STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0853

Robert Pfoser, as special administrator of the Estate of David Pfoser,
Respondent,

vs.

Jodi Harpstead, Commissioner Minnesota Department of Human Services,
Appellant,

and

Dakota County Human Services,
Respondent Below.

Filed January 13, 2020
Affirmed
Bratvold, Judge

Dakota County District Court
File No. 19HA-CV-18-3466

Laurie Hanson, Long, Reher, Hanson, & Price, P.A., Minneapolis, Minnesota (for respondent Robert Pfoser, as special administrator to the Estate of David Pfoser)

Keith Ellison, Attorney General, Michael N. Leonard, Assistant Attorney General, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Slieter, Judge.

S Y L L A B U S

1. When a Medical Assistance for Long-Term Care (MA-LTC) recipient challenges a transfer penalty for having transferred assets into a pooled special-needs trust, the Commissioner of Human Services must make a factual determination, based on the evidence, whether the recipient has made a "satisfactory showing" that the recipient

"intended to dispose of the assets either at fair market value or for other valuable consideration," and thus is not subject to a transfer penalty under the asset-transfer exception in Minn. Stat. § 256B.0595, subd. 4(a)(4) (2018) and 42 U.S.C. § 1396p(c)(2)(C) (2018).

2. In determining whether an MA-LTC recipient has made a satisfactory showing under the asset-transfer exception, the Commissioner of Human Services must consider evidence of the asset's fair market value at the time of the transfer and evidence of other valuable consideration received by the MA-LTC recipient before, during, and after the transfer into the pooled special-needs trust.

O P I N I O N

BRATVOLD, Judge

David Pfoser had severe Parkinson's disease and was disabled mentally and physically. He injured himself while living at home, which he and his siblings inherited from their parents. Pfoser moved to a long-term care facility and received MA-LTC benefits from the State of Minnesota. After it became evident that Pfoser would not return to live at home, his siblings sold the home, and Pfoser received a share of the proceeds, $28,010.10. Pfoser's legal guardian and conservator received court approval to transfer the proceeds into a pooled special-needs trust restricted to making distributions for Pfoser's benefit for needs not provided for by MA-LTC. Based on Pfoser's asset transfer, Dakota County Human Services (the county) imposed a transfer penalty against Pfoser of about four months of ineligibility for MA-LTC benefits.

This appeal arises from the decision of appellant Commissioner Minnesota Department of Human Services (commissioner) to affirm the transfer penalty. Pfoser asserted an exception to the transfer penalty and offered evidence before the Department of Human Services (DHS) that he had a life expectancy of just over 14 years from the date of assessment. Pfoser also established that the trustee expected to deplete Pfoser's sub-account in a "few years" by paying for goods and services, such as an adaptive recliner and equipment for Pfoser's wheelchair, which are not covered by Medical Assistance (MA) or other government programs. The commissioner found, however, that Pfoser "did not receive adequate compensation or fair market value when he transferred the cash into the trust, at the time the transfer was made." Pfoser appealed to the district court, which reversed the commissioner's decision.[1]

We conclude that the commissioner erred in affirming the transfer penalty against Pfoser. First, we determine that, when an MA-LTC recipient challenges a transfer penalty and asserts the asset-transfer exception, the commissioner must make a factual determination whether the recipient intended to dispose of the assets either at fair market value or for other valuable consideration. Second, we determine that while analyzing whether an MA-LTC recipient has proven the asset-transfer exception, the commissioner must consider evidence of fair market value received at the time of the transfer and

[1] Pfoser passed away while this appeal was pending. The district court appointed Pfoser's brother, Robert Pfoser, as the special administrator of the Estate of David Pfoser, solely for this litigation. This court ordered the appeal to proceed with Robert Pfoser, as special administrator of the Estate of David Pfoser, substituted as the respondent.

evidence of other valuable consideration received before, during, and after the time of the transfer.

Third, we examine the commissioner's factual determination that Pfoser "did not receive adequate compensation or fair market value when he transferred the cash into the trust" under the applicable standard of review. We conclude that the commissioner's determination was affected by legal error because she did not consider other valuable consideration Pfoser received before, during, and after the time that he transferred his assets into a pooled special-needs trust. Also, we conclude that the commissioner's decision was arbitrary and capricious, affected by legal error in its analysis of the trust's characteristics, and unsupported by substantial evidence in the administrative record as a whole. Thus, we affirm the district court's reversal of the commissioner's decision.

FACTS

Until 2014, Pfoser received Social Security disability benefits and lived in a home that he and his siblings inherited from their parents. In March 2014, Pfoser was found on the floor of his home, unable to get up or crawl to a telephone. He was hospitalized, and the district court appointed Fiduciary Services of Minnesota as Pfoser's guardian and conservator.[2] Pfoser then moved to a nursing facility paid for by MA-LTC.

Pfoser's siblings sold the home in August 2016. Pfoser received his share of the sale proceeds, $28,010.10, in late 2017. Pfoser petitioned the district court for authorization to

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[2] Because we refer to Fiduciary Services of Minnesota only as it acted on Pfoser's behalf as his guardian and conservator, we refer to the acts of Fiduciary Services of Minnesota as the acts of "Pfoser."

transfer his share of the sale proceeds to a pooled special-needs trust. The district court granted the petition and authorized the transfer by court order. In December 2017, Pfoser executed a joinder agreement (joinder agreement) with Lutheran Social Service of Minnesota (LSS), a nonprofit corporation that has established two pooled trusts, one for special needs and one for supplemental needs,[3] which together have about 420 sub-accounts. Pfoser, the grantor, and LSS, the trustee, adopted the 2017 Amended and Restated LSS Special Needs Pooled Trust Agreement (LSS pooled-trust agreement). Pfoser agreed to transfer $28,010.10 into a sub-account of the LSS pooled trust for special needs, and, from that sum, to pay a $1,000.00 one-time enrollment fee. Pfoser was 65 years old at the time of the transfer into the LSS pooled trust.

