



**In the  
Missouri Court of Appeals  
Western District**

**JANICE E. SPURGEON,**

**Appellant,**

**v.**

**MISSOURI CONSOLIDATED HEALTH  
CARE PLAN, BOARD OF TRUSTEES,  
ET AL.,**

**Respondents.**

**WD80855**

**OPINION FILED:**

**MARCH 20, 2018**

**Appeal from the Circuit Court of Cole County, Missouri  
The Honorable Jon Edward Beetem, Judge**

**Before Division Two: James Edward Welsh, Presiding Judge, Alok Ahuja, Judge, Anthony  
Rex Gabbert, Judge**

Janice Spurgeon appeals the circuit court's Judgment concluding that she is not entitled to enroll in the Missouri Consolidated Health Care Plan (MCHCP) pursuant to Section 103.085<sup>1</sup> and 22 C.S.R. 10-2.020.<sup>2</sup> Spurgeon contends that the circuit court erred in interpreting Section 103.085 and in applying 22 C.S.R. 10-2.020. We affirm.

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri as currently supplemented unless otherwise indicated.

<sup>2</sup> All regulation references are to the Missouri Code of State Regulations as currently updated unless otherwise indicated.

### **Factual and Procedural History**

Spurgeon's late husband, Gary,<sup>3</sup> was an employee of the Missouri Department of Public Safety, Division of Alcohol and Tobacco Control, from January 12, 1976, through November 30, 2009. He retired on December 1, 2009. Gary was covered for health care benefits under MCHCP at the time of his retirement. He elected to continue coverage with MCHCP upon his retirement and maintained coverage until his death on March 4, 2014.

Gary did not elect to enroll Spurgeon in MCHCP coverage when he retired. Spurgeon, therefore, was not covered by MCHCP at the time of Gary's death. At the time of Gary's passing, Spurgeon was an employee of Crawford Electric Cooperative covered under her employer's health insurance plan. After Gary's death, Spurgeon completed a Survivor Enrollment Form which was received by MCHCP on April 3, 2014. MCHCP denied Spurgeon's application on the grounds that Spurgeon was ineligible to enroll for survivor coverage under 22 C.S.R. 10-2.020(2)(C)2. This provision only allows survivors of retirees to continue enrollment in MCHCP if the retiree elected at retirement to enroll the survivor; it does not allow a survivor to initiate enrollment at the time of a retiree's death.

Spurgeon appealed MCHCP's decision to the MCHCP Board of Trustees ("the Board"). The Board denied Spurgeon's appeal. On October 2, 2014, Spurgeon filed an amended petition<sup>4</sup> in the circuit court against the Board and Judith Muck, executive director of MCHCP ("Respondent's" collectively). The amended petition alleged that Spurgeon met all of the

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<sup>3</sup> To avoid confusion, we refer to Gary Spurgeon by his first name. No familiarity or disrespect is intended.

<sup>4</sup> Spurgeon's initial petition was filed on July 10, 2014.

requirements of Section 103.085 to be allowed healthcare coverage under MCHCP, and the Board's denial of her appeal was unlawful, unreasonable, arbitrary, capricious, and deprived her of a property right she is entitled to under the law. Spurgeon also contended that she had relied upon an averment made in a telephone call to MCHCP's customer service representative that Spurgeon could wait until Gary's death to enroll for coverage. Further, she argued that MCHCP had discretion to approve coverage pursuant to 22 C.S.R. 10-2.075(6)(B). She contended that 22 C.S.R. 10-2.020(2)(C)2 contradicts Section 103.098 which statutorily authorizes her enrollment.

On October 22, 2014, Respondents moved to dismiss Spurgeon's petition for failure to state a claim upon which relief could be granted. The court heard argument on Respondent's motion on November 7, 2014, and on July 15, 2015, entered a Judgment dismissing Spurgeon's petition for failure to state a claim. Spurgeon appealed the circuit court's dismissal to this court. On March 9, 2016, we issued a mandate reversing the circuit court's judgment. *Spurgeon v. Missouri Consolidated Health Care Plan*, 481 S.W.3d 604 (Mo. App. 2016). We found that, in construing Spurgeon's petition liberally and assuming the facts alleged therein to be true, the petition stated a claim for judicial review of MCHCP's decision. *Id.* at 607-608 (Mo. App. 2016). We determined that MCHCP's motion to dismiss challenged the merits of Spurgeon's claim rather than the adequacy of the petition, and noted that MCHCP had not alternatively requested a judgment on the pleadings. *Id.* at 608. We concluded that Spurgeon was entitled to a decision on the merits and remanded the matter to the circuit court. *Id.*

On remand, the circuit court reviewed the merits of Spurgeon's claims and concluded, as relevant to this appeal, that Section 103.085 and 22 C.S.R. 10-2.020 required MCHCP to deny Spurgeon's application for enrollment. This appeal follows.

