STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1015

Abdirizak Ahmed Gayre,
Relator,

vs.

Minnesota Department of Human Services,
Respondent.

Filed May 3, 2021
Affirmed
Bjorkman, Judge

Department of Human Services
File No. 98038

Jason Steck, Edina, Minnesota (for relator)

Keith Ellison, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Relator Abdirizak Gayre appeals a June 2020 decision by respondent Minnesota Department of Human Services (DHS) affirming his disqualification from positions involving direct contact with persons served by a DHS-licensed program. Because we

conclude the disqualification did not violate his due-process rights and is not arbitrary and capricious, we affirm.

FACTS

Gayre's disqualification stems from criminal charges arising from his involvement with Minnesota Child Care Services, Inc. (MCCS), which operated a child-care center. In September 2013, the Minnesota Bureau of Criminal Apprehension opened an investigation into MCCS's billing practices related to the Child Care Assistance Program (CCAP), a publicly funded program that covers child-care costs for eligible parents. MCCS received CCAP funds for almost every child enrolled at the center. At that time, Gayre owned MCCS and served as its director.

Using video surveillance to compare the number of children seen entering the MCCS facility against the number of children billed for any particular day, investigators estimated that MCCS overbilled CCAP for almost 3,500 children from November 2014 through May 2015, resulting in estimated overpayments in excess of $1 million. Additional investigation revealed that only Gayre and one coworker submitted bills to CCAP on MCCS's behalf during the surveillance period. Billing entries further demonstrated that Gayre personally submitted hundreds of bills during this time.

The investigation led to criminal charges against MCCS, Gayre, and the coworker. In November 2016, MCCS pleaded guilty to felony theft by swindle pursuant to a plea agreement. Under the agreement, the state dismissed the charges against Gayre and his coworker and agreed not to pursue further charges against any of the defendants. As part of the plea agreement, Gayre signed a "disqualification agreement," in which he promised

not to work for or have an ownership interest in any Minnesota licensed child-care provider for two years. After the two years passed, Gayre agreed that he would "be subject to all normal and customary background checks before working at or having an ownership interest in any licensed child care centers."

In 2017, DHS initiated a background study regarding Gayre.[1] During this study, DHS found that because (1) Gayre and his coworker were the only persons authorized to submit bills to CCAP on behalf of MCCS, (2) MCCS was an entity that could not act on its own, and (3) MCCS pleaded guilty to the fraudulent scheme, it was "more likely than not" that Gayre knew he was submitting false billing representations with the aim of securing payments to which MCCS was not entitled. As a result, DHS determined there was a "preponderance of evidence" that Gayre committed felony theft between November 2014 and May 2015.

DHS sent Gayre a letter in November 2017 notifying him of its determination and stating that he was disqualified from any position allowing access to persons served by a DHS-licensed program and programs requiring a background study under Minn. Stat. § 174.30 (2020) or Minn. Stat. §§ 245C.01-.34 (2020). The letter stated that he could seek reconsideration of the disqualification decision and had 30 days to do so. The letter also advised Gayre, "If you do not timely request reconsideration of disqualification, or if you request reconsideration and the disqualification is not set aside, subsequent background

[1] The record does not indicate why this background study was conducted. But Gayre remained the owner of record for MCCS in 2017.

studies will result in an order for your immediate removal." Gayre did not seek reconsideration at that time.

In February 2020, Gayre applied to work as a home health aide for a DHS-licensed organization. In April, DHS informed Gayre that he was disqualified from the position based on the prior 2017 disqualification. Gayre timely requested reconsideration, asserting that there is no evidence to support DHS's 2017 determination and that the disqualification he agreed to in 2016 had expired. DHS denied Gayre's reconsideration request, stating, in pertinent part:

> You committed an act which meets the definition of Felony Theft from November 2014 to May 2015. Although you were not convicted, DHS determined that there is a preponderance of evidence that you committed the act.

The letter also stated:

> DHS records show that you were previously disqualified for this act on November 16, 2017. You did not request reconsideration of the disqualification at the time, and you did not request a fair hearing pursuant to Minnesota Statutes, section 256.045. Therefore, your disqualification is conclusive pursuant to Minnesota Statutes, section 245C.29.

Gayre appeals by writ of certiorari.

DECISION

Gayre argues that the disqualification violated his due-process rights because (1) his 2017 disqualification was treated as conclusive, (2) the 2017 letter was misleading, and (3) the disqualification violated the 2016 plea agreement. He also contends that the 2017 disqualification decision is arbitrary and capricious. Before turning to these arguments, we

examine the relevant provisions of the Minnesota Department of Human Services Background Studies Act (the act) and the applicable standard of review.

