

STATE OF MINNESOTA

IN SUPREME COURT

A18-1287

Court of Appeals

Lillehaug, J.
Concurring, Thissen, J.

In the Matter of Cindi Ali.

Filed: February 12, 2020
Office of Appellate Courts

Christopher Scott, Charles H. Thomas, Southern Minnesota Regional Legal Services, Inc., Saint Paul, Minnesota, for appellant Cindi Ali.

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Barnett Rosenfield, Mid-Minnesota Legal Aid/Minnesota Disability Law Center, Minneapolis, Minnesota, for amici curiae The Arc Minnesota, Minnesota Disability Law Center, and Mid-Minnesota Legal Aid.

S Y L L A B U S

Amounts of a Consumer Directed Community Support budget that a parent allocates to pay for the care the parent provides to a child are not excluded by 24 C.F.R. § 5.609(c)(16) (2019), when calculating annual income to determine eligibility for the Section 8 housing program.

Affirmed.

OPINION

LILLEHAUG, Justice.

This case arises at the intersection of two public welfare programs, the state Consumer Directed Community Support (CDCS) option for families with disabled members, and Section 8, an income-based federal housing program. To resolve this dispute, we must interpret one of the federal regulations governing Section 8.

Eligibility for Section 8 housing is based on income. Federal regulations tell us what is income and—by a list of exclusions—what is not. One such exclusion is amounts paid by a state agency to “offset the cost of services and equipment” needed to keep the disabled family member living at home. *See* 24 C.F.R. § 5.609(c)(16) (2019).

That exclusion is important to the family of Cindi Ali, whose son is disabled. Ali participated in the Section 8 housing program until Scott County—the local housing administrator—determined that CDCS money that Ali had allocated to herself as wages to care for her child was not excluded from the annual income calculation for the purpose of Section 8 eligibility. As a result, Ali lost her Section 8 eligibility. The court of appeals affirmed Scott County’s decision and this appeal followed.

We affirm the court of appeals and hold that amounts allocated to a parent to care for her disabled child are not excluded as income under section 5.609(c)(16).

FACTS

Cindi Ali participated in the Section 8 housing program that subsidizes housing for qualifying families. Ali has a son with autism spectrum disorder who is eligible for home and community-based services through Minnesota’s Developmental Disability Waiver

program. Under this program, county social workers developed and approved a budget for the specific services and equipment needed to keep Ali's son living at home with his family.

Ali chose to participate in the Consumer Directed Community Support (CDCS) option, which allowed Ali to allocate her budget as she saw fit to keep her son living at home. Ali chose to allocate a portion of the budget to herself as a paid parent to provide to her son some of the necessary services. To receive these amounts, Ali was required to file a timesheet tracking her weekly hours and to pay income tax.

In late 2017, Scott County determined that, although most of the CDCS benefits Ali received were excluded from her income when calculating her eligibility for Section 8 housing, the amounts she paid herself under the CDCS option were not. The County based its decision on section 5.609(c)(16) of the federal regulations. That regulation excludes from income:

Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

24 C.F.R. § 5.609(c)(16).

Ali requested an informal hearing to dispute Scott County's decision to include the amounts allocated as compensation for her care services as income. At the hearing, Ali's counsel argued that the amounts allocated to Ali as a paid parent were excluded from income under section 5.609(c)(16). Scott County responded that the amounts Ali allocated as compensation for her services must be included in the income calculation because those

amounts were not used to “offset” any “cost” to Ali, as Ali did not actually incur an out-of-pocket expense.

The hearing officer issued a written decision on June 13, 2018, determining that the amounts Ali allocated to herself are not excluded from income under section 5.609(c)(16). Ali appealed this decision to the court of appeals, which affirmed. *See In re Ali*, 931 N.W.2d 107 (Minn. App. 2019). We granted review.

