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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-12**

Amina Abdullahi Mohamed,
Relator,

vs.

Commissioner of Health,
Respondent.

**Filed July 11, 2011
Affirmed
Willis, Judge***

Minnesota Department of Health
Health Facility ID: 900170; Background Study ID: 22320775

Amina Abdullahi Mohamed, Roseville, Minnesota (pro se relator)

Lori Swanson, Attorney General, Gina D. Jensen, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and
Willis, Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Pro se relator Amina Mohamed requests that the criminal conviction disqualifying her from providing direct-contact, dental-hygienist services be expunged from her record. Because this is not an expungement proceeding and because the commissioner's decision not to set aside Mohamed's disqualification is supported by substantial evidence and is not arbitrary or capricious, we affirm.

FACTS

Amina Mohamed enrolled in a Normandale Community College program to become a dental hygienist. In anticipation of Mohamed working with patients at Normandale's dental clinic beginning in January 2010, Normandale submitted a routine request that the Department of Human Services conduct a background study on Mohamed. The background study showed that in March 2007, Mohamed was convicted of felony second-degree assault and that in August 2009 she had been discharged from probation and the offense was reduced to a misdemeanor. Mohamed's conviction was the result of a physical altercation that occurred in September 2006 in which Mohamed broke a glass bottle and shoved the broken end of the bottle into the victim's face.

As a result of the conviction, the commissioner disqualified Mohamed from "any position allowing direct contact with, or access to, persons receiving services from programs licensed by the Department of Human Services and the Minnesota Department of Health." The disqualification is effective for seven years from the date of Mohamed's discharge from probation, which occurred on August 5, 2009. *See* Minn. Stat. § 245C.15,

subd. 4(a) (2010). In August 2010, after the department told Mohamed of her disqualification, she requested reconsideration. She asked that the commissioner set aside her disqualification.

In determining whether to set aside the disqualification, the commissioner considered the nine statutory factors identified in Minnesota Statutes section 245C.22, subdivision 4. The commissioner denied Mohamed's request for a set-aside, concluding that Mohamed poses "a risk of harm to clients served by the [Normandale] facility or program." The department sent a letter to Normandale stating that it "may not allow [Mohamed] to have direct contact or access to persons served by your program."

On appeal, Mohamed requests that this court expunge the underlying conviction from her record.

D E C I S I O N

I. Mohamed's expungement request is not properly before this court.

Mohamed requests that this court expunge the second-degree assault conviction from her record so that she may become a dental hygienist. Expungement proceedings, however, are properly initiated in the district court. *See* Minn. Stat. § 609A.03 (2010) (providing procedure for filing expungement petition in district court). Mohamed did not file an expungement petition in the district court. District courts have both statutory and inherent powers to grant expungement. *State v. L.W.J.*, 717 N.W.2d 451, 455 (Minn. App. 2006). But Mohamed cites no authority for an appellate court to consider expungement without a petition first having been filed in the district court.

The issues raised by Mohamed's request for inherent-authority expungement require district court findings; therefore, this court will not consider her expungement request for the first time on appeal. *See State v. M.L.A.*, 785 N.W.2d 763, 768 (Minn. App. 2010) (declining to consider statutory expungement issue for first time on appeal), *review denied* (Minn. Sept. 21, 2010); *State v. H.A.*, 716 N.W.2d 360, 364 (Minn. App. 2006) (stating that inherent-authority expungement could not be reviewed on appeal without district court findings and determinations on balancing-test factors). We note also that, in any event, there is no authority to expunge Mohamed's criminal record in order to assist her with her employment goal. *See State v. S.L.H.*, 755 N.W.2d 271, 277-78 (Minn. 2008) (holding that judiciary lacks authority to expunge criminal record held outside of judicial branch without allegation of constitutional violation solely to allow petitioner to reach an employment goal).

II. The commissioner's refusal to set aside Mohamed's disqualification is supported by substantial evidence and is not arbitrary or capricious.

Although Mohamed has not explicitly challenged the basis for the commissioner's denial of a set-aside, in the interests of justice and completeness, we will review the commissioner's decision. This court will sustain an agency's decision if it is supported by substantial evidence and is not arbitrary or capricious. Minn. Stat. § 14.69(e), (f) (2010). Judicial review presumes the correctness of an agency decision. *In re Excess Surplus Status of Blue Cross and Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). A petitioner bears the burden of proving that a decision was improperly reached. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 849 (Minn. 1984).