The joinder agreement provided that LSS would manage and administer the trust sub-account for the benefit of the beneficiary, Pfoser, as provided by the LSS pooled-trust agreement. In the joinder agreement, Pfoser recognized that "all disbursements [were] discretionary, as directed by" LSS. The joinder agreement stated that LSS could make distributions "for any so items for [Pfoser's] benefit" when "such supplemental care or special needs [are] not being provided by any public agency, or [are] not otherwise being provided by any other source available to [Pfoser]." In the joinder agreement, Pfoser acknowledged that the trust was irrevocable and that, after he transferred funds to the LSS pooled trust, he would "not have further interest in and [would] thereby relinquish and

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[3] A pooled special-needs trust contains the assets of the disabled beneficiary and complies with 42 U.S.C. § 1396p(d)(4)(C) (2018). A supplemental-needs trust contains the assets of other individuals, such as parents and grandparents, and not the assets of the beneficiary. *See* Minn. Stat. § 501C.1205, subd. 2(b) (2018).

release all rights in, control over, and all incidents of interest of any kind or nature in and to the contributed assets and all income thereon." The joinder agreement provided that all "unspent amounts" in Pfoser's sub-account after his death "must be used to reimburse the state or states for medical services received." If funds remained after Pfoser's death, the LSS pooled trust would retain a remainder share of ten percent of the value of the sub-account "as of the date of termination and prior to payment of any amounts to the State(s)." The joinder agreement is governed by Minnesota law.

As mentioned above, the joinder agreement adopted the LSS pooled-trust agreement. The LSS pooled-trust agreement provided that LSS is the settlor and trustee of the LSS pooled trust and that LSS created the trust to provide supplemental care and special-needs assistance to MA and MA-LTC recipients. The LSS pooled-trust agreement stated that LSS would manage, invest, and disburse trust assets "to promote the comfort and well-being of each Beneficiary by providing for supplemental needs." LSS also promised that it would "not make any disbursements that would have the effect of replacing, reducing or substituting any Government Assistance or other Public Benefit otherwise available to a Beneficiary or which would render the Beneficiary ineligible for Government Assistance." The LSS pooled-trust agreement provided that LSS had "sole and absolute discretion" to make distributions as "necessary or advisable to provide for the supplemental care or supplemental needs of the Beneficiary." The LSS pooled-trust agreement also stated that LSS would "not make distributions" for "anything other than necessary services or for services which [would] enhance the quality of life for the Beneficiary." The LSS pooled-trust agreement provided a "non-exclusive list of

permissible distributions" that included, among other things, medical, dental, and diagnostic treatment, for which no private or public funds are available as well as other expenditures "to improve the Beneficiary's quality of life."

Two months after Pfoser transferred the funds to the LSS pooled trust, the county notified Pfoser by email that his transfer of funds to the LSS pooled trust was "being reviewed." The county's "[i]nitial indication [was] that the establishment of this trust may have caused an improper transfer under the MA/long term care guidelines." The county later concluded that Pfoser "diverted [his] income and/or gave away assets" and assessed a transfer penalty of about four months of ineligibility for MA-LTC benefits.

Pfoser appealed the transfer penalty to the DHS. In support of his position, Pfoser submitted a "fair market value assessment" of his sub-account in the LSS pooled trust that included an estimate of expenditures he expected the trust to pay and that MA would not cover. The assessment included one-time expenditures such as adaptive equipment for Pfoser's wheelchair, as well as ongoing expenses such as STEM activity boxes and fees for guardian services and trust administration. The assessment stated that Pfoser's sub-account would be depleted in less than two years with the assumption that the sub-account received interest income of three percent per year.

An affidavit submitted by the director of the LSS pooled trust stated that while on MA, Pfoser could keep $97 each month from his Social Security disability benefits and his sub-account would pay for goods and services "to enhance the quality of his life—which he cannot [] purchase with his $97 personal need allowance and which are not covered by Medical Assistance or other government benefit programs." The director averred that she

had reviewed the goods and services identified in Pfoser's written assessment and concluded that "the trust money will be easily spent for [Pfoser's] benefit in a few years as reflected in the assessment."

At a hearing, a Human Services Judge (HSJ) heard testimony from the county financial worker assigned to Pfoser's case. The financial worker said that the county based the transfer penalty "on policy showing that . . . the addition to a pool trust by a beneficiary . . . after the beneficiary reaches . . . age 65 is evaluated as an uncompensated transfer." The financial worker testified that "that's where [she] stopped with [her] calculation" and, because she "did not receive anything further indicating that adequate compensation was received . . . , that was where [her] determinations stopped." When asked by Pfoser's attorney whether it was the county's position that a "transfer into the pool trust is just simply a per se improper transfer[,]" the county financial worker testified that "[a]ccording to the manual when there is a long-term care client, yes."

In a written decision, the HSJ recommended that the commissioner affirm the county's decision to impose the transfer penalty. The HSJ found that Pfoser retained an equitable interest in his trust sub-account but had "given up or relinquished all ownership or control in the money ($28,010.10) he transferred into the pooled trust." The HSJ also found that the LSS pooled trust was discretionary and irrevocable; therefore, Pfoser essentially "entered into an irreversible agreement to give a broker/investor $27,010.10 to invest and paid that individual $1,000.00 for the agreement. In return, the broker/investor, may, at his absolute discretion, return some of the money over time." The HSJ stated he did "not believe any reasonable seller/buyer or objective observer would consider this type

of exchange to be a transfer for adequate compensation or for fair market value." The commissioner adopted the HSJ's findings and recommendation without change and affirmed the transfer penalty.

Pfoser appealed the commissioner's decision to the district court. The district court found that the county's decision to impose a transfer penalty was arbitrary and capricious because it "deemed [Pfoser's] transfer per se improper based solely on his age at the time of the transfer, and did not further evaluate information to determine if adequate compensation was received." The district court also found that, upon execution of the joinder agreement, Pfoser "gained an immediate vested equitable interest in the trust assets" that did not "diminish [in value] or disappear upon its transfer into the pooled trust, but became professionally managed, protected, and disbursable to supplement" Pfoser's receipt of MA-LTC benefits. The district court reversed the commissioner's decision because it was based on the HSJ's belief about a reasonable seller and buyer and this belief "is unsupported by substantial evidence in view of the entire record as submitted." The district court held that, on the record before the commissioner, Pfoser's transfer of assets into the LSS pooled trust was for "adequate compensation." Thus, the district court reversed the commissioner's order and the county's assessment of the transfer penalty. The commissioner appeals.

ISSUES

I. Before affirming a transfer penalty against Pfoser, who is disabled, over 65 years old, and an MA-LTC recipient who transferred assets into a pooled special-needs trust, must the commissioner make a factual determination based on the asset-transfer exception and the evidence offered by Pfoser?

