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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-642**

Raymond L. Semler,
Appellant,

vs.

Crow Wing County Social Services,
Respondent,

Minnesota Department of Human Services,
Respondent.

**Filed September 19, 2011
Affirmed
Schellhas, Judge**

Crow Wing County District Court
File No. 18-CV-10-4597

Raymond L. Semler, Moose Lake, Minnesota (pro se appellant)

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent Crow Wing County Social Services)

Lori Swanson, Attorney General, Patricia A. Sonnenberg, Assistant Attorney General, St. Paul, Minnesota (for Minnesota Department of Human Services)

Considered and decided by Klaphake, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's decision affirming the termination of his general-assistance benefits by the Minnesota Commissioner of Human Services. Appellant argues that the termination is inconsistent with the law, that he has an ongoing property interest and legitimate claim of entitlement to benefits, and that the commissioner discriminated against him. We affirm.

FACTS

Appellant Raymond Semler is a patient in the Minnesota Sex Offender Program at Moose Lake Regional Treatment Center. As of June 2010, Semler was a recipient of general-assistance benefits. In July 2010, a statement of Semler's personal-needs account was provided to Crow Wing County Social Services (the county), showing that Semler had received a tax refund of approximately \$2,100. Because the amount of the refund seemed inconsistent with Semler's reported 2009 income, the county asked Semler to provide his 2009 tax return. Semler failed to provide the 2009 tax return or a release that would allow the county to obtain the tax return. Subsequently, the county terminated Semler's general-assistance benefits.

Semler appealed the termination of his general-assistance benefits to a human-services judge (HSJ). The HSJ recommended affirming the termination decision, and the Minnesota Commissioner of Human Services adopted the HSJ's recommendation. Semler requested reconsideration of the decision, which the commissioner denied. Semler then appealed the commissioner's decision to the Crow Wing County District

Court. Based on the parties' written arguments, the district court affirmed the commissioner's decision. This appeal follows.

D E C I S I O N

“Judicial review presumes the correctness of an agency decision.” *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 123 (Minn. App. 2006). The party challenging the agency's decision bears the burden of proving that the decision was improperly reached. *City of Moorhead v. Minn. Pub. Utils. Comm'n*, 343 N.W.2d 843, 849 (Minn. 1984). “On appeal from the district court's appellate review of an administrative agency's decision, this court does not defer to the district court's review, but instead independently examines the agency's record and determines the propriety of the agency's decision.” *Johnson v. Minn. Dep't of Human Servs.*, 565 N.W.2d 453, 457 (Minn. App. 1997). This court may not reverse or modify an agency decision unless the decision was (1) “in violation of constitutional provisions,” (2) in excess of the agency's statutory authority or jurisdiction, (3) “made upon unlawful procedure,” (4) “affected by other error of law,” (5) “unsupported by substantial evidence in view of the entire record as submitted,” or (6) “arbitrary or capricious.” Minn. Stat. § 14.69 (2010).

Minnesota Rule 9500.1200, subpart 1 (2011), provides: “Parts 9500.1200 to 9500.1270 establish the rights and responsibilities of the Department of Human Services, local agencies, and recipients of general assistance as they pertain to the administration of the general assistance program.” Minnesota Rule 9500.1215, subpart 4 (2011), states: “The county agency must verify the factors of program eligibility in items A to C at the time of application, when a factor of eligibility changes, and at each redetermination of

eligibility.” The rules define “redetermination of eligibility” as “the process by which information is collected periodically by a county agency and used to determine a recipient’s continued eligibility for assistance.” Minn. R. 9500.1206, subp. 28d (2011).

The relevant factors in this case that a county must verify concerning eligibility are:

B. The county agency must verify the information in subitems (1) to (6) when that information is acknowledged by an applicant or recipient or obtained through a federally mandated verification system:

- (1) receipt and amount of earned income, including gross receipts from self-employment;
- (2) receipt and amount of unearned income;
- (3) termination from employment;
- (4) ownership and value of real property;
- (5) ownership and value of personal property;

and

- (6) dependent care costs of an employed filing unit member at the time of application, redetermination, or a change in provider.