### **Standard of Review**

“On appeal from the circuit court’s review of a non-contested administrative decision, we review the circuit court’s judgment, not the administrative agency’s decision.” *Spurgeon*, 481 S.W.3d at 606 (citing *Mo. Nat’l Educ. Ass’n v. Mo. State Bd. of Educ.*, 34 S.W.3d 266, 274 (Mo. App. 2000)). “Legal questions of statutory interpretation are reviewed de novo.” *Macon County Emergency Services Board v. Macon County Commission*, 485 S.W.3d 353, 355 (Mo. banc 2016). “The rules of a state administrative agency duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding upon the agency adopting them.” *Farrow v. Saint Francis Medical Center*, 407 S.W.3d 579, 588 (Mo. banc 2013) (quoting *State ex rel. Martin-Erb v. Missouri Com’n on Human Rights*, 77 S.W.3d 600, 607 (Mo. banc 2002)). However, “[a]s a creature of statute, an administrative agency’s authority is limited to that given it by the legislature.” *Farrow*, 407 S.W.3d at 588 (quoting *State ex rel. Missouri Public Defender Com’n v. Waters*, 370 S.W.3d 592, 598 (Mo. banc 2012)). “While administrative regulations are entitled to a presumption of validity and may not be overruled except for weighty reasons, the rules or regulations of a state agency are invalid if they are beyond the scope of authority conferred upon the agency, or if they attempt to expand or modify statutes.” *Union Elec. Co. v. Director of Revenue*, 425 S.W.3d 118, 124-125 (Mo. banc 2014) (internal quotation marks and citations omitted).

### **Points on Appeal**

Spurgeon asserts two points on appeal. In her first point she contends that the circuit court erred in finding that MCHCP was required to deny her application for survivor enrollment because denial of her enrollment is contrary to the purpose of the plan’s establishment set forth in Section

103.005,<sup>5</sup> and she met the statutorily mandated requirements for enrollment under Section 103.085. In her second point she contends that 22 C.S.R. 10-2.020(2)(B)<sup>6</sup> is in direct conflict with Section 103.085 and, therefore, the court erred in applying 22 C.S.R. 10-2.020. As both points involve interpretation of Section 103.085, we review them together.

### **MCHCP's Purpose – Section 103.005**

Section 103.005, titled “Missouri Consolidated Health Care Plan established, purpose – powers to carry out plan,” states:

For the purpose of covering medical expenses of the officers, employees and retirees, the eligible dependents of officers, employees and retirees and to the surviving spouses and children of deceased officers, employees and retirees of the state and participating member agencies of the state, there is hereby created and established a health care plan which shall be a body corporate, which shall be under the management of the board of trustees herein described, and shall be known as the “Missouri Consolidated Health Care Plan”. Notwithstanding any provision of law to the contrary, such plan may sue and be sued, transact business, contract, invest funds and hold cash, securities and other property and shall be vested with such other powers as may be necessary or proper to enable it, its officers, employees, and agents to carry out fully and effectively all the purposes of sections 103.003 to 103.175.

Spurgeon suggests that Section 103.005 endows her with an absolute right to MCHCP coverage because it states that the MCHCP was created, in part, for the purpose of covering medical expenses of surviving spouses of retirees. It does not. Section 103.005 is clear that the

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<sup>5</sup> Spurgeon did not raise a claim regarding Section 103.005 with the circuit court. Generally, we do not review claims raised for the first time on appeal. *Dotson v. Dillard's*, 472 S.W.3d 599, 603 n.2 (Mo. App. 2015). However, Spurgeon did preserve her claim that 22 C.S.R. 10-2.020, a rule adopted by the Board, is contrary to the legislative intent expressed in Section 103.085. Given that we necessarily must review Section 103.085 *in para materia* with a statute governing the legislature's establishment and purpose of the MCHCP, we review Spurgeon's claim regarding Section 103.005 *ex gratia*. See *Citizens Elec. v. Dir. of Dept. of Rev.*, 766 S.W.2d 450, 452 (Mo. banc 1989) (“In construing a statute it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed[.]”)

