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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0402**

In re the Matter of Sokkhan Ka and the Commissioner of Human Services.

**Filed September 3, 2019
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CV-18-4262

Sokkhan Ka, Shoreview, Minnesota (*pro se* appellant)

Keith Ellison, Attorney General, Ali P. Afsharjavan, Assistant Attorney General, St. Paul,
Minnesota (for respondent Commissioner of Human Services)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

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

JOHNSON, Judge

Sokkhan Ka asked the Minnesota Department of Human Services (DHS) to pay the fees charged by a medical provider for medical services. The commissioner of human services determined that Ka is not entitled to the payment he seeks in light of the law governing the health-care-benefits program for which he was eligible when the medical services were provided. On judicial review, the district court affirmed the commissioner's decision. We conclude that the commissioner did not err in her decision concerning Ka's

eligibility for health-care benefits and that the district court did not err by affirming that decision. Therefore, we affirm.

FACTS

On October 6, 2017, Ka applied to DHS for health-care benefits through the MinnesotaCare program and selected HealthPartners as his managed-care organization. *See* Minn. Stat. § 256L.12 (2018). On the same day, DHS sent Ka a written notice stating that he was eligible for MinnesotaCare benefits, effective October 1, 2017. On October 13, 2017, DHS sent Ka a written request for information concerning his projected annual income in 2017. Ka responded by faxing information to DHS seven days later.

On November 3, 2017, DHS sent Ka a written request for information concerning his projected annual income in 2018. The written request stated that his MinnesotaCare benefits would be terminated on December 31, 2017, if he did not respond within 30 days. Ka did not respond within 30 days. On December 21, 2017, DHS sent Ka written notice that his MinnesotaCare benefits were terminating on December 31, 2017, because he did not timely respond to the request for information concerning his projected annual income in 2018. On Thursday, December 28, 2017, after normal business hours, Ka faxed information to DHS concerning his projected annual income in 2018. DHS did not process the information on the following day, Friday, December 29, 2017, the last business day of the year. Ka's eligibility for MinnesotaCare benefits terminated on Sunday, December 31, 2017.

Meanwhile, Ka was experiencing pain in his head and jaw. In December 2017, Ka's dentist referred him to Minnesota Craniofacial Center (MCC) for specialized treatment.

Based on an examination on December 21, 2017, a dentist at MCC diagnosed Ka with temporomandibular joint dysfunction. Ka elected non-surgical treatment, specifically, the installation of an occlusal orthotic device. Ka sought pre-approval from HealthPartners, but HealthPartners informed him that pre-approval was not required. An appointment was scheduled for Tuesday, January 2, 2018. On that date, the device was installed. On January 15, 2018, Ka had a follow-up appointment at MCC.

On January 22, 2018, Ka's authorized representative contacted DHS to follow up on the information that Ka had sent by fax on December 28, 2017. The authorized representative was informed that Ka's eligibility for MinnesotaCare benefits had terminated on December 31, 2017, because DHS had not received and processed the requested information concerning Ka's projected annual income in 2018 within 30 days. DHS requested that Ka re-apply and re-submit the requested information. Ka did so on February 5, 2018. On February 8, 2018, DHS approved Ka's application for MinnesotaCare benefits in 2018, effective March 1, 2018, the first day of the following month. At the same time, DHS enrolled Ka in a different health-care-benefits plan, a fee-for-service plan, for the period of January 1, 2018, to February 28, 2018.

In January 2018, MCC submitted claims to HealthPartners for payment for the services it provided to Ka in that month, but HealthPartners rejected the claims because he was not eligible for MinnesotaCare benefits on the dates services were provided. On February 14, 2018, MCC sent Ka a bill for \$2,763 for the services that it provided to him in January 2018.

On February 22, 2018, Ka filed an administrative appeal with DHS in which he sought benefits under the MinnesotaCare program for the services provided by MCC in January 2018. On April 17, 2018, an employee in DHS's Health Care Compliance and Appeals Unit wrote a memorandum to a human-services judge to "explain[] the reasons why [DHS] has not paid for [the] services Sokkhan Ka received in January 2018, and why fee-for-service . . . funds cannot be used to pay for this request." The memorandum states that Ka was not eligible for MinnesotaCare benefits in January and February of 2018, that the fee-for-service program has not denied a request for payment because no claim has been submitted, that MCC is not an enrolled provider in the fee-for-service program, and that the device that MCC installed is not included in the benefits of the fee-for-service program.

On April 20, 2018, the human-services judge held an evidentiary hearing via telephone, at which Ka's authorized representative appeared on his behalf. The April 17, 2018 memorandum was marked as an exhibit. On June 11, 2018, the human-services judge issued a nine-page order with two recommendations: that the commissioner affirm the department's decision that Ka is eligible for MinnesotaCare benefits in 2018 effective March 1, 2018, and that the commissioner affirm the department's decision that Ka is eligible for fee-for-service benefits for the period of January 1, 2018, to February 28, 2018. On the following day, a representative of the commissioner adopted the human-services judge's findings of fact, conclusions of law, and recommended order as the final decision of the department.

Ka then commenced an action in the district court to seek judicial review of the commissioner's decision. *See* Minn. Stat. §§ 256.045, subd. 7, 256L.10 (2018). In March 2019, the district court filed an order affirming the commissioner's decision. Ka appeals.

