STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0897

In re the Matter of the Appeal of Francis Matejcek,
Respondent,

vs.

Rice County Social Services,
Appellant,

Emily Johnson Piper,
Commissioner of the Minnesota Department of Human Services,
Respondent.

Filed April 2, 2018
Reversed and remanded
Bratvold, Judge

Rice County District Court
File No. 66-CV-16-2152

Francis Matejcek, Faribault, Minnesota (pro se appellant)

Lori Swanson, Attorney General, Bradley R. Hutter, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of the Minnesota Department of Human Services)

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for appellant Rice County)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey, Judge.

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

BRATVOLD, Judge

Appellant Rice County Social Services (the agency) seeks review of the Minnesota Commissioner of Human Services' second reconsideration decision, which reinstated the first decision she issued in the case. The commissioner affirmed the agency's decision to terminate respondent Francis Matejcek's Medical Assistance for Employed Persons (MA-EPD) benefits and concluded that the agency cannot recover the overpayment of benefits from Matejcek. Matejcek did not appeal the termination of his benefits. The agency, however, appealed the commissioner's decision that it could not recover its overpayments from Matejcek, making two related arguments. First, the agency argues that the commissioner used unlawful procedure to reconsider the case on remand from the district court and to issue a second reconsideration decision. Second, the agency contends that the commissioner's decision is not supported by substantial evidence, and is arbitrary and capricious. We conclude that the commissioner did not follow unlawful procedure in reconsidering her decision after the district court remanded the case. We reverse and remand, however, because the commissioner's decision did not apply the correct legal standard.

FACTS

In March 2013, Matejcek started receiving MA-EPD benefits. As part of the eligibility renewal process, Matejcek submitted information on agency forms every six months. These forms required Matejcek to disclose and verify his assets and encumbrances. For two years, the agency relied on the information reported by Matejcek and did not

further verify his income or assets before issuing benefits to him. In October 2015, after Matejcek received income from the sale of corporate stock, the agency's Income Eligibility Verification System (IEVS) issued a notice that Matejcek's bank account balance had increased by a sum that raised the amount of his total assets to more than $20,000, which was the eligibility limit for MA-EPD. After investigating Matejcek's assets and receiving additional information, the agency discovered previously undisclosed assets. On November 17, 2015, the agency terminated Matejcek's benefits because he had failed to comply with the disclosure and verification requirement, did not report the change in assets that triggered the IEVS report, and had assets in excess of $20,000. The agency also determined that it had overpaid Matejcek MA-EPD benefits, which amounted to $40,445.60, for the months between March 2013 and November 2015.

On November 23, 2015, Matejcek appealed the agency's decision to a human-services judge (HSJ) who held an evidentiary hearing. The HSJ heard evidence on two issues: (1) whether the agency correctly terminated Matejcek's MA-EPD benefits because his assets exceeded the $20,000 limit; and (2) whether the agency correctly determined that it overpaid benefits to Matejcek. The agency presented evidence of Matejcek's assets. Matejcek testified that he had shuffled assets around "[t]o earn a little extra money," but explained that it was "all the same money." The HSJ took the matter under advisement and later submitted a written recommendation to the commissioner.

In her February 5, 2016 decision, the commissioner adopted the HSJ's recommendation and concluded that (1) the agency established that, after December 1, 2015, Matejcek had assets in excess of the $20,000 limit, and (2) any overpayment of

benefits was due to agency error so Matejcek did not have to return the overpayment. The agency requested that the commissioner reconsider this decision and submitted charts showing the value of Matejcek's assets between July 2013 and November 2015.

On August 26, 2016, the commissioner granted reconsideration and issued a second decision in which she concluded that the February 5 decision was flawed. The August 26 decision determined that Matejcek had received overpayment of $34,041.95 in benefits between September 2013 and November 2015, the amended period of time for which the agency sought repayment, and that the agency was entitled to recover its overpayment.

Matejcek appealed the August 26 decision to the district court. On December 28, 2016, the district court granted the commissioner's request to remand the case for further consideration.

On January 19, 2017, the commissioner issued a third decision in which she vacated the August 26 decision and affirmed the February 5 decision. The January 19 decision reaffirmed the agency's termination of Matejcek's MA-EPD benefits and concluded that (1) the agency had erred by renewing his benefits without verifying Matejcek's reported assets and (2) the overpayments could not be "cited to" Matejcek because the overpayment resulted from agency error. The commissioner submitted the January 19 decision to the district court. On May 12, 2017, the district court issued an order affirming the commissioner's January 19 decision. The agency appeals.