ANALYSIS

We have already described briefly the Minnesota Developmental Disability Waiver program and its CDCS option. Some background on the Section 8 housing program may also be helpful. Section 8 is a federal program that is administered by local housing agencies. To qualify for Section 8, a household must meet certain income requirements. *See* 24 C.F.R. § 982.201 (2019). A public housing agency determines a household’s annual income by applying the definitions and exclusions in the relevant federal regulations. *See* 24 C.F.R. § 982.52 (2019). Once a household’s annual income is calculated, the local public housing agency determines what percentage of rent will be subsidized and how much the household must pay.

The question presented in this appeal is whether the CDCS amounts Ali received as compensation for her services in caring for her child are excluded from annual income under section 5.609(c)(16). To answer this question, we must interpret the phrase “offset the cost of services and equipment” as used in section 5.609(c)(16) and decide whether the CDCS amounts fall within that phrase. Interpreting a federal regulation is a question of

law that we review de novo. *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 (Minn. 2015).

“When interpreting a statute or regulation, we first look to see whether the statute or regulation is clear or ambiguous on its face.” *In re Cities of Annandale & Maple Lake NPDES/SDS Permit Issuance for Discharge of Treated Wastewater*, 731 N.W.2d 502, 516 (Minn. 2007). A regulation is ambiguous if it is “unclear or reasonably susceptible to more than one reasonable interpretation.” *Id.* at 517. When making this determination, we “interpret words and sentences in the light of their context” and “construe rules as a whole.” *In re Reichmann Land & Cattle*, 867 N.W.2d at 506 (citations omitted) (internal quotation marks omitted). If the language of a regulation is clear and capable of understanding, then no deference is given to the agency interpretation and “the court may substitute its own judgment.” *St. Otto’s Home v. Minn. Dept. of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989).

We begin with the text of the relevant provisions in the federal regulation. There is no question that the CDCS amounts paid to Ali qualify as “annual income.” Section 5.609(a) provides that annual income means “all amounts, monetary or not, which: (1) Go to, or on behalf of, the family head or spouse” And section 5.609(b) provides that annual income includes “(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.” As Ali recognized by paying income tax on the CDCS amounts, those amounts were annual income as defined by federal regulation.

We turn, then, to whether the CDCS amounts paid to Ali are excluded from annual income. Under section 5.609(c)(16), amounts paid by a state agency (here, the State of Minnesota) to a family with a member who has a developmental disability and is living at home (here, Ali and her son) are excluded if the amounts are “to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.”

The parties agree that the CDCS amounts paid to Ali were needed to keep Ali’s son at home. But the parties disagree whether the amounts were “to offset the cost of services.” Scott County argues, and the hearing officer and the court of appeals concluded, that “cost” means monetary expense. Because Ali incurred no monetary expense, there can be no “cost” to offset. Thus, the County argues, the CDCS amounts are not excluded from income. Ali argues that section 5.609(c)(16) should be interpreted to exclude the CDCS amounts she received because “cost” should be read to include more than monetary cost.

Because the Section 8 regulations do not define “offset the cost,” we look to dictionary definitions to give the phrase its “plain and ordinary meaning.” *See Troyer v. Vertlu Mgmt. Co.*, 806 N.W.2d 17, 24 (Minn. 2011). The primary definition of “cost” supports the County’s interpretation: “the amount or equivalent paid or charged for something: PRICE.” *Merriam-Webster’s Collegiate Dictionary* 262 (10th ed. 2001); *see also Cost*, *Black’s Law Dictionary* (8th ed. 2004).

Ali argues that we should interpret “cost” more broadly to include the secondary, non-monetary definition, which is “the outlay or expenditure (as of effort or sacrifice) made to achieve an object.” *Merriam-Webster’s Collegiate Dictionary*, *supra*, at 262. But that

interpretation—arguably reasonable in isolation—is not reasonable when the word “cost” is read in the context of paragraph (c)(16) and subdivision (c) as a whole.

