STATE OF MINNESOTA

IN SUPREME COURT

A20-0603

Court of Appeals

Moore, III, J.

State of Minnesota,

Respondent,

v.

Filed: May 25, 2022
Office of Appellate Courts

Barbara Ann Currin,

Appellant.

Keith M. Ellison, Attorney General, Nicholas Wanka, Assistant Attorney General, Saint Paul, Minnesota; and

John Choi, Ramsey County Attorney, Saint Paul, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Andrew J. Nelson, Assistant State Public Defenders, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The plain language of the phrase "amount of economic loss sustained by the victim" in Minn. Stat. § 611A.045, subd. 1(a)(1) (2020), requires district courts to consider the value of economic benefits, if any, a defendant conferred on a victim when calculating a restitution award.

2. The district court did not abuse its discretion when it determined the victim's economic loss.

Affirmed.

O P I N I O N

MOORE, III, Justice.

This case involves a challenge to a $2.64 million restitution award. Between 2012 and 2015, appellant Barbara Ann Currin owned and operated several agencies that billed the Minnesota Department of Human Services (DHS) as medical assistance providers of health care services. Currin has a prior fraud conviction that bars her from operating in any capacity as a medical assistance provider, and the agencies concealed Currin's role and involvement with them from DHS. Currin was convicted of racketeering for her role in this medical assistance fraud scheme. After a hearing, the district court ordered Currin to pay DHS $2,648,539.53 in restitution for fraudulently billed medical assistance claims that it had paid to Currin's agencies.

In a postconviction petition, Currin argued her restitution award should be reduced.[1] When a district court determines the amount of restitution to award a victim in a criminal case, it must consider "the amount of economic loss sustained by the victim as a result of the offense." Minn. Stat. § 611A.045, subd. 1(a)(1) (2020). Currin argued that DHS's

[1] In a postconviction order, the petitioner's name should be listed first on the caption. The district court, however, captioned its postconviction order with Currin's name listed second, and the court of appeals' opinion and our subsequent orders continued this party order in the caption. We continue this rubric in the interest of consistency for the caption of this opinion.

economic loss had to account for the economic benefit it received from her offense, which she contended was the value of medical services her agencies had purportedly provided to low-income Minnesotans. The district court denied the postconviction petition, and the court of appeals affirmed.

We hold that the plain language of the phrase "amount of economic loss sustained by the victim" in Minn. Stat. § 611A.045, subd. 1(a)(1), requires a district court to consider the value of any economic benefits a defendant conferred on a victim when calculating a restitution award. We further hold, based on the facts of this case, that the district court did not abuse its discretion when it calculated DHS's economic loss. As a result, we affirm the court of appeals, but on different grounds.

FACTS

In 2010, appellant Barbara Ann Currin was convicted in state court of medical assistance fraud for submitting fraudulent Medicaid claims to DHS through a private-duty-nursing-provider company she owned and operated. As a result of this conviction, federal law excluded Currin from participating as a medical assistance provider. *See* 42 U.S.C. § 1320a-7(a)(1) (2018) (excluding individuals who have been convicted of a criminal offense relating to delivery of medical assistance services under state law from participating in federal healthcare programs).

Despite this exclusion, between 2012 and 2015, Currin formed, owned, and operated eight agencies and other businesses that billed DHS as medical assistance providers. Along with several codefendants, Currin set up agencies that billed DHS for nursing services while concealing Currin's involvement as owner and manager. Based on this scheme, the

State charged Currin with one count of racketeering, Minn. Stat. § 609.903, subd. 1(1) (2020), and seven counts of theft by swindle, Minn. Stat. § 609.52, subd. 2(a)(4) (2020).

In June 2016, Currin pleaded guilty to racketeering in exchange for dismissal of the theft by swindle charges. At her plea hearing, Currin admitted that the agencies she set up billed DHS for nursing services purportedly provided to clients who were eligible to receive services paid for by the medical assistance program. She conceded that, while her agencies provided some services, they billed DHS for more services than were provided. Currin also agreed that her agencies gave clients kickbacks and other incentives to retain them. Currin acknowledged that, based on her 2010 conviction, DHS would not have paid any bills submitted by Currin's agencies had it known of her involvement. Finally, Currin agreed that between 2012 and 2015, DHS made medical assistance payments totaling $2,648,548.53 to her agencies.

The district court accepted Currin's plea, convicted her of racketeering, and later sentenced her to 122 months in prison. At the sentencing hearing, the State asked the court to order Currin to pay the full $2.64 million in restitution. Because Currin's attorney was having technical difficulties accessing the State's restitution evidence, the district court reserved its decision on restitution.

