STATE OF MINNESOTA

IN SUPREME COURT

A18-2156

Court of Appeals — Anderson, J.

In re the Matter of:
Esther Schmalz and the Commissioner of Minnesota Department of Human Services, Renville County Human Services.

Filed June 24, 2020
Office of the Appellate Courts

Casey J. Swansson, Jon C. Saunders, Anderson Larson Saunders Klaassen Dahlager & Leitch, P.L.L.P., Willmar, Minnesota, for respondent.

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Cicely Miltich, Ali P. Afsharjavan, Assistant Attorneys General, Saint Paul, Minnesota, for appellant.

Laura J. Zdychnec, Long, Reher, Hanson & Price, P.A., Minneapolis, Minnesota, for amicus curiae Minnesota Chapter of the National Academy of Elder Law Attorneys.

S Y L L A B U S

1. The term "individual" in Minn. Stat. § 256B.056, subd. 4a (2018), means the medical assistance applicant. Because the subdivision does not apply to assets held by a community spouse, the value of non-homestead life estates was includable when totaling assets to determine the community spouse asset allowance.

2. The decision of the Commissioner interpreting Minn. Stat. § 256B.056, subd. 4a, differently from a previous interpretation by the Commissioner in prior, unrelated, litigation was not arbitrary and capricious.

Reversed.

O P I N I O N

ANDERSON, Justice.

Because respondent Esther Schmalz sought long-term-care medical assistance, Renville County Human Services assessed her assets and those of her husband, Marvin Schmalz. As part of the assessment of Marvin's assets, Renville County Human Services included Marvin's portion of several non-homestead life estate interests that he and Esther owned. Esther appealed the inclusion of the life estate interests in the assessment of Marvin's assets, arguing that the life estates should not be included in the total amount of assets that Marvin may retain. The Commissioner adopted the recommendation of the human services judge, which concluded that Renville County Human Services properly denied Esther's application for medical assistance based on the inclusion of the life estate assets owned by Marvin.

Esther appealed to the district court. The district court agreed with Esther that the non-homestead life estates should not be included in Marvin's assets, holding that the term "individual" in Minn. Stat. § 256B.056, subd. 4a (2018), included Marvin. The Commissioner appealed, and the court of appeals affirmed the district court order. We granted review and now hold that the term "individual" applies only to the applicant for medical assistance and that the Commissioner's interpretation was neither arbitrary nor capricious. We therefore reverse the decision of the court of appeals.

FACTS

The facts are not in dispute. Esther Schmalz was 85 years old when she entered a long-term-care facility. Her husband, Marvin Schmalz, continued to reside at their

homestead property.[1] In April 2017, Esther submitted an application for medical assistance for long-term-care benefits (MA-LTC). Renville County Human Services (RCHS) completed and submitted an asset assessment for Esther and Marvin Schmalz (the Couple), which involved identifying and valuing the Couple's assets. In totaling the Couple's assets, RCHS excluded the homestead property where Marvin resided. RCHS included funds held by the Couple in a joint checking account and the value of four life insurance policies. Central to this appeal, RCHS also included the value of three non-homestead life estate interests in real property held by the Couple.

Of the Couple's countable assets, RCHS attributed a total of $280,710.08 to Marvin, including the three life insurance policies that were in Marvin's name, $236,746.12 in the three non-homestead life estate interests, and half of the joint checking account. RCHS considered the Couple's remaining $344,590.11 in assets to be owned by Esther.[2]

RCHS requested that Esther determine what assets constituted Marvin's community spouse asset allowance. Rather than designate assets as requested, Esther appealed the asset assessment to a human services judge on the ground that the life estates should not be counted in the Couple's total assets. The Commissioner adopted the recommendation of the human services judge that the RCHS asset assessment be affirmed. On remand,

---

[1] When only one member of a married couple is in a long-term-care facility, the spouse in long-term care is referred to by statute as the institutionalized spouse. Minn. Stat. § 256B.059, subd. 1(e) (2018). The noninstitutionalized spouse living in the community is referred to by statute as the community spouse. *Id.*, subd. 1(b) (2018).

[2] The value of assets assigned to Esther and Marvin individually differed because the share of the life estate interests attributed to each was unequal as a result of the difference in their ages.