<sup>6</sup> Based on Spurgeon's claims with the trial court and argument on appeal, Spurgeon appears to mean 22 C.S.R. 10-2.020(2)(C) rather than 22 C.S.R. 10-2.020(2)(B).

provisions implementing the purposes of MCHCP are set forth in Sections 103.003 to 103.175. Section 103.005, therefore, is inseparable from the entirety of Chapter 103 and the purposes of the MCHCP contained and reflected therein. If a provision within Chapter 103 (in this case Section 103.085) prohibits Spurgeon's enrollment in the MCHCP, it is consistent with the purpose of Section 103.005.

### **Termination of MCHCP Coverage – Section 103.085**

Section 103.085, titled "Termination of coverage, when, exceptions, certain persons may choose to continue coverage, requirements," states:

Except as otherwise provided by sections 103.003 to 103.080, medical benefits coverage as provided by sections 103.003 to 103.080 shall terminate when the member ceases to be an active employee; except persons receiving or entitled to receive an annuity or retirement benefit or disability benefit or the spouse of or unemancipated children of deceased persons receiving or entitled to receive an annuity or retirement benefit or disability benefit from the state, participating member agency, institution, political subdivision or governmental entity may elect to continue coverage, provided the individuals to be covered have been continuously covered for health care benefits:

(1) Under a separate group or individual policy for the six-month period immediately preceding the member's date of death or disability or eligibility for normal or early retirement; or

(2) Pursuant to sections 103.003 to 103.080, since the effective date of the most recent open enrollment period prior to the member's date of death or disability or eligibility for normal or early retirement; or

(3) From the initial date of eligibility for the benefits provided by sections 103.003 to 103.080; or

(4) Within sixty days of a loss of group coverage, provided that such coverage was in place for at least twelve consecutive months immediately prior to the loss and that such loss was due to the dependent's termination of employment or termination of group coverage by the dependent's employer. This subdivision only applies to qualifying dependents of members receiving or entitled to receive an annuity or retirement benefit from the state, participating member agency, institution, political subdivision, or governmental entity.

Cost for coverage continued pursuant to this section shall be determined by the board. If an eligible person does not elect to continue the coverage within thirty-one days of the first day of the month following the date on which the eligible person ceases to be an employee, he or she may not later elect to be covered pursuant to this section.

Spurgeon focuses on Section 103.085's statement that the spouse of a deceased retiree may elect to continue MCHCP coverage if the individuals to be covered have been continuously covered for health care benefits under a separate group or individual policy for six months preceding the death of the retiree. She contends that this statement authorized her enrollment in the MCHCP following Gary's death because nothing within this provision requires the separate group or individual policy to be an MCHCP policy.

Section 103.005 creates the MCHCP and establishes that it will be managed by the Board. Section 103.008 vests the "general administration and the responsibility for the proper operation for the plan" with the Board. Details for administration of the plan are not set forth in the statutes. Section 103.059 requires the Board to formulate and adopt rules and regulations for the administration of the plan. The rules created by the Board pursuant to Section 103.059 are set forth in Missouri's Code of State Regulations. The "General Membership Provisions" of the MCHCP are detailed in 22 C.S.R. 10-2.020. Among other things, these provisions encompass active employee coverage, retiree coverage, survivor coverage, and dependent coverage.

22 C.S.R. 10-2.020 requires that, in order for a surviving spouse to continue enrollment in MCHCP coverage upon the death of a retiree, the surviving spouse must be covered by the MCHCP at the time of the retiree's death. All parties acknowledge that, if valid, 22 C.S.R. 10-2.020 prevents Spurgeon's enrollment in MCHCP. The question before us, then, is whether 22 C.S.R. 10-2.020 improperly expands or modifies Section 103.085 as Spurgeon contends. We conclude that it does not.

22 C.S.R. 10-2.020(2), titled “General Membership Provisions” states, in relevant part:

(B) Retiree Coverage.

1. An employee may participate in an MCHCP plan when s/he retires if s/he receives a monthly retirement benefit from either MOSERS or from Public School Retirement System (PSRS) for state employment. The employee may elect coverage for him/herself and his/her spouse/child(ren), provided the employee and his/her spouse/child(ren) have been continuously covered for health care benefits –
  - A. Through MCHCP since the effective date of the last open enrollment period;
  - B. Through MCHCP since the initial date of eligibility; or
  - C. Through group or individual medical coverage for the six (6) months immediately prior to retirement. Proof of prior group or individual coverage (letter from previous insurance carrier or former employer with dates of effective coverage and list of persons covered) is required.

