

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1119**

In the Matter of the Appeal by Amy Waters of the Maltreatment Determination and Disqualification, and by John and Amy Waters Order of Revocation of their Child Foster Care License DHS Case Number 36496.

**Filed June 27, 2022
Reversed
Reilly, Judge**

Minnesota Department of Human Services
File No. DHS 36496

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Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Frisch, Judge.

SYLLABUS

A maltreatment determination of the commissioner of human services is arbitrary or capricious when the decision adopts an administrative-law judge's findings about circumstances surrounding an injury to a foster child but then rejects the administrative-law judge's conclusions of law and recommendation based on those findings without explaining the basis for the decision.

OPINION

REILLY, Judge

Relators John and Amy Waters served as foster parents to three young children. After a bruise appeared on one child's cheek, respondent Ramsey County (the county) investigated and concluded that foster mother had caused the child's injury. Based on this conclusion, the county issued a maltreatment determination against foster mother. Respondent Department of Human Services (DHS) then disqualified foster mother from having contact with persons receiving services from licensed department programs. DHS also revoked foster parents' child-foster-care license based on foster mother's disqualification, as well as alleged violations of various licensing rules by both foster parents.

Foster parents appealed the maltreatment determination, the disqualification, and the license revocation. The case proceeded to an evidentiary hearing before an administrative-law judge (ALJ). The ALJ determined that the county failed to prove that foster mother had physically abused the child, and he recommended that the commissioner of human services vacate and rescind the actions against foster parents. The commissioner disagreed with the ALJ's recommendations and affirmed the maltreatment determination, the disqualification, and the license revocation.

In this certiorari appeal from the commissioner's decision, relators challenge the commissioner's decision affirming the maltreatment determination against foster mother, the disqualification of foster mother from having contact with persons receiving services from licensed department programs, and the revocation of foster parents' child-foster-care

license. We conclude that the commissioner's maltreatment determination was not supported by substantial evidence and was arbitrary or capricious. Because the disqualification and the license revocation stemmed from the maltreatment determination, those decisions are also legally erroneous. For these reasons, we reverse the commissioner's decision in all respects.

FACTS¹

Relators married in 2014 and planned to start a family together. After a few years, relators began to explore adoption. Relators applied for a child-foster-care license from DHS, and they obtained the license in 2017.

The Foster-Care Placement

In March 2018, Clay County Social Services approached relators about a possible placement. Clay County was seeking a placement for three young siblings, all boys, whom we will refer to here as Child 1, Child 2, and Child 3.² At the time, Child 1 was eight years old, Child 2 was six years old, and Child 3 was five years old.³ The boys had experienced significant trauma and neglect from a young age. The boys' biological parents were involved in selling narcotics and exposed the boys to drug use and domestic violence. The district court terminated the parents' parental rights in 2016. Since their first placement in

¹ These facts are taken from the commissioner's findings of fact and are supplemented by relevant evidence in the record.

² The commissioner's decision refers to the children by the Greek letters Alpha, Beta, and Gamma. We use a different method to follow this court's preferred method of referring to children in child-welfare matters.

³ We note that the ages of the children listed in the commissioner's findings are inaccurate. The ages listed here are taken from the record showing the children's dates of birth, as shown on neuropsychological examinations for each child.

the foster-care system, Child 1 and Child 2 had been in nine different placements, and Child 3 had been in eight different placements. The children had also experienced a failed adoption, which was especially difficult for Child 1, who seemed to take it personally and blamed himself. The children all suffered from post-traumatic-stress disorder and reactive-attachment disorder. Despite the challenges that the placement posed, relators agreed to take in the children. Clay County placed all three children in relators' home by the end of March 2018.

The children remained in relators' care for more than a year, and the placement seemed promising. Relators took measures to address the children's health conditions and developmental delays, including having medical evaluations and therapy sessions for the children. According to the children's guardian ad litem (GAL), Child 2 suffered from mental-health and cognitive issues that made it hard for him to respond accurately and consistently in interviews. Relators learned from the children's therapists that the boys could be "manipulative" and had problems with lying and "raging," and relators sometimes used those terms to describe the children's behaviors. The GAL had regular contact with the children and hoped that the children could remain in relators' home and be adopted by relators.⁴ Relators began drafting the adoption petition, and Clay County officials started preparing for a permanent adoptive placement for the boys with relators.

⁴ The GAL testified that she had served as the children's GAL since May 2015, when the children were first placed in foster care.

Bruising of Child 2 and County Investigation

On the morning of May 13, 2019, a bruise appeared on Child 2's left cheek. The bruise drew the attention of several people who interacted with the child. Foster mother took Child 2 to her workplace that day because Child 2 had a medical appointment scheduled for later in the day. One of foster mother's coworkers asked about the bruise, and Child 2 said that he got hit in the face with a ball. Over the next several days, Child 2 gave varying explanations about the cause of the bruise, and Child 1 and Child 3 also provided conflicting accounts.