Esther allocated the life estate assets as part of Marvin's community spousal assets and proceeded with her application. The application for MA-LTC was denied because Marvin's assets exceeded the statutory amount that he could retain, and thus the excess was considered to be an available asset to Esther, causing Esther's available assets to exceed the amount of assets that she could retain and still be eligible for MA-LTC.

Esther appealed the denial of her application. On appeal, the human services judge concluded that RCHS properly denied Esther's application because Marvin had chosen to retain "assets in excess of the [community spouse asset allowance] limit." The Commissioner adopted the recommendation of the human services judge as her final decision.

Esther appealed the Commissioner's decision to the Renville County District Court. The district court reversed the Commissioner's determination and held that the Commissioner erred by considering the life estate interest attributable to Marvin when determining Esther's eligibility and that the Commissioner's denial of Esther's application was arbitrary and capricious. The district court therefore concluded that Esther was eligible for MA-LTC benefits. The Commissioner appealed. The court of appeals affirmed the district court on the issue of statutory interpretation and thus did not reach the arbitrary-and-capricious issue. The Commissioner sought further review of the court of appeals' decision. We granted review.

ANALYSIS

I.

The issue presented to us is whether the Commissioner properly denied Esther's application for MA-LTC based on the interpretation by the Department of Human Services of the MA-LTC statutes.[3] Resolution of this issue requires us to interpret the relevant provisions of Minn. Stat. §§ 256B.056 (medical assistance eligibility) and 256B.059 (treatment of assets when a spouse is institutionalized) (2018).

Judicial review of agency decisions is authorized under Minn. Stat. § 256.045 (2018). We may reverse an agency decision only when the party challenging the decision establishes that the decision was (a) in violation of constitutional provisions; (b) in excess

---

[3] As a predicate matter, we must first determine whether we have jurisdiction to decide this case. The parties do not contend that we lack jurisdiction because the case is moot. But we may raise the issue on our own because the existence of a justiciable controversy is essential to the exercise of our jurisdiction. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989).

During her appeal, Esther died. Neither party argued as a result of Esther's death that this case was moot, and both parties argued that the case should be decided on its merits. The issue is whether a justiciable controversy exists, which implicates our mootness doctrine.

Our mootness doctrine is "flexible and discretionary; it is not a mechanical rule that we invoke automatically." *In re Guardianship of Tschumy*, 853 N.W.2d 728, 736 (Minn. 2014). We should decide a case when an issue, while technically moot, is functionally justiciable and of public importance and statewide significance. *Id.* at 741. This case is functionally justiciable because it is a matter of statutory interpretation, which we review de novo, and because it has been adequately briefed and argued by the parties through the appeal process. *See State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984). Further, this issue is one of public importance and statewide significance because it implicates both estate planning on the individual level and the expenditure of monies at the state level. Thus, we conclude that, because this case is both functionally justiciable and the issue is one of public importance and statewide significance, we have jurisdiction to decide the case on its merits.

of the statutory authority or jurisdiction of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) unsupported by substantial evidence in view of the entire record as submitted; or (f) arbitrary or capricious. *See Estate of Atkinson v. Minn. Dep't of Human Servs.*, 564 N.W.2d 209, 213 (Minn. 1997); *see also* Minn. Stat. § 14.69 (2018).

In considering questions of law, we are not bound by the decision of the agency and need not defer to agency expertise. *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39–40 (Minn. 1989). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2018). "If the Legislature's intent is clear from the unambiguous language of the statute," we apply the plain meaning of a statutory provision. *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 716–17 (Minn. 2014).

"We construe statutes to effect their essential purpose but will not disregard a statute's clear language to pursue the spirit of the law." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 123 (Minn. 2007). To determine whether a statute's meaning is plain, we interpret the statute to "give effect to all of its provisions." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). "In reading the statute, it is necessary to consider not only the bare meaning of the word or phrase, but also its placement and purpose in the statutory scheme." *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (citation omitted) (internal quotation marks omitted). Thus, "it is sometimes necessary to analyze [a] provision in the context of surrounding sections." *Am. Family Ins. Grp.*, 616 N.W.2d at 278.

