**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A18-1380**

In re the Matter of: Victoria Carlson and Stephen Carlson,
Appellants,

vs.

Pam Wheelock,
in her official capacity as
Commissioner of Minnesota Department of Human Services,
Respondent,
Tina Curry,
in her official capacity as Director of
Ramsey County Community Human Services, Financial Assistance Division, et al.,
Respondents.

**Filed August 12, 2019**
**Affirmed**
**Florey, Judge**

Ramsey County District Court
File No. 62-CV-17-4889

Victoria Carlson, Stephen Carlson, St. Paul, Minnesota (pro se appellants)

Keith Ellison, Attorney General, Ali P. Afsharjavan, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioner of human services)

John J. Choi, Ramsey County Attorney, Ayah Helmy, Assistant County Attorney, St. Paul, Minnesota (for respondent county)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Peterson, Judge.*

**U N P U B L I S H E D  O P I N I O N**

**FLOREY**, Judge

The Minnesota Department of Human Services (DHS) determined that appellant Victoria Carlson,[1] because of her age and eligibility for medical assistance for the aged, no longer qualified for a special Medicaid program, which provides medical assistance for certain persons needing treatment for breast cancer (MA-BC). In this appeal, appellant argues that her removal from the MA-BC program violated her rights to equal protection and due process and constituted a misapplication of the Minnesota statute governing MA-BC eligibility, Minn. Stat. § 256B.057, subd. 10(a) (2018). Because appellant's constitutional arguments are unavailing and DHS properly determined that appellant was ineligible for MA-BC benefits under the plain language of Minn. Stat. § 256B.057, subd. 10(a), we affirm.

## FACTS

Appellant was diagnosed with breast cancer in 2013 and began receiving MA-BC benefits that year. The MA-BC program's eligibility requirements are set forth in statute. *See* Minn. Stat. § 256B.057, subd. 10(a). To receive MA-BC benefits, a person must, in

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

[1] Appellant Stephen Carlson was not the subject of DHS's determinations, and he is therefore not the subject of this opinion.

relevant part, be under the age of 65, not otherwise eligible for certain medical assistance, and "not otherwise covered under creditable coverage." *See id.*

Appellant turned 65 on November 11, 2016. In July 2016, prior to appellant turning 65, Ramsey County terminated appellant's MA-BC benefits. The county determined that appellant no longer met the eligibility criteria, but instead qualified for medical assistance for the aged, which required, based on appellant's income, a $433 per month "spenddown" payment. *See* Minn. Stat. § 256B.055, subd. 7 (2018) (setting forth eligibility requirements for medical assistance for the aged). Appellant had not been required to make this spenddown payment when receiving MA-BC benefits.

In October 2016, the county sent appellant a notice stating that her medical-assistance benefits would cease on October 31, 2016, because of her failure to meet the spenddown requirement. A second notice was sent that month informing her that she was no longer eligible for MA-BC benefits due to her age and receipt of Medicare and that she must rely on medical assistance for the aged with a spenddown. Appellant appealed her MA-BC eligibility to a human-services judge (HSJ). The county sent appellant an appeal summary explaining that she was no longer eligible for MA-BC benefits because of her age and eligibility for Medicare.[2]

[2] Medicare is the federal health-insurance program, while Medicaid is the joint federal-state welfare program for medical care. *Koronis Manor Nursing Home v. Dep't of Pub. Welfare*, 249 N.W.2d 448, 449 n.1, n.2 (Minn. 1976). Medical assistance for the aged is a type of Medicaid, not Medicare. *See Resident v. Noot*, 305 N.W.2d 311, 313 (Minn. 1981) ("The state scheme, the Minnesota Medical Assistance program, is a part of the federal scheme, the federal Medicaid program.").

On June 7, 2017, following an evidentiary hearing, the HSJ recommended that, due to her age and eligibility for medical assistance for the aged, DHS affirm the county's determination that appellant is no longer eligible for the MA-BC program. The HSJ recommended that DHS reverse the county's determination that appellant's medical-assistance benefits terminated on October 31, 2016. The HSJ found that appellant met all of the eligibility requirements for the MA-BC program until November 11, 2016, when she turned 65, and therefore the county erred when it transferred her off of the MA-BC program in July 2016. The HSJ determined that, because the county did not provide appellant with adequate notice of the program change, appellant should receive new notice of her removal from the MA-BC program and enrollment into the medical-assistance-for-the-aged program.

*First Appeal to District Court*

On June 8, 2017, DHS adopted in an order the recommendations of the HSJ. Appellant sought reconsideration of DHS's June 8 decision, and on July 21, 2017, DHS issued an order affirming its decision. In August 2017, appellant appealed DHS's July 21 order to the district court.