Currin appealed her sentence, which the court of appeals affirmed. *See Currin v. State*, No. A17-1483, 2018 WL 2090623, at *1 (Minn. App. May 7, 2018), *rev. denied* (Minn. Aug. 7, 2018). While Currin's appeal was pending, her case proceeded to a restitution hearing before a different district court judge.

At the restitution hearing, the State introduced into evidence several documents detailing the medical assistance payments that DHS made to Currin's agencies. The State also called a Medicaid fraud investigator from the Minnesota Attorney General's Office to testify. The investigator testified that she calculated the total amount of medical assistance payments that DHS paid to Currin's agencies as $2,648,539.53, based on bills submitted for nursing services provided to medical-assistance-eligible clients. The investigator agreed that DHS would not have made any medical assistance payments to Currin's agencies had it known that Currin was involved in their operations and management. The investigator also testified that state regulations require agencies seeking medical assistance payments to maintain time sheets going back 5 years and prohibit them from giving kickbacks to those receiving services. The investigator added that if DHS determined that an agency had received fraudulent payments, then DHS would seek to recover the entire amount of its payment and would not seek to recover only the agency's profit on the services provided.

Nonetheless, the investigator testified she did try to estimate the profit Currin's agencies received during the medical assistance scheme. To do so, she subtracted the amount that the agencies purportedly paid their nurses—$1,156,259.36—from the total amount that DHS paid the agencies. When calculating this estimate, the investigator assumed that the agencies provided all the services billed, despite evidence that Currin's agencies had back billed, overbilled, and falsified and destroyed timesheets. Operating on this assumption, the investigator estimated that the agencies' total profit was $1,492,280.17. Currin cross-examined the State's investigator but did not otherwise offer

any evidence at the hearing. After the restitution hearing, the parties submitted memoranda and Currin submitted an affidavit about her ability to pay. Currin's affidavit did not challenge the accuracy of the State's restitution amount or offer an alternative figure.

In November 2017, the district court ordered Currin to pay restitution of the full $2.64 million and directed that $50 would be deducted monthly from her prison earnings to pay the award. The district court found unpersuasive Currin's argument that she should only have to pay the amount the State's investigator calculated as profit because, as she reasoned, DHS would have had to reimburse some other agency for the same services the nurses provided. The district court noted there was no evidence DHS would have reimbursed another agency for the same services Currin's agencies purportedly provided to clients, "no authority" supported reducing a victim's restitution request "based on expenses incurred by a defendant in obtaining or using the ill-gotten gains," and without Currin's "deceits, falsehoods, and fabrications," DHS would not have funded her enterprise at all. Since Currin was not entitled to any of the funds she received from DHS, the district court reasoned, she must return them in full.

Two years later, Currin filed a petition for postconviction relief, challenging the amount of the restitution award. Once again, she argued that because her agencies used $1.1 million of the funds to pay for nursing services provided to Medicaid beneficiaries, DHS received benefits from these payments, and therefore they were not an economic loss. The district court summarily denied Currin's petition without a hearing for reasons similar to those stated in its original restitution order. The district court agreed that if Currin "had not committed her crime, DHS would not have paid out any of the $2.6 million."

The court of appeals affirmed. *State v. Currin*, No. A20-0603, 2021 WL 164690, at *1 (Minn. App. Jan. 19, 2021). The court rejected Currin's assertion that DHS would have paid $1.1 million for services even if Currin had not committed her crime, and therefore the restitution award should be reduced to $1.49 million because that more accurately reflects DHS's economic loss. *Id.* at *6. Instead, the court of appeals reasoned that "a district court's analysis is confined to the two exclusive statutory factors" for determining restitution in Minn. Stat. § 611A.045, subd. 1(a),[2] and that it "may not consider Currin's proposed additional 'factor' " related to the benefit the victim received. *Id.* As a result, the court concluded, "the district court did not abuse its discretion by returning DHS to the same financial position it was in before the crime, or ordering restitution of $2.64 million because Currin's criminal activity directly caused the economic loss." *Id.* The court also rejected Currin's argument that the district court improperly shifted the burden of proof to her before awarding restitution, concluding instead that "the district court's decision to award restitution in the total amount paid by DHS to Currin's agencies was fully supported by record evidence offered by the State." *Id.* at *8. Thus, the court of appeals held that "the district court did not abuse its discretion in determining that Currin's fraudulent scheme directly caused DHS's economic loss of $2.64 million." *Id.*

We granted Currin's petition for review.

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[2] The statute lists two factors that the court "shall consider" when determining restitution: "(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a). The court of appeals characterized these factors as "the victim's economic loss and the defendant's ability to pay." *Currin*, 2021 WL 164690, at *5.