On May 14, Child 2's teacher asked him about the bruise. Child 2 initially avoided eye contact and said he was hurt. When the teacher pressed him for details, Child 2 said that foster mother got mad at him after he urinated in his pants and that she hit him on the cheek. The teacher then sent Child 2 to the school nurse to examine his injury. The school nurse examined him, and Child 2 said that he had hit his cheek while getting out of the car. At lunch that day, another faculty member asked Child 2 about the bruise, but Child 2 responded that he had already discussed the matter with other staff members. The same faculty member later asked Child 3 about Child 2's bruise, and Child 3 said that foster mother had slapped Child 2 "because she was mad at him in the car."

After the children disclosed this information, a deputy from the Ramsey County Sheriff's Office (the first deputy)⁵ went to the school to interview Child 2. The first deputy

⁵ Three different deputies from the Ramsey County Sheriff's Office were involved in various parts of the investigation. To distinguish between the deputies, we call them the "first deputy," "second deputy," and "third deputy."

asked Child 2, “What happened with the bruise on your cheek?” Child 2 replied, “I had an accident and my mom was mad.” Child 2 clarified that the “accident” was “peeing [his] pants,” and he said that he had the accident when he was playing outside. The first deputy asked Child 2 if foster mother hit him “with an open hand . . . or was it more like a fist, like a punch?” Child 2 shared that the hit was with an open hand. Child 2 later stated that, after he had urinated in his pants, the family went to Walmart and foster mother struck him in the car when they were leaving the store. After interviewing Child 2, the first deputy called foster mother and inquired further about the injury. Foster mother said she had noticed the bruise on the morning of May 13 but claimed not to know how the injury happened. She propounded that she may have accidentally hit Child 2’s cheek during a jumping game she was playing with the boys the previous weekend.

The county opened a maltreatment investigation and assigned a child-protection investigator to the matter (the county investigator). The county investigator interviewed all three children at the school on May 16, 2019. According to the county investigator’s notes from the interview, the children provided different stories about the cause of the bruise. Child 2 told her that, during the previous weekend, foster mother became angry in the car after learning that he had wet his pants. According to Child 2, foster mother told Child 2 to get out of the car, grabbed him by the arm near the shoulder, and struck his face with her open hand. Child 1 told the county investigator that Child 2 did have an accident in his pants, but he believed that Child 2 obtained the bruise by falling down the stairs. Child 3 reported that foster mother had slapped Child 2, but he said that the slap happened on the deck of the family home, rather than in the car.

After interviewing the children, the county investigator contacted the children's foster-care case manager with Clay County and urged her to remove the children from relators' home. The county investigator said that she was "concerned about the safety and well-being" of the children and that she believed "it is best that the children do not remain in placement" with relators. The Clay County case manager, with the support of her supervisor and the foster-care licenser,⁶ responded that they believed it was in the children's best interests to remain in relators' home until the maltreatment investigation was complete, because they did not want to cause additional trauma to the children by removing them from the home.

On May 21, 2019, the county investigator and a second deputy interviewed relators separately at their residence. Foster mother speculated about possible sources of Child 2's bruise and provided two possible times she thought the injury could have happened: first, when they were playing soccer in the house and foster mother "was trying to playfully take [Child 2] down and she ended up grabbing his face with her thumb"; and second, when Child 2 had his "accident" and foster mother "touched his face while in the car." Foster mother expanded on the incident in the car. She said that, when she discovered that Child 2 had wet his pants, she was in the driver's seat and foster father was in the passenger seat. According to foster mother, she became frustrated, reached around to the passenger seat behind foster father, and tried to grab Child 2's arm so that she could get him out of the car

⁶ These individuals had worked with relators and regularly visited relators' home since Clay County had placed the children with relators in March 2018.

because his pants were wet. As she was doing this, her hand “went across his face.” Foster mother said that it was “harder than a tap,” but that it was not a slap and was unintentional.

Foster father also told the county investigator and the second deputy about the incident in the car. He said that, while the family was running errands, he and foster mother discovered that Child 2 had wet his pants. Foster father indicated that they asked Child 2 to get out of the car and go inside to get cleaned up. Foster father acknowledged that he and foster mother were frustrated with Child 2, but he denied seeing foster mother slap the child. During the interviews, both foster parents said that the children had problems with lying and manipulation and that they were trying to address those issues in therapy.

Based on the interviews, the county investigator and the second deputy distrusted foster parents. They viewed foster mother’s listing of alternative ways that the child could have been injured and the description of the children’s problems with lying as signs that foster mother was trying to obscure the truth.

The county investigator also showed photos of Child 2’s bruise to a doctor with the Midwest Children’s Resource Center. The doctor said that the mark did not appear to be a typical slap mark but seemed to have been caused by “impact pressure or being squeezed.” The doctor, though, told the county investigator that he believed there was “a preponderance of evidence to believe [Child 2]” and that it “[did] not seem like reasonable parenting.”