II. Before affirming a transfer penalty against Pfoser and while analyzing whether Pfoser satisfied the asset-transfer exception, must the commissioner consider evidence of fair market value received at the time of the transfer and evidence of valuable consideration received before, during, and after the time of the transfer?

III. Did the commissioner err in affirming the county's decision to impose a transfer penalty on Pfoser when it determined that Pfoser did not receive adequate compensation or fair market value at the time he transferred assets to the LSS pooled trust?

ANALYSIS

Judicial review of the commissioner's order is authorized under Minn. Stat. § 256.045, subd. 7 (2018). We may affirm, reverse, remand, or modify the commissioner's decision if it prejudiced Pfoser's substantial rights and 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 (2018). We independently review the commissioner's order and grant no deference to the district court's conclusions. *Verhein v. Piper*, 917 N.W.2d 96, 101 (Minn. App. 2018). While we generally defer to the administrative agency's expertise and fact-finding, we review questions of law de novo. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001); *Fish v. Comm'r of Minn. Dep't of Human Servs.*, 748 N.W.2d 360, 363 (Minn. App. 2008).

"An agency decision is arbitrary and capricious if it is an exercise of the agency's will, rather than its judgment, or if the decision is based on whim or is devoid of articulated reasons." *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 565 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). An agency decision is unsupported by substantial evidence if, in view of the entire record, "there is a combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings." *Cable Commc'ns Bd. v. Nor-West Cable Commc'ns P'ship*, 356 N.W.2d 658, 669 (Minn. 1984) (quotations and citations omitted).

Here, the parties agree that Pfoser was qualified to receive MA-LTC, that the LSS pooled trust is a qualified trust under 42 U.S.C. § 1396p(d)(4)(C), and that Pfoser transferred funds to the LSS pooled trust at the age of 65. The only issue is whether the commissioner's conclusion that Pfoser was subject to a transfer penalty is legally erroneous, arbitrary and capricious, or unsupported by substantial evidence.[4]

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[4] For simplicity, we treat the HSJ's factual findings and recommendation, which were adopted by the commissioner without change, as those of the commissioner.

To provide the background necessary for our analysis, we first discuss the relevant statutory framework for Medicaid and MA transfer penalties. The federal Medicaid program provides financial assistance to states that reimburse needy individuals for their essential medical expenses. *Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 9 (Minn. 2002). Each participating state enacts and administers its own medical assistance program. *In re Estate of Barg*, 752 N.W.2d 52, 58-59 (Minn. 2008). Minnesota participates in Medicaid through its MA program established under Minn. Stat. §§ 256B.01-.85 (2018). Minnesota also provides support for long-term care services through its MA-LTC program. Minn. Stat. §§ 256B.0571, subd. 8; 256B.0625, subd. 1. Each state must comply with federal law to participate in Medicaid. *See* 42 U.S.C. §§ 1396-1396t (2018); 42 C.F.R. §§ 430-456 (2008); *Barg*, 752 N.W.2d at 58-59. Failure to comply may lead to a reduction in or a loss of federal funds for the state program. 42 U.S.C. § 1396c; *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986).

An individual may qualify for MA and MA-LTC if he or she is blind, disabled, or at least 65 years old. Minn. Stat. § 256B.055, subd. 7; 42 U.S.C. § 1381 (2018). Because Medicaid is intended to be the payor of last resort, *Martin ex rel. Hoff*, 642 N.W.2d at 9, the individual also must be financially eligible by having "available assets" valued below a statutory threshold amount at the time he or she applies for benefits, and assets must not exceed this threshold during the time benefits are received. Minn. Stat. § 256B.056, subds. 3(a), 3b; 42 U.S.C. § 1396a(a)(17) (2018); *see also* Minn. Stat. § 501C.1206 (stating public policy is for an individual to "use all available resources to pay for the cost of long-term

care services" before "turning to Minnesota health care program funds, and that trust instruments should not be permitted to shield available resources of an individual").

An individual may reduce assets in several ways to meet this initial and continuing financial eligibility requirement. For example, a disabled MA recipient under age 65 may reduce or dispose of assets over the threshold amount by transferring them into a pooled special-needs trust. Minn. Stat. § 256B.056, subd. 3b; 42 U.S.C. § 1396p(d)(4)(C) (2018). "[A] pooled special-needs trust . . . pays for a disabled person's Medicaid-ineligible expenses, such as clothing, phone service, vehicle maintenance, and taxes." *Ctr. for Special Needs Tr. Admin., Inc. v. Olson*, 676 F.3d 688, 695 (8th Cir. 2012). If done in compliance with federal and state law, assets transferred into a pooled special-needs trust are exempt and not considered an "available asset" of the disabled MA recipient.[5] *Id.* at 702.

If an MA recipient is 65 years old or older and transfers assets exceeding the eligibility amount to a pooled special-needs trust, the recipient may be penalized and deemed ineligible for MA benefits for a specified period of time. Minn. Stat. § 256B.0595, subds. 1, 2; 42 U.S.C. § 1396p(c)(1)(A) (2018). This is known as a "transfer penalty." The transfer penalty furthers Minnesota public policy by preventing persons who can pay for

[5] To satisfy the exemption for disabled recipients under age 65, the pooled special-needs trust must have certain qualities. The trust must be irrevocable, established and managed by a nonprofit association; a separate account must be maintained for each beneficiary of the trust "but, for purposes of investment and management of funds, the trust pools these accounts"; the account must be established "solely for the benefit of individuals who are disabled . . . by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court"; finally, upon the death of the beneficiary, amounts remaining in the account must be paid to the state "equal to the total amount of medical assistance paid on behalf of the beneficiary" under the state plan. 42 U.S.C. §§ 1396p(d)(3), 1396p(d)(4)(c) (2018).

their own healthcare from sheltering available resources to enrich their heirs. *In re Flygare*, 725 N.W.2d 114, 118 (Minn. App. 2006), *review denied* (Minn. Feb. 28, 2007).

To avoid a transfer penalty, the MA recipient may apply for an exception; the exception asserted by Pfoser (asset-transfer exception), who was 65 years old when he transferred funds into the LSS pooled trust, requires him to make a "satisfactory showing" to the state that he "intended to dispose of assets either at fair market value or for other valuable consideration." Minn. Stat. § 256B.0595, subd. 4(a)(4); 42 U.S.C. § 1396p(c)(2)(C)(i) (2018).

