

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2070**

Charles Jerome Godfrey, Jr.,
Relator,

vs.

Commissioner of Human Services,
Respondent.

**Filed September 17, 2012
Affirmed
Hudson, Judge**

Department of Human Services
License No.: 1030617 R203

Charles Jerome Godfrey, Jr., Apple Valley, Minnesota (pro se relator)

Lori Swanson, Attorney General, Anthony R. Noss, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Muehlberg, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

Relator challenges the decision of respondent commissioner of human services, following a background study, disqualifying him from working at a state-licensed program. Because relator did not request a fair hearing after his disqualification following a previous background study and did not request reconsideration of his disqualification after a second previous background study, his disqualification is conclusive. And the evidence supports the commissioner's decision not to set aside the disqualification. We affirm.

FACTS

In 2005, relator Charles Godfrey, Jr. threw a screwdriver, hitting his 13-year-old stepson, I.P., in the head. The incident happened immediately after an argument between Godfrey and his wife at the time about finances. She reported the incident to police, and Godfrey told responding officers that the incident was an accident resulting from Godfrey's attempt to get I.P.'s attention when Godfrey was working on a ladder. I.P., who stated that he never heard Godfrey trying to get his attention, sustained a bump on his head and reported a headache. Godfrey was charged with misdemeanor domestic assault; the charges were later dismissed.

In 2008, an adult-foster-care provider requested an applicant background study on Godfrey pursuant to the Background Studies Act, Minn. Stat. §§ 245C.01-.34 (2010).¹

¹ Godfrey's contact with the department occurred between 2008 and 2011. Although the Minnesota legislature amended some portions of the Background Studies Act in 2009 and

As a result of that study, Godfrey was notified that he was disqualified from direct contact with persons served by the program because a preponderance of the evidence showed that he had committed conduct meeting the definition of malicious punishment of a child under Minn. Stat. § 609.377 (2004). Godfrey requested reconsideration, and the department of human services determined that the information used to disqualify him was correct. The department also conducted a risk-of-harm assessment and determined that Godfrey failed to show that he did not pose a risk of harm to persons served by programs licensed by the department, so that his disqualification would not be set aside. The department also notified Godfrey of his right to request a fair hearing to contest the disqualification; Godfrey did not request a fair hearing.

In 2010, a home-health-services provider requested a background study on Godfrey. The department notified Godfrey that his disqualification from the previous background study had not been set aside; that he posed an imminent risk of harm to persons receiving services; and that he should be immediately removed from any position allowing direct contact with, or access to, persons receiving services. The department also notified Godfrey that he had 30 days in which to request reconsideration of that decision and told him the address to which he should send a reconsideration request. Godfrey did not request reconsideration.

2010, because the provisions directly applicable to Godfrey's disqualification have not materially changed, we apply the most recent version of those statutes. *See McClelland v. McClelland*, 393 N.W.2d 224, 226–27 (Minn. App. 1986) (indicating that the current version of a statute will be used unless it changes or alters a matured or unconditional right of the parties or creates some other injustice), *review denied* (Minn. Nov. 17, 1986).

In 2011, an adult-foster-care provider requested another background study on Godfrey. The department informed Godfrey that he had a disqualification from a previous background study, which had not been set aside. Godfrey requested reconsideration, and the commissioner declined to set aside the disqualification, determining, pursuant to a risk-of-harm assessment, that Godfrey had failed to demonstrate that he did not pose a risk of harm to persons served by licensed programs. Godfrey also received notification that, because he had not requested an agency hearing after the 2009 disqualification or requested reconsideration after the 2010 disqualification, his disqualification was conclusive. This certiorari appeal follows.

D E C I S I O N

A commissioner's decision on disqualification is a quasi-judicial agency decision, which is not subject to the Administrative Procedure Act (APA), Minn. Stat. §§ 14.63-.69 (2010). *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 165 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012). On certiorari appeal from a quasi-judicial agency decision that is not subject to the APA, this court examines the record to review "questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Id.* (quoting *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992)).

The Background Studies Act provides that individuals who have engaged in certain conduct or committed certain crimes are disqualified from having direct contact

with persons served by any program that is licensed by the department. Minn. Stat. §§ 245C.01-.34. “The public purpose of Chapter 245C is to protect the health and safety of individuals who are vulnerable due to their age or their physical, mental, cognitive, or other disabilities.” *Obara v. Minn. Dep’t of Health*, 758 N.W.2d 873, 879 (Minn. App. 2008). A person may be disqualified from direct contact with persons served by department-licensed programs for a period of ten years if a background study shows that, by a preponderance of the evidence, the person has committed an act meeting the definition of gross-misdemeanor malicious punishment of a child. Minn. Stat. §§ 245C.14, subd. 1(a)(2), .15, subd. 3(a); *see* Minn. Stat. § 609.377 (defining malicious punishment of a child).