The act is designed "to ensure the safety of the people who use DHS-licensed facilities." *Jackson v. Comm'r of Human Servs.*, 933 N.W.2d 408, 411 (Minn. 2019). To further that purpose, the act authorizes DHS to investigate and "disqualify an individual" from holding certain positions "if that individual has a background that indicates a potential risk" to persons who receive services at licensed facilities. *Id.* DHS must disqualify an individual who, as determined by a preponderance of the evidence, committed one of several enumerated felony offenses, including theft. Minn. Stat. §§ 245C.14, .15. A disqualified individual "may request a reconsideration of the disqualification" within 30 days after receiving notice and "must submit" information demonstrating why the disqualification is incorrect. Minn. Stat. § 245C.21, subds. 1, 2(a), 3(a)(1).

An individual who has been disqualified following such a preponderance-of-the-evidence determination may request a "fair hearing" if DHS denies relief on reconsideration. Minn. Stat. § 245C.27, subd. 1. But an individual is not entitled to a fair hearing following reconsideration if a prior disqualification is deemed "conclusive." *Id.*, subd. 1(a). A disqualification is deemed conclusive if the individual did not timely request a hearing. Minn. Stat. § 245C.29, subd. 2(a)(2), (3). But even a conclusive disqualification does not foreclose a later challenge based on factual error. *Jackson*, 933 N.W.2d at 415.

A DHS disqualification decision is "a quasi-judicial agency decision that is not subject to the Administrative Procedure Act." *Id.* at 413. Accordingly, we review by writ of certiorari, which is confined to questions of jurisdiction, the regularity of the

proceedings, and whether the decision on the merits is "arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Id.* (quotation omitted).

I. The 2020 disqualification decision did not violate Gayre's due-process rights.

Both the United States and Minnesota Constitutions guarantee that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Gayre argues that disqualifying him in 2017 and treating that disqualification as conclusive in 2020 deprived him of due process because he never received a full and fair opportunity to contest his disqualification. Because these arguments implicate the constitutionality of statutes, we apply de novo review. *See Gustafson v. Comm'r of Hum. Servs.*, 884 N.W.2d 674, 682 (Minn. App. 2016) (stating the constitutionality of a statute is subject to de novo review).

A. Treating the 2017 disqualification as conclusive did not violate due process.

DHS was statutorily required to disqualify Gayre in 2017 because it determined by a preponderance of the evidence that he committed felony theft. *See* Minn. Stat. §§ 245C.14, subd. 1(a)(2), .15, subd. 2(a), (f). And DHS was statutorily required to treat that disqualification as conclusive in 2020 because Gayre did not request reconsideration in 2017. *See* Minn. Stat. §§ 245C.21, .29. Gayre argues that this statutory scheme denied him due process because he did not have the opportunity to contest his disqualification. This argument is unavailing.

Minnesota courts have squarely rejected Gayre's constitutional challenge, concluding that the disqualification statutes afford the requisite notice and opportunity to be heard. The act requires DHS to notify persons of the basis for the disqualification. Minn. Stat. § 245C.17, subd. 2. The act then outlines two opportunities an aggrieved person has to be heard. *Jackson*, 933 N.W.2d at 414. The first opportunity is to request reconsideration of the disqualification decision. Minn. Stat. § 245C.21. The second opportunity is to request a fair hearing if a reconsideration request is denied. Minn. Stat. § 245C.27. Because Gayre did not take advantage of either opportunity in 2017, his due-process rights were not violated. *See Smith v. Minn. Dep't of Human Servs.*, 764 N.W.2d 388, 392 (Minn. App. 2009) ("[T]here is no due process violation if an aggrieved party fails to take advantage of an appeal process.").

Only the second appeal opportunity—a fair hearing—is foreclosed if a disqualification decision is deemed "conclusive." *See Jackson*, 933 N.W.2d at 415. But the unavailability of a hearing on a conclusive disqualification does not violate due process. In *Jackson*, the appellant argued that the act creates an "irrebuttable presumption" in favor of DHS's decisions—essentially, that a conclusive disqualification deprives disqualified persons of a meaningful opportunity to contest their disqualification. *Id.* at 414. The *Jackson* court found no constitutional infirmity, reasoning that "[n]othing in the Act states that a conclusive disqualification forecloses the ability to request reconsideration on the basis that the information relied upon to disqualify the individual was incorrect." *Id.* at 415. Because the appellant retained the ability "to seek reconsideration on the basis of

factual error," the supreme court concluded that "the correctness of DHS's decision is not irrebuttable." *Id.*

As in *Jackson*, Gayre retained the ability to challenge the factual basis for his 2017 conclusive disqualification. He made this challenge when requesting reconsideration of the 2020 disqualification decision. Accordingly, treating the 2017 disqualification as conclusive did not violate Gayre's constitutional right to due process.

B. The 2017 DHS disqualification notice comported with due process.

Gayre argues that the notice conveyed by the 2017 disqualification letter was inadequate because it misled him into thinking his disqualification was only for two years, rather than the statutorily required 15 years, and because it "violated" the 2016 criminal plea agreement. We disagree.

