfriend brought Thomas's five-year-old son to the Hennepin County Medical Center for a sexual-abuse examination. Thomas's father had pulled the child's pants down several times and squeezed his buttocks. As a child, Thomas had been sexually abused by her father. Thomas was on probation for a DWI offense, and concerns about her alcohol use immediately arose. The child was placed in foster care, and Thomas, after failing chemical testing, entered inpatient treatment. During the course of the child-protection matter, the Hennepin County Human Services and Public Health Department (the county) advised Thomas of its determination that maltreatment had occurred and that child-protective services were necessary. The county also informed Thomas that this determination could affect her ability to qualify for employment requiring licensure by the department, the Minnesota Department of Health, the Minnesota

Department of Corrections, and unlicensed personal-care-provider organizations. Thomas was apprised of her right to challenge the maltreatment decision within 15 days.

Thomas successfully completed inpatient treatment and recovered custody of her son. In the fall of 2016, she enrolled in the addiction counseling program at Minnesota Community and Technical College (MCTC). As part of this program, she was required to complete an internship. Her request for a background study resulted in a disqualification. Thomas requested reconsideration on grounds that she did not pose a risk of harm to those she would serve. The commissioner affirmed the disqualification and denied the request to set it aside. By writ of certiorari, Thomas challenges this decision.

D E C I S I O N

1. The commissioner's decision not to set aside Thomas's disqualification was not arbitrary, capricious, or unsupported by substantial evidence.

The commissioner's decision whether to grant a reconsideration request following disqualification is a quasi-judicial action that is not subject to the Minnesota Administrative Procedure Act (MAPA). *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). We review such decisions to determine, among other things, whether the commissioner's decision was arbitrary and capricious, or unsupported by substantial evidence. *Id*.; *see also Sweet v. Comm'r of Human Servs.*, 702 N.W.2d 314, 318 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). "An agency's conclusion is arbitrary and capricious if there is no rational connection between the facts and the agency's decision." *Sweet,* 702 N.W.2d at 318.

The department must conduct a background study of any person seeking to work in a licensed program who will have direct contact with persons served by the program. Minn. Stat. § 245C.03, subd. 1(3) (Supp. 2017). Thomas applied to work as an intern in a program licensed by the department. In 2014, following the child-protection case, the county informed Thomas that the maltreatment finding potentially could affect her future licensing, employment, or services, and advised her that she had 15 days to appeal the finding of maltreatment. A maltreatment determination is conclusive if the individual does not timely challenge it, and Thomas did not timely challenge the 2014 maltreatment determination. Minn. Stat. § 245C.29, subd. 1(2) (2016).

A person who is the subject of an administrative determination, such as the county's maltreatment decision, is disqualified from having direct contact with persons served by a licensed program. Minn. Stat. § 245C.14, subd. 1(a)(3) (2016). If there is an administrative determination that a person committed serious maltreatment of a child, the disqualification period is seven years from the date of the determination. Minn. Stat. § 245C.15, subd. 4(b)(2) (2016). By virtue of the 2014 child-protection action, Thomas was disqualified from licensure for seven years.

A disqualified person may request reconsideration on two grounds: the disqualified person can challenge the factual basis for the commissioner's determination of what conduct occurred or the seriousness of the maltreatment. In the alternative, a disqualified person may request that the disqualification be set aside by showing that he or she does not pose a risk of harm to individuals served by the licensed program. Minn. Stat. §§ 245C.21, subd. 3(a), .22, subd. 4(a) (2016). Thomas did not challenge the 2014 maltreatment

determination or the commissioner's 2017 fact-finding, but instead asked that the agency set aside her disqualification because she did not pose a risk of harm. For a set-aside, the commissioner is directed to consider nine different 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) 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.

Minn. Stat. § 245C.22, subd. 4(b) (2016).

The commissioner found factors 1, 3, 4, 5, 6, 8, and 9 "to be determinative." Briefly restated, the commissioner found that (1) the maltreatment was considered serious; (2) Thomas's son was only five years old and, therefore, vulnerable; (3) he was "sexually abused, which likely resulted in emotional harm" and he reported "it hurt" when his grandfather squeezed his buttocks; (4) Thomas would be working with people who are vulnerable because of their alcohol usage; (5) because these people are vulnerable, they are similar to Thomas's son; (6) Thomas had not submitted letters from her current therapists; and (7) before 2014, Thomas had several incidents of alcohol abuse.