The asset-transfer exception is described in the Minnesota Health Care Program Eligibility Policy Manual (EPM): "The establishment of a pooled trust after the beneficiary reaches age 65 is evaluated as an uncompensated transfer. . . . The beneficiary must provide proof that adequate compensation was received." Minn. Dep't of Human Servs., *Minnesota Healthcare Programs Eligibility Policy Manual* § 2.4.1.3.4, http://hcopub.dhs.state.mn.us/epm/#t=2_4_1_3_4.htm (last visited Jan. 6, 2020).[6]

With this background in mind, we will address whether the commissioner must make a factual determination before affirming a transfer penalty. We will also determine whether the asset-transfer exception considers only fair market value at the time of the transfer or is satisfied by evidence of valuable consideration received before, during, and

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[6] The EPM "contains the official DHS eligibility policies for the Minnesota Health Care Programs, including Medical Assistance." EPM, Eligibility Policy Manual Home, http://hcopub.dhs.state.mn.us/epm/#t=index_1.htm (last visited Jan. 6, 2020).

after asset transfer into a pooled special-needs trust. Finally, we will review the commissioner's determination in Pfoser's case under the applicable standard of review.

I. Before affirming a transfer penalty against Pfoser, who asserted the asset-transfer exception, the commissioner made factual determinations based on the evidence, as required by applicable state and federal law.

In affirming the transfer penalty against Pfoser, the commissioner described the issue as whether Pfoser "diverted proceeds from the sale of real property into a pooled trust, for which he did not receive adequate compensation, and . . . the uncompensated transfer was not exempt from a transfer penalty due to [Pfoser] establishing the trust over the age of 64." The commissioner argues on appeal that she did not apply a per se rule and deny Pfoser an exception because of his age or the mere fact that he transferred funds into a pooled trust. Pfoser responds that the commissioner arbitrarily and capriciously applied a per se rule and that this per se rule is legally erroneous because it fails to satisfy the fact-based analysis required by federal and state statutes and the EPM.

We first interpret the applicable state and federal statutes governing our analysis of the transfer penalty and the asset-transfer exception. Statutory interpretation is a question of law that we review de novo. *Verhein*, 917 N.W.2d at 101. "The object of all statutory interpretation is to ascertain and effectuate the intention of the Legislature." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016) (citing *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012)). We consider the statute as a whole in a way that gives effect to all of its statutory provisions. *Id.* (quoting Minn. Stat. § 645.16 (2014)). When a statute is unambiguous, we interpret it according to the plain meaning of its text. *Id.*

As already mentioned, Minnesota law provides that an MA recipient may avoid a transfer penalty by making "a satisfactory showing" that the MA recipient "intended to dispose of the assets either at fair market value or for other valuable consideration." Minn. Stat. § 256B.0595, subd. 4(a)(4). Likewise, under federal law, a Medicaid recipient may avoid a transfer penalty where "a satisfactory showing is made to the State" that the medical-benefits recipient "intended to dispose of the assets either at fair market value or for other valuable consideration." 42 U.S.C. § 1396p(c)(2)(C). By requiring the MA recipient to make "a satisfactory showing," state and federal law necessarily require that the commissioner make a factual determination. A per se rule that an MA recipient over the age of 65 who transfers assets to a pooled special-needs trust *always* does so for less than fair market value or other valuable consideration would be inconsistent with granting an exception for an MA recipient who makes the required "satisfactory showing."[7]

We therefore hold that, before the commissioner may affirm a transfer penalty against an MA recipient who seeks an asset-transfer exception, the commissioner must make a factual determination that the MA recipient failed to show satisfactorily that he intended to transfer the assets for fair market value or other valuable consideration. *See* Minn. Stat. § 256B.0595, subd. 4(a)(4); 42 U.S.C. § 1396p(c)(2)(C). Here, the

[7] The EPM, prepared by the DHS, states that funds transferred to a pooled trust "must be *evaluated* to determine if an uncompensated transfer occurred" and that the "beneficiary must *provide proof* that adequate compensation was received." EPM § 2.4.1.3.4 (emphasis added). The EPM's use of the term "evaluate" and its recognition that a beneficiary must "provide proof" fits our view that federal and state statutes require the commissioner to make a factual determination before applying the asset-transfer exception to excuse a transfer penalty.

commissioner had to weigh the evidence offered by Pfoser and the county to determine whether Pfoser intended to transfer $28,010.10 into the LSS pooled trust for fair market value or other valuable consideration.

We also note that the burden of persuasion in administrative appeals "is governed by specific state or federal law and regulations that apply to the subject of the hearing." Minn. Stat. § 256.0451, subd. 17 (2018). Since state and federal law place the burden on the MA recipient to make the necessary showing for the asset-transfer exception to the transfer penalty, we conclude that Pfoser has the burden of persuasion in this appeal. *See* Minn. Stat. § 256.0451, subd. 17.[8]

It is a close call whether the commissioner applied a per se rule when she determined that Pfoser did not satisfy the asset-transfer exception. On one hand, the commissioner stated that the issue in Pfoser's DHS appeal was whether the county correctly imposed a transfer penalty after Pfoser "did not receive adequate compensation" for a transfer made when Pfoser was 65 years old. This may suggest that the commissioner assumed Pfoser "did not receive adequate compensation" without making a fact-specific determination.

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[8] The commissioner's written decision stated that the county had "the burden of showing by [a] preponderance that the penalty was correct," yet also state that Pfoser failed to show that the asset-transfer exception applied. Similarly, Pfoser's brief to this court asserts that the county had the burden of persuasion by a preponderance of evidence that the transfer penalty was proper, but does not discuss his burden to establish the exception to the transfer penalty. For the reasons stated, we conclude that the language of the asset-transfer exception unambiguously places the burden of persuasion on the MA recipient who seeks to avoid a transfer penalty.

The commissioner's written factual findings also quoted an opinion letter issued by the Center for Medicaid and Medicare Services (CMS).[9] The CMS opinion letter states:

> [A] pooled trust established for an individual age 65 or older may be subject to a penalty as a transfer of assets for less than fair market value. When a person places funds in a trust, the person gives up ownership of those funds. Since the individual generally does not receive anything of comparable value in return, placing funds in a trust is usually a transfer for less than fair market value.