*Second Appeal to District Court*

In accordance with DHS's June 8 order, on June 15, 2017, a new notice was sent to appellant informing her that she was no longer eligible for MA-BC benefits effective July 1, 2017. Appellant appealed. A prehearing conference was held before another HSJ to determine the issues on appeal, and the HSJ determined that appellant was seeking to relitigate an issue already being appealed to district court; her eligibility for MA-BC

benefits. On August 29, 2017, due to appellant's pending appeal in district court, the HSJ recommended dismissing the second appeal for lack of jurisdiction.

On August 30, 2017, DHS adopted the recommendation of the HSJ. Appellant sought reconsideration, and on October 24, 2017, DHS issued an order affirming its August 30 determination. Appellant appealed the October 24 order to the district court.

*Appeals to District Court*

A hearing before the district court was held in March 2018. During the hearing, appellant acknowledged that she was, at that time, eligible for and receiving Medicare benefits. DHS and the county conceded that, although appellant became ineligible for MA-BC benefits on November 11, 2016, she was entitled to those benefits through June 2017 given the improper October 2016 notices and subsequent determinations by the HSJ and DHS.

In May 2018, the district court filed an order affirming DHS's orders of July 21 and October 24, 2017. The district court determined that, under the plain language of Minnesota's MA-BC statute, appellant became ineligible for MA-BC benefits when she turned 65. The district court then analyzed three arguments: (1) whether DHS's action violated appellant's right to equal protection; (2) whether DHS's action violated appellant's right to procedural and substantive due process; and (3) whether DHS's action was arbitrary or capricious or unsupported by substantial evidence. The district court determined that appellant's equal-protection claim failed because appellant was not similarly situated to persons under 65 receiving MA-BC benefits because, after reaching 65, she qualified for Medicare. The district court also found that the classification at issue

passed rational-basis scrutiny. The district court concluded that appellant's procedural and substantive due-process rights were not violated because appellant received sufficient procedural protections, and the MA-BC age limitation was rationally related "to the public purpose sought to be served." Lastly, the district court concluded that DHS's determination was neither arbitrary nor capricious and was supported by substantial evidence. This appeal followed.

## D E C I S I O N

This court may reverse or modify an agency's decision if the agency's findings or conclusions violate constitutional provisions, exceed statutory authority, are legally erroneous, are unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 14.69 (2018). "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).

**MA-BC Benefits**

In 2000, Congress gave states the option to provide Medicaid benefits to "certain women screened and found to have breast or cervical cancer." *See* Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, 114 Stat. 1381; *see also* 42 U.S.C. § 1396a(aa) (2012); Minn. Stat. § 256B.057, subd. 10(a). The congressional record indicates that the program was intended to cover "women who are not eligible for Medicaid and too young for Medicare, but are caught in that crack of not having insurance

coverage." 146 Cong. Rec. H2690 (daily ed. May 9, 2000) (statement of Rep. Myrick), https://www.congress.gov/crec/2000/05/09/CREC-2000-05-09.pdf. Congress limited eligibility to include only individuals under the age of 65. *See* 42 U.S.C. § 1396a(aa).

Minnesota began providing this coverage in 2002. 2001 Minn. Laws 1st Spec. Sess. ch. 9, § 29, at 2203. The statute presently extends eligibility to an individual who:

> (1) has been screened for breast or cervical cancer by the Minnesota breast and cervical cancer control program, and program funds have been used to pay for the person's screening;
> (2) according to the person's treating health professional, needs treatment, including diagnostic services necessary to determine the extent and proper course of treatment, for breast or cervical cancer, including precancerous conditions and early stage cancer;
> (3) meets the income eligibility guidelines for the Minnesota breast and cervical cancer control program;
> (4) is under age 65;
> (5) is not otherwise eligible for medical assistance under United States Code, title 42, section 1396a(a)(10)(A)(i); and
> (6) is not otherwise covered under creditable coverage, as defined under United States Code, title 42, section 1396a(aa).

Minn. Stat. § 256B.057, subd. 10(a).

In this appeal, appellant raises three discernable arguments that were presented to and considered by the district court: (1) DHS's action violated appellant's right to equal protection; (2) DHS's action violated appellant's right to procedural and substantive due process; and (3) DHS's action was arbitrary or capricious, unsupported by substantial evidence, and inconsistent with the language of section 256B.057, subdivision 10(a). *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating appellate courts generally

address only issues presented to and considered by the district court).[3] We address each of these arguments in turn, and we begin with equal protection.