A disqualified person may request reconsideration of the disqualification by showing that the information relied on by the commissioner is erroneous, or that the person does not pose a risk of harm to any person served by the licensed facility. Minn. Stat. § 245C.21, subsd. 1, 3. In determining whether the person poses a risk of harm, the commissioner must consider nine factors: (1) “the nature, severity, and consequences of the event or events that led to the disqualification”; (2) whether more than one disqualifying event occurred; (3) the victim’s age and vulnerability; (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 amount of elapsed time without a similar event occurring; (8) documentation of the disqualified individual’s successful completion of training or rehabilitation pertinent to the event; and (9) any other relevant information. Minn. Stat. § 245C.22, subd. 4(b). In considering

these factors, the commissioner must “give preeminent weight to the safety of each person served by the license holder.” *Id.*, subd. 3.

If the commissioner concludes that the person does not pose a risk of harm after considering the required factors, the commissioner may set aside the disqualification. *Id.*, subd. 4(a); *Johnson v. Comm’r of Health*, 671 N.W.2d 921, 923 (Minn. App. 2003). A person may contest disqualification by seeking a fair hearing. Minn. Stat. § 245C.27, subd. 1. But if the person does not seek reconsideration, or does not request a hearing on the disqualification, the disqualification is conclusive. Minn. Stat. § 245C.29, subd. 2; *Smith v. Minn. Dep’t of Human Servs.*, 764 N.W.2d 388, 391–92 (Minn. App. 2009).

Godfrey argues that the commissioner’s disqualification decision lacks evidentiary support because the incident was an accident, and he did not intend to injure his stepson with the screwdriver. But because Godfrey did not challenge his disqualification either by seeking a fair hearing in 2009 or requesting reconsideration in 2010, his disqualification is conclusive. Minn. Stat. § 245C.29, subd. 2.

Even if a person’s disqualification is conclusive, that person in some circumstances retains the right to request reconsideration on the risk-of-harm issue, although without an additional hearing. Minn. Stat. § 245C.29, subd. 2(c); *cf. Smith*, 764 N.W.2d at 390–91 (concluding that if a permanently disqualified person fails to challenge the disqualification within the time limits set out by statute, he or she is barred from challenging the disqualification). Because Godfrey’s conduct would subject him to disqualification for a ten-year period, rather than permanently, he may challenge on

appeal the commissioner's decision not to set aside his disqualification based on a risk-of-harm assessment. Minn. Stat. § 245C.29, subd. 2(c).

A person may have his or her disqualification set aside if that person “has submitted sufficient information to demonstrate that the [person] does not pose a risk of harm.” Minn. Stat. § 245C.22, subd. 4(a). In denying Godfrey's most recent request for reconsideration, the commissioner conducted a thorough risk-of-harm analysis, weighing the nine statutory factors and considering eleven categories within those factors. The commissioner found that Godfrey had a higher risk in five of the categories: the nature and severity of the event, the age and vulnerability of the victim, the vulnerability of clients served by the program, whether he accepted responsibility for the event, and documentation of successful training or rehabilitation. The commissioner found that Godfrey had a medium risk relating to four additional categories. And the commissioner found that Godfrey had provided a letter of support, but that the person submitting the letter had not witnessed the event, and that Godfrey's behavior at the time of the event may not be characteristic of his behavior with that person.

We conclude that the commissioner's decision not to set aside the disqualification is supported by the evidence and is not arbitrary or unreasonable. Godfrey was found to be high risk regarding several factors because the act was committed against a child, the department-licensed program served a very vulnerable population, and Godfrey submitted no documentation that he had successfully completed training or rehabilitation.

We note that Godfrey has submitted additional letters of support on appeal. But “evidence which was not received below may not be reviewed as part of the record on

appeal.” *Appelhof v. Comm’r of Jobs & Training*, 450 N.W.2d 589, 591 (Minn. App. 1990); *see* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal consists of papers, transcripts, and exhibits filed in proceeding below); *id.*, 115.04, subd. 1 (applying rule 110 to certiorari appeals). Because the letters were not submitted to the department in the proceeding below, we decline to consider them in this appeal.

Affirmed.