Based on the investigation, the county notified foster parents on May 23, 2019, of a maltreatment determination against foster mother. The maltreatment determination was based on the county’s conclusion that a preponderance of the evidence supported that foster

mother had “caused bruising” to Child 2’s face, which is defined by statute as “physical abuse,” a form of maltreatment.⁷ See Minn. Stat. § 260E.03, subds. 12, 18 (2020) (defining “maltreatment” and “physical abuse”).

Because of the county’s maltreatment determination, DHS considered whether to take licensing action against foster parents. While the DHS investigation was pending, the children’s GAL wrote to support relators. The GAL stated that she had never had any concerns related to the children’s care while they were in relators’ home. The GAL wrote that she and Clay County officials “fully endorse[d] the children remaining in the home.”

On July 11, 2019, DHS notified relators that, because of the maltreatment determination, foster mother was disqualified from any position allowing direct contact with persons served by the DHS-licensed child-foster-care program. DHS then sent foster father an order for immediate removal, which directed him to immediately remove foster mother from the home and to prevent her from having direct contact with the children. Foster mother left the home within the seven-hour period provided by the order, to avoid having the children placed in emergency foster care and to prevent their foster-care license from being revoked.

Report of Sexual Contact among the Children and Removal from Relators’ Home

After foster mother left the home, foster father continued to care for the children by himself. Then, on July 25, 2019, the county received a report that Child 1 may have

⁷ The county later charged foster mother with gross-misdemeanor malicious punishment of a child. In December 2019, after the children had been removed from relators’ home, the county dismissed the complaint because the state did not believe that it could meet its burden of proof.

engaged in sexual contact with his siblings. According to the report, Child 2 and Child 3 told their friends that, while they were playing at a park, Child 1 had “sucked” on them “down there.” The exchange was overheard by an adult, who reported it, and the county began to investigate for possible sexual abuse. The county investigator and a third deputy conducted forensic interviews of Child 2 and Child 3. Despite the disqualification against her, foster mother received permission from the county to come to the county office while the two boys were being interviewed and to hear the interviewers’ findings. During the forensic interviews, Child 2 and Child 3 denied that Child 1 had engaged in any sexual contact with them.

After the forensic interviews, relators asked the county what would happen next. The parties disagree about the response by county officials. According to relators, the third deputy simply told them, “just leave it alone.” Foster parents claimed that it was not clear to them what the third deputy meant by “leave it alone.” According to the county, however, the third deputy specifically advised relators not to discuss anything with the boys, in case one of them decided to disclose sexual abuse in the future. During that conversation, relators also questioned what would happen if the children continued to “lie, manipulate, and rage.” Foster father stated that he was “at his [wits’] end” having to care for the children himself and that he felt unsafe because of Child 1’s unpredictable behaviors.

On the car ride home from the forensic interviews, Child 2 and Child 3 began to talk to relators about the sexual-contact allegations. According to relators, the two children admitted that they had lied and asked if Child 1 was “going to jail.” To try to determine whether the children’s claims were truthful, relators drove to the park where the alleged

sexual contact happened. Each foster parent took one boy to a different part of the park and tried to make sense of what the boys had told their friends. After doing so, relators became convinced that Child 1 could not have engaged in the alleged sexual contact with his siblings. Foster mother obtained a satellite image of the park and annotated the image with features of the children's claims, and she emailed the county investigator with the image to explain that she did not believe the claimed sexual contact occurred.

After the incident at the park, tensions between relators and the county reached a breaking point. The county investigator was troubled by foster mother's email and believed that she had violated the county's directives not to have access to the children and not to discuss the sexual-contact claims with the children. The third deputy and foster mother had a heated phone conversation about the incident at the park. During a teleconference to discuss the support that foster father might need in caring for the children, county officials suggested that the children might need additional hours of therapy. According to the county investigator, foster mother was cool to the idea of additional therapy because the children already had significant time commitments for therapy, and she said that "having to sit at therapy for three hours [was] torture." Foster mother, however, denied making this remark and said that Child 1 had called it "torture" and that the children did not like sitting in a waiting room for hours during each other's therapy sessions.

On July 31, 2019, the county investigator emailed the Clay County officials in charge of the foster-care placement and encouraged them to remove the children from the home and to find a third adoptive placement. The county investigator believed that relators

were exaggerating the children's mental and medical needs because "it does not appear as though they are as high need as [relators] make them out to be." The county investigator wrote that the county did not believe that relators were qualified to provide foster-care services and that it did "not feel as though this is a safe or healthy environment for the[] children."

Shortly after the county investigator's email, the children's foster-care-placement agency formally recommended that DHS revoke relators' child-foster-care license. On August 10, 2019, the three children were removed from relators' home.

