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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0393

In the Appeal of: Dylan Ross For: Rule 25 denial Agency: Washington County.

Filed November 26, 2012
Reversed
Kalitowski, Judge

Washington County District Court
File No. 82-CV-10-5077

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellants, the commissioner of human services and Washington County Community Services, challenge the district court's decision reversing the commissioner's decision denying the request of respondent Dylan Ross for payment from the consolidated chemical dependency treatment fund. Appellants contend that substantial evidence supports the commissioner's finding that respondent was not assessed and

placed in treatment in accordance with the Minnesota Rules governing public-assistance funding for chemical dependency treatment. We agree and reverse.

D E C I S I O N

After pleading guilty to the charge of minor consumption, respondent Dylan Ross was sentenced to probation, one condition being that he undergo a chemical dependency evaluation and comply with the assessor's recommendations. A private assessor completed the evaluation on December 3, 2009, and recommended residential treatment.

Respondent then entered residential treatment at the Maple Lake Recovery Center (Maple Lake) on January 25, 2010. After respondent's private insurer denied coverage, Maple Lake requested that Washington County Community Services fund respondent's residential treatment from the consolidated chemical dependency treatment fund (CCDTF). CCDTF distributions are governed by Minnesota Rules 9530.6600-7030 (2011), previously designated, and still commonly referred to, as "Rule 25." After receiving respondent's initial assessment and completing an update as required by Rule 25, Washington County Community Services denied payment.

Respondent appealed the decision to a human services judge, who conducted an evidentiary hearing and found that respondent was not assessed and placed into treatment in accordance with Rule 25. Because the Minnesota Rules provide that "the department [of human services] shall deny payments from the consolidated chemical dependency treatment fund to vendors for chemical dependency treatment services provided to clients who have not been assessed and placed by the county in accordance with [Rule 25],"

Minn. R. 9530.7025, subp. 1, the commissioner of human services adopted the human services judge's recommendation that payment be denied.

Respondent appealed this decision to the district court, where the district court took additional evidence and considered new legal issues. The district court found that respondent entered treatment with the prior knowledge and approval of the placing authority and that the commissioner erred by failing to consider applicable Minnesota Rules. The district court overruled and rescinded the commissioner's order and ordered that the county pay all costs of respondent's residential treatment at Maple Lake.

In an appeal from a district court's review of an agency decision, we make "an independent examination of an administrative agency's record and decision and arrive at our own conclusions as to the propriety of that determination without according any special deference to the same review conducted by the trial court." *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). We review legal conclusions de novo and are "not bound by the legal conclusions of the trial court or of the agency itself." *Matter of Hutchinson*, 440 N.W.2d 171, 175 (Minn. App. 1989), *review denied* (Minn. Aug. 9, 1989). But "[w]here the trial court reviewing an agency decision makes independent factual determinations . . . , [we apply] the 'clearly erroneous' standard of review." *Id.* We may affirm, remand, reverse, or modify the agency's decision if respondent's substantial rights were prejudiced because the decision was made upon unlawful procedure, affected by error of law, or "unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 14.69 (2010).

Because we conclude that the commissioner's finding that respondent was not assessed and placed in accordance with Rule 25 was supported by substantial evidence, we reverse the district court's order and reinstate the commissioner's order.

I.

We first address the district court's review of the commissioner's decision. We reject appellants' contention that the district court erred by taking additional evidence. But we conclude that the district court (1) exceeded the appropriate standard of review by failing to review the commissioner's factual findings for substantial evidence and (2) ignored the scope of review by considering legal issues not presented to and decided by the commissioner.

When reviewing an agency decision, the district court engages in appellate review. *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). The district court may affirm, remand, reverse, or modify the agency's decision if it was:

> (a) in violation of constitutional provisions; or
> (b) in excess of the statutory authority or jurisdiction of the agency; or
> (c) made upon unlawful procedure; or
> (d) affected by other error of law; or
> (e) unsupported by substantial evidence in view of the entire record as submitted; or
> (f) arbitrary or capricious.

Minn. Stat. § 14.69; *see also Zahler*, 624 N.W.2d at 301.

New Evidence

The law provides that the district court may take new evidence. But the district court "shall take no new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal." Minn. Stat. § 256.045, subd. 8 (2010).

We disagree with appellants that the district court erred by taking testimony from respondent's mother. The record shows that in the absence of funding from CCDTF or private insurance, respondent's mother is financially responsible for respondent's treatment at Maple Lake. And prior to the evidentiary hearing before the human services judge, respondent's mother requested that she be allowed to participate in the hearing, but she was not included.

The use of exclusive rather than inclusive language in the statute limits the district court's authority to take additional evidence. But it gives the district court discretion to determine when taking additional evidence "is necessary for a more equitable disposition of the appeal" under section 256.045. Here, the district court properly determined that additional evidence was necessary in part because respondent's mother, who has a direct pecuniary interest in the appeal and is therefore an "interested person," was not permitted to participate in the human services judge's hearing. *See* Minn. Stat. § 256.045, subd. 4 (2010) ("The state human services [judge] shall notify all interested persons of the time, date, and location of the hearing at least five days before the date of the hearing. Interested persons may be represented by legal counsel . . . and may appear personally, testify and offer evidence, and examine and cross-examine witnesses."). We conclude

that the district court did not err by holding an evidentiary hearing for the purpose of allowing testimony from an interested person.