**Equal Protection**

Appellant argues that she is being "treated differently than those more fortunate who remain under 65 when [their] treatment is successfully completed." In effect, she challenges the constitutionality of the age restriction in Minn. Stat. § 256B.057, subd. 10(a)(4). Whether a statute is unconstitutional presents a question of law subject to de novo review. *Brink v. Smith Cos. Constr., Inc.* 703 N.W.2d 871, 874 (Minn. App. 2005), *review denied* (Minn. Dec. 21, 2005). Minnesota statutes are presumed to be constitutional and are struck down only when absolutely necessary. *Id.*

Both the United States and Minnesota Constitutions provide equal-protection guarantees that similarly situated individuals shall be treated alike. *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000). A party asserting an equal-protection challenge must initially show that she has been treated differently from others who are similarly situated. *Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 647 (Minn.

[3] Appellant nominally seeks injunctive relief and remedies under 42 U.S.C. § 1983 (2012). The district court determined that appellant's requests for an injunction and relief under section 1983 were not within its jurisdiction because they exceeded the scope of the powers afforded under Minn. Stat. § 14.69. Appellant argues that those claims were properly before the district court. Because appellant's substantive claims are unavailing, the availability of injunctive relief and relief under section 1983 is of no consequence. *See* 42 U.S.C. § 1983 (requiring a deprivation of rights); *Johnson v. Morris*, 453 N.W.2d 31, 34-35 (Minn. 1990); *see also City of Mounds View v. Metro. Airports Comm'n*, 590 N.W.2d 355, 357 (Minn. App. 1999) ("A party seeking an injunction must first establish that the legal remedy is inadequate and that the injunction is necessary to prevent great and irreparable injury.").

2012); *see State v. Garcia*, 683 N.W.2d 294, 298 (Minn. 2004) (stating that the Equal Protection Clauses of both the United States and Minnesota Constitutions "have been analyzed under the same principles and begin with the mandate that all similarly situated individuals shall be treated alike" (quotation omitted)). Minnesota appellate courts have "routinely rejected equal-protection claims when a party cannot establish that he or she is similarly situated to those whom they contend are being treated differently." *State v. Cox*, 798 N.W.2d 517, 521 (Minn. 2011). The focus when determining whether groups of people are similarly situated is whether "they are alike in all relevant respects." *Id.* at 522.

Here, because she is over 65 years old, and eligible for and receiving "creditable coverage" in the form of Medicare benefits, appellant is not similarly situated to MA-BC recipients in all relevant respects. *See* Minn. Stat. § 256B.057, subd. 10(a) (requiring that a person receiving MA-BC benefits not have "creditable coverage," as defined under 42 U.S.C. § 1396a(aa)); *see also* 42 U.S.C. §§ 1396a(aa) (referencing creditable coverage as defined under "42 U.S.C. 300gg(c)"); 42 U.S.C. 300gg-3(c)(1)(C) (2012) (defining creditable coverage to include Medicare Part A or Part B). Because appellant is not similarly situated to her comparison class, her equal-protection claim fails.

Even if we were to conclude that appellant is similarly situated to her comparison class, she would not prevail in her equal-protection claim. Age classifications, like the one at issue, are subject to rational-basis review. *State v. Holloway*, 916 N.W.2d 338, 348 (Minn. 2018). Minnesota's rational-basis test, which is more stringent than the federal test, sets forth the following requirements:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

*Id.*

The age classification in section 256B.057, subdivision 10(a), is not arbitrary; rather, it is legitimately and logically connected to the eligibility age for Medicare, and accordingly, a reduced need for MA-BC benefits. *See id.*; *see also* 42 U.S.C. § 426(a) (2012) (concerning Medicare eligibility). As previously discussed, the MA-BC program was intended to cover women ineligible for Medicaid and too young for Medicare. The exclusion of individuals 65 and older is a reasonable means for ensuring that adequate funding remains for the targeted recipients of the MA-BC program. The age restriction in section 256B.057, subdivision 10(a), does not violate federal or state equal-protection guarantees.

**Procedural Due Process**

We next address appellant's procedural due-process claim. Appellant generally asserts that she did not receive proper notice and a fair hearing. The protections of due process provided under the Minnesota and United States Constitutions are identical. *See State v. Krause*, 817 N.W.2d 136, 144 (Minn. 2012). "Whether the government has violated a person's procedural due process rights is a question of law that we review de

novo." *Sawh v. City of Lino* Lakes, 823 N.W.2d 627, 632 (Minn. 2012). We conduct a two-step analysis, first, identifying whether the government has deprived the individual of a protected interest, and then determining whether the procedures used were sufficient. *Id.*

The Supreme Court has determined that certain public benefits are "important rights," and recipients have a protected interest in receiving those benefits. *Goldberg v. Kelly*, 397 U.S. 254, 262-64, 90 S. Ct. 1011, 1017-18 (1970). Respondents do not dispute that appellant's entitlement to MA-BC benefits represents a protected interest. For purposes of this appeal, we therefore accept that a protected interest is at stake.

