STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1040

In the Appeal of: SH RG For:
Northstar Adoption Assistance

Filed February 12, 2018
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CV-16-18545

Mark D. Fiddler, Fiddler Law Office, P.A., Edina, Minnesota (for appellants S.H. and R.L.G.)

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Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Bratvold, Judge.

S Y L L A B U S

The Adoption Assistance and Child Welfare Act, 42 U.S.C. § 673 (2012), does not preempt a state law that excludes a child subject to direct-placement adoption from receiving adoption assistance, as provided in Minn. Stat. § 256N.23, subd. 6(3) (2016).

O P I N I O N

BRATVOLD, Judge

Appellants S.H. and R.L.G. challenge the Minnesota Commissioner of Human Services' determination that the child they plan to adopt is not eligible for adoption assistance,[1] arguing that the commissioner legally erred when she concluded the child is ineligible under federal and state law and excluded from receiving adoption assistance by state law. To be clear, adopting parents receive adoption assistance payments on behalf of an eligible child. For the sake of simplicity, this opinion will refer to the child as receiving adoption assistance.

We conclude that the commissioner erred in her determination that the child is ineligible for adoption assistance under federal and state law. However, because the commissioner correctly determined that state law excludes a child that is the subject of a direct-adoptive placement from receiving adoption assistance,[2] and because federal law does not preempt this state-law exclusion, we conclude that the commissioner did not err in denying adoption assistance. Thus, we affirm.

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[1] Minnesota law defines "adoption assistance" as "medical coverage as allowable under [Minn. Stat. § 256B.055 (2016)] and reimbursement of nonrecurring expenses associated with adoption and may include financial support provided under agreement with the financially responsible agency, the commissioner, and the parents of [the] adoptive child." Minn. Stat. § 256N.02, subd. 2 (2016).

[2] Minnesota law defines "direct-adoptive placement" as "placement of a child by a birth parent or legal guardian other than an agency under the procedure for adoption authorized by [Minn. Stat. § 259.47 (2016)]." Minn. Stat. § 259.21, subd. 10 (2016). The parties also refer to the term, direct-placement adoption, which is synonymous.

FACTS

J.E.S. was born in Ukraine in 2002, and has multiple medical conditions, including Down syndrome, post-traumatic stress disorder, oppositional defiant disorder, tremors, short-term memory difficulties, sleep apnea, and ventricular stenosis. In 2014, a Virginia couple adopted J.E.S., and she became a United States citizen. J.E.S.'s parents struggled to manage her needs and contacted appellants, who live in Minnesota and previously have adopted children from Eastern Europe, including four children with Down syndrome. In fact, one of appellants' children not only has Down syndrome but also was J.E.S.'s "crib mate" when they lived in a Ukrainian orphanage. In November 2015, J.E.S. began to live with appellants.

In January 2016, J.E.S.'s parents consented to appellants' direct adoption of J.E.S. through a private agency, International Adoption Services. J.E.S.'s direct-adoptive placement did not include registering her with a state adoption exchange, nor was a search conducted for J.E.S.'s relatives.

In February 2016, a Minnesota district court filed a preadoptive custody order for J.E.S. The order provided that appellants have the right to make medical decisions for J.E.S. and are responsible for payments for her care, subject to the legal parents' right to custody, until the adoption becomes irrevocable.

In July 2016, the Social Security Administration awarded Supplemental Security Income (SSI) benefits to J.E.S. based on disability.

On August 17, 2016, International Adoption Services applied for Northstar Adoption Assistance for J.E.S. through the Minnesota Department of Human Services

(DHS). DHS denied the application because it determined that J.E.S. met neither federal nor state eligibility criteria for adoption assistance. Appellants challenged DHS's determination and requested a hearing.