Although the CMS letter states a penalty "may" be imposed and describes fair market value in "general" or "usual" terms, the CMS letter also implies a per se rule, or at least a presumption, that conflicts with our statutory interpretation of the asset-transfer exception.

On the other hand, the commissioner made specific factual findings about the joinder agreement and the LSS pooled-trust agreement. The commissioner found: (1) Pfoser irrevocably transferred funds to the LSS pooled trust, (2) LSS as trustee had sole and absolute discretion to distribute trust funds, and (3) Pfoser relinquished his interest, rights in, or control over any of the transferred funds. When the commissioner's findings and conclusions are read together, they suggest that she made a fact-specific determination based on the evidence offered by the parties and did not apply a per se rule. The commissioner, at the very least, considered some evidence—the joinder agreement and

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[9] CMS is the federal agency that administers Medicaid. *Shagalow v. State, Dep't of Human Servs.*, 725 N.W.2d 380, 385 (Minn. App. 2006), *review denied* (Minn. Feb. 28, 2007). While we do not defer to an agency's interpretation of a statute when in an opinion letter, the opinion receives our respect under *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S. Ct. 161, 164 (1944). *See Olson*, 676 F.3d at 701 n.4.

LSS pooled-trust agreement—and did not affirm the transfer penalty only because Pfoser was over the age of 65 when he transferred funds to the LSS pooled trust.

II. The asset-transfer exception to the MA transfer penalty requires the commissioner to determine whether an MA recipient received either fair market value at the time of the transfer or valuable consideration before, during, and after the assets were transferred into a pooled special-needs trust.

The commissioner argues that she correctly found that the asset-transfer exception does not apply to excuse the transfer penalty imposed by the county. Pfoser challenges the commissioner's factual determination for reasons in addition to the per se rule argument already discussed. Before we can address these arguments, we must resolve a threshold issue. The parties disagree whether the asset-transfer exception considers valuable consideration received before, during, and after the transfer, with Pfoser arguing for the broadest timeframe and the commissioner contending that only the time of transfer is relevant. To decide this issue, we consider the statutory language and the agency's interpretation of that language, along with the parties' arguments.

The asset-transfer exception does not on its face restrict the relevant timeframe in which to determine whether a transferor received valuable consideration for transferring funds into a pooled trust. *See* 42 U.S.C. § 1396p(c)(2)(C)(i) (providing that the exception determines the benefit recipient's intent to dispose of assets "either at fair market value, or for other valuable consideration"). Yet, other exceptions to the transfer penalty contain timeframe restrictions. For example, an MA recipient is not subject to a transfer penalty if the recipient transfers a home's title to a sibling who lived in the home *for at least one year* before the MA recipient becomes an institutionalized individual. 42 U.S.C.

§ 1396p(c)(2)(A)(iii). A similar exception exists if the MA recipient transfers a home's title to a child who lived in the home *for at least two years* before the MA recipient becomes an institutionalized individual. 42 U.S.C. § 1396p(c)(2)(A)(iv). These examples show that Congress understands how to restrict transfer-penalty exceptions by including a specific period of time. Yet Congress chose not to do so for the asset-transfer exception. *See Russello v. United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). We conclude that Congress did not intend to restrict the asset-transfer exception to "other valuable consideration" received at the time of transfer.

Our conclusion accords with the Program Operations Manual System (POMS), which provides definitions and policy for determining whether a transferor received fair market value when transferring an asset.[10] POMS states that the value of the compensation received depends on the transfer agreement, the date compensation is received, and the value of any noncash compensation. POMS SI 01150.005C, https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150005. POMS also states that the value is based "on the agreement and expectations at the time of transfer"; and includes

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[10] POMS is the manual that "contains the Social Security Administration's policy interpretations of federal regulations." *In re Carlisle Tr.*, 498 N.W.2d 260, 264 (Minn. App. 1993). We have held that we may rely on POMS when determining MA eligibility even though POMS has no legal force. *Id.*; *see also Draper v. Colvin*, 779 F.3d 556, 561 (8th Cir. 2015) (holding POMS receives *Skidmore* deference).

"something of value pursuant to a legally binding agreement" in effect at the time of transfer. *Id.* SI 01150.005C.1-.2. Important to the disputed timeframe issue, POMS states that a "transferor *may actually receive the compensation before, at, or after* the actual time of transfer." *Id.* SI 01150.005C.2 (emphasis added). POMS strongly supports our view that the asset-transfer exception allows an MA recipient to offer evidence of valuable consideration received before, during, and after transferring assets into a special-needs trust.

We therefore hold that when determining whether an MA-LTC recipient intended to receive fair market value or other valuable consideration in exchange for his transfer of assets to a pooled special-needs trust, the commissioner must consider evidence of valuable consideration received by the recipient before, during, and after transferring assets to the pooled trust.

III. The commissioner's factual determination that Pfoser did not receive adequate compensation or fair market value when he transferred funds into the LSS pooled trust is affected by legal error, arbitrary and capricious, and unsupported by substantial evidence.

We now turn to the commissioner's determination that Pfoser did not receive fair market value in exchange for his transfer of funds to the LSS pooled trust. The commissioner argues that substantial evidence supports her finding that Pfoser did not receive fair market value for transferring his assets because liquid assets are "intrinsically more valuable than goods and services valued at the same amount," Pfoser received no monetary compensation at the time of the transfer, and Pfoser had no right to receive distributions because LSS had sole discretion to make distributions. Pfoser argues that the

record as a whole satisfactorily shows he received fair market value or other valuable consideration for three reasons: (1) he retained an equitable interest in the trust assets that is "neither less nor more than the value of the asset[s] prior to the transfer," (2) LSS must use the funds in his sub-account for his sole benefit, and (3) other provisions in the joinder agreement benefitted him.

We begin by considering the meaning of the terms "fair market value" and "valuable consideration." The parties urge us to apply definitions in the State Medicaid Manual (SMM).[11] "Fair market value" is "an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred." SMM § 3258.1(A)(1). Similarly, "valuable consideration" exists where "an individual receives in exchange for his or her right or interest in an asset some act, object, service, or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset." SMM § 3258.1(A)(2).[12] Value is "tangible" if it is "[c]apable of

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[11] The SMM is a CMS publication that contains guidelines that participating states must follow while administering their Medicaid programs. *The State Medicaid Manual*, Foreword § A, https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html; *Moore v. Reese*, 637 F.3d 1220, 1235 (11th Cir. 2011). The SMM is binding on state Medicaid agencies. SMM Foreword § B; *In re Pooled Advocate Tr.*, 813 N.W.2d 130, 145 (S.D. 2012). Federal appellate courts have given the SMM varying degrees of deference. *See Sai Kwan Wong v. Doar*, 571 F.3d 247, 258-62 (2d Cir. 2009) (giving the SMM *Skidmore* deference); *Hobbs ex rel. Hobbs v. Zenderman*, 579 F.3d 1171, 1187 (10th Cir. 2009) (giving the SMM "some deference . . . as long as its interpretation is consistent with statutory language, statutory purpose, and is reasonable").