Paragraph (c)(16) refers not only to amounts that “offset the cost of services,” it refers to amounts that “offset the cost of services *and* equipment.” 24 C.F.R. § 5.609(c)(16) (emphasis added). The “and” between the words services and equipment suggests that the same measurement is used for each. Typically, the cost of equipment is calculated in monetary terms—such as the cost to buy or lease.

The monetary definition of “cost” is further supported by another provision within subdivision (c). Paragraph (c)(4) excludes from annual income “[a]mounts received by the family that are specifically for, or in reimbursement of, the *cost* of medical expenses for any family member.” 24 C.F.R. § 5.609(c)(4) (emphasis added). By tying cost and expense, the regulation shows that cost means a monetary expense.

Finally, it is instructive that, when the regulators wanted to exclude amounts paid to family members for their own services, they knew how to do so—and did so unambiguously. For example, paragraph (c)(12) excludes from annual income “[a]doption assistance payments in excess of \$480 per adopted child.” 24 C.F.R. § 5.609(c)(12). Similarly, paragraph (c)(2) excludes “[p]ayments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).” 24 C.F.R. § 5.609(c)(2). By contrast, paragraph (c)(16) excludes only amounts to offset the “cost” of services. This contrast suggests that amounts paid to family members for their own services are not excluded from the income calculation.

Taking into account dictionary definitions, and both the text and context of paragraph (c)(16), we conclude that there is only one reasonable interpretation of “cost” as used in the phrase “offset the cost of services and equipment.” Cost means an actual monetary expense that has been, or will be, incurred by the family to keep the disabled family member living at home.

This interpretation of section 5.609(c)(16) is consistent with the decisions of two other courts that have considered the issue. In *Anthony v. Poteet Housing Authority*, the U.S. Court of Appeals for the Fifth Circuit decided that “cost” means “out-of-pocket expenses.” 306 Fed. App’x 98, 101–02 (5th Cir. 2009). As a result, a paid parent has no “out-of-pocket expenses” to be “reimbursed or ‘offset’ by the state.” *Id.* at 102. In *Reilly v. Marin Housing Authority*, the California Court of Appeals concluded that the word “cost” means price—which is the “more common and concrete meaning.” 232 Cal. Rptr. 3d 789, 796 (Cal. Ct. App. 2018). Therefore, a paid parent incurs no “costs” that the state payments can be said to offset. *Id.*

Based on our analysis, we hold that the CDCS amounts Ali received as compensation for her services in caring for her child were not amounts paid to offset the cost of services and equipment because Ali incurred no actual monetary expense. These amounts are not excluded from annual income by section 5.609(c)(16). It follows that these amounts were correctly included as annual income when calculating Ali’s Section 8 eligibility.¹

¹ After the amici curiae filed a joint brief in support of Ali, Scott County moved to strike the declaration filed with that brief and references in the brief to research papers and

CONCLUSION

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

Affirmed.

publications cited by amici. The County asserts that the declaration and research papers were not before the hearing officer, were not considered in the promulgation of section 5.609(c)(16), and do not meet the criteria for judicial notice under Minn. R. Evid. 201. Ali and the amici entities oppose the motion to strike. We grant the motion in part and deny the motion in part. The declaration recites facts that are specific to one family's individual circumstances and therefore evidentiary in nature; they were not presented to the hearing officer. *See State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006) (striking the state's citation to a publication that was "evidentiary in nature," not part of the record, and not "the type of information that is subject to judicial notice"). The research papers are materials available in the public domain, which we understand are cited to fulfill amici's role in assisting the court in its consideration of the issues in this case. *See Camacho v. Todd & Leiser Homes*, 706 N.W.2d 49, 52 n.3 (Minn. 2005).

CONCURRENCE

THISSEN, Justice (concurring).