We next determine whether the procedures used were sufficient. To determine the adequacy of the procedures, the Supreme Court, in *Mathews v. Eldridge*, established a three-factor balancing test, which requires us to consider:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976). Here, considering the applicable *Mathews* factors, appellant received sufficient procedural protections. She received notice, a hearing, the opportunity to present evidence, and following DHS's decision, several levels of subsequent review, including this appeal.

Appellant appears to argue that, after she received the June 2017 notice (following DHS's determination that the prior notices were deficient), she was entitled to another hearing on her MA-BC eligibility. We disagree. Appellant received adequate notice of

the eligibility issue in dispute prior to the April 2017 evidentiary hearing before the HSJ. Adequate notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). Here, the county's appeal summary apprised appellant of the MA-BC eligibility issue, as did an October 26 notice. Appellant appeared at the subsequent evidentiary hearing in April 2017 and offered argument regarding her MA-BC eligibility.

The October 2016 notices were deemed deficient by the HSJ and DHS, not because the issues in dispute were not set forth, but because appellant was improperly removed from the MA-BC program prior to aging out of that program. Appellant received adequate notice of the issues in dispute prior to the hearing before the HSJ, and that hearing, as well as the procedures that followed, constitute sufficient due process. Procedural due process "is flexible and calls for such procedural protections as the particular situation demands." *Mathews*, 424 U.S. at 334, 96 S. Ct. at 902 (quotation omitted).

Any subsequent hearing on the issue of appellant's MA-BC eligibility would not reduce the risk of an erroneous deprivation of her rights. The HSJ and DHS determined that appellant aged out of the MA-BC program. Providing appellant another hearing on an issue that was already resolved would serve solely as an administrative burden with no corresponding benefit to appellant. Appellant's right to procedural due process was not violated.

**Substantive Due Process**

We next address appellant's substantive due-process claim. Appellant appears to argue that her removal from the MA-BC program prior to the completion of her treatment constituted an arbitrary government action. Substantive due process protects individuals from wrongful government actions "regardless of the fairness of the procedures used to implement them." *In re Linehan*, 594 N.W.2d 867, 872 (Minn. 1999) (quotations omitted). "Where no fundamental right is at stake, judicial scrutiny is not exacting and substantive due process requires only that the statute not be arbitrary or capricious; in other words, the statute must provide a reasonable means to a permissible objective." *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999).

There is no fundamental right at stake in this case. As noted in *Greene v. Comm'r of Minn. Dep't of Human Servs.*, "welfare benefits are not a fundamental right and neither the State nor Federal Government is under any sort of constitutional obligation to guarantee minimum levels of support." 755 N.W.2d 713, 726 (Minn. 2008) (quotation omitted). We therefore determine whether section 256B.057, subdivision 10(a), provides a reasonable means to a permissible objective. *See Boutin*, 591 N.W.2d at 716. The statute does so by providing medical assistance to women who are not eligible for Medicaid and too young for Medicare. As previously stated, the exclusion of individuals 65 and older is a reasonable means for ensuring that adequate funding remains for the targeted recipients of the MA-BC program.

**Review under Section 14.69**

Lastly, having considered appellant's constitutional arguments, we consider whether DHS's decision was otherwise erroneous. We may reverse or modify DHS's decision if its conclusions exceed statutory authority, are legally erroneous, are unsupported by substantial evidence, or are arbitrary or capricious. Minn. Stat. § 14.69. Appellant argues that "[t]he meaning of the MA-BC statute," section 256B.057, subdivision 10(a), "is in doubt," and that it was misapplied by DHS. She asserts that, once she qualified for the MA-BC program, she could not be deemed ineligible simply because of her age. In effect, she argues that the age requirement set forth in section 256B.057, subdivision 10(a), applies to applicants, not recipients. We disagree.

Statutory interpretation presents a question of law subject to de novo review. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). The first step in the process is to determine whether the statute's language is ambiguous. *Id.* The language is ambiguous if it "is subject to more than one reasonable interpretation." *Id.* (quotation omitted). "Words and phrases are to be construed according to their plain and ordinary meaning." *Id.* "Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Id.*

MA-BC coverage under section 256B.057, subdivision 10(a), is plainly contingent upon a recipient being under 65 and having no "creditable coverage." The statute states that MA-BC benefits "may be paid for a person who . . . is under age 65 . . . [and] is not otherwise covered under creditable coverage, as defined under United States Code, title 42,

section 1396a(aa)." Minn. Stat. § 256B.057, subd. 10(a). Appellant asks this court, in effect, to add language to the statute so that recipients of MA-BC benefits cannot be removed from the program based upon age. "[W]e will not read into a statute a provision that the legislature has omitted, either purposely or inadvertently." *Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006). While we sympathize with appellant, and acknowledge the increased financial burden resulting from the her removal from the MA-BC program, DHS's decision to terminate appellant's MA-BC benefits was supported by the record and based upon the unambiguous language of section 256B.057, subdivision 10(a).

**Affirmed.**