[12] The commissioner's brief to this court asks us to rely on the SMM to interpret the meaning of fair market value and valuable consideration, but never specifically addresses the definition of valuable consideration in the SMM. Instead, the commissioner quotes other provisions in the SMM. For example, the commissioner quotes: "[f]or an asset to be

being touched and seen"; and "intrinsic value" is "[t]he inherent value of a thing, without any special features that might alter its market value." *Black's Law Dictionary* 1683, 1785 (10th ed. 2014).

The commissioner concluded that Pfoser did not receive "adequate compensation or fair market value" because, as provided in the joinder agreement and LSS pooled-trust agreement, Pfoser relinquished all ownership rights in the transferred funds, the LSS pooled trust is irrevocable, and LSS, as trustee, has the sole discretion and authority to make distributions from Pfoser's sub-account. The commissioner summarized these findings by saying that, "[i]n essence, [Pfoser] entered into an irreversible agreement to give a broker/investor $27,010.10 to invest and paid that individual $1,000.00 for the agreement. In return, the broker/investor, may, at his absolute discretion, return some of the money over time." The commissioner then said that she did "not believe any reasonable seller/buyer or objective observer would consider this type of exchange to be a transfer for adequate compensation or for fair market value."

We acknowledge that the commissioner accurately described the operation of the joinder agreement and the LSS pooled-trust agreement: Pfoser's transfer of funds to the LSS pooled trust was irrevocable, Pfoser relinquished his rights in and control over the

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considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value." Throughout its opening and reply brief, the commissioner emphasizes the definition of fair market value, which the SMM defines as "an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred." Because the fair-market-value exception allows an MA recipient to prove *either* fair market value *or* "other valuable consideration," we are not persuaded by the commissioner's repeated references to fair market value at the time of transfer.

funds, and LSS, as trustee, has discretion to disburse funds from Pfoser's sub-account. Thus, the commissioner's findings in these respects are supported by the record.

But we must view the record as a whole given the applicable law. *See Cable Commc'ns Bd.*, 356 N.W.2d at 668. In doing so, we conclude that the commissioner's determination that Pfoser did not receive fair market value or other valuable consideration when he transferred funds into the LSS pooled trust rests on three legal errors, is arbitrary and capricious, and is unsupported by substantial evidence.

Incorrect statutory standard

The commissioner committed an error of law by limiting her fact-finding to "adequate compensation or fair market value . . . *at the time the transfer was made*." (Emphasis added.) This was legal error because the commissioner failed to consider compensation received by Pfoser after the transfer into the LSS pooled trust. As stated in POMS, the value of the compensation received by the transferor is based on the agreement and expectations "at the time of transfer" and includes "something of value pursuant to a legally binding agreement"—here, the joinder and LSS pooled-trust agreement. POMS also states that the transferor "may actually receive the compensation before, at, or after the actual time of transfer." *See* POMS SI 01150.005C.2. Thus, the commissioner erred by considering only compensation at the time of the transfer.

The commissioner also specifically failed to consider "other valuable consideration" received by Pfoser. The asset-transfer exception includes two prongs: an MA-LTC recipient can avoid a transfer penalty if he satisfactorily shows that he "intended to dispose of the assets *either* at fair market value *or for other valuable consideration*."

42 U.S.C. § 1396p(c)(2)(C)(i) (emphasis added); Minn. Stat. § 256B.0595, subd. 4(a)(4) (emphasis added). Use of the term "or" conveys that the legislature intended for an MA beneficiary to avoid the transfer penalty if they make either showing. *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 829 (Minn. 2013) ("It is a well-established rule of statutory construction that when the disjunctive 'or' is used, only one of the listed factual situations needs to be present in order for the provisions to be satisfied."). Thus, where supported by the evidence, the commissioner must consider both fair market value and other valuable consideration when determining whether the asset-transfer exception applies.

Pfoser's evidence of "other valuable consideration" included a list of one-time and ongoing expenditures for his benefit that MA-LTC would not cover. Pfoser offered evidence that these expenses would deplete his sub-account within two years, well within his expected life. And Pfoser provided an affidavit from the director of the LSS pooled trust that underscored the value of Pfoser's sub-account.

The relevant definition of valuable consideration is "some act, object, service, or other benefit which has a tangible and/or *intrinsic value to the individual* that is *roughly equivalent* to or greater than the value of the transferred asset." SMM § 3258.1(A)(2) (emphasis added). Thus, Pfoser's evidence directly addresses "the intrinsic value to the individual" of his sub-account and depicts it as "roughly equivalent" to the value of the funds transferred to the LSS pooled trust.

Because the commissioner did not consider Pfoser's evidence of "other valuable consideration," she did not determine whether the "intrinsic" or inherent value of the

pooled special-needs trust to Pfoser was "roughly equivalent" to the value of $28,010.10. Moreover, the commissioner's brief to this court fails to even discuss that valuable consideration includes "intrinsic value to the individual."

Thus, we conclude that the commissioner's decision was based on legal error because she focused exclusively on fair market value at the time of transfer, which does not satisfy the statutory standard, and her decision was arbitrary and capricious because she gave no reason for disregarding Pfoser's evidence of "other valuable consideration" received before, during, and after the transfer. *See Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456, 466-67 (Minn. App. 2000) (concluding the commissioner committed a legal error by misapplying the law to the facts of the case); *CUP Foods, Inc.*, 633 N.W.2d at 565 ("We therefore hold that the absence of such findings renders the respondent['s] decision arbitrary and capricious . . . .").