A Human Services Judge (HSJ) conducted an evidentiary hearing and affirmed the denial, applying federal and state law. Among other things, the HSJ found that appellants were not willing to adopt J.E.S. without adoption assistance. The Commissioner of Human Services adopted the judge's decision. Appellants sought review in district court, which affirmed the denial in June 2017. This appeal follows and appellants' adoption of J.E.S. is stayed pending appeal.

ISSUE

Did the commissioner err in denying adoption assistance to J.E.S. because its decision was affected by legal error in interpreting and applying federal and state law?

ANALYSIS

I. The commissioner did not err in denying adoption assistance to J.E.S.

This court reviews an administrative agency's decision with no deference to the district court's decision. *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). Minn. Stat. § 14.69 (2016) governs this court's review of the commissioner's decision. To obtain relief, appellants must show that the decision is:

> (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.

Zahler, 624 N.W.2d at 301 (citing Minn. Stat. § 14.69); *see also Mattice v. Minn. Prop. Ins. Placement*, 655 N.W.2d 336, 340 (Minn. App. 2002), *review denied* (Minn. Mar. 18, 2003). This court "defer[s] to the [agency's] findings of fact if they are reasonably supported by the evidence in the record," but "the interpretation of statutes and their application to undisputed facts present questions of law that [this court] reviews de novo."[3] *Id.*

Federal and state law set out separate eligibility criteria for adoption assistance. 42 U.S.C. § 673 (2012); Minn. Stat. § 256N.23, subd 1(a) (2016). State law also sets out certain mandatory exclusions from receiving adoption assistance on behalf of a child that is otherwise eligible. Minn. Stat. § 256N.23, subd. 6 (2016). The commissioner concluded that J.E.S. was ineligible for adoption assistance under federal law and so addressed neither whether J.E.S. was eligible under state law nor whether she is excluded from receiving adoption assistance, even though these additional reasons were presented to the commissioner. On appeal, DHS asks this court to conclude that J.E.S. is not eligible and, if eligible, is excluded from receiving adoption assistance.

In resolving the issue before us, we conclude that J.E.S. is eligible for adoption assistance under federal and state law and, therefore, the commissioner erred in ruling to

[3] In its brief, DHS argued that "[t]he Commissioner's interpretation is entitled to deference and should be affirmed." At oral argument, however, DHS agreed that de novo review applies to the statutory questions presented on appeal.

the contrary. But we also conclude that J.E.S. is excluded from receiving adoption assistance because state law excludes children subject to direct-adoptive placements. And we determine that federal law does not preempt the relevant state law exclusion.

A. J.E.S. is eligible for adoption assistance under federal law.

Adoption assistance arises out of a complicated scheme of federal and state laws. In 1980, the federal government enacted the Adoption Assistance and Child Welfare Act (the act), also known as Title IV-E of the Social Security Act, to provide monetary adoption assistance to children with special needs. Pub. L. No. 96-272 (1980); *see also* 42 U.S.C. § 670 (2012). Under federal law, the adopting parents receive the adoption assistance payments on behalf of the child. 42 U.S.C. § 673 (a)(1)(B). The act sets out eligibility criteria for adoption assistance. 42 U.S.C. § 673. Each state seeking to administer program funds submits a plan for federal approval. *Id*. Minnesota's plan is referred to as "Northstar Adoption Assistance" and is codified under Minn. Stat. §§ 256N.001-.28 (2016).

For a child to receive adoption assistance, the child must satisfy eligibility criteria under both federal and state law. Appellants contend that the commissioner erred in determining that J.E.S. is ineligible for adoption assistance. DHS contends that J.E.S. is ineligible under both federal and state law. Thus, our review requires statutory interpretation of both federal and state law.