To satisfy due process, "notice must be of such nature as reasonably to convey the required information." *Id.* at 416 (quotation omitted). This standard is met if a DHS disqualification notice "accurately describe[s]" the law and informs the recipient "of the consequences of missing the deadline to challenge the decision." *Id.* The notice should also contain "specific information about the timing and means of making an appeal." *Smith*, 764 N.W.2d at 392. The act itself further requires that a disqualification notice inform the person of the reason for the disqualification, how to request reconsideration, which entities will be informed of the disqualification, and information on a risk-of-harm determination, if any. *See* Minn. Stat. § 245C.17, subd. 2(a).

The letter Gayre received in 2017 met these requirements. It informed him that he had been disqualified, the reason why he had been disqualified, that he could request

reconsideration, the timeline for doing so, and which entities may be informed of his disqualification. Gayre's sole argument is that, because the letter did not inform him that he would be disqualified for 15 years, he believed that the letter simply reflected the terms of his 2016 disqualification agreement and he did not need to respond. But neither the statute nor caselaw requires a disqualification notice to inform the individual about the length of the disqualification.

Nor are we persuaded that the letter reasonably misled Gayre into thinking it had no effect in light of his 2016 disqualification agreement. The 2016 agreement did not—by its terms—commit DHS or any other state entity to take or abstain from any licensure action. Rather, the disqualification agreement memorialized Gayre's promise that he would neither own nor work for "any licensed child care provider" in the state for two years. By contrast, the 2017 disqualification letter informed Gayre that he was disqualified from *any* position requiring a background study under Minn. Stat. § 174.30 or Minn. Stat. §§ 245C.01-.34. On its face, the 2017 disqualification was broader than Gayre's "disqualification agreement" and reasonably conveyed that information to Gayre. His misunderstanding or disregard of the 2017 disqualification letter does not render it constitutionally deficient.

Finally, we are not convinced that the 2017 disqualification violated the terms of the agreement the State of Minnesota reached with MCCS in the criminal proceeding, including Gayre's disqualification agreement. The interpretation and enforcement of a plea agreement presents an issue of law that we review de novo. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Even if we assume, without deciding, that DHS is bound by the

state's agreement, we conclude that the 2017 disqualification does not run afoul of the state's promises. As noted above, the state made no promises to Gayre regarding disqualification; the state only agreed to dismiss the pending criminal charges and to abstain from pursuing future charges against Gayre based on the 2014-15 investigation. It is Gayre who promised not to work for or hold an ownership interest in a DHS-licensed child-care entity for two years. Because neither promise the state made to Gayre involved disqualification or DHS licensure, the 2017 disqualification did not violate the plea agreement.

In sum, we conclude that "the process afforded to [Gayre] gave him a full and fair opportunity to challenge any factual and legal issue made relevant by the terms of the disqualification statute." *Anderson v. Comm'r of Health*, 811 N.W.2d 162, 167 (Minn. App. 2012), *review denied* (Minn. Apr. 17, 2012).

II. The 2017 disqualification decision is not arbitrary and capricious.

Gayre contends that DHS's 2017 determination that a preponderance of the evidence shows he committed a disqualifying theft offense is arbitrary and capricious because DHS did not consider "any exonerating evidence." An agency's decision is arbitrary and capricious only if it

> (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 Cty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). An agency's decision is not arbitrary and capricious so long as there is

a rational connection between the facts found and the choice made. *In re Review of 2005 Annual Automatic Adjustment of Charges*, 768 N.W.2d 112, 120 (Minn. 2009).

The record before DHS included evidence that MCCS routinely billed CCAP for more children than it actually cared for on any given day. This includes days for which the center itself was closed—the 2017 determination specifically notes "the most blatant showing of MCCS's false billings was that MCCS billed children as 'regular' to CCAP for days when the facility was closed." And the record demonstrates that MCCS routinely billed for more than the 149 children that the center was licensed to serve. MCCS is an entity that cannot act on its own, and Gayre was one of only two individuals who submitted the billing for MCCS and also derived profits from the facility. These facts directly support DHS's ultimate determination that it is more likely than not that Gayre committed felony theft.

Gayre argues that DHS should have also considered that the state's prosecution against MCCS ended in a hung jury,[2] and other potentially exonerating evidence. But Gayre did not produce such evidence in 2017, and did not do so when he requested reconsideration in 2020. Instead, he simply argued that he did not submit billings to CCAP, that he had not been convicted of a crime, and that DHS lacked "any evidence at all" that he committed a felony offense. Because the record evidence supports DHS's 2017

[2] The criminal case against MCCS proceeded to a jury trial which resulted in a hung jury. The record on appeal does not contain testimony or evidence introduced at trial. MCCS subsequently pleaded guilty to felony theft by swindle.

disqualification decision and Gayre did not establish factual error, we conclude the decision is not arbitrary and capricious.

Affirmed.