



DHS Disqualifications



What is a disqualification?

A disqualification is an action taken by the Minnesota Department of Human Services (DHS) or the Minnesota Department of Health (MDH) stopping you from working in a direct care job (health care, child care, nursing home, foster care license, etc.) for a period of time because of something in your background report. This is sometimes also called your “record.”

How do I get a “record” with DHS or MDH?

If you apply for a foster care or daycare license, or when you are hired for a direct care job, the state performs a background check on you. This means the state investigates you to see if there is anything in your background the law says should stop you from working in those types of jobs.

How do I know if I have been disqualified from working in direct care?

You will receive a letter in the mail from the DHS telling you there is a problem with your background report. The letter also tells you about your rights to fight the disqualification.

How does my employer find out?

The state sends your employer a letter explaining that there is a problem with your background check and explaining whether they can let you work if you appeal the results of the background check.

What kinds of things disqualify me and for how long?

The following information on your record disqualifies you from working in direct care jobs in Minnesota. This is true even if these things happened in another state or they happened when you were a minor (under age 18).

1. Criminal Convictions

Violent, sexual, drug, and theft-related convictions disqualify you from working in the health care field in Minnesota. Violent and sex-related crimes disqualify you forever. Most other felonies disqualify you for 15 years, gross misdemeanors for 10 years, and misdemeanors for 7 years.

2. Arrests and Dismissed Criminal Charges

Arrests without charges filed and dismissed charges for violent, sexual, drug, and theft-related crimes can disqualify you just like criminal convictions if it is “more likely than not” they happened.

If you plead guilty to a lesser charge, but the arrest was for a more serious charge, the state can still disqualify you for the more serious charge if “more likely than not” the more serious charge happened. For example, if you are arrested for assault, but you plead guilty to disorderly conduct which is a misdemeanor, the state can still disqualify you if “more likely than not” an assault happened.

3. Maltreatment

When a child you care for is hurt or neglected and child protection gets involved, the county can make a “maltreatment determination.” This means they accuse you of abuse or neglect. Common examples of maltreatment are bruises or scratches, verbal threats or verbal abuse, or leaving your children alone without supervision. Maltreatment determinations can also be made when the victim is a “vulnerable adult.” This means the adult is someone the law says needs special protection from harm. An example is an elderly person or an adult with mental disabilities.

The maltreatment must be serious or “recurring” to be a disqualification. This means it must cause physical or emotional injury or occur more than once. If your disqualification is because of a maltreatment determination, it’s important to get more information about that type of case. See the Factsheet “Challenging a Maltreatment Determination,” which can be found online at www.LawHelpMN.org.

4. Termination of Parental Rights

If your parental rights were terminated “involuntarily” (you did not agree to it) or “voluntarily” (you agreed to it) without “good cause,” you are disqualified for 15 years from when your rights were terminated. But, there are “good cause” exceptions. Voluntary termination for “good cause” means

- you agreed to the termination

AND

- the termination happened for good reasons other than you being unfit to care for the child. For example, the child was violent towards you or the child was in foster care for a long time. The court order terminating your parental rights will say if it was voluntary or involuntary and if good cause was established.

5. Welfare Fraud

Even if you were never convicted of a crime, a civil or administrative welfare fraud determination will disqualify you from a direct care position for 7 years. An administrative welfare fraud determination happens when you are accused of wrongfully obtaining welfare benefits. You are not charged with a crime, but the county cuts you off benefits for a period of time, usually 1 to 10 years. If you are accused of welfare fraud, you can appeal and defend yourself at a fair hearing through the Department of Human Services. For information on how to appeal, see the “Welfare Appeals” Factsheet on www.LawHelpMN.org.

What can I do to get back to work?

You can challenge a disqualification, but there are strict deadlines. Make sure you follow the time limits in the letter you receive. What you can do also depends on the reason for your disqualification. It is best to get an attorney to help you. Your local Legal Aid office may be able to help you (if you qualify based on your income). You can find the office nearest you online at www.LawHelpMN.org.

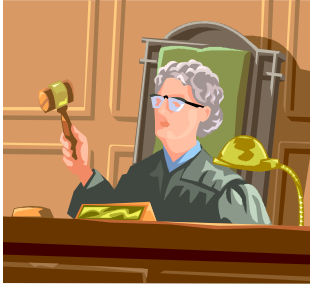


1. Get the Disqualification off Your Record

Try to get the state to change their decision. If they do, you will no longer have a disqualifying mark on your record and you can work in any direct care job. What you can do depends on the type of disqualifying mark you have on your record. Below are some things you can do depending on the type of disqualification.

▪ Criminal Convictions

- a. If you are not the person who was found guilty or pled guilty, tell DHS and they can help you submit fingerprints to clear up the identity mistake. But this does not have any impact on the criminal court case.



b. File papers with the court to get a criminal expungement in the county where the disqualifying crime occurred. Expungement is the process of going to court to ask a judge to seal (hide from the public) a criminal record. An expungement removes the disqualification if the judge agrees to seal the conviction **and** the judge directs the court order to DHS and MDH.

