STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1478

Kadiatu Jeneba Kamara,
Relator,

vs.

Commissioner of Human Services,
Respondent.

Filed April 26, 2011
Affirmed
Connolly, Judge

Minnesota Department of Human Services
File No. 1030773 R203

Kadiatu Jeneba Kamara, Coon Rapids, Minnesota (pro se relator)

Lori Swanson, Attorney General, Matthew D. Schwandt, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Relator, pro se, challenges respondent commissioner's refusal to set aside her disqualification from positions providing direct-contact services. Because the

commissioner did not err in making the underlying determination that relator failed to prove she does not pose a risk of harm, we affirm.

FACTS

In April 2005, a disabled adult resident of a care facility fractured her ankle when relator Kadiatu Kamara, a caregiver in the facility, attempted to transfer the resident by herself instead of getting help from another staff member as mandated by the resident's care plan. In connection with this incident, a Minnesota Department of Health (MDH) investigator visited the facility. The investigator's report, concluding that abuse of the resident resulted from relator's neglect, was sent to the Minnesota Department of Human Services (MDHS). Relator was disqualified from any position involving contact with or access to persons receiving services from facilities licensed by MDHS and MDH.

Relator requested a hearing, and one was scheduled before an MDHS judge. After the hearing, the MDHS judge recommended upholding the determination of relator's neglect. An order was issued, generally adopting the recommendation and the findings of fact and conclusions of law on which it was based and concurring that the MDHS had shown by a preponderance of the evidence that relator neglected a vulnerable adult. In August 2006, relator requested reconsideration, but in October, she withdrew her request by phone, and the MDHS judge issued a notice that relator's file was closed.

In July 2007, relator received a letter from the MDHS judge telling her that her request for reconsideration had been misplaced and delayed because her previous appeal was in offsite storage; that her request was denied because it arrived more than 30 days

after the appeal was completed and the file was closed; and that the file showed MDH had set aside relator's disqualification, so there was no adverse action for her to oppose.

Between November 2007 and September 2008, RelieveCare, a care facility where relator was then employed, received three notices from the Anoka County Human Services Division stating that, based on a completed background study, relator was not disqualified from providing direct-contact services and could do so for RelieveCare.

But, in November 2008, relator was again notified that, as the result of an MDHS background study, she was disqualified from providing direct-contact services, and in May 2009, she was notified that this disqualification had not been set aside. In April 2010, a letter from the MDHS informed relator that RelieveCare had requested a background study on her, that she had a disqualification from a previous background study which had not been set aside, and that she could again request reconsideration. Because of her disqualification, RelieveCare received an "Order For Immediate Removal" of relator from any position allowing direct contact with, or access to, persons receiving services. RelieveCare objected to the order, and relator requested reconsideration.

In July 2010, she received a letter from the MDHS informing her that, because she had withdrawn her appeal in 2006, her disqualification was conclusive, and that it had not been set aside because relator had failed to prove that she does not pose a risk of harm. That determination was based on three reasons: the vulnerability of those to whom relator wanted to provide services, their similarity to relator's victim, and the fact that only five of the seven years for which the disqualification was imposed had passed. *See* Minn.

Stat. § 245C.15, subd. 4(b)(2) (2010) (providing that an individual is disqualified "if less than seven years has passed since a determination or disposition of the individual's . . . substantiated serious . . . maltreatment of . . . a vulnerable adult . . . .").

By writ of certiorari, relator challenges the refusal to set aside her disqualification.

D E C I S I O N

"An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence or arbitrary and capricious." *Carter v. Olmsted Cnty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). We discern no basis to reverse the MDHS's denial of relator's request to set aside her disqualification.

Nine items are to be considered in determining the merits of a request to set aside a disqualification. Minn. Stat. § 245C.22, subd. 4(b) (2010). These are listed and rated as "lower risk", "medium risk", or "higher risk" on the "Risk Of Harm Assessment – Reconsideration of Disqualification" form. Substantial evidence supports the determination that relator failed to prove she does not pose a risk of harm.

On the first item, "the nature, severity, and consequences of the event or events that led to the disqualification[,]" Minn. Stat. § 245C.22, subd. 4(b)(1), relator was rated as presenting a medium risk because her conduct met the "unintentional, neglectful" description of that risk and caused "short-term damage" to the victim. Relator concedes that the conduct occurred, that it was an accident, and that the victim suffered physical and psychological pain as a result.

On the second item, "whether there is more than one disqualifying event[,]" Minn. Stat. § 245C.22, subd. 4(b)(2), the rating was lower risk: this accords with the fact that one single incident led to relator's disqualification.

On the third item, "the age and vulnerability of the victim at the time of the event[,]" Minn. Stat. § 245C.22, subd. 4(b)(3), the rating was higher risk. The descriptive phrase here is "very vulnerable, i.e., child, disabled," and relator concedes that her victim was physically disabled in a number of ways.

On the fourth item, "the harm suffered by the victim[,]" Minn. Stat. § 245C.22, subd. 4(b)(4), the rating was medium risk. The victim's ankle was broken as a result of the incident, and relator admits that the victim suffered considerable pain.

On the fifth item, "vulnerability of persons served by the program[,]" Minn. Stat. § 245C.22, subd. 4(b)(5), the rating was "higher risk." The descriptive phrase here also is "very vulnerable, i.e., child, disabled." At RelieveCare, relator served "mental Health and TBI client[s,]" who would also be vulnerable.

On the sixth item, "the similarity between the victim and persons served by the program[,]" Minn. Stat. § 245C.22, subd. 4(b)(6), the rating was higher risk because relator's victim was "very similar" to the clients at RelieveCare. Nothing refutes this rating.

On the seventh item, "the time elapsed without a repeat of the same or similar event[,]" Minn. Stat. § 245C.22, subd. 4(b)(7), the rating was "medium risk," which is defined as four to seven years.

On the eighth item, "documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event[,]" Minn. Stat. § 245C.22, subd. 4(b)(8), the rating was "lower risk," reflecting the fact that relator has completed further training in handling disabled adults.

On the ninth item, "any other information relevant to reconsideration[,]" Minn. Stat. § 245C.22, subd. 4(b)(9), the comment was that "MDH set aside [relator's disqualification] several times, but DHS did not set [it] aside in 2009." No explanation was provided for this apparent anomaly, and the comment may be a reference to the Anoka County notices that relator was not disqualified.

The form also provides two factors not listed among the statutory items. Factor 10 assesses the number of years an individual has been employed in health/human services; on this, relator received the "medium risk" rating given to those with two to five years of employment. Finally, factor 11 is "insight since event"; here, relator was rated "lower risk" because she "accepts responsibility" for the incident.

Thus, for the 11 factors for which a risk assessment was made, relator was given three "lower risk" evaluations, five "medium risk" evaluations, and three "higher risk" evaluations. The determination that her disqualification would not be set aside was not outside the agency's jurisdiction, unconstitutional, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious. *See Carter*, 574 N.W.2d at 729.

Affirmed.