On October 8, 2019, DHS issued an order revoking relators' child-foster-care license. The primary reason for the license revocation was foster mother's disqualification for serious maltreatment. DHS also determined that license revocation was appropriate because relators failed to comply with various DHS licensing rules. The revocation order listed the rules that DHS determined relators had violated. First, DHS determined that relators violated Minnesota Rule 2960.3060, subpart 4(I) (2021), because relators "failed to deal with anger, sorrow, frustration, conflict, and other emotions in a manner that would build positive interpersonal relationships," based on relators "repeatedly describ[ing] the foster children . . . as manipulative, lying, and raging." Next, DHS determined that relators violated Minnesota Rule 2960.3060, subpart 4(J) (2021), which required them to comply with the foster children's care plan and to work within agency and state policies. This violation was based on foster father reporting that he felt unsafe around the children, foster mother saying that waiting while the children had three hours of therapy was "torture," and relators taking the children to the park to discuss the allegations of sexual contact against

Child 1. Finally, DHS determined that foster mother violated Minnesota Rule 2960.3080, subpart 8 (2021), which prohibits corporal punishment of a child, based on the maltreatment determination against her. The next day, DHS denied relators' request to set aside its earlier disqualification of foster mother, determining that she failed to prove that she did not pose a risk of harm to foster children.

Relators administratively appealed the maltreatment determination, the disqualification, and the license revocation. While the matter was pending before the agency, the children's GAL wrote to relators saying that she believed that it was in the children's best interests not to return the children to relators' home for adoption and placement. The GAL explained she reached that opinion because of how long it was taking to appeal the maltreatment determination, the uncertainty about whether the maltreatment determination would be overturned, and that "[t]here is no way to determine when or if you will be able to have the children in your home." The children were eventually separated and placed in different foster-care homes.

The ALJ's Recommendation and the Commissioner's Decision

The ALJ held a contested-case hearing over three days. After the hearing, the ALJ issued his findings of fact, conclusions of law, and recommendation. The commissioner then reviewed the ALJ's recommendation and issued her final order.

The ALJ determined that DHS failed to establish that foster mother physically abused Child 2 as defined in Minn. Stat. § 260E.03, subd. 18.⁸ The ALJ stated that the

⁸ The definition of "physical abuse" was previously codified at Minn. Stat. § 626.556, subd. 2(k) (2018), and the ALJ's recommendation and the commissioner's order cite that

case “reveal[ed] the very real dangers of confirmation bias.” The ALJ found that the county had “cherry-picked” the evidence and clung to its initial belief that foster mother had caused Child 2’s bruise, despite evidence to the contrary. As contrary evidence, the ALJ cited Child 2’s differing accounts of the injury, the conflicting accounts of other family members, and the medical opinion of the doctor that the bruise was caused by a pinch rather than a slap.⁹ The ALJ reasoned that the county’s case was “side-stepping an inconvenient truth”—“that the eyewitness accounts of the car ride, and the medical evidence of [Child 2’s] injuries, do not match.”

Based on the determination that the county had failed to show that foster mother was responsible for Child 2’s injury, the ALJ concluded that DHS also failed to show serious maltreatment by mother, as defined by Minn. Stat. § 245C.02, subd. 18 (2020). As a result, the ALJ recommended that the commissioner vacate the maltreatment determination against foster mother and rescind her disqualification. The ALJ also determined that the licensing-rule violations were “doubtful.” The ALJ concluded that DHS could not sanction relators for violating Minnesota Rule 2960.3060 because that provision, by its plain language, applied only to prospective foster parents during their

provision. As part of the 2020 statutory amendments, much of section 626.556 was moved to chapter 260E. *See* 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, §§ 3, at 199; 39, at 234. We cite the current version of the statute.

⁹ Before the evidentiary hearing, the doctor was served with a subpoena seeking records of his review of Child 2’s injuries. The doctor did not comply with the subpoena, but the county later sought to offer into evidence an affidavit from the doctor explaining his conclusions. The ALJ excluded the doctor’s affidavit because of his failure to comply with the subpoena. The doctor’s affidavit is not part of the administrative record.

initial application and home study, not throughout foster parents' license period. Thus, the ALJ recommended that the commissioner vacate the order of license revocation.

The commissioner adopted almost all the ALJ's factual findings. The commissioner adopted in full the ALJ's first 52 findings, which included all relevant findings about the circumstances of Child 2's injury and the county's maltreatment investigation. These included findings about the county investigator's and the deputies' methods of investigating the injury and interviewing the family members, the children's conflicting accounts of how the bruise happened, and foster parents' alternative theories. The commissioner modified several of the ALJ's findings about the county's investigation of the sexual-contact allegations against Child 1 and the circumstances prompting the children's removal from relatives' home. The commissioner made additional findings that county officials specifically told foster parents not to discuss the sexual-contact allegations with the children and that foster parents expressed concerns to the county about the children's "lying, manipulating, and raging." Despite agreeing with most of the ALJ's factual findings, the commissioner reached the opposite determination about maltreatment and disagreed with the ALJ's recommendations.