Many times, people get a criminal expungement order, but they are still disqualified because the court order is limited to court records only. Make sure to notify both DHS and MDH - in writing - if you file papers for an expungement. This process can take up to 9 months. For more information on expungement, see the Factsheet “Basics on Criminal Expungement,” which can be found on www.LawHelpMN.org.

c. Apply for a pardon from the Minnesota Board of Pardons. DHS usually stops using a criminal conviction against you if the Minnesota Board of Pardons grants you a pardon. This process can take up to 9 months. Contact the Minnesota Board of Pardons for more information at 651-642-0284.

▪ **Maltreatment Determinations**

See the “Challenging a Maltreatment Determination” Factsheet for information about how to get this type of disqualification off your record. You can find the Factsheet online at www.LawHelpMN.org.

▪ **Arrests and Dismissed Charges**

a. Rescind (cancel) the Decision. Give information in writing to DHS to show you did not commit the crime or you acted in self-defense. You may be able to get DHS to remove the disqualification from your record. But, if the charges against you were dismissed before trial, it **is not** a reason to remove the disqualification. If your request to rescind the decision is denied, appeal in writing and request a fair hearing in front of a judge. You must appeal before the deadline (usually 15-30 days) or you do not get to fight the disqualification.

b. Expungement. Expungement is the process of going to court to ask a judge to seal (hide from the public) a criminal record. You can file a motion for a criminal expungement with the court in the county where the disqualifying charge occurred. An expungement removes the disqualification **if** the judge agrees to seal the charge **and** directs the order to DHS and MDH. You should notify both agencies in writing or serve (give the agencies the court papers) when you file a motion for an expungement. This process can take up to 9 months.



▪ **Termination of Parental Rights**

You cannot be disqualified if you voluntarily terminated your rights **with good cause**. Good cause means the termination occurred for good reasons other than you being unfit to care for the child. Review the court’s termination order to see what the court decided and make sure DHS has the right information about what happened.

▪ **Administrative (non-criminal) Welfare Fraud**

If you have only been accused of non-criminal welfare fraud, you can appeal the determination through the county where you received benefits and request a fair hearing with DHS. However, if your appeal deadline has passed or you gave up your hearing rights, you cannot re-open the welfare fraud case to try to get your disqualification removed. You also cannot expunge or pardon this type of disqualification because it is not criminal.

2. Try to Get Permission to Work Even With the Disqualifying Mark

If you cannot get the disqualifying mark off of your record, you can still try to work at your job, but only if the disqualifying act does not permanently prevent you from working in direct care. Below are some things you can do.

- **Make a “Set-Aside” Request**

You usually have 30 days after receiving your disqualification notice to send DHS proof that you are not a risk of harm to the patients you care for. You must explain what happened, how you have changed, and show why you can be trusted around patients. Instructions for how to provide this information are in your disqualification notice. If successful, you can return to work at the job that you were disqualified from and work without supervision. If you change jobs, you will have to send a new “set-aside” request to DHS. It can take DHS one month or more to make a decision on a “set-aside” request.



- **Request a “Variance”**

Your employer can request a “variance” from DHS. This means you can work at your job under constant supervision. Only your employer can request a variance, so ask your boss to consider doing this if you cannot get a “set-aside.” It can take DHS several months to make a decision on a “variance” request.

Other Things to Consider

- **Wait out your disqualification period.** If your disqualifying act does not permanently disqualify you from working in direct care, you can wait out your disqualification period. These periods last from 7-15 years from the date the offense occurred for non-convictions and 7-15 years after you are discharged from probation or parole (“off paper”).

- **Move to another state.** Minnesota has some of the strictest background study laws for direct care jobs in the nation. You may want to consider working in another state with less stringent direct care jobs.

- **Change Careers.** DHS background study laws cover all positions where you may have direct contact with vulnerable people or patients. Strict state background checks do not apply to other careers, such as retail or food service. You may want to change jobs temporarily or permanently, depending on how severe your disqualification is.

Your local Legal Aid office may be able to help you (if you qualify based on your income). You can find the office nearest you online at www.LawHelpMN.org. For more information on expungement, see the Factsheet “Basics on Criminal Expungement,” which can also be found on www.LawHelpMN.org.

Volunteer attorneys may be available to take your case, if you do not qualify for legal aid. The following volunteer agencies can be contacted by phone

Volunteer Lawyers’ Network – 612-752-6677

University of Minnesota Law Clinic – 612-625-5515

Volunteer Attorney Program – 218-723-4005

William Mitchell College of Law Clinical Program – 651-290-6351

Private civil attorneys (if you can afford to pay an attorney) can be located by contacting the Minnesota State Bar Association’s Attorney Referral Service online at www.mnfindalawyer.com.