We interpret a federal statute with the same approach we use to interpret state statutes. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). "The object of all statutory interpretation and construction is to ascertain the intent of the legislature." *In re Estate of Jobe*, 590 N.W.2d 162, 164 (Minn. 1999). We give the

words and phrases in statutes their plain and ordinary meaning. *Engfer*, 869 N.W.2d at 300. Additionally, we interpret "the statute as a whole and give effect to all of its provisions." *Id.* Initially, we determine whether the statutory language is ambiguous, which means that it is susceptible to more than one reasonable interpretation. *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn. 2010). If the statute is unambiguous, "we must enforce the plain meaning of the statute and not explore the spirit or purpose of the law." *Engfer*, 869 N.W.2d at 300.

Under federal law, a state may enter into adoption assistance agreements with "parents who adopt a child with special needs" and "may make adoption assistance payments" to those parents through an approved state plan "in any case where the child meets the requirements of paragraph (2)." 42 U.S.C. § 673 (a)(1)(A); *id*. (a)(1)(B). Paragraph (2) sets out two slightly different eligibility criteria depending on whether a child is an "applicable child for the fiscal year (as defined in subsection (e))." *Id.* (a)(2)(A)(i). An "applicable child" is a child who has reached a certain age—which in J.E.S.'s case is four years old—before the year the adoption agreement is entered into. *Id.* (e)(1)(A)-(B). The commissioner determined, and all parties agree, that J.E.S. is an applicable child.

Paragraph (2) also provides that an applicable child is eligible for adoption assistance if she meets both clause (I) and clause (II) of subparagraph (ii). *Id.* (a)(2)(A)(ii). The commissioner found that J.E.S. satisfied clause (I) because she "meets all medical or disability requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income [SSI]." *Id.* (a)(2)(A)(ii)(I)(bb). The parties dispute whether J.E.S. satisfies clause (II), which states an applicable child must have "been determined by

the State, pursuant to subsection (c)(2), to be a child with special needs." *Id.* (a)(2)(A)(ii)(II).

An applicable child "shall not be considered a child with special needs unless" she meets three criteria. *Id.* (c)(2). First, "the State has determined, pursuant to a criterion or criteria established by the State, that the child cannot or should not be returned to the home of his parents." *Id.* (c)(2)(A). Second, "the State has determined that there exists with respect to the child a specific factor or condition," e.g., ethnic background or medical conditions, "because of which it is reasonable to conclude" that the child cannot be placed without providing adoption assistance, or "the child meets all medical or disability requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income benefits." *Id.* (c)(2)(B). The parties agree that J.E.S. meets the first and second criteria in subsection (c)(2), and so we do not analyze them.

The parties dispute whether J.E.S. meets the third criterion under subsection (c)(2), which states:

> (C) the State has determined that, *except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child,* a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

Id. (c)(2)(C) (emphasis added). To paraphrase, this third criterion requires a "reasonable, but unsuccessful, effort" to place the child with adoptive parents without adoption assistance, except where such a search would be "against the best interests of the child."

The commissioner concluded that J.E.S. does not satisfy the third criterion. Appellants do not dispute the commissioner's finding that no "reasonable, but unsuccessful, effort has been made to place [J.E.S.] with appropriate adoptive parents without providing adoption assistance." Instead, appellants argue that J.E.S. satisfies the third criterion because she falls into the best-interest exception, and therefore, that the reasonable-search requirement does not apply to her.

Appellants' position has some support in the record. The commissioner determined that J.E.S. "has developed significant emotional ties with the Appellant[s] and [their] family." The commissioner also determined that, based on J.E.S.'s medical conditions, attachment to appellants' family, and appellants' experience with children with Down syndrome, a "preponderance of the evidence shows that it is in the best interests of [J.E.S.] that she remain" with appellants.[4] The commissioner concluded, however, that the best-interest exception applies only when foster parents adopt the child. DHS asks this court to affirm this interpretation of federal law.