....

5. If a retiree who is eligible for coverage elects not to be continuously covered for him/herself and spouse/child(ren) with MCHCP from the date first eligible, or does not apply for coverage for him/herself and spouse/child(ren) within thirty-one (31) days of his/her eligibility date, the retiree and his/her spouse/child(ren) shall not thereafter be eligible for coverage unless specified elsewhere herein.

....

(C) Survivor Coverage.

1. At the time of a vested active employee subscriber’s death, his/her survivor(s) may elect to continue coverage if the survivor(s) had MCHCP coverage at the time of the subscriber’s death. The deceased subscriber’s spouse/child(ren) who do not have MCHCP coverage at the time of the death may elect MCHCP coverage and become a survivor if the spouse/child(ren) had coverage through group or individual medical coverage for the six (6) months immediately prior to the subscriber’s death. In that case, proof of prior group or individual coverage (letter from previous insurance



carrier or former employer with dates of effective coverage and list of persons covered) is required.

2. At the time of a retiree or terminated vested subscriber's death, his/her survivor(s) may elect to continue coverage if the survivor(s) had MCHCP coverage at the time of the subscriber's death.

As expressed in the rules above, the Board interpreted Section 103.085's provision allowing for survivor coverage upon proof of six months of non-MCHCP coverage to apply only to survivors of active employees. 22 C.S.R. 10-2.020(2)(C)1. A surviving spouse of a retiree must have MCHCP coverage at the time of the retiree's death in order to elect to continue coverage. 22 C.S.R. 10-2.020(2)(C)2. A retiree may enroll a spouse in MCHCP coverage upon proof of six months of non-MCHCP coverage, however, when the retiree retires. 22 C.S.R. 10-2.020(2)(B)1.C.

We find the Board's interpretation/application of Section 103.085 via 22 C.S.R. 10-2.020 consistent with Section 103.085's requirement that, "If an eligible person does not elect to continue the coverage within thirty-one days of the first day of the month following the date on which the eligible person ceases to be an employee, he or she may not later elect to be covered pursuant to this section." Although Section 103.085 may not unambiguously specify when an election of coverage must occur with respect to an employee's spouse or children, the Board's regulations are consistent with Section 103.085 when they specify that a retiree must elect coverage at the time of retirement for him/herself as well as for any dependents. 22 C.S.R. 10-2.020(2)(B)5. Under the regulations, dependent enrollment in MCHCP requires affirmative action by the employee; enrollment may be continued by a survivor but cannot be initiated by a survivor.<sup>7</sup> Because a

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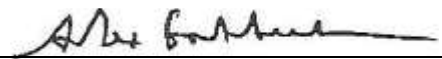
<sup>7</sup> The one exception to this is found at 22 C.S.R. 10-2.020(2)(C)1 which allows survivors of vested active employees to elect initial coverage within thirty-one days of an active employee's death. In such cases, the survivor essentially acts on behalf of the deceased vested employee whose opportunity to elect MCHCP coverage for his/her survivor(s) when he/she ceased to be an employee was eliminated when death ended the employment.

dependent's eligibility and election for coverage is derived solely from the employee or former employee's eligibility and elective choices, it follows that where a retiree elects to decline MCHCP coverage for his/her spouse at retirement, the spouse cannot later initiate coverage pursuant to Section 103.085. To find otherwise would allow circumvention of Section 103.085's requirement that an employee make an MCHCP election within thirty-one days of the first day of the month following the date on which employment ceases.

We find that 22 C.S.R. 10-2.020 does not expand or modify Section 103.085 and does not deprive Spurgeon of any rights established by the statute. Gary had the opportunity to elect MCHCP coverage for Spurgeon at the time of his retirement based on Spurgeon's prior six months of coverage through her own employer. Gary was required to make an election at that time pursuant to Section 103.085. He chose not enroll Spurgeon at that time and, consequently, Spurgeon had no MCHCP coverage she could elect to continue at the time of Gary's death.

### **Conclusion**

We conclude that the circuit court did not err in its interpretation of Section 103.085 or its application of 22 C.S.R. 10-2.020. Spurgeon's points on appeal are denied. We affirm the circuit court's judgment.

  
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Anthony Rex Gabbert, Judge

All concur.