ANALYSIS

This appeal presents two questions. First, in determining whether to order restitution and the amount of restitution pursuant to Minn. Stat. § 611A.045, subd. 1(a)(1), must district courts consider the value of economic benefits a defendant confers on a victim when calculating "the amount of economic loss sustained by the victim." Second, whether the district court abused its discretion in this case by awarding restitution to DHS in the amount of the total medical assistance payments Currin's agencies fraudulently received. We answer the first question in the affirmative but, even though the district court did not apply this legal standard, we nevertheless affirm the district court's award of restitution on the facts of this case.

We review denial of a petition for postconviction relief for abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). We similarly review a district court's decision to award restitution for an abuse of discretion. *State v. Anderson*, 871 N.W.2d 910, 913 (Minn. 2015). "A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). "We will not reverse findings of fact unless they are clearly erroneous . . . ." *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020). The interpretation of the restitution statute is a question of law that we review de novo. *State v. Jones*, 678 N.W.2d 1, 23 (Minn. 2004).

Important general principles govern the district court's consideration of a restitution claim in a criminal case. A victim of a crime has the right to receive restitution as part of the disposition of the criminal charge if the offender is convicted. Minn. Stat. § 611A.04,

subd. 1 (2020). "The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). And when calculating the proper amount of restitution, the district court must consider two statutory factors: "the amount of economic loss sustained by the victim as a result of the offense" and the defendant's ability to pay.[3] Minn. Stat. § 611A.045, subd. 1(a)(1)–(2).

The parties' dispute centers on the amount of restitution Currin should be ordered to pay back to DHS in this case. Specifically, the parties disagree on whether the estimated $1.1 million in wages Currin's agencies purportedly paid out to nurses who provided medical services is an "economic loss" to DHS under Minn. Stat. § 611A.045, subd. 1(a), or whether the amount should be excluded—and therefore reduced from the restitution award—because the services provided were not a loss to DHS, but rather a benefit. To resolve this issue, we must interpret the phrase "the amount of economic loss sustained by the victim" from the restitution statute and then apply it to the facts here.

I.

We begin by interpreting the restitution statute. The purpose of statutory interpretation is to "ascertain and effectuate" the Legislature's intent. Minn. Stat. § 645.16 (2020). When interpreting a statute, the threshold question is whether the statute's language is clear on its face. *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020). If we

[3] The second factor concerning the defendant's ability to pay is not before us in this case. *See* Minn. Stat. § 611A.045, subd. 1(a)(2).

can clearly discern the Legislature's intent from the plain language of the statute, we apply the plain meaning. *State v. Alarcon*, 932 N.W.2d 641, 645 (Minn. 2019). If, however, the disputed language is subject to more than one reasonable interpretation, then the statute is ambiguous, and we may employ additional canons of construction to resolve the ambiguity. *State v. Irby*, 967 N.W.2d 389, 394 (Minn. 2021).

We have previously interpreted Minn. Stat. § 611A.045, subd. 1(a), as establishing an exclusive list of factors the district court must consider when determining the amount of a restitution award*, see State v. Riggs*, 865 N.W.2d 679, 685 (Minn. 2015), one of which is the factor at issue here, "the amount of economic loss sustained by the victim as a result of the offense." Minn. Stat. § 611A.045, subd. 1(a)(1). We have also addressed the proper causal scope of a restitution award, holding that the term "result" as used in this factor, permits district courts to consider only losses "that are directly caused by, or follow naturally as a consequence of, the defendant's crime." *See State v. Boettcher*, 931 N.W.2d 376, 380–81 (Minn. 2019). But we have not determined the plain meaning of the phrase "the amount of economic loss," nor by extension, whether the phrase contemplates reducing from a restitution award economic benefits a defendant confers on the victim as a result of the crime. Minn. Stat. § 611A.045, subd. 1(a)(1).

Where, as here, the Legislature has not provided a definition of the relevant phrase, "amount of economic loss," we may consider applicable dictionary definitions to determine the phrase's plain and ordinary meaning. *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018). First, "amount" is defined as "the total of two or more quantities; the aggregate." *The American Heritage Dictionary* 60 (5th ed. 2020). Next, "economic" is defined as "of

or relating to the production, development, and management of material wealth, as of a country, household, or business enterprise." *Id.* at 566; *see also Oxford English Dictionary* 540 (3rd ed. 2008) (defining "economic" as "[o]f or relating to the management of domestic or private income and expenditure; relating to (personal) money considerations, financial"); *Merriam-Webster's Collegiate Dictionary* 365 (10th ed. 2001) (defining "economic" as "of, relating to, or based on the production, distribution, and consumption of goods and services"). Finally, "loss" is defined as "the condition of being deprived or bereaved of something or someone" as well as "the amount of something lost." *The American Heritage Dictionary* at 540. "Loss" is the "diminution of one's possessions or advantages; detriment or disadvantage involved in being deprived of something, or resulting from a change of conditions." *See also Oxford English Dictionary* at 1009.

