



# Job Disqualifications

## What is a job disqualification?

A job disqualification is when the Minnesota Department of Human Services (DHS) or the Minnesota Department of Health (MDH) stops you from working in a “direct care” job for a period of time because of something in your background report or record. Direct care jobs can be jobs in:

- Healthcare
- Child care
- Foster care
- Nursing homes



## How does DHS or MDH find out about my record?

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

## How do I find out if I have been disqualified from working in direct care?

You will get 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 with an appeal.

## How does my employer find out?

The state sends your employer or person that wants to hire you a letter explaining that there is a problem with your background check. It also says whether they can let you work during an appeal of the results of the background check.

## What kinds of things disqualify me and for how long?

The following things on your record disqualify 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. Some 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.

For example: if you are arrested for assault, but you plead guilty to the lesser charge of 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 causes physical or emotional injury or happens 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 our fact sheet [What is Maltreatment and How Can it Affect my Job?](#)

## 4. Termination of Parental Rights

If your parental rights were terminated “involuntarily” (you did not agree to it) or “voluntarily” (you agreed to it) 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 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 getting welfare benefits when you shouldn't have. 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 hearing through the Department of Human Services. For information on how to appeal, see our fact sheet [Welfare Appeals to DHS](#).

### **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 get. It also depends on the reason for your disqualification. It is best to get a lawyer to help you. Your local Legal Aid office may be able to help you if you qualify. To find your local legal aid office by county go to [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices).

Things you can try:

#### **1. Get the Disqualification off Your Record**

Try to get the state to change their decision. If they do, you won't 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. Below are some things you can do depending on the type of disqualification.

##### **→ If your disqualification is because of 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 you still have to deal with the criminal court case separately.
- b.** File papers with the court to get a criminal expungement in the county where the crime happened. Expungement is the process of going to court to ask a judge to "seal" (limit access to) a criminal record. A judge agreeing to "seal" or "expunge" a criminal record does not delete the record. But it does remove the disqualification if you serve DHS with your petition for expungement and the judge also directs the court order to DHS and MDH.



Many times, people get a criminal expungement order, but are still disqualified because the expungement order is limited to court records only. **Make sure to let DHS and MDH know in writing if you file papers for an expungement.** This process can take up to 9 months. For more information on expungement, read [Criminal Expungements in Minnesota: A Step-by-Step Guide for Pro Se Petitioners](#). You can find it on [www.LawHelpMN.org](http://www.LawHelpMN.org). Type Criminal Expungement in the search bar.

- 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.

→ **If your disqualification is because of maltreatment determinations**

See our fact sheet [What is Maltreatment and How Can it Affect my Job?](#) for information about how to get this type of disqualification off your record.

→ **If your disqualification is because of 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 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 (limit access to) a criminal record. You can file a motion for a criminal expungement with the court in the county where the disqualifying charge happened. An expungement removes the disqualification if you serve DHS with your petition for expungement and the judge agrees to seal the charge and directs the order to DHS and MDH. You should serve (give the agencies the court papers) when you file a motion for an expungement. This process can take up to 9 months.

→ **If your disqualification is because of Termination of Parental Rights**

You can't be disqualified if you voluntarily terminated your rights **with good cause**. Good cause means the termination happened was not because you were 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.

→ **If your disqualification is because of 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. Ask for a hearing with DHS. But if your appeal deadline has passed or you gave up your hearing rights, you can't re-open the welfare fraud case to try to get your disqualification removed. You also can't 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 can't get the disqualifying mark off of your record, you can still try to work at your job. You can only do this 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 getting your disqualification notice to send DHS proof that you are not a risk 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 do this are in your disqualification notice.

If successful, you can go back to work at the job that you were disqualified from and work without supervision. If you change jobs after you get a set-aside you may automatically be granted a new set-aside when certain conditions are met. These conditions are:

- you were not disqualified for a felony,
- your new employer is licensed under the same law as your former employer,
- there is no new information showing you may be a risk to the people served by the new employer and
- your previous set aside was not limited to a specific client.



If you get a set aside and apply for another job, tell the employer you have been granted a set aside.

→ **Ask for a "Variance"**

Your employer can ask for a "variance" from DHS. This means you can work at your job under constant supervision. Only your employer can ask for a variance, so ask your boss to think about doing this if you can't get a "set-aside." It can take DHS several months to make a decision on a "variance" request.

**3. Other Things to Think About**

→ **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 happened 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 check 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.** Background checks are done for all jobs 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.

### Where can I find help?

Your local legal aid office may be able to help you if you qualify. To find your local legal aid office by county go to [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices).



These volunteer lawyers may be able to help you if you do not qualify for legal aid:

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 lawyers can be located by contacting the Minnesota State Bar Association's Attorney Referral Service online at [www.mfindalawyer.com](http://www.mfindalawyer.com).

Find more fact sheets at [www.lawhelpmn.org/LASMfactsheets](http://www.lawhelpmn.org/LASMfactsheets)

Find your local legal aid office at [www.lawhelpmn.org/resource/legal-aid-offices](http://www.lawhelpmn.org/resource/legal-aid-offices)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

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