Title XIX of the Social Security Act, known as the Medicaid Act, is a cooperative federal-state program. *Atkins v. Rivera*, 477 U.S. 154, 156–57 (1986). Although the program is voluntary, it states that the participant must comply with requirements of federal statutes and regulations. *See* 42 U.S.C § 1396a (2012). In *Estate of Atkinson*, we summarized Minnesota's medical assistance program:

> Medicaid, which is known as medical assistance in Minnesota, was enacted in 1965 as Title XIX of the Social Security Act and is designed to provide medical assistance to individuals whose income and resources are not sufficient to meet the costs of their necessary care and services. The federal government shares the cost of Medicaid with the states that elect to participate in the program and, in return, the states are required to administer their programs in a way that complies with the federal statutes and regulations.

564 N.W.2d at 210 (internal citations omitted). One category of individuals served by Medicaid are the medically needy.

> The "medically needy" are those people who, while not otherwise eligible for SSI or AFDC benefits, incur medical expenses in an amount that effectively reduces their income to roughly the same position as those who are eligible for those programs. To be deemed medically needy, and therefore eligible for MA in Minnesota, an individual must own no more than $3,000 in assets as an individual or $6,000 in assets as a household, not including household goods and other excluded items [such as a homestead, personal effects, business assets, and motor vehicles up to a certain value, as listed under Minn. Stat. § 256B.056, subds. 2–3 (2018)], and have an income not exceeding [federally defined eligibility thresholds]. Those whose assets exceed this eligibility standard are required to "spend down" their assets until they are at or below the threshold amount.

Id. at 211 (footnote omitted) (citations omitted). Thus, Minn. Stat. § 256B.056 provides financial assistance to individuals who need long-term medical care, such as nursing home care, but are without the necessary funds to acquire it by allowing them to apply for and

receive funds from the State (once they meet the statutory eligibility requirements) to cover the costs of such care.

As part of this eligibility determination, certain assets are excluded from and do not count towards an individual's $3,000 in allowed assets. *See* Minn. Stat. § 256B.056, subd. 2–3. Items such as clothing, cars, and a homestead are not counted when totaling assets to determine eligibility. *See id.* In addition to assets that are not counted, certain assets that are counted are not required to be "spent down" to reach the $3,000 limit. *See id.*, subd. 3d.

One category of such assets is the subject of Minn. Stat. § 256B.056, subd. 4a:

> **Asset verification**. For purposes of verification, an individual is not required to make a good faith effort to sell a life estate that is not excluded under subdivision 2 and the life estate shall be deemed not salable unless the owner of the remainder interest intends to purchase the life estate, or the owner of the life estate and the owner of the remainder sell the entire property. This subdivision applies only for the purpose of determining eligibility for medical assistance, and does not apply to the valuation of assets owned by either the institutional spouse or the community spouse under section 256B.059, subdivision 2.

Accordingly, an applicant may have an asset total that exceeds $3,000 and still qualify for MA-LTC if the assets that cause the total to exceed $3,000 constitute assets such as those in subdivision 4a.

In 1988, Congress enacted the Medicare Catastrophic Coverage Act (MCCA) to prevent the impoverishment of a spouse living at home (the "community spouse") when the other spouse (the "institutionalized spouse") is institutionalized, typically in a nursing home, and becomes eligible for Medicaid. *Wisc. Dep't of Health & Family Servs. v. Blumer*, 534 U.S. 473, 478 (2002). Congress sought to avoid the "pauperization" of a

community spouse by ensuring that the spouse has sufficient, but not excessive, resources available. *Id.* at 480.

Congress enacted a set of "intricate and interlocking requirements with which States must comply in allocating a couple's income and resources." *Id.* Minnesota complies with the MCAA through section 256B.059 ("Treatment of Assets When a Spouse is Institutionalized"). This statute defines the amount of assets a community spouse can retain without affecting the eligibility of the institutionalized spouse.[4] The statute prescribes which assets count toward this limit; how assets can be transferred between an institutionalized spouse and a community spouse; and how assets in excess of the amount the community spouse may retain must be used. Although section 256B.059 sets aside an asset amount that the community spouse may retain, the institutionalized spouse still must meet the eligibility requirement of section 256B.056 by having under $3,000 in assets.