At the district court evidentiary hearing, respondent's mother testified that on January 19, she received a phone call from a Washington County Community Services case aide and that the case aide stated, "[W]e have received your application and it has been approved. Go ahead and put [respondent] into treatment." The case aide denied making that statement but admitted she may have had a phone conversation with respondent's mother that day and that she may have given respondent's mother an authorization code to obtain an assessment, but not to begin treatment. The district court found that respondent's mother's testimony was specific, consistent, and credible, and that she justifiably entered respondent into treatment with the belief that Washington County Community Services had approved the treatment during the January 19 phone call. Thus, the district court found that respondent entered treatment with the prior approval of the placing authority.

District Court's Standard of Review

Appellants argue that the district court erred because it failed to apply the substantial evidence standard of review to the commissioner's factual finding that respondent entered treatment without the placing authority's prior approval. We agree.

The district court reviews the commissioner's factual findings under the substantial evidence test. *Zahler*, 624 N.W.2d at 301. And the district court reviews the agency's decision in an appellate capacity even when it takes additional evidence. *Id.* ("[T]he district court is engaged in appellate review even though Minn. Stat. § 256.045,

subd. 8, allows the district court to consider new and additional evidence when 'necessary for a more equitable disposition of the appeal.'"). Therefore, the district court applies the substantial evidence test to the commissioner's findings based on the entire record—both what was before the commissioner as well as the additional evidence taken by the district court. *See Matter of Kindt*, 542 N.W.2d 391, 398 (Minn. App. 1996) ("[A] district court has the discretion to expand the record only for the purpose of discovering whether the agency properly resolved the matter based on facts in existence at the time of its decision." (emphases omitted)).

Here, the district court failed to apply the substantial evidence test to the commissioner's factual findings. The record shows no consideration by the district court of the commissioner's factual findings or of other evidence in the record, and the district court did not mention the substantial evidence test in its order. Rather, the district court relied almost entirely on respondent's mother's testimony and made its own factual findings as if hearing the case in the first instance. We conclude that the district court erred and exceeded the applicable standard of review by failing to review the commissioner's factual findings under the substantial evidence test.

District Court's Scope of Review

As an appellate tribunal, the district court may consider only issues that were presented to and considered below by the commissioner. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to address an issue raised for the first time on appeal); *Matter of Kindt*, 542 N.W.2d at 398 (stating that failure to raise an issue before the agency precludes the court of appeals from considering it). The district court ignored the

appropriate scope of review by considering and ruling on the applicability of the jail or prison exception and the adolescent exception, neither of which were raised before or considered by the commissioner. Moreover, even if properly before the district court, the court erred as a matter of law in determining that these exceptions were applicable.

Jail or Prison Exception

To obtain public funds for chemical dependency treatment, an individual must undergo a Rule 25 assessment by the placing authority. *See* Minn. R. 9530.6615. If 45 calendar days elapse between the completion of the assessment and the initiation of services, an update to the assessment must be completed to determine whether changes have occurred that affect the appropriateness of the planned services. Minn. R. 9530.6615, subp. 1(D). An update "is not required if the client has been in jail or prison continuously from the time of the assessment interview until the initiation of service." Minn. R. 9530.6615, subp. 1(C).

Respondent argues, and the district court found, that an update to his initial assessment from December 3, 2009, was not required based on the jail or prison exception contained in Minnesota Rule 9530.6615, subpart 1(C). We disagree.

First, the rule clearly states it applies when an individual is in jail or prison. Respondent provides no authority for his argument that the rule should be interpreted to apply to time spent in residential treatment. Therefore, a broader interpretation is not warranted.

Second, the rule applies only when the individual has been in jail or prison from the *time of the assessment until the initiation of service*. Here, respondent was assessed

on December 3, 2009, and entered treatment on January 25, 2010. Thus, even if the rule applied to residential treatment, it would be inapplicable because respondent was not in treatment continuously from the time of the assessment until the start of treatment.

Adolescent Exception

"An adolescent client assessed as having a substance use disorder may be placed in a program offering room and board when . . . [t]he adolescent client has participated in a nonresidential treatment program within the past year, and nonresidential treatment proved to be insufficient to meet the client's needs." Minn. R. 9530.6620, subp. 12(A). Respondent argues, and the district court found, that residential treatment at Maple Lake should have been approved based on this rule. But this rule for adolescents does not eliminate the basic requirement that the individual be assessed and placed in accordance with Rule 25. Furthermore, under the plain language of the rule, the placing authority is not obligated to place the adolescent in a residential treatment program, but rather *may* do so. In short, this adolescent rule is not self-implementing; the placing authority must still assess and place the client in accordance with the requirements of Rule 25.

In sum, the district court did not err by taking additional evidence. But the district court exceeded the standard of review by failing to review the commissioner's factual findings under the substantial evidence test, and both exceeded the scope of review by allowing new legal issues to be raised on appeal and erred by basing its decision on these issues.