The commissioner argues that Pfoser received "only a speculative interest in receiving possible future benefits." We disagree. The application of Minnesota trust law to the terms of the LSS pooled trust require the grantor's intent to govern the terms of a trust. *In re Stisser Grantor Tr.*, 818 N.W.2d 495, 502 (Minn. 2012). This is so even for discretionary trusts because any attempt by the trustee to violate the grantor's intent or the trust's purpose is an abuse of discretion. *United States v. O'Shaughnessy*, 517 N.W.2d 574, 577 (Minn. 1994). The LSS pooled-trust agreement stated that Pfoser, as the grantor, intended that the funds transferred to the LSS pooled trust supplement his needs and provide goods and services not covered by public assistance. The pooled-trust agreement also stated that Pfoser intended to limit LSS's distribution of funds to his "supplemental

care and supplemental needs only." Additionally, the pooled-trust agreement means that LSS must use the funds in Pfoser's sub-account solely for Pfoser's benefit, comfort, and well-being.

Commissioner's belief about a reasonable seller/buyer

Second, the commissioner committed legal error when she stated, as a conclusion of law, that she did "not believe *any* reasonable seller/buyer or objective observer would consider this type of exchange to be a transfer for adequate compensation or for fair market value." (Emphasis added.) No factual finding supports this blanket conclusion. Even the CMS letter states an opinion that "placing funds in a trust is *usually* a transfer for less than fair market value." (Emphasis added.) And Pfoser offered evidence that he and about 420 persons transferred funds to the LSS pooled trust.

Because the commissioner stated her belief as a conclusion of law and extrapolated an opinion about the usual transfer into a blanket conclusion, the commissioner exercised her will rather than judgment and acted arbitrarily and capriciously. *See Reserve Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411, 414 (Minn. App. 1985) (concluding that the agency's decision without written findings and reasons was arbitrary and capricious because it represented the agency's will rather than its judgment), *review dismissed* (Minn. June 10, 1985).

We also reject the commissioner's reliance on an opinion issued in March 2019 by the Social Security Administration (SSA) about the fair market value of a different

sub-account in the LSS pooled trust.[13] In the opinion, the Regional Chief Counsel stated that "if a beneficiary could sell his interest in the trust, that interest would have no significant market value since the trust is discretionary and [LSS] cannot be compelled to make any distributions." POMS PS 01825.026B, https://secure.ssa.gov/apps10/poms.nsf/lnx/1601825026. This hypothetical has no bearing on Pfoser given that the joinder agreement and LSS pooled-trust agreement provide that Pfoser cannot sell his interest. But more importantly, the opinion only concerns one aspect of the asset-transfer exception and does not discuss the "other valuable consideration" that an MA recipient may receive in exchange for transferring funds to the LSS pooled trust.[14]

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[13] The commissioner cited the opinion for the first time in her reply brief and the SSA issued the opinion after the administrative record was closed. We do not generally consider matters outside the record on appeal. *See Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005) (stating that "[a]ppellate courts may not consider matters outside the record on appeal"), *review denied* (Minn. July 19, 2005); *Nat'l Audubon Soc'y v. Minn. Pollution Control Agency*, 569 N.W.2d 211, 216 (Minn. App. 1997) ("A reviewing agency also is not required to consider or include in the administrative record documents never submitted to or received by it"), *review denied* (Minn. Dec. 16, 1997).

[14] Because an MA recipient may establish the exception to the transfer penalty by a satisfactory showing of either the fair market value or the other valuable consideration received for the transfer, and Pfoser offered evidence of other valuable consideration, we do not further consider the commissioner's analysis of the fair market value of Pfoser's sub-account in the LSS pooled trust. For example, we do not consider the commissioner's arguments in her brief to this court about the fair market value of a discretionary special-needs trust to a reasonable seller/seller on the open market, or the fair market value of cash today versus future benefits. The commissioner's arguments are limited to the fair-market-value prong of the exception and are not based on evidence in the administrative record.

Trust characteristics as irrevocable and discretionary

The commissioner committed a third error of law by emphasizing that the LSS pooled trust is irrevocable. Pfoser and other disabled persons are eligible for MA-LTC benefits only if their available assets are valued below a specific statutory amount. Minn. Stat. § 256B.056, subd. 3(a); 42 U.S.C. § 1396a(a)(17). If a disabled person transfers assets to a revocable trust, the trust corpus is considered an available asset that may prevent their eligibility for MA-LTC benefits or lead to a transfer penalty. 42 U.S.C. § 1396p(d)(3)(A). The disabled person therefore *must* transfer the assets to an irrevocable trust to be eligible or remain eligible for MA-LTC benefits. *See id.* at (d)(3)(B) (stating that an irrevocable trust that may lead to payments to or for the individual's benefit "shall be considered income of the individual"). Of course, as here, even an MA recipient's transfer into an irrevocable trust may lead to a penalty if they cannot make a satisfactory showing under the asset-transfer exception.

If the LSS pooled trust's characteristic as an irrevocable trust *always* defeats the asset-transfer exception, then *every* transfer of assets by an MA-LTC recipient to a pooled irrevocable trust would lead to a transfer penalty. This would lead to a per se rule that is inconsistent with the fact-specific determination required by the asset-transfer exception. Thus, in finding that Pfoser did not receive fair market value or other valuable consideration because he transferred funds into an irrevocable trust, the commissioner committed an error of law.

The commissioner also erred when she disregarded Pfoser's interest in the LSS pooled trust because Pfoser only had an interest in discretionary distributions and "no

longer ha[d] any right[] to the cash." It is true that the commissioner noted, in passing, that Pfoser retained an equitable interest in the trust principal, which is an accurate statement of Minnesota law. *See O'Shaughnessy*, 517 N.W.2d at 577. But the issue posed by the asset-transfer exception is the value of this equitable interest.

Pfoser contends that the value of his equitable interest is "neither less nor more than the value of the asset prior to the transfer." We disagree. Minnesota trust law recognizes that creating a trust separates the legal and equitable interests in the trust assets. *Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 501 (Minn. 2018). This separation of legal and equitable interests necessarily means that neither interest is equal to the whole. *See id.* ("[T]he interest . . . is divided between the trustee and the beneficiary."). This is why beneficiaries of discretionary trusts are entitled only to the funds the trustee in her discretion sees fit to distribute, and the beneficiary cannot compel the trustee to make distributions. *O'Shaughnessy*, 517 N.W.2d at 577.