Appellants point out that the third criterion includes the best-interest exception with connecting language "because of such factors as" before it mentions "significant emotional ties" with foster parents. From this, appellants contend that emotional ties with foster parents is merely one instance that may support waiving the reasonable-search requirement. *Id.* (c)(2)(C). We agree. By determining that the best-interest exception is

[4] The parties dispute whether determining that remaining with appellants is in J.E.S.'s best interests is the same as determining that waiving the reasonable-search requirement is in J.E.S.'s best interests. Given our ultimate conclusion that J.E.S. is excluded from receiving adoption assistance under state law, we decline to address this issue.

always limited to foster-parent adoption, the commissioner ignored the connecting language "because of such factors as." *Id.* Congress's use of this connecting language means it is providing one circumstance in which a search may be waived based on a child's best interest. *Id.* When we interpret a statute, we "give effect to all of its provisions." *Engfer*, 869 N.W.2d at 300. The commissioner's interpretation of subparagraph (c)(2)(C) renders the phrase "because of such factors" meaningless, and, thus we reject her interpretation of the best-interest exception in the third criterion as overly narrow. 42 U.S.C § 673 (c)(2)(C).

Moreover, DHS on appeal provides no analysis or legal authority supporting its view of the best-interest exception to the third criterion. We are persuaded by the Supreme Court of Pennsylvania's holding that the third criterion favors but does not require foster placement before applying the best-interest exception. *See C.B. ex rel. R.R.M. v. Dep't of Pub. Welfare*, 786 A.2d 176, 183 (Pa. 2001) ("[I]t is apparent that Congress contemplated agency custody as a proper measure of eligibility for adoption assistance, even if it did not expressly require such custody under the Act." (emphasis omitted)).

The language in the third criterion is unambiguous. Even though further analysis is not required, we note that the legislative history of the relevant provision supports the interpretation that foster-care-parent adoption is one example of the best-interest exception to the reasonable-search requirement. *See* S. Rep. 96-336 at 2 ("The requirement of a search for a non-subsidized adoptive family would not apply when such a search would be against the best interest of the child, *for example*, where the child had already established

significant emotional ties as a foster child of the potential adoptive parents." (emphasis added)).

Accordingly, the failure to satisfy the reasonable-search criteria did not render J.E.S. ineligible for adoption assistance under federal law. We conclude that the commissioner erred in determining that J.E.S. was not eligible for adoption assistance under federal law.

B. J.E.S. satisfies state eligibility criteria for adoption assistance, but because J.E.S.'s adoption is a direct-adoptive placement, she is excluded from receiving adoption assistance under Minnesota law.

1. J.E.S. satisfies eligibility criteria for adoption assistance under Minnesota law.

DHS asks this court to affirm the commissioner's decision based on state adoption-assistance eligibility law; while the commissioner was presented with this issue, she did not decide it. Minn. Stat. § 256N.23, subd. 1(a), sets out several eligibility requirements for adoption assistance. Of these, the parties primarily dispute whether J.E.S. satisfies the criteria outlined in Minn. Stat. § 256N.23, subd. 1 (a)(1), which states that the child must have "special needs under subdivision 2."[5] Subdivision 2(a) states that "[a] child is considered a child with special needs under this section if the requirements in paragraphs (b) to (g) are met." *Id.*, subd. 2(a). Paragraph (d) requires a reasonable, but unsuccessful effort to place the child with persons willing to adopt without adoption assistance. *Id.*, subd.

[5] DHS argues that J.E.S. does not meet another criterion for eligibility for adoption assistance under state law. It points out that under subdivision 1(a)(3) of section 256N.23, the child must either satisfy federal adoption assistance eligibility criteria set out in 42 U.S.C. § 673 or "have had foster care payments paid on the child's behalf while in out-of-home placement." Because we have determined J.E.S. is eligible for adoption assistance under federal law, J.E.S. satisfies the criterion set out in subdivision 1(a)(3) of section 256N.23.