D E C I S I O N

We "review[] the commissioner's order independently, giving no deference to the district court's review." *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301

(Minn. App. 2001), *review denied* (Minn. June 19, 2001). "Agency decisions enjoy a presumption of correctness," so we will "exercise judicial restraint" to avoid substituting our judgment for that of the commissioner. *In re Appeal of Staley*, 730 N.W.2d 289, 293 (Minn. App. 2007) (quotation omitted). But we will also apply the standards prescribed in Minnesota statutes and rules. The Minnesota Administrative Procedure Act grants us the authority to "affirm . . . or remand the case for further proceedings; . . . or reverse or modify the decision if . . . the administrative finding, inferences, conclusion, or decisions are" made upon unlawful procedure, based upon error of law, unsupported by substantial evidence, or arbitrary and capricious. Minn. Stat. § 14.69(c)-(f) (2016).

The agency raises two issues on appeal: (1) whether the district court had authority to remand the matter to the commissioner and whether the commissioner had authority to reconsider her decision, and (2) whether the commissioner's January 19 decision is based on an error of law. We address each issue in turn.

I. The commissioner did not use "unlawful procedure" to issue the January 19, 2017 decision.

The agency challenges the procedure by which the commissioner reconsidered the August 26 decision. What constitutes "unlawful procedure" is a question of law, which we review de novo. *In re Appeal by Kind Heart Daycare, Inc. v. Comm'r of Human Servs.*, 905 N.W.2d 1, 9 (Minn. 2017).

A district court may review a decision made by the commissioner upon appeal by an aggrieved party. Minn. Stat. § 256.045, subd. 7 (2016). The district court may affirm the agency decision, or "remand the case for further proceedings; or it may reverse or

modify" the agency decision upon certain enumerated grounds. Minn. Stat. § 14.69 (2016). The commissioner may reconsider a prior decision "on [her] own motion" under Minn. Stat. § 256.045, subd. 5. Here, the commissioner asked to reconsider her August 26 decision and the district court remanded the case to the commissioner for further consideration.

Upon remand, the commissioner may reopen for additional evidence, amend, or affirm her previous order because she has the power to change her determination and correct an error. Minn. Stat. § 256.045, subd. 5 (2016); *see State ex rel. Turnbladh v. Ramsey Cty. Dist. Ct.*, 259 Minn. 228, 236, 107 N.W.2d 307, 312 (1960) (explaining that an agency as a "well-established right to reopen, rehear, and redetermine the matter even after a determination has been made"); *see also In re North Metro Harness, Inc.*, 711 N.W.2d 129, 134-35 (Minn. App. 2006) (recognizing the authority of the commissioner to request reconsideration by examining Minnesota statutes and case law), *review denied* (Minn. June 20, 2006). Because the district court may remand the case to the commissioner for further consideration under Minn. Stat. § 14.69, and the commissioner has the authority to reconsider on her own motion, we conclude that the commissioner's January 19 decision was not made upon unlawful procedure.

II. The commissioner's decision denying the agency's recovery of overpayments to Matejcek is affected by legal error.

The agency contends that Matejcek's failure to disclose his assets to the agency requires him to return the $34,041.95 overpayment. The agency specifically argues that the overpayment of MA-EPD benefits resulted from Matejcek's failure to disclose assets, and

that if he had complied with his duty to disclose his assets within the required time period, then the agency would have determined his ineligibility as early as March 2013, and would not have issued overpayments from September 2013 to November 2015. Although the commissioner agreed that Matejcek was ineligible for MA-EPD benefits, and had received overpayments, she disagreed with the agency's conclusion that it could collect the overpayment. Because the overpayments were due to "agency error," specifically, the agency's renewal of Matejcek's MA-EPD benefits without verification of his assets, the commissioner denied recovery of overpayment.