C. A county agency may verify additional program eligibility and assistance payment factors when it determines that information on the application is inconsistent with statements made by the applicant, other information on the current application, information on previous applications, or other information received by the county agency. The county agency must document the reason for verifying the factor in the case record of an assistance unit. Additional factors that may be verified, subject to the conditions of this item, are:

- (1) the presence of a child in the home;
- (2) the death of a parent or spouse;
- (3) marital status;
- (4) residence address; and
- (5) income and property that an applicant or recipient has not acknowledged receiving or having.

Minn. R. 9500.1215, subp. 4. A recipient bears the burden of providing documentation of the information required under subpart 4 or authorizing an agency to verify the information by other means. *Id.*, subp. 2 (2011).

Here, the county received information that Semler received a tax refund of approximately \$2,100. In response, the county asked Semler to produce his 2009 income tax return because the county believed the refund amount was inconsistent with Semler's reported income. The rules permit the agency to conduct further investigation upon receiving information that is inconsistent with an applicant's statements. *See* Minn. R. 9500.1215, subp. 4B, C. Semler does not dispute that he did not provide the county with his 2009 income tax return or authorize the county to obtain the tax return.

Semler argues that the county violated Minn. Stat. § 256.028 (2010) by using his tax refund "against" him to terminate his general assistance. Section 256.028 prohibits counting a "federal or state tax rebate received by a recipient of a public assistance program" as income or an asset for purposes of the general-assistance program. Semler seems to argue that the county improperly considered the tax refund as income or an asset.

Semler's argument is unpersuasive because the record shows that the county did not count the refund as income or an asset and did not terminate Semler's general-assistance benefits because he received the refund. Only after Semler failed to produce his tax return, which prohibited the county from investigating the matter and determining whether Semler remained eligible, did the county terminate his general-assistance benefits. Because the county did not violate Minn. Stat. § 256.028, and because Semler

failed to satisfy his burden for eligibility under the Minnesota Rules, we conclude that the commissioner did not err in terminating Semler's general-assistance benefits.

Semler also argues that he has an ongoing property interest and legitimate claim of entitlement to general-assistance benefits because he initially satisfied the eligibility requirements to receive general-assistance benefits. We disagree.

A property interest “stem[s] from an independent source such as state law—rules or understandings that secure certain benefits and that supports claims of entitlement to those benefits.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972). A legitimate claim of entitlement therefore depends on the nature of the interest created by the state. *Id.* We recognize that after Semler initially satisfied the eligibility requirements, he had a property interest in his general-assistance benefits. *See* Minn. Stat. § 256D.01, subd. 1 (2010) (stating that those who satisfy the eligibility requirements “are entitled to receive grants of general assistance”).

But under the Minnesota Rules that govern the rights and responsibilities of agencies and recipients of general-assistance benefits, the county's prior acceptance of Semler's reported income and assets does not preclude further investigation to verify eligibility if the county determines that information on the application is inconsistent with other information it receives. *See* Minn. R. 9500.1206, subp. 28d, 9500.1215, subp. 4C. We therefore reject Semler's assertion that his initial eligibility created an ongoing property interest in general-assistance benefits. Because Semler failed to provide the county with his tax return, or with an authorization to obtain his return, the county could not verify his income in order to make a determination on his continued eligibility. *See*

Minn. R. 9500.1215, subp. 4. Absent a redetermination of eligibility, Semler does not have a property interest in general-assistance benefits or a legitimate claim of entitlement to general-assistance benefits.

Semler also argues that the county violated The Rehabilitation Act, 29 U.S.C. § 794(a)(504) (2006), by terminating his general-assistance benefits due to his disability. He identifies his disability as “a mental illness,” which subjects him to indefinite civil commitment. This argument is unpersuasive for several reasons. Semler has not identified a disability that prevents him from providing a copy of his 2009 tax return to the county or from providing the county with a release that would allow the county to obtain the tax return. Nor has he shown that the county’s termination of his general-assistance benefits was related to “a mental illness” that led to his civil commitment. Additionally, Semler fails to identify how the termination of his general-assistance benefits was prohibited by the federal law that he discusses or a basis under which Minnesota courts have jurisdiction over his federal claims.

Because Semler’s arguments lack merit, we affirm.

Affirmed.