As for Child 2's bruising, the commissioner stated in her analysis that foster mother "does not deny that she caused the injury to [Child 2]; she claims that she did so accidentally." The commissioner rejected foster mother's explanation that she accidentally touched Child 2's face in an attempt to get him out of the car, deeming her account of the incident not credible. Instead, the commissioner determined that "the weight of the credible evidence is that [foster mother] reached for [Child 2's] arm in a manner that was

not controlled, reasonable, or moderate physical discipline, and that [foster mother's] actions resulted in injury to the child.” Thus, the commissioner concluded that foster mother physically abused Child 2 and that her conduct was not accidental. In reaching this conclusion, the commissioner did not address the ALJ's concerns about confirmation bias or relators' proposed possibilities of alternative sources of the injury. The commissioner determined that foster mother's conduct constituted serious maltreatment, and she affirmed the maltreatment determination and the disqualification of foster mother. The commissioner also considered whether to set aside the disqualification but declined to do so.

Finally, the commissioner affirmed the revocation of relators' child-foster-care license, based on both the disqualification of foster mother and relators' violations of licensing rules. The commissioner disagreed with the ALJ's determination that the licensing rules did not apply to relators and noted that DHS regularly applied the rules throughout licenseholders' duration of their service as providers. The commissioner concluded that relators violated the licensing rules by failing to deal with their frustration with the foster children's needs, by failing to work within agency and state policies, and by committing corporal punishment. For these reasons, the commissioner determined that revocation of relators' child-foster-care license was appropriate.

Relators requested reconsideration of the commissioner's decision, which the commissioner denied. Relators appeal to this court by certiorari.

ISSUES

- I. Is the commissioner’s maltreatment determination supported by substantial evidence and not arbitrary or capricious?
- II. Did the commissioner err by disqualifying foster mother for serious maltreatment?
- III. Is the commissioner’s decision to revoke foster parents’ child-foster-care license based on foster mother’s disqualification and the licensing-rule violations legally correct, supported by substantial evidence, and not arbitrary or capricious?

ANALYSIS

Our review of the decisions of an administrative agency following a contested-case hearing is governed by the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2020). *See* Minn. Stat. § 14.63. “Agency decisions enjoy a presumption of correctness and warrant deference by courts.” *Kind Heart Daycare, Inc. v. Comm’r of Hum. Servs.*, 905 N.W.2d 1, 9 (Minn. 2017) (quotation omitted). An appellate court may reverse or modify an agency’s decision if the appealing party’s substantial rights are prejudiced because the decision is (a) unconstitutional, (b) in excess of the agency’s statutory authority or jurisdiction, (c) based on unlawful procedure, (d) affected by an error of law, (e) unsupported by substantial evidence in the record, or (f) arbitrary or capricious. Minn. Stat. § 14.69. We review legal questions, including the interpretation of statutes and administrative rules, *de novo*. *In re Restorff*, 932 N.W.2d 12, 18 (Minn. 2019); *see also St. Otto’s Home v. Minn. Dep’t of Hum. Servs.*, 437 N.W.2d 35, 39-40 (Minn. 1989).

The supreme court has defined the substantial-evidence standard as “such evidence that a reasonable person would accept as adequate to support a conclusion.” *Restorff*, 932 N.W.2d at 21 (quotation omitted). The standard requires “more than a scintilla of evidence,

more than ‘some’ evidence, and more than ‘any’ evidence.” *Webster v. Hennepin County*, 910 N.W.2d 420, 428 (Minn. 2018). The substantial-evidence standard reflects the principle that this court examines “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *In re NorthMet Project Permit*, 959 N.W.2d 731, 749 (Minn. 2021).

An agency’s decision is arbitrary or capricious if it “represents the agency’s will and not its judgment.” *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020). In determining whether an agency’s decision is arbitrary or capricious, we consider whether the agency’s decision

- (a) relied on factors not intended by the legislature;
- (b) entirely failed to consider an important aspect of the problem;
- (c) offered an explanation that runs counter to the evidence; or
- (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of Comm’rs, 713 N.W.2d 817, 832 (Minn. 2006).

Relators challenge these three aspects of the commissioner’s decision: (1) the maltreatment determination against foster mother; (2) the disqualification of foster mother; and (3) the revocation of the child-foster-care license for both foster parents. We address each determination in turn.

I. The commissioner’s maltreatment determination is not supported by substantial evidence in the record and is arbitrary or capricious.

We first address the maltreatment determination against foster mother. The commissioner’s maltreatment decision was based on the determination that foster mother was responsible for maltreatment by physical abuse.

Minnesota statute defines “physical abuse” as “any physical injury . . . inflicted by a person responsible for the child’s care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child’s history of injuries.” Minn. Stat. § 260E.03, subd. 18(a). Physical abuse is a form of maltreatment. *Id.*, subd. 12(3). Maltreatment that constitutes “abuse resulting in serious injury,” including bruises, is considered “serious maltreatment.” Minn. Stat. § 245C.02, subd. 18(a), (c) (2020). If DHS determines that an individual committed serious maltreatment, the individual is subject to various sanctions, including disqualification and revocation of their license. *See* Minn. Stat. §§ 245C.15, subd. 4(b)(2) (requiring disqualification of individual determined to have committed serious maltreatment), 245A.07, subd. 3(a)(5), .04, subd. 7(d) (requiring license revocation when individual has been disqualified) (2020). Under agency rules, DHS had the burden to show that foster mother was responsible for serious maltreatment before taking action against her. *See* Minn. R. 1400.7300, subp. 5 (2021) (providing that “[t]he party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence”).