To review the parties' arguments, we must briefly summarize the relevant statues and regulations regarding eligibility for MA-EPD, agency verification of eligibility, and the recipient's duty to provide additional information upon agency request, as well as the agency's authority to recover overpayments from the recipient. While the statutory-regulatory scheme is complex, the relevant provisions may be summarized in three parts. First, the agency determines an applicant's eligibility for assistance. Minn. Stat. § 256B.057, subd. 9 (2017). An applicant is eligible for MA-EPD benefits if he is employed and, among other things, has assets not in excess of $20,000. Minn. Stat. § 256B.057, subd. 9(d). Second, after an applicant is deemed eligible for MA-EPD, the agency distributes benefits and routinely verifies the recipient's assets and income. *See* Minn. Stat. § 256B.056, subd. 7a(d) (2016) (six-month review), Minn. Stat. § 256B.056, subd. 7 (twelve-month review). Third, if the agency determines that it has overpaid benefits to the recipient, the agency may recover the overpayment from the recipient if the overpayment

was caused by fraud, theft, abuse, or error, "absent a showing that recovery would, in that particular case, be unreasonable or unfair." Minn. R. 9505.2215, subp. 1(B) (2017).

Here, the commissioner determined that the agency had overpaid MA-EPD benefits to Matejcek, and that the agency could not recover the overpayments because they were due to agency error. Neither the commissioner nor the HSJ applied the appropriate standard to find that recovering the overpayment of MA-EPD benefits from Matejcek is "unreasonable or unfair." And, although the commissioner cited Minn. R. 9505.2215, subp. 1, on page 5 of the February 5 decision, she did not apply the rule to this case or make an explicit finding consistent with the relevant rule in either the February 5, 2016 or the January 19, 2017 decisions.

Instead, the commissioner cited to and relied upon unpromulgated rules from the department's Health Care Programs Manual (program manual), which is issued by the DHS and describes the process by which a person is deemed eligible to receive benefits as well as the renewal process. Dep't of Human Servs., *Health Care Programs Manual*, Chs. 19.0505; 8.35 (2014) [hereinafter DHS, *HCPM*]. The program manual states that, if an overpayment results, the agency cannot recover the difference if the overpayment was due to agency error. DHS, *HCPM*, Ch. 29.15. At oral argument, respondent agreed that the program manual, cited by the commissioner, contains interpretive rules that have not been promulgated and do not have the force of law.

Our decision, *In re PERA Salary Determinations Affecting Retired & Active Employees of the City of Duluth*, 820 N.W.2d 563, 570 (Minn. App. 2012), explained that promulgated administrative rules "have the force and effect of law." We stated the general

rule that unpromulgated administrative rules are "invalid and cannot be used as the basis for agency action." *Id.* (quoting *In re Contested Case of Good Neighbor Care Ctrs., Inc. v. Minnesota Dep't of Human Servs.*, 428 N.W.2d 397, 402 (Minn. App. 1988), *review denied* (Minn. Oct. 19, 1988)). But we recognized two exceptions when unpromulgated administrative rules may be valid: (1) if the administrative rule corresponds with the plain meaning of the emulated statute or (2) if the administrative rule is longstanding in the face of an ambiguous statute. *Id.* Neither of these two exceptions apply to the program manual that formed the basis for the commissioner's decision.

In the February 5 decision, the commissioner acknowledged that Matejcek knew that "he was in violation of the rules" by not disclosing his stock account. But the commissioner also concluded that "the agency has not verified the appellant's assets for each month it is citing an overpayment . . . . [I]t is likely [Matejcek] was ineligible for MA/EPD as early as the February 2013 . . . renewal application, however, the agency did not verify the appellant's assets, especially the reported savings account." In the January 19, 2017 decision, the commissioner "concur[red] with the original finding" in the February 5, 2016 decision that "there is no evidence to show that [the agency] sent written verification requests for any of [Matejcek's] accounts prior to receiving the IEVS report." (quotation omitted). The commissioner concluded that benefits were overpaid, at least in part, because the agency failed to verify Matejcek's assets before issuing benefit payments. The commissioner also concluded that "the overpayment [is attributed] to the agency not [Matejcek] and thus, the agency cannot cite an overpayment for its omissions when

determining [his] eligibility for MA/EPD." But in drawing this conclusion, the commissioner relied on the program manual.

Because the commissioner applied the standard articulated in an unpromulgated program manual that does not have the force of law, we reverse and remand for the commissioner to apply the correct legal standard and determine whether the agency may recover the overpayment from Matejcek.

Reversed and remanded.