II.

This court conducts an independent examination of the commissioner's decision, giving no deference to the district court's review. *Reserve Mining Co.*, 256 N.W.2d at 824. We review the commissioner's decision based on the entire record. *See Matter of Hutchinson*, 440 N.W.2d at 175. Regarding the additional factual findings made by the district court, we apply the clearly erroneous standard of review. *Id.*

The Minnesota Department of Human Services must deny payments from the CCDTF "for chemical dependency treatment services provided to clients who have not been assessed and placed by the county in accordance with [Rule 25]." Minn. R. 9530.7025, subp. 1. The commissioner upheld the determination that respondent was not assessed and placed in accordance with Rule 25, but the district court reversed.

Placing Authority

Respondent argues that the commissioner erred when he interpreted "placing authority" to be Washington County Community Services specifically rather than all of Washington County in general. We disagree.

"When . . . the language of an administrative rule is clear and capable of understanding, interpretation of the rule presents a question of law reviewed de novo." *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 440 (Minn. 2002). But if "the agency's construction of its own regulation is at issue, . . . considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations." *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989).

To obtain public funds for chemical dependency treatment, an individual must undergo a Rule 25 assessment by a placing authority. *See* Minn. R. 9530.6610. The placing authority must determine the appropriate treatment and services for a client, Minn. R. 9530.6620, subp. 1, and remains "responsible for and cannot delegate making . . . placement authorizations." Minn. R. 9530.6610, subp. 3. "Placing authority" means the county of financial responsibility, a prepaid health plan, or a tribal governing board. Minn. R. 9530.6605, subp. 12, 21a. Respondent argues that "county" means the entire Washington County system, including an employee at Washington County Community Corrections. But the commissioner interpreted the term specifically to mean Washington County Community Services. Because the meaning of "county" is susceptible to different interpretations, we defer to the agency's interpretation as a more reasonable reading of the rule.

Although Rule 9530.6605, subpart 21a does not define "placing authority" as a specific county division, Rule 9530.7010 specifies that the local agency is responsible for distributing CCDTF funds. And these rules must be read together. Minn. R. 9530.7005. Here, it is undisputed that the local agency responsible for administering the CCDTF is Washington County Community Services. Therefore, "placing authority" could be interpreted to mean Washington County Community Services, as the local agency actually responsible for administering the CCDTF program, or all of Washington County in general, as the literal language of the rule states. Given the explicit language of the rules that requires these parts to be read together and the deference to be afforded to the agency in interpreting its own rule, we conclude that the commissioner did not err by

interpreting "placing authority" to mean Washington County Community Services specifically rather than all of Washington County in general.

Prior Approval

Respondent challenges the commissioner's finding that respondent entered residential treatment without prior approval from the placing authority. Thus, we must determine whether this finding is supported by substantial evidence based on the entire record. Substantial evidence is:

> 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than 'some evidence'; 4) more than 'any evidence'; and 5) evidence considered in its entirety.

In re O'Boyle, 655 N.W. 2d 331, 334 (Minn. App. 2002). We conclude that substantial evidence supports the commissioner's finding.

The social services supervisor at Washington County Community Services testified that a Client Placement Authorization (CPA) had not been issued for respondent when he entered treatment. She testified that treatment facilities know that they would receive a CPA prior to the initiation of treatment if Washington County Community Services had in fact authorized the treatment. Respondent's advocate, a chemical dependency counselor at Maple Lake, testified that when respondent entered treatment at Maple Lake he did not have a CPA. The advocate further testified that respondent entered treatment under the "impression" that CCDTF funds would pay for residential treatment based on the initial assessment and advice of the private assessor. But the

advocate emphasized that it was respondent's and respondent's mother's impression only and that Maple Lake had not received a CPA authorizing the treatment.

The district court did not make a finding regarding, or even address, the nonexistence of a CPA. Rather, the district court found that respondent's mother entered respondent into treatment "in the belief that" Washington County Community Services had approved it. We need not review this finding for clear error because even accepting the district court's finding regarding respondent's mother's testimony, substantial evidence supports the commissioner's finding that respondent entered treatment without prior approval from the county.

In February 2010, after respondent entered treatment, Washington County Community Services received a request from Maple Lake to fund respondent's treatment. This is not disputed, and supports the commissioner's finding that the placing authority had not already approved and agreed to pay for such treatment.

The commissioner also found that Washington County Community Services did not possess a valid Rule 25 assessment until February 2010. The private assessor testified that he did not submit the December 2009 assessment to Washington County Community Services until that time. Because Washington County Community Services did not have a valid assessment on which to base its treatment determination until February, Washington County Community Services could not have given approval before respondent entered treatment in January.

In conclusion, the Minnesota Department of Human Services must deny payments from the CCDTF "for chemical dependency treatment services provided to clients who

have not been assessed and placed in accordance with [Rule 25]." Substantial evidence supports the commissioner's finding that respondent was not assessed and placed in accordance with Rule 25 because he entered treatment without the prior approval of the placing authority.

Reversed.