Still, the equitable interest retained by the beneficiary of a discretionary trust has at least *some* value. Applicable law requires that the commissioner determine whether Pfoser transferred assets either at fair market value or for other valuable considerations. This means that the value of Pfoser's equitable interest in his sub-account is the central question when determining whether Pfoser avoids the transfer penalty. Yet, the commissioner stopped her analysis after finding that distributions from the LSS pooled trust are discretionary and Pfoser's interest is equitable. Because the commissioner failed to consider the value of Pfoser's equitable interest, her decision rests on an error of law.

Importantly, this case does not implicate public policy concerns about wealthy individuals sheltering available resources for their heirs by claiming MA benefits. *See Flygare*, 725 N.W.2d at 118. No party contends that Pfoser transferred assets to shelter them for the benefit of his heirs. The commissioner's reply brief concedes that Pfoser's sub-account "will not pass" to his "heirs or the beneficiaries of his will upon his death." Indeed, Pfoser's joinder agreement provides that, at Pfoser's death, LSS retains a ten percent remainder share and that all unspent amounts "must be used to reimburse the state or states for medical services received."

Substantial-evidence review

Finally, we evaluate whether the evidence as a whole supports the commissioner's decision. In exchange for relinquishing his legal title to the transferred funds, Pfoser received equitable title to distributions from the LSS pooled trust. *O'Shaughnessy*, 517 N.W.2d at 577. According to the LSS pooled-trust agreement and Pfoser's joinder agreement, the trustee may distribute assets in Pfoser's sub-account only for Pfoser's benefit, comfort, and support. Pfoser provided evidence of goods and services he intended to receive after transferring his funds into the LSS pooled trust and showed his sub-account would be depleted within two years by paying for goods and services that MA-LTC would not cover. The county provided no evidence to contradict Pfoser's evidence of the goods and services he intended to receive after the transfer to the LSS pooled trust. Taken as a whole, the record satisfactorily shows that Pfoser intended to receive other valuable consideration in exchange for his transfer of funds to the LSS pooled trust. The

commissioner's determination to the contrary is therefore unsupported by substantial evidence.

In sum, we conclude that the commissioner's findings and conclusions contain legal errors, are the product of the commissioner's will rather than judgment, and display "a combination of danger signals which suggest the agency has not taken a hard look at the salient problems." *Cable Commc'ns Bd.*, 356 N.W.2d at 669 (quotations and citations omitted); *see Verhein*, 917 N.W.2d at 101; *CUP Foods*, 633 N.W.2d at 565. The commissioner's factual determination that Pfoser did not intend to transfer his funds into the LSS pooled trust and receive either fair market value or other valuable consideration is therefore legally erroneous, arbitrary and capricious, and unsupported by substantial evidence.[15]

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[15] The commissioner relies on appellate decisions from other states that have considered the asset-transfer exception and upheld penalties on materially different records. First, in *In re Pooled Advocate Tr.*, the South Dakota Supreme Court upheld an agency's determination that transfers to a pooled trust were for less than fair market value, in part because there was "nothing guaranteeing that a beneficiary's transfer [to the trust would] be used to benefit that beneficiary." 813 N.W.2d 130, 147 (S.D. 2012). In contrast, Pfoser's joinder agreement and the LSS pooled-trust agreement require the trustee to use Pfoser's sub-account solely for his benefit, and Minnesota trust law provides that the trustee's failure to make these distributions is an actionable abuse of discretion. *See O'Shaughnessy*, 517 N.W.2d at 577.

Second, in *Cox v. Iowa Dep't of Human Servs.*, the Iowa Supreme Court concluded that substantial evidence supported an agency's findings that a husband and wife's transfers to their respective pooled special-needs trusts were for less than fair market value. 920 N.W.2d 545, 558-59 (Iowa 2018). The two trusts at issue in *Cox* were worth roughly $102,000 and $475,000. *Id.* at 548. The beneficiaries in *Cox* submitted "proposed budgets" and argued that the trust funds would "be used to purchase items for fair market value" in the future, with no anticipated dates on which the trust funds would be depleted. *Id.* at 557-58. In contrast, Pfoser provided an affidavit from the trust director and a fair-market-value assessment that anticipated that his sub-account would be depleted in two years by paying for expenses that MA-LTC would not cover.

When an agency's findings are unsupported by substantial evidence, we may remand for more findings or reverse. Minn. Stat. § 14.69; *In re Restorff*, 932 N.W.2d 12, 24 (Minn. 2019). "Remand is appropriate to permit further evidence to be taken or additional findings to be made in accordance with the applicable law." *Id.* (quotation omitted). We conclude that remand is not necessary or appropriate because the record contains sufficient evidence showing that Pfoser met his burden of proof and the county did not contradict the evidence offered by Pfoser. *Cf. id.* at 23-24 (remanding because a fact "material [to the] case and explicitly called for" by statute was missing from the record).

DECISION

We conclude that when an MA-LTC recipient challenges a transfer penalty for transferring assets into a pooled special-needs trust on the basis of the asset-transfer exception, the commissioner must determine, based on the evidence, whether the recipient has made a "satisfactory showing" that the recipient "intended to dispose of the assets either at fair market value or for other valuable consideration," and that this determination

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Third, in *Parkhurst v. Wilson-Coker*, the Connecticut Court of Appeals concluded that the district court did not err in finding that a special-needs trust "did not give fair market value . . . because the [beneficiary's] receipt of benefits therefrom was entirely discretionary." 848 A.2d 515, 524 (Conn. App. Ct. 2004). Unlike Pfoser, the appellant in *Parkhurst* did not provide a fair-market-value assessment. *Id*. at 518-19. And the court's analysis in *Parkhurst* focused on Connecticut law, which required proof of "fair market value" in exchange for transferring funds to the special-needs trust. *Id*. at 524. In contrast, Pfoser must make a "satisfactory showing" that he intended to receive either "fair market value or other valuable consideration" for his transfer of funds to the LSS pooled trust. *See* Minn. Stat. § 256B.0595, subd. 4(a)(4); 42 U.S.C. § 1396p(c)(2)(C). We conclude that the holdings in *In re Pooled Advocate Tr.*, *Cox*, and *Parkhurst* are limited to the facts of those cases.

includes whether the MA-LTC recipient received other valuable consideration before, during, and after the transfer. We also conclude that the commissioner's factual determination that Pfoser did not receive fair market value or other valuable consideration when he transferred assets into the LSS pooled trust is legally erroneous, arbitrary and capricious, and unsupported by substantial evidence. We therefore affirm the district court's decision to reverse the commissioner's order.

Affirmed.