2(d). Alternatively, under paragraph (d), the commissioner may determine a search is not in the best interest of the child and waive the search requirement. *Id.* Paragraph (e) states that the commissioner "must" waive the reasonable-search requirement under paragraph (d) if any of three instances apply:

> (1) the child is being adopted by a relative and it is determined by the child-placing agency that adoption by the relative is in the best interests of the child;
>
> (2) the child is being adopted by a foster parent with whom the child has developed significant emotional ties while in the foster parent's care as a foster child and it is determined by the child-placing agency that adoption by the foster parent is in the best interests of the child; or
>
> (3) the child is being adopted by a parent that previously adopted a sibling of the child, and it is determined by the child-placing agency that adoption by this parent is in the best interests of the child.

Id., subd. 2(e).

Appellants do not contend that J.E.S. fits any of the three waiver instances outlined in paragraph (e). The parties disagree whether paragraph (e) lists the *only* instances when the commissioner *can* waive the search requirement. DHS contends that because subdivision 2 requires that a child meet "paragraphs (b) to (g)" to be considered a child with special needs, the statutory language suggests that a child must satisfy both paragraphs (d) and (e). *Id.*, subd. 2(a). Under this interpretation, paragraph (e) would contain the only circumstances in which the commissioner can waive the reasonable-search requirement.

Because this reading of the statute fails to account for the distinction between permissive and mandatory waiver, we disagree. Upon a closer analysis of subdivision 2, we conclude that a child does not need to satisfy *every* paragraph from (b) to (g), but rather

an appropriate combination of them, for two reasons. *See id.*, subd. 2(a)-(g). First, this reading of subdivision 2 avoids rendering meaningless any language from (b) to (g). The plain language of paragraph (e) provides when waiver of the reasonable-search requirement is *mandatory* because the paragraph states that the commissioner "must" waive the reasonable-search requirement in those three instances. *Id.*, subd. 2(e); *see* Minn. Stat. § 645.44, subd. 15(a) (2016) (stating that "[m]ust is mandatory). But paragraph (d) gives the commissioner discretion to determine that a reasonable search is not in the best interests of the child. Minn. Stat. § 256N.23, subd. 2(d). We conclude the commissioner's power under this provision is discretionary because the statute does not outline specific circumstances when the commissioner must determine that waiving the reasonable search is in the best interest.[6] *Id.*; *see generally* Minn. Stat. § 645.44, subd. 15 (2016) (stating that "'[m]ay' is permissive). If paragraph (e) is interpreted to identify the only circumstances in which a reasonable search can be waived, then the discretion granted in paragraph (d) would be rendered meaningless.

Second, other provisions in subdivision 2 are included in the alternative. Specifically, paragraph (f) sets the minimum requirements for the documented search required by paragraph (d). Minn. Stat. § 256N.23, subd. 2(f). Yet, paragraph (e) provides that a reasonable search need not occur in three specific circumstances; consequently, it

[6] While paragraph (e) states particular circumstances in which the reasonable-search requirement must be waived, those too involve discretionary findings on the child's best interests. *See, e.g.*, *id.*, subd. 2(e)(1) ("The child is being adopted by a relative and it is *determined by the child-placing agency that adoption by the relative is in the best interests of the child . . . .*" (emphasis added)).

would be impossible to satisfy both paragraphs (e) and (f). *Id.*, subd. 2(e). Accordingly, we conclude that the three circumstances when a search *must* be waived are listed in paragraph (e), but are not the *only* instances when a reasonable search *may* be waived. Thus, the commissioner's decision that J.E.S. was ineligible for adoption assistance cannot be affirmed based on Minn. Stat. § 256N.23, subd. 1(a).

2. Children subject to direct-adoptive placements are excluded from receiving adoption assistance under Minnesota law, which is not preempted by federal law.

Subdivision 6 of Minn. Stat. § 256N.23 provides that the commissioner "must not enter into an adoption assistance agreement" in any of five enumerated circumstances. These enumerated exclusions include "(3) an individual adopting a child who is the subject of a direct-adoptive placement under section 259.47 or the equivalent tribal code."[7] Minn. Stat. § 256N.23, subd. 6(3).