One can take issue with some of these conclusions: there is not a great deal of similarity between a five-year old and a person receiving treatment for alcohol abuse; in the range of sexual abuse, this behavior was at the mild end; Thomas submitted letters of support from others with knowledge of her progress; and Thomas had specifically worked on her problems with alcohol, with no reported incidents since she completed treatment. But there is evidentiary support in the record for the agency's factual findings. *See Sweet*, 702 N.W.2d at 318 (explaining substantial-evidence standard). An agency's decision is not arbitrary and capricious if there is a rational connection between the facts and its decision. *Id*. There is sufficient evidence and a rational connection between the facts and the commissioner's conclusions so that the refusal to set aside the disqualification is not arbitrary and capricious.

As did the commissioner, we recognize the positive action Thomas has taken and her commitment to sobriety. But a "court must also recognize the need for exercising judicial restraint and for restricting judicial functions to a narrow area of responsibility lest the court substitute its judgment for that of the agency." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 277 (Minn. 2001) (quotation omitted) (analyzing decision under MAPA). We, therefore, affirm the commissioner's decision refusing to set aside Thomas's disqualification.

2. Thomas was not denied due process because no hearing was held on her request for a set aside.

Thomas argues that she was deprived of her due-process rights because the commissioner did not hold an evidentiary hearing on her claim that she did not pose a risk

of harm. Thomas concedes that she did not have a right to a hearing about whether the information supporting the maltreatment determination was accurate because that "had been established through normal criminal law procedures."

Minn. Stat. § 245C.29, subd. 2(c) (2016) states, "The commissioner's decision regarding the risk of harm shall be the final agency decision and is not subject to a hearing under this chapter, [the MAPA], or section 256.045 [dealing with hearings for administrative and judicial review of human services matters]." We review the constitutionality of a statute as question of law, subject to de novo review. *Sweet*, 702 N.W.2d at 319. "We presume statutes are constitutional, and we will declare a statute unconstitutional with extreme caution and only when absolutely necessary. A party challenging a statute carries the heavy burden of demonstrating beyond a reasonable doubt that a statute is unconstitutional." *Id.* (quotations omitted).

In *Sweet*, the relator made a similar challenge to the statute. This court concluded that the statutory procedure provided adequate due process without an evidentiary hearing. *Id.* at 321. Affirming that the relator had a property interest in the licensed employment, this court applied the *Mathews* factors. *Id*. at 320-22 (analyzing relator's claims based on *Mathews v. Eldridge*, 424 U.S. 319, 332, 335, 96 S. Ct. 893, 901, 903 (1976)). This requires a balancing of (1) the private interest affected; (2) the risk of erroneously depriving a party of this interest, including an analysis of the procedures used and the value of additional procedural safeguards; and (3) the government interest and relative burden of providing additional procedural requirements. *Id.* at 320 (noting that procedural due process is a flexible concept that can be tailored to the specific situation).

As in *Sweet*, Thomas has a private property interest in a licensed employment position. *Id.* Also like *Sweet*, Thomas had an "unfettered right to present all evidence, including letters of support, that [she] thought the commissioner should consider in [the] written submission" and was able to "mold [her] argument to the issues the decision maker appears to regard as important in support of [her] application." *Id.* at 321 (quotation omitted). All of the information submitted to the commissioner was generated by Thomas and, therefore, "a hearing was not necessary to permit cross-examination of agency witnesses." *Id.* This court concluded that a hearing would make no difference because the same evidence would be submitted. *Id.* The same analysis is true for Thomas.

Finally, as in *Sweet*, "the governmental interest in protecting the public, especially vulnerable individuals attending counseling for drug and alcohol addiction, is of paramount importance." *Id.* The commissioner is charged with giving "preeminent weight to the safety of each person served by the . . . applicant . . . over the interests of the disqualified individual." Minn. Stat. § 245C.22, subd. 3 (2016). "The government also has an interest in saving time and money by considering disqualifications quickly and efficiently, without additional time, expenses, and personnel required to provide evidentiary hearings to disqualified individuals." *Sweet*, 702 N.W.2d at 321. This court concluded that "the cost outweighs the limited benefit, if any, of providing an evidentiary hearing." *Id.* at 322. The same can be said for Thomas—it is unclear what an evidentiary hearing would have added when she was given the opportunity to submit any supporting information. Thomas was

given an adequate opportunity to present her arguments and evidence, and was not denied due process by the lack of an evidentiary hearing.

Affirmed.