Summarizing these definitions—and reading them in conjunction with our prior interpretation of the term "result," *see Boettcher*, 931 N.W.2d at 380—the plain meaning of the phrase "the amount of economic loss sustained by the victim as a result of the offense" is the total or aggregate diminution or deprivation of money, goods, or services that a victim suffers as a direct result or natural consequence of the defendant's crime. Since the word "amount" implies an aggregation, the logical conclusion from this interpretation is that district courts, in calculating what the victim lost as a result of the crime, must also consider what benefits, if any, the victim received from the defendant. In

other words, because a benefit would offset a loss, restitution awards must account for any benefits received from the defendant to determine the aggregate economic loss.[4]

We therefore hold that, based on the plain language of Minn. Stat. § 611A.045, subd. 1(a)(1), a district court must consider the value of economic benefits, if any, the defendant conferred on the victim as a result of the offense when determining "the amount of economic loss sustained by the victim as a result of the offense."[5]

II.

We turn next to the issue of whether the district court abused its discretion in concluding that the amount of DHS's economic loss was the entire $2.64 million it paid out to Currin. As noted above, we review a district court's decision to award restitution for an abuse of discretion. *State v. Anderson*, 871 N.W.2d 910, 913 (Minn. 2015). "A

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[4] Though we do not reach ambiguity, our interpretation finds support in the well-established purpose of the restitution statute, which is to "restore crime victims to the same financial position they were in before the crime." *Palubicki*, 727 N.W.2d at 666; *see also State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984) (stating that restitution is about "restoring or compensating the victim for his loss"). By requiring district courts to consider benefits conferred on victims when calculating restitution awards, we ensure that crime victims end up in the same position as they were in before the crime—not a better one.

[5] In addressing Currin's argument on this issue, the court of appeals relied on our decision in *Riggs* to reason that the exclusive factors in Minn. Stat. § 611A.045, subd. 1(a)(1)–(2), implicitly prohibit a district court from considering the value of economic benefits conferred on a victim when determining the amount of the restitution award. Our holding today does not create an additional factor for district courts to consider when calculating restitution awards. Such a holding would be contrary to the Legislature's creation of two exclusive factors in Minn. Stat. § 611A.045, subd. 1(a). *See Riggs*, 865 N.W.2d at 685 (holding that the statute permits district court to consider only the two factors delineated in Minn. Stat. § 611A.045, subd. 1(a)(1)–(2), when determining the amount of restitution). Instead, our holding here is based on our interpretation of one of those factors—"the amount of economic loss sustained by the victim as a result of the offense." Minn. Stat. § 611.045, subd. 1(a)(1).

court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). We also "will not reverse findings of fact unless they are clearly erroneous . . . ." *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020).

The district court concluded that the "actual loss" to DHS, the victim in this case, is all payments made by DHS to Currin and her agencies, because they were not entitled to receive any of the medical assistance funds they received from the victim. The court further concluded that Currin's arguments confuse who is the actual victim here. The record supports the district court's findings.

This case is unique in that it involves the intersection between state medical assistance law, federal Medicare law, and the state's general restitution statute. Both Minnesota and federal law require medical providers to disclose the identity of any owner, agent, or managing employee who has been convicted of a Medicare- or Medicaid-related crime. 42 C.F.R. § 455.106(a) (2022) (requiring disclosure); Minn. Stat. § 256B.064, subd. 3(b) (2020) (requiring vendors to check exclusion list). Minnesota law prohibits DHS from making medical assistance payments to individuals like Currin whose prior convictions bar them from participating in medical assistance programs. Minn. Stat. § 256B.064, subd. 3(a) (2020). Federal law similarly prohibits individuals who have been convicted of a criminal offense related to the delivery of medical assistance services from participating in federal healthcare programs. 42 U.S.C. § 1320a-7(a)(1). We agree with the State and the district court that Currin's exclusion from participating in these health care programs caused her agencies' services to be ineligible for *any* medical assistance payments from

DHS in any amount. As discussed below, this conclusion is supported by the record and by federal caselaw addressing Medicare and Medicaid payments to excluded health care providers in similar situations, even when some services may have been provided to otherwise eligible recipients.[6]