The impact that section 256B.059 has on an eligibility determination under section 256B.056 is that it allows the institutionalized spouse to transfer assets to the community spouse to lower the institutionalized spouse's total assets because the community spouse can retain $120,900 without those assets being considered as available assets for the institutionalized spouse. Minn. Stat. § 256B.059, subd. 3. The statute also provides that any assets retained by the community spouse above $120,900 are considered available to the institutionalized spouse and thus are added to, and count against, the $3,000 limit of

[4] In 2017, the year at issue in this appeal, the amount was $120,900.

permitted assets. *Id.*, subd. 5(a). Any amount over $3,000 must be used for the health care or personal needs of the institutionalized spouse. *Id.*, subd. 5(d).

Thus, section 256B.059 provides that a community spouse may retain a defined amount of assets and those assets do not count as assets available to the institutionalized spouse. This allows the institutionalized spouse to begin receiving MA-LTC benefits while ensuring that the community spouse may retain a certain amount of funds for personal support.

Esther argues that, as the community spouse, Martin can retain the non-homestead life estates without his share counting as part of the assets that he is otherwise able to retain as part of his community spouse asset allowance. She contends that, under Minn. Stat. § 256B.056, Marvin is an "individual" under subdivision 4a and that, because subdivision 4a exempts an individual's non-homestead life estate assets from being spent down to reach the medical assistance applicant's asset limit, a community spouse need not dispose of or transfer a non-homestead life estate to reach the community spouse asset allowance. We disagree.

Esther's argument—that the word "individual" is the general term for either "institutional spouse" or "community spouse"—is unavailing for several reasons. Section 256B.056, as a whole, pertains to applicants for medical assistance. Where the statute uses the term "individual" in a manner other than this, it specifically defines who an individual includes.

The language of Minn. Stat. § 256B.056, subd. 4a, plainly states that life estates will be "deemed not salable . . . *only* for the purpose of determining eligibility for medical

assistance." (Emphasis added.) The statute also plainly states that the subdivision "does not apply to the valuation of assets owned by either the institutional spouse or the community spouse under section 256B.059, subdivision 2." The plain language of subdivision 4a, stating that it applies only to medical assistance eligibility and not the community spouse asset allowance, is not ambiguous. Esther's interpretation, which would view an asset deemed nonsalable in subdivision 4a as a non-countable asset under Minn. Stat. § 256B.059, subd. 2, would render this express language superfluous.

Additionally, throughout Minn. Stat. § 256B.056, the term "individual" refers to the individual who is applying for medical assistance—the medical assistance applicant. This interpretation is supported by the use of the term "individual" elsewhere in the statute when it could apply only to the applicant. For example, subdivision 1 discusses residency requirements and circumstances where "the individual is absent from the state," which can apply only to the person receiving medical assistance. Minn. Stat. § 256B.056, subd. 1(c); *see also* Minn. Stat. § 256B.056, subds. 3e(2) (identifying circumstances when "the individual is eligible for a refund . . . when the individual dies"), 4b (discussing income verification procedures for "recipients" and noting that "an individual may be required to submit additional verification"), 5a (setting forth eligibility criteria for "[i]ndividuals on fixed or excluded income"). The only time that the use of the term individual means someone other than the applicant is when the statute expressly states so. *See* Minn. Stat. § 256B.056, subd. 2 (specifying individuals other than the applicant by stating that "[a homestead will be excluded if it is the primary residence used] by one of the following

individuals: (1) the spouse; (2) a child under age 21; . . . ."). Thus, when the term individual applies to someone other than the applicant, the Legislature said so.

Subdivision 4a expressly provides that its nonsalability determination is "[f]or purposes of verification." Minn. Stat. § 256B.056, subd. 4a. "Verification" refers to subdivision 10(c): "The commissioner shall verify assets and income for all applicants, and for all recipients upon renewal." Minn. Stat. § 256B.056, subd. 10(c). Assets retained by the community spouse are not "verified" upon renewal. *See* Minn. Stat. § 256B.059, subd. 5. Thus, a reading that includes the community spouse as an "individual" under Minn. Stat. § 256B.056, subd. 4a, would not harmonize with purpose of that subdivision, which relates to asset verification for qualifying the applicant.