Appellants admit that J.E.S's proposed adoption by appellants is a direct placement—consistent with the commissioner's finding—and acknowledge that J.E.S. is excluded from receiving assistance under state law as a result.[8] But appellants urge this

[7] DHS also argues that another exclusion prohibits J.E.S. from receiving adoption assistance, i.e., "(4) a child's legal custodian or guardian who is now adopting the child." Minn. Stat. § 256N.23, subd. 6(4). Because we conclude that exclusion (3) prohibits J.E.S. from adoption assistance, we do not consider exclusion (4).

[8] Appellants assert that Minnesota's exclusion of children subject to direct-adoptive placements from receiving adoption assistance is not sound public policy, but provide no legal arguments—aside from federal preemption, which we reject this opinion—that the exclusion is invalid. "[T]his court is limited in its function to correcting errors [and] it cannot create public policy." *Clark v. Connor*, 843 N.W.2d 785, 788 (Minn. App. 2014) (quotation omitted). Accordingly, do not consider appellants' public policy arguments.

court to conclude that federal law regarding adoption assistance preempts the state-law exclusion for direct-adoptive placements, as stated in subdivision 6 of Minn. Stat. § 256N.23.

The Supremacy Clause of the United States Constitution requires that "a federal law prevails over a conflicting state law." *Angell v. Angell*, 791 N.W.2d 530, 534 (Minn. 2010) (citing U.S. Const. art. VI, cl. 2). Determining that federal law preempts state law, however, is generally disfavored. *Blackburn v. Doubleday Broad. Co.*, 353 N.W.2d 550, 554 (Minn. 1984). This court has recognized that "[t]he presumption against preemption is a necessary requirement for a properly functioning and well-balanced federal system." *Harbor Broad., Inc. v. Boundary Waters Broad., Inc.*, 636 N.W.2d 560, 564 n.1 (Minn. App. 2001). In determining whether federal law preempts state law, congressional purpose is the "ultimate touchstone." *Engfer*, 869 N.W.2d at 301 (quoting *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138, 111 S. Ct. 478, 482 (1990)). We review questions of preemption de novo. *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008).

"Federal law can preempt state law in three ways: through (1) field preemption, (2) express preemption, and (3) conflict preemption (sometimes called 'implied conflict preemption')." *Hous. & Redevelopment Auth. v. Lee*, 852 N.W.2d 683, 687 (Minn. 2014). Conflict preemption arises when either "a party cannot simultaneously comply with both state and federal law," or "a state law is an obstacle to achieving the purpose of a federal law.'" *Id.*

Appellants contend that conflict preemption applies here because "there is an actual conflict between federal and state law." Specifically, appellants claim that there is an actual

conflict between 42 U.S.C. § 673 and Minn. Stat. § 256N.23, subd. 6(3), because, according to appellants, Minnesota law excludes children from receiving adoption assistance who would otherwise would be eligible under federal criteria. Since the commissioner concluded that J.E.S. was ineligible for adoption assistance because she did not satisfy the criteria for "special needs," the commissioner did not address the preemption issue that was raised by appellants. Because we have concluded that J.E.S. satisfies the criteria for special needs under federal law and the commissioner's ineligibility determination cannot be affirmed based on state law, we must address whether the relevant state law exclusion for adoption assistance is preempted by federal law. *See In re Senty-Haugen*, 583 N.W.2d 266, 269 n.3 (Minn. 1998) ("It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise.").