Here, the district court heard testimony from the State's medical assistance fraud investigator, who explained that DHS would not have made any medical assistance payments to Currin's agencies had it known that Currin was involved in their operations and management. The district court then made a factual finding consistent with the investigator's testimony: "But for [Currin's] deceits, falsehoods, and fabrications, the victim [DHS] would not have funded the enterprise. . . . Therefore, this court finds that the 'actual loss' to the victim is all payments made to [Currin] and [her] 'agencies' by the victim."[7] The record clearly supports this factual finding, and Currin does not challenge this finding on appeal—in fact, she acknowledged its truth at her plea hearing. Because Currin was disqualified from receiving any medical assistance payments, there was no benefit to DHS in disbursing funds to providers who were not entitled to receive them.

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[6] We have previously considered federal interpretations of terms in federal restitution statutes when reviewing the meaning of undefined terms in our state restitution statutes. *See State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019) (relying on U.S. Supreme Court's interpretation of federal restitution provision to determine the meaning of a similar phrase in the state's general restitution statute).

[7] Though the district court used the phrase "but for" in stating its factual finding, it was not applying the "but-for" causation test we rejected in *State v. Palubicki*, 727 N.W.2d 662, 667 (Minn. 2007). The district court determined that the State's evidence proved Currin's racketeering scheme directly caused DHS to sustain an economic loss in excess of $2.64 million when it paid Currin's agencies. This finding is consistent with our existing precedent on causation.

Currin argues that, because some of the funds her agencies received were arguably used to pay nurses for legitimate services, the value of these services was a benefit to DHS and therefore should have been excluded from the district court's economic loss calculation. But federal courts have consistently ruled that arguments similar to Currin's confuse who the actual victim is in Medicare/Medicaid fraud cases—the government healthcare program. *See, e.g.*, *United States v. Triana*, 468 F.3d 308, 321–23 (6th Cir. 2006); *United States v. Jones*, 664 F.3d 966, 984 (5th Cir. 2011); *United States v. DeHaan*, 896 F.3d 798, 807–08 (7th Cir. 2018). We find the reasoning in these cases persuasive.

In these factually similar cases, federal courts found that when a provider managing an entity like Currin's was not entitled to receive any money from Medicare or Medicaid, the appropriate loss calculation was the full amount paid out by the victim-healthcare program. In this situation, the victim-healthcare program does not receive a benefit from paying entities who are ineligible to receive any government funds, even when some services may have been provided to otherwise eligible recipients. *See Triana*, 468 F.3d at 322–23 (calculating loss as the full amount of services for which a federally excluded podiatric services provider received reimbursement even though some legitimate services were provided); *Jones*, 664 F.3d at 984 (calculating the loss as the entire amount an unlicensed provider received in Medicare reimbursements because "the treatments had no monetary value" under the Medicare and Medicaid laws since Medicare only pays for treatments that meet its standards (internal quotation omitted)); *DeHaan*, 896 F.3d at 807–08 (calculating the loss as the entire amount Medicaid paid to defendant as a result of fraudulent homebound patient certifications because even though some fraudulently

certified patients may have been eligible for home care services anyway, Medicaid would not have funded the services without proper certification); *cf. United States v. Mahmood,* 820 F.3d 177, 193–94 (5th Cir. 2016) (vacating federal district court's order to pay restitution in the total amount of Medicare funds disbursed based on finding that Medicare would have paid much of the restitution award to defendant who was eligible to provide services and receive Medicare payments funds but overbilled). The district court's finding is consistent with how federal courts have considered loss to the government in the context of Medicare/Medicaid fraud.

The court of appeals rejected the State's reliance on *Jones* and *Triana* because those cases rely on a federal sentencing guidelines comment "that has no parallel in Minnesota law." *Currin*, 2021 WL 164690, at *6, n.5. While it is true that they are federal sentencing cases, we conclude their reasoning applies to the facts here. The district court found that Currin was prohibited from receiving medical assistance payments and that she only succeeded in doing so because she concealed her involvement in the agencies that billed DHS. We agree with the district court that there was no benefit to DHS, the victim in this case, in paying Currin's agencies funds the agencies were not entitled to receive.

Thus, on this record, we hold that the district court did not abuse its discretion in finding that DHS's total economic loss was the full amount—$2,648,539.53—that DHS paid to Currin's agencies. We emphasize that our holding here is limited to the unique facts and circumstances of this case; the determination of the value of any benefits conferred on the victim as a result of a crime related to a claim for restitution is an issue for district courts to address on a case-by-case basis.

CONCLUSION

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

Affirmed.