Relators argue that the maltreatment determination was not supported by substantial evidence and was arbitrary or capricious because the commissioner failed to address

contradictory evidence in the record and failed to explain why she departed from the ALJ's conclusions of law and related recommendations. The commissioner is "not required to treat the ALJ's recommendation with the same deference an appellate court must accord the findings of a trial court." *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 274 (Minn. 2001). "Rejection of the ALJ's recommendations without explanation however, may suggest that the agency exercised its will rather than its judgment and was therefore arbitrary and capricious." *Id.* at 278. The commissioner must articulate a "rational connection between the facts found and the choice made." *Id.* at 277 (quotation omitted). And when an agency's findings on witness credibility differ from those of the ALJ, we review the agency decision more critically. *In re Occupational License of Hutchinson*, 440 N.W.2d 171, 176 (Minn. App. 1989), *rev. denied* (Minn. Aug. 9, 1989).

While recognizing that the commissioner was not bound by the ALJ's recommendation about maltreatment, we conclude that the commissioner's decision did not adequately explain how she reached her determination that foster mother maltreated the child. The commissioner adopted all the ALJ's findings about the circumstances of Child 2's injury. Despite adopting these same findings, the commissioner reached the opposite determination as the ALJ and determined that foster mother caused the child's bruise. The commissioner did not explain the reasons for disregarding the ALJ's conclusion that DHS failed to show that foster mother was responsible for serious maltreatment. Nor did the commissioner try to reconcile her conclusion with the ALJ's concerns about confirmation bias, the conflicting accounts of the injury among the family

members, and the doctor's medical opinion that the bruise was likely caused by a pinch rather than a slap.

Moreover, the commissioner's analysis of the issue is marred by a fundamental misstatement about the parties' positions. The commissioner inaccurately stated that foster mother "does not deny that she caused the injury to [Child 2]; she claims that she did so accidentally." The record contradicts this statement. The commissioner correctly noted that foster mother did not deny that the incident in the car happened; she indeed acknowledged that her hand made contact with the child's face after she discovered he had wet his pants and she was trying to get him out of the car. But foster mother's statement in this respect did not amount to a concession that her conduct during that incident was what caused the child's bruise. Instead, foster mother was open to that idea as one of several possibilities as the source of the bruising. Throughout their filings to the ALJ and the commissioner, relators maintained that mother did not cause the bruise and cited other possible causes. The commissioner's decision assumed that the incident in the car was the cause of the child's injury but did not identify a definitive basis for reaching that conclusion. By incorrectly stating that relators had essentially conceded this issue, the commissioner circumvented an entire area of analysis and skipped over an important area of contention among the parties.

Because of the commissioner's rejection of the ALJ's recommendation without explanation, as well as the failure to consider other possible causes of the bruise based on an inaccurate determination that relators had conceded the issue, we conclude that the commissioner's decision that foster mother physically abused Child 2 was arbitrary or

capricious. The supreme court has recognized that these types of deficiencies in an agency decisionmaker's analysis may show that a decision was arbitrary or capricious. *See Citizens Advocating Responsible Dev.*, 713 N.W.2d at 832 (noting one way that an agency acts arbitrarily or capriciously is by failing to consider an important aspect of the problem); *Excess Surplus Status*, 624 N.W.2d at 274 (providing that "[r]ejection of the ALJ's recommendations without explanation" may show the exercise of an agency's will rather than its judgment). The commissioner's analysis is further troubling because the ALJ appears to have implicitly found foster mother's version of events credible, while the commissioner found her account not credible. The ALJ, not the commissioner, sat through the three-day evidentiary hearing and had the chance to evaluate the witnesses' credibility. While the commissioner was not bound by the ALJ's credibility determinations, the commissioner's decision failed to explain the bases for rejecting the ALJ's determinations on witness credibility.

Based on these deficiencies in the commissioner's analysis, we are not satisfied that the commissioner's decision establishes a "rational connection" between the findings of fact and the conclusion that foster mother was responsible for Child 2's bruise. *See Excess Surplus Status*, 624 N.W.2d at 277. In light of the record as a whole, the commissioner's determination that foster mother committed physical abuse against Child 2 is not supported by substantial evidence and is arbitrary or capricious. We therefore reverse the maltreatment determination against foster mother.

II. The commissioner’s disqualification of foster mother based on the determination of serious maltreatment is reversible error.