Several courts around the country have analyzed whether federal adoption-assistance law preempts state laws that restrict which adoptions are eligible for assistance. In *Glanowski v. New York State Department of Family Assistance*, a federal district court analyzed a New York state statute that limited adoption assistance to children who "have been committed to a social services official or a voluntary authorized agency or whose guardianship and custody have been committed to a certified or approved foster parent." 225 F. Supp. 2d 292, 298 (W.D.N.Y. 2002) (quoting N.Y. Soc. Serv. § 451(1) (McKinney 2002)). The court held that state law did not conflict with 42 U.S.C. § 673 after determining that Congress's intent was "to reduce long-term foster care situations which have proven financially burdensome to the state and inimical to the children's best interests." *Glanowski*, 225 F. Supp. 2d at 303.

Additionally, the court noted that federal law requires that each state wishing to participate in the adoption-assistance agreements, as outlined in 42 U.S.C. § 673, develop a plan that is consistent with federally enumerated criteria. *Id.* at 302. The Secretary of Health and Human Services must approve the plan after determining whether it meets the federal criteria. 42 U.S.C. § 671 (b) (2012). *Glanowski* went on to observe that the federal government had not refused to reimburse New York based on a failure of New York's plan to meet the requirements of 42 U.S.C. § 673, and that, as a result, "the New York plan ha[d] the imprimatur of the federal government." *Glanowski*, 225 F. Supp. 2d at 302.

State courts have similarly held that federal law does not preempt state laws that limit the types of adoptions that are eligible for assistance. *See C.B.*, 786 A.2d at 181-83 (determining that federal law did not preempt Pennsylvania law limiting adoption assistance to children "in the legal custody of local authorities where parental rights have been terminated"); *Becker v. Iowa Dep't of Human Servs.*, 661 N.W.2d 125, 127-29 (Iowa 2003) (determining that federal law did not preempt Iowa law limiting adoption assistance to children "under the guardianship of the state, county, or a licensed child-placing agency immediately prior to adoption").

Minnesota's Northstar Adoption Assistance law, like the similar New York law examined in *Glanowski*, excludes children subject to direct-placement adoptions from receiving adoption assistance. *Compare* Minn. Stat. § 256N.23, subd. 6(3), *with* N.Y. Soc. Serv. § 451(1). Accordingly, Minnesota law does not conflict with Congress's underlying goal of reducing reliance on foster care and moving children from foster care into permanent placements. *See Glanowski*, 225 F. Supp. 2d at 303. Further, appellants do not

contend that the federal government has ever refused to reimburse Minnesota on the ground that its adoption assistance program did not satisfy federal standards. As a result, Minnesota adoption law has "the imprimatur of the federal government." *See id.* at 302 (referring to New York statute). On this basis, we conclude that federal adoption assistance law under 42 U.S.C. § 673 does not preempt Minnesota's exclusion of children subject to direct-adoptive placements from receiving adoption assistance under Minn. Stat. § 256N.23, subd. 6(3).

Appellants argue that a policy statement from the United States Department of Health and Human Services (DHHS) establishes that federal law preempts Minnesota's exclusions from adoption assistance. Section 8.2B5 of the Title IV-E portion of the Child Welfare Policy Manual states that "[i]f the State determines that [a] child is a child with special needs, consistent with [42 U.S.C. § 673 (c)], the State may not apply any further requirements or restrictions to the child's eligibility for title IV-E adoption assistance"; the manual also provides that "how a child is removed from his or her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation."[9]

We first consider how much deference to give this policy statement. "[I]f a federal statute is ambiguous, a court 'must give effect to an agency's regulation containing a

[9] U.S. Dep't of Health and Human Servs., ACYF-CB-PA-01-01, Title IV-E Adoption Assistance (Eligibility and Ancillary Prices) (Jan. 23, 2001), https://www.narf.org/nill/documents/icwa/federal/adoptpolicy.pdf.