I concur. The money relator Cindi Ali earned as a paid parent from the benefits provided by the State of Minnesota to her son under the Consumer Directed Community Supports (CDCS) option of the state's Medicaid waiver is income under 24 C.F.R. § 5.609 (2019) for the purpose of calculating eligibility for Section 8 housing.

I do not think we need to parse the meaning of the word “cost” to answer the question presented. In her capacity as a paid parent, Ali is legally equivalent to a third party who was hired to care for Ali's son. Ali's income as a paid parent simply is not covered by the exclusion set forth in 24 C.F.R. § 5.609(c)(16).

A family must satisfy income-eligibility requirements to qualify for Section 8 housing. 24 C.F.R. § 5.603(b) (2019) (defining “low income family”); 24 C.F.R. § 5.653(b)(2), (e) (2019) (providing that only a family defined as a “low income family” is eligible for the program and directing that “family annual income” under section 5.609 is to be used to determine income eligibility). “Annual income” is broadly defined as any amounts that “go to, or on behalf of” *any* family member. 24 C.F.R. § 5.609(a). Under section 5.609, money received by or on behalf of any family member is counted as income to the family unless “specifically excluded.” 24 C.F.R. § 5.609(a)(3).

At issue in this case is the exclusion that is set forth in 24 C.F.R. § 5.609(c)(16):

Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.

In my view, the language is simply a description of a category of benefits under a federal- or state-funded program designed to allow a person with a developmental disability to remain at home where the benefits are paid to and controlled by the person with the disability rather than being paid directly to the providers who supply the care.¹ Stated another way, the exclusion provided by section 5.609(c)(16) means what it says and nothing more: state or federal benefits received by, or on behalf of, a developmentally disabled member of a family are not included as income to the family for the purpose of determining eligibility for a Section 8 voucher.

But section 5.609(c)(16) is mute about how the benefits are used. Under the CDCS option, the person receiving the benefits (here, Ali's son) can choose to hire the people he wants, including his parent, to deliver the suite of services and supports he designs. In this

¹ The provision of benefits and services to persons with developmental disabilities has evolved over time. Historically, persons with developmental disabilities were institutionalized. Over time, the federal government provided more Medicaid reimbursement flexibility for services provided at home and in the community. *See* Social Security Act § 1905, 42 U.S.C. § 1396d(a)(24) (2012) (providing for personal care services as a Medicaid reimbursable service); Social Security Act § 1915(c), 42 U.S.C. § 1396n(c) (2012) (providing for the Home and Community Based Services waiver). In the 1990s, states began to explore and offer “consumer directed” personal care services, allowing the disabled person more authority over the choice of services and providers (including relatives who are otherwise precluded from receiving Medicaid reimbursement for providing personal care services). For instance, in the 1990s, Minnesota established a state-funded program called the Consumer Grant Program. Act of May 25, 1995, ch. 207, art. 3, § 15, 1995 Minn. Laws 1033, 1104–09 (codified as amended at Minn. Stat. § 256.476 (2018)). The program was added to Minnesota’s federal Medicaid Developmental Disabilities waiver in 1997. These are the categories of programs described in section 5.609(c)(16). This conclusion is supported by the statements of the agency when the exclusion in paragraph (c)(16) was adopted in 1995. 60 F.R. 17388, 17389 (Apr. 5, 1995) (“This exclusion exempts amounts paid by a State agency to families that have developmentally disabled children or adult family members living at home.”).

case, the choice was made to use the benefit described in section 5.609(c)(16) to hire Ali to provide some services to her son. I have no doubt that was a good and proper choice for the Ali family. But the family also could have chosen to use the benefit described in section 5.609(c)(16) to pay a different person to provide those services.

The essential point here is this: it is the income that Ali earned to care for her son as a paid parent—and not the CDCS benefit itself which is the subject of section 5.609(c)(16)—that is at issue in this case. Because there is no exception for such paid parent income in section 5.609(c), respondent Scott County properly included it as “family annual income” for the purpose of determining Ali’s Section 8 eligibility.