D E C I S I O N

Ka argues that the district court erred by affirming the commissioner's decision. He contends that he is entitled to relief on the ground that DHS delayed its processing and approval of his application for MinnesotaCare benefits in 2018, which caused his eligibility to be terminated, which caused him to incur medical expenses that otherwise would have been paid by the MinnesotaCare program.

Although Ka has appealed to this court from a judgment of the district court, this court reviews the decision of the commissioner independently, without giving deference to the district court's decision. *See In re Review of 2005 Annual Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 118-119 (Minn. 2009); *Zahler v. Minnesota Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001). Our review of the commissioner's decision is conducted pursuant to the Minnesota Administrative Procedure Act (MAPA). *See* Minn. Stat. § 14.63 (2018); *Estate of Atkinson v. Minnesota Dep't of Human Servs.*, 564 N.W.2d 209, 213 (Minn. 1997); *Zahler*, 624 N.W.2d at 301. Under MAPA, this court may reverse or modify an administrative decision only if it (a) violates constitutional provisions, (b) exceeds the authority of the agency, (c) was made using unlawful procedure, (d) was affected by an error of law, (e) is unsupported by substantial evidence, or (f) is arbitrary or capricious. Minn. Stat. § 14.69 (2018).

We begin by noting the incongruity between Ka’s request to DHS, the issues decided by the human-services judge and the commissioner, the arguments made by the parties to the district court, the issues decided by the district court, and the arguments made by the parties on appeal. Ka made a specific request to DHS for payment of the February 14, 2018 invoice that MCC had sent to him. The human-services judge decided generally that Ka was eligible for fee-for-service benefits in January and February of 2018 and eligible for MinnesotaCare benefits on March 1, 2018, and thereafter. The human-services judge did not decide specifically whether DHS is required to pay MCC for the services it provided to Ka in January 2018. The commissioner adopted the human-services judge’s decision verbatim. In the district court, Ka reiterated his specific request that DHS pay the MCC bill. In a memorandum of law, the commissioner addressed the substance of Ka’s specific request by arguing that the services received by Ka were not included in the benefits provided by MinnesotaCare and that MCC was not an approved MinnesotaCare provider. The district court resolved the parties’ arguments by ruling that Ka “fail[ed] to identify which statutory grounds are satisfied thus entitling him to reversal” and “failed to present sufficient legal justification to reverse or modify” the commissioner’s decision. On appeal, Ka responds to the district court’s reasoning by contending that DHS did not comply with three statutory provisions governing the MinnesotaCare program. In response, the commissioner argues that the human-services judge and the commissioner properly determined that Ka was eligible for fee-for-service benefits in January and February of 2018 and eligible for MinnesotaCare benefits on March 1, 2018, and thereafter. The commissioner argues further that Ka’s request that DHS “pay his outstanding medical

claims” is “not properly before the Court.” But the issues that the commissioner now argues are not properly before this court are the same issues that the commissioner argued on the merits to the district court. Thus, the commissioner has forfeited the argument that judicial review is limited to the two general issues decided by the human-services judge and the commissioner.

A person is eligible for MinnesotaCare benefits if the commissioner of human services determines “that the individual meets the eligibility criteria for the applicable period of eligibility.” Minn. Stat. § 256L.05, subd. 2a (2018). The commissioner must verify certain information to determine eligibility, including the applicant’s annual gross income. *See* Minn. R. 9506.0030, subp. 2(A) (2017); *see also* Minn. Stat. §§ 256L.04, .07 (2018). Eligibility for MinnesotaCare benefits becomes effective on “the first day of the month following the month in which eligibility is approved and the first premium payment has been received.” Minn. Stat. § 256L.05, subd. 3(a) (2018). The commissioner must re-determine an applicant’s eligibility for MinnesotaCare on an annual basis. *Id.*, subd. 3a (2018). The commissioner must determine an applicant’s eligibility within 45 days of the date on which an application is received. Minn. Stat. § 256L.05, subd. 4 (2018).

In this case, DHS requested information from Ka on November 3, 2017, concerning his eligibility for MinnesotaCare benefits in 2018. The request stated that his MinnesotaCare benefits would be terminated on December 31, 2017, if he did not respond within 30 days. Ka did not respond within 30 days. DHS terminated Ka’s MinnesotaCare benefits effective December 31, 2017. Ka submitted the requested information on December 28, 2017. DHS approved Ka’s application for MinnesotaCare benefits in 2018

on February 8, 2018, which was within the statutory 45-day period after he submitted the information. DHS determined that Ka is eligible for MinnesotaCare benefits effective March 1, 2018, the first day of the following month. In the administrative appeal, the commissioner determined that DHS complied with the relevant statutes in processing Ka's application for MinnesotaCare benefits in 2018. The commissioner also determined that, in light of the two-month gap in Ka's eligibility for MinnesotaCare benefits, DHS properly provided Ka with fee-for-service benefits for the months of January and February of 2018.

Ka does not contend that the commissioner erred in determining the dates of his eligibility for MinnesotaCare benefits and fee-for-service benefits. Rather, he contends that DHS delayed in reviewing and processing the information that he faxed to DHS on December 28, 2017, which caused him to lose eligibility for MinnesotaCare benefits and, consequently, to become personally liable for the fees incurred at MCC in January 2018. Ka is correct insofar as he asserts that DHS did not immediately process the information that he faxed to DHS on December 