Relators also challenge the commissioner’s disqualification of foster mother from providing direct contact with persons served by the DHS-licensed child-foster-care program. The commissioner must disqualify an individual for seven years from any position allowing direct contact with persons receiving licensed services if there is a determination that the individual committed “substantiated serious or recurring maltreatment of a minor.” Minn. Stat. § 245C.14, subd. 1(a)(3), .15, subd. 4(b)(2) (2020). The disqualification of foster mother was based on the commissioner’s determination that foster mother committed serious maltreatment. Because we reverse the maltreatment determination against foster mother, we also reverse the disqualification.¹⁰

III. The bases for the revocation of relators’ foster-care license are legally erroneous, not supported by substantial evidence in the record, and arbitrary or capricious.

Finally, we address the commissioner’s revocation of relators’ child-foster-care license. The commissioner must revoke a license if the licenseholder has been disqualified and the disqualification was not set aside. Minn. Stat. §§ 245A.07, subd. 3(a)(5), .04, subd. 7(d). Because we reverse the commissioner’s disqualification of foster mother, the license revocation cannot be affirmed based on the disqualification.

DHS argues that the license revocation can be independently sustained based on relators’ violations of licensing rules. The commissioner may revoke a license if the

¹⁰ Relators also challenge the commissioner’s decision not to set aside the disqualification of foster mother. Given our decision, we need not address this alternative argument.

licenseholder “fails to comply fully with applicable laws or rules” governing DHS licensing. Minn. Stat. § 245A.07, subd. 3(a)(1) (2020). When imposing sanctions on licenseholders, the commissioner must “consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.” *Id.*, subd. 1(a) (2020). The commissioner’s decision cited three provisions that relators failed to comply with: two provisions under Minnesota Rule 2960.3060, subpart 4, and one provision of Minnesota Rule 2960.3080, subpart 8.

As a threshold question, we address the applicability of some of these provisions to relators’ situation. The ALJ reasoned that DHS could not sanction relators for violating Minnesota Rule 2960.3060 because that provision applies only to applicants at the time of the initial application and home study, not during the license period. The commissioner disagreed with this interpretation and reasoned that DHS routinely applies the rule to licenseholders throughout the duration of their license period. We observe that the plain language of the rule appears to support the ALJ’s interpretation. Rule 2960.3060 refers to the duties of prospective licenseholders, and it lists requirements that an applicant “must demonstrate the ability” to do during a home study. Minn. R. 2960.3060, subp. 4 (2021). Rule 2960.3080, on the other hand, governs the requirements that licenseholders must comply with during the placement. We therefore question why DHS chose to impose sanctions under the rule that applies to home study applicants and not under the rule that applies to licenseholders during the license period.

We need not decide whether rule 2960.3060 applies to all licenseholders because we conclude that, under the circumstances of this case, the rule applied to relators. The

rule imposes requirements that “[t]he applicant” must demonstrate. Minn. R. 2960.3060, subp. 4. And the definition of “applicant” includes “a current license holder who is seeking relicensure or recertification.” Minn. R. 2960.3010, subp. 2 (2021). The record shows, and relators acknowledge in their brief, that they were in the process of having their home study updated in July 2019. Thus, relators were “applicants” who were seeking an update of the home study and rule 2960.3060 applied to them.

We now address each of the three licensing rules that the commissioner determined relators violated.

A. Rule 2960.3060, subp. 4(I)—failure to deal with frustration and emotions

An applicant must show the ability to “deal with anger, sorrow, frustration, conflict, and other emotions in a manner that will build positive interpersonal relationships rather than in a way that could be emotionally or physically destructive to other persons.” Minn. R. 2960.3060, subp. 4(I). The commissioner determined that relators violated this rule because they “failed to successfully and appropriately process their frustrations.” As the basis for this rule violation, the DHS order of license revocation cited the fact that relators “repeatedly described the foster children . . . as manipulative, lying, and raging.”

We conclude that relators’ conduct does not violate this rule. While relators did call the children “manipulative,” “lying,” and “raging,” the record shows that they used those terms because they learned the terms from therapists as ways to describe the boys’ behavior. There are no allegations that foster parents made disparaging remarks to the children; instead, they directed their frustrations at county officials in the context of discussing the children’s behavioral problems. Foster parents’ verbal expressions of

frustration to county officials with the children’s problematic behaviors do not show an inability to deal with their emotions in a positive way. Nor does the record support that relators could not appropriately respond to the children’s emotional needs. A psychologist who evaluated the children and had worked with relators wrote that relators were “tuned into” the children’s emotional, social, psychological, physical, and behavioral needs, and that they eagerly pursued treatment recommendations. Because the evidence of relators’ conduct is insufficient to show that they violated subpart 4(I), the commissioner cannot sanction relators under this rule.

B. Rule 2960.3060, subp. 4(C) & (J)—inability to comply with agency and state policies and foster children’s care plan

Applicants are required to “work within agency and state policies” and to “demonstrate an ability to comply with the foster child’s care plan.” Minn. R. 2960.3060, subp. 4(C), (J). The commissioner reasoned that relators violated these provisions when they took the children to the park to question them about the alleged sexual contact by Child 1, after county officials told relators not to discuss the allegations with the children.