The commissioner must “disqualify an individual who is the subject of a background study from any position allowing direct contact with persons receiving services from the license holder or entity” if the individual has been convicted of one or more crimes identified in section 245C.15. Minn. Stat. § 245C.14, subd. 1(a) (2010). A conviction of felony assault in the second degree is a disqualifying crime requiring a seven-year disqualification period. Minn. Stat. § 245C.15, subd. 4. The statute does not except felony convictions that are subsequently reduced to misdemeanor-level offenses after probation. The commissioner may set aside a disqualification upon a request for reconsideration “if the commissioner finds that the individual has submitted sufficient information to demonstrate that the individual does not pose a risk of harm to any person served by the applicant, license holder, or other entities.” Minn. Stat. § 245C.22, subd. 4(a) (2010). “In reviewing a request for reconsideration of a disqualification, the commissioner shall give preeminent weight to the safety of each person served by the license holder.” Minn. Stat. § 245C.22, subd. 3 (2010).

The burden of proof is on the individual to prove that she does not pose a risk of harm. *See Sweet v. Comm’r Human Servs.*, 702 N.W.2d 314, 318-19 (Minn. App. 2005), *review denied* (Minn. Nov. 15, 2005). In determining whether an individual has satisfied the burden of proof, the commissioner considers nine statutory factors. Minn. Stat. § 245C.22, subd. 4(b) (2010) (identifying the nine factors). Any single factor may be determinative of the commissioner’s decision whether to set aside the disqualification. Minn. Stat. § 245C.22, subd. 3 (2010). After considering each statutory factor, the

commissioner here concluded that Mohamed poses a risk of harm to clients served by the licensed program and denied her request for a set-aside.

One statutory factor for the commissioner to consider is the nature, severity, and consequences of the disqualifying act. Minn. Stat. § 245C.22, subd. 4(b)(1). The commissioner found that the disqualifying event was an “[i]ntentional,” “overt act” with “harm likely.” In support of this conclusion, the commissioner noted that Mohamed was disqualified because of a conviction of second-degree assault that was later reduced to a misdemeanor, that Mohamed was in a physical altercation with her former roommate, and that she “broke a glass bottle and stabbed the victim in the face with the broken end of the bottle.” The commissioner’s conclusion is supported by the record. It is undisputed that Mohamed was convicted of felony second-degree assault and that the conviction was reduced to a misdemeanor after she completed probation. And the police report relating to the incident states that Mohamed broke a glass bottle and shoved the broken end of the bottle into the victim’s face, causing a large laceration on the left side of the victim’s face. It was reasonable for the commissioner to conclude that Mohamed’s actions were “[i]ntentional,” “overt,” and likely to cause harm.

Another statutory factor for the commissioner to consider in determining whether an individual has satisfied the burden of proving that she does not pose a risk of harm is whether there is documentation of successfully completed rehabilitation relating to the disqualifying event. Minn. Stat. § 245C.22, subd. 4(b)(8). The commissioner found that Mohamed has had “[s]ome treatment [or] training” but that she “[d]oes not accept responsibility” for her actions in the disqualifying event. The commissioner concluded

that Mohamed accepts responsibility only for slapping the victim, but she “in fact stabbed the victim with a broken bottle resulting in a large laceration to the victim’s face.” And although Mohamed claims that she participated in an anger-management program, she submitted no documents showing her progress or completion of the program. The commissioner concluded that whether Mohamed has changed her behavior in order to prevent recurrence is unknown. The commissioner’s conclusion is supported by the record. First, in her reconsideration request, in response to the directive to explain the details of the crime, Mohamed wrote that in September she and her roommate had an argument, it escalated, she lost her temper, and she slapped her roommate once on the cheek with her keys in her hand. Second, Mohamed provided no documents supporting her statement that she completed an anger-management course.

The last of the nine statutory factors is “any other information relevant to reconsideration.” Minn. Stat. § 245C.22, subd. 4(b)(9). The commissioner found that the “incident was very serious” and that there has been an insufficient passage of time for Mohamed to demonstrate her ability to avoid wrong choices. The commissioner’s conclusions on this factor are reasonable: the record shows that Mohamed responded to a conflict by engaging in a physical altercation in which she intentionally injured another and that she has not accepted responsibility for her actions.

Although an adverse conclusion on a single statutory factor would have been sufficient to deny Mohamed’s set-aside request, the commissioner relied on several factors that disfavor a set-aside, including the nature, severity, and consequences of the disqualifying act; the lack of documentation of successful rehabilitation and a failure to

take responsibility for the offense; and other relevant information, including the seriousness of the event. *See* Minn. Stat. § 245C.22, subd. 3. The commissioner's decision to deny Mohamed's set-aside request is substantially supported by the evidence and is neither arbitrary nor capricious.

Affirmed.