In addition, when considering all of the relevant provisions and statutes as a whole, the Legislature's intent is clear, and the statute is not ambiguous. Minnesota Statutes sections 256B.056 and 256B.059 serve different purposes, and treatment of an asset for one purpose is not inconsistent with treating it differently for another purpose. Whether an asset is salable determines whether it must be disposed of (i.e., sold) when an applicant for MA-LTC has assets that exceed $3,000. *See Estate of Atkinson*, 564 N.W.2d at 210 (holding that an applicant with assets in excess of $3,000 must spend them down first before becoming eligible for medical assistance). The effect of subdivision 4a is that if an applicant has assets that are in excess of $3,000 and are deemed not salable under subdivision 4a, then those assets need not be disposed of to reach the $3,000 level, and they are excluded from the medical eligibility determination.

By contrast, Minn. Stat. § 256B.059, the spousal impoverishment statute, determines the amount of assets a community spouse can retain without affecting an institutionalized spouse's eligibility for MA-LTC. In 2017, the community spouse could retain $120,900 without excess amounts counting toward the institutionalized spouse's $3,000 asset limit. Any amount in excess must be "used for the health care or personal needs of the institutionalized spouse." Minn. Stat. § 256B.059, subd. 5(d).

Section 256B.056, which defines whether an applicant is eligible for MA-LTC, allows the applicant to become eligible regardless of whether the applicant holds a nonsalable life estate, has no bearing on section 256B.059, which defines the amount of assets a community spouse may retain without jeopardizing the institutionalized spouse's eligibility. By holding that an "individual" in Minn. Stat. § 256B.056, subd. 4a, refers to the medical assistance applicant and not a community spouse, our decision today harmonizes the two statutes and avoids rendering certain provisions superfluous.[5]

---

[5] Esther also argues that, when calculating the total marital assets, if an asset is deemed not salable under Minn. Stat. § 256B.056, subd. 4a, then it should not be a countable asset under Minn. Stat. § 256B.059. Esther cites to a Supplemental Security Income Program regulation, which defines resources as real property "that an individual (or spouse, if any) owns and could convert to cash" and also states that, "[i]f the individual has the right, authority or power to liquidate the property or his or her share of the property, it is considered a resource." *See* 20 C.F.R. § 416.1201(a)(l) (2019).

The Commissioner disagrees that salability under section 256B.056 is relevant to whether an asset is countable under section 256B.059. She argues that, under federal and state law, salability matters only for the purpose of whether an applicant must spend down assets to reach the asset threshold and that, under federal and state law, salability is inconsequential for the purpose of calculating a community spouse's total assets. The Commissioner distinguishes between the legal power to sell an asset and the ability to sell at a reasonable price. We need not reach this argument because we conclude that the term "individual" in subdivision 4a does not include the community spouse.

II.

In the alternative Esther argues that, even if the interpretation by the Commissioner was not an error of law, it is arbitrary and capricious. A decision is arbitrary and capricious when an agency

> (a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise.

Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006). An agency's decision is arbitrary or capricious when it "represents the agency's will and not its judgment." *In re Review of 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 118 (Minn. 2009).

The district court's overall conclusion was that the denial of the application for medical assistance was "arbitrary and capricious and premised on an error of law." The court expressed concern that the Commissioner, in other proceedings unrelated to Esther, had taken a different position on whether life estates counted "against either spouse in terms of medical assistance eligibility." The district court concluded, and Esther argues here, that the Commissioner's decision was arbitrary and capricious because the Commissioner's view in this case differed from the view that the Commissioner took in a different case. This argument is unpersuasive.

An error of law is separate from whether a decision is arbitrary and capricious, *see* Minn. Stat. § 14.69, and a change in interpretation of a statute, standing alone, is not a factor we have relied on to find that a decision is arbitrary and capricious. Esther cites to

none of our decisions that support the contention that a single prior decision interpreting a statute binds the Commissioner so as to make a new and different interpretation arbitrary and capricious. Esther has no vested right in a prior, potentially—and as it turns out, actually—incorrect interpretation of the statute by the Commissioner. It was not arbitrary and capricious for the Commissioner to interpret the law differently here (and actually, correctly) merely because the Commissioner might have incorrectly interpreted it previously. Under these facts, the decision to interpret the statute against Esther's position does not represent the "will" of the agency, but rather reflects its judgment on how the statute operates.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals.

Reversed.