We conclude that the record does not support the commissioner’s determination that relators’ conduct showed an inability to comply with agency and state policies or the children’s care plan. This violation depends solely on the commissioner’s finding that the *county deputy* directed relators not to discuss the sexual-contact allegations with the children. Neither DHS nor the commissioner’s order explains which “agency” or “state” policies apply to the deputy’s direction on this matter. And the record does not show that the deputy’s directive on this point was a part of the foster children’s “care plan.” Because

DHS has not shown a connection between relators' conduct and any policy of the agency, state, or care plan, there is insufficient evidence in the record to show that relators violated this provision.¹¹

C. Rule 2960.3080, subp. 8(A)—corporal punishment

Licenseholders are prohibited from using corporal punishment against a child. Minn. R. 2960.3080, subp. 8(A). The commissioner determined that foster mother violated this rule, based on the finding that she physically abused the child. Given our reversal of the maltreatment determination against foster mother, we similarly conclude that the license revocation cannot be based on the alleged use of corporal punishment.

D. Consideration of the severity of the violations

In sum, we conclude that the commissioner's findings do not support a determination that foster parents violated any of the licensing rules under which they were sanctioned. We also observe that, when imposing sanctions on licenseholders, the commissioner must "consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program." Minn. Stat. § 245A.07, subd. 1(a) (2020); *see also In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. App. 2003) (recognizing that

¹¹ The revocation order also stated that relators violated subpart 4(C) and (J) because foster father told county officials that he felt unsafe around the children and foster mother allegedly commented that it was "torture" to wait during the children's three hours of therapy. It is unclear whether the commissioner relied on these bases in determining that relators violated this rule. To the extent that DHS relies on these bases on appeal, they are insufficient to show a violation of these provisions. We do not see how relators violated any particular state or agency policy, or any provision of the children's care plan, by expressing these concerns to the county.

the severity of an agency's sanction "must reflect the seriousness of the violation"). Even if we were to conclude that the evidence supported the commissioner's determinations that relators violated any of these licensing rules, the violations are not so serious that license revocation would be an appropriate sanction.

Because the revocation of relators' child-foster-care license cannot be sustained based on either the disqualification of foster mother or the alleged licensing-rule violations, we reverse the license revocation.

IV. Conclusion

Finally, we take this opportunity to express our concerns about the county's and DHS's maltreatment investigation. The overarching principle in juvenile-protection proceedings, including adoptive placements, is the best interests of the children. *See* Minn. Stat. §§ 259.29, subd. 1(a) ("The policy of the state of Minnesota is to ensure that the best interests of the child are met by requiring individualized determination of the needs of the child and of how the adoptive placement will serve the needs of the child."), 260C.001, subd. 2(a) ("The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child."), .193, subd. 3(a) (providing that "[t]he policy of the state is to ensure that the best interests of children in foster care" are met), .212, subd. 2 (listing factors for the agency to consider to further the state's policy "to ensure that the child's best interests are met") (2020).

For as long as the children were in relators' care during the investigation, the children's GAL and the Clay County officials in charge of the children's adoptive placement consistently supported the children's placement with relators. The GAL and

Clay County officials had worked with the children since they were removed from their parents' care and placed in the care of the commissioner. During their first few years in the foster-care system, each child had been through at least eight different placements, including a failed adoptive placement. The GAL and Clay County officials were most familiar with the children's needs.

When the county began its maltreatment investigation, the children had been in relators' care for more than one year and were preparing for an adoptive placement. The children were excited about being adopted by relators. The GAL and Clay County officials wrote to the county to say that they never had any concerns about the children's care in relators' home and fully endorsed the children remaining in that placement. Only after the county's investigation dragged on and it became unclear whether or when the children could return, did the GAL and Clay County officials eventually support the county's decision not to return the children to relators' care. After the children were removed from relators' home, they were separated and placed in different foster homes.

On this record and given the children's experience in the foster-care system, we agree with the assessment of the GAL that relators' home was the best fit for all three children. And, while we recognize that the county and DHS undertook the maltreatment investigation because of a concern for the safety of the children, we question whether the actions of the county or DHS during these proceedings served the best interests of these children.¹²

¹² Nothing in this opinion is meant to suggest that we believe that the county officials or DHS acted in bad faith or with an intent to harm the children.

For the reasons explained above, we conclude that the commissioner's decision must be reversed.

DECISION

The commissioner's maltreatment determination was not supported by substantial evidence and was arbitrary or capricious. Because the disqualification of foster mother was based on the maltreatment determination, we reverse the disqualification. We likewise reverse the license revocation to the extent that it was based on the disqualification. We also conclude that the licensing-rule violations against foster parents are not supported by the evidence and do not support the sanction of license revocation. For these reasons, we reverse the commissioner's decision in all respects.

Reversed.