reasonable interpretation' of the federal statute," otherwise known as *Chevron* deference.[10] *In re Gillette Children's Specialty Healthcare*, 867 N.W.2d 513, 522 (Minn. App. 2015) (emphasis omitted) (quoting *Christensen v. Harris County*, 529 U.S. 576, 586-87, 120 S. Ct. 1655, 1662 (2000)), *aff'd*, 883 N.W.2d 778 (Minn. 2016)). Agency interpretations of federal law receive *Chevron* deference only so long as the interpretation carries the "force of law." *Christensen*, 529 U.S. at 587, 120 S. Ct. at 1662. Interpretations of federal law in opinion letters, agency manuals, and enforcement guidelines "lack the force of law." *Id.* If the agency interpretation does not carry the force of law, then courts defer to the agency's interpretation based on "*Skidmore* factors," i.e., "the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors that give it power to persuade." *Gillette Children's Specialty Healthcare*, 867 N.W.2d at 522 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40, 65 S. Ct. 161, 164 (1944)).

We conclude that 42 U.S.C. § 673 is not ambiguous as to whether Congress intended to preempt state law excluding children subject to certain adoptions from receiving assistance. *Glanowski* and *C.B.* recognized that "Congress expressly allowed the states participating in the federal program leeway to determine themselves, within certain broad parameters, which children have special needs." *Glanowski*, 225 F. Supp. 2d at 302

[10] The United States Supreme Court announced this standard of review in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 843, 843-46, 104 S. Ct. 2778, 2781-83 (1984).

(quoting *C.B.*, 786 A.2d at 183). Accordingly, we do not defer to the policy statements that appellants cite.

Even if we were to conclude 42 U.S.C. § 673 is ambiguous, the agency's interpretation would not change our ruling. Appellants cite only to an agency interpretation in a policy manual, which does not carry the force of law; thus we need not defer to it. *See Christenson*, 529 U.S. at 587, 120 S. Ct. 1662. Instead, we may evaluate the agency interpretation for its persuasiveness under the *Skidmore* factors discussed above. *Gillette Children's Specialty Healthcare*, 867 N.W.2d at 522. The DHHS policy statement does not persuade us that federal law preempts Minnesota's exclusion of children subject to direct placement adoptions from receiving adoption assistance. After the parties submitted their briefs to this court, the DHHS "deleted" the quoted statements from its Child Welfare Policy Manual.[11] The Child Welfare Policy Manual does not comment on the meaning or legal value of "deleted" policy statements. But the agency has not issued any new statements that address this topic.[12]

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[11] *See* U.S. Dep't of Health & Human Servs., *Child Welfare Policy Manual Updates Deletions to the Manual*, ACF.HHS.GOV, https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/updates_delete.jsp (last visited Jan. 29, 2018).

[12] The brief of amicus curiae cites to other policy statements articulating similar points. For example: "Further, the title IV-E agency is prohibited from imposing additional eligibility requirements not contained in federal law." U.S. Dep't of Health and Human Servs., ACYF-CB-PI-09-10 (2009). Unlike the statements from the Child Welfare Policy Manual, it does not appear that DHHS has deleted this policy statement. But the amicus does not contend this statement has the force of law, and we remain unpersuaded that 42 U.S.C. § 673 preempts Minn. Stat. § 256N.23, subd. 6(3).

We conclude, for the reasons stated, that the agency's now-deleted statements about federal law are not persuasive. As *Glanowski* noted, Congress's goal in passing 42 U.S.C. § 673 was to "reduce long-term foster care situations which have proven to be financially burdensome to the state and inimical to the children's best interests." 225 F. Supp. 2d at 303. Minnesota's exclusion furthers Congress's goal by preserving scarce resources and focusing resources on children not subject to direct-adoptive placements. As a result, with the presumption against preemption in mind, we conclude that federal law does not preempt Minnesota law excluding children subject to direct-adoptive placements from receiving adoption assistance.

D E C I S I O N

Minnesota law expressly excludes J.E.S from receiving adoption assistance because appellants propose a direct-adoptive placement. Because this state law exclusion is not preempted by federal adoption assistance law, we affirm the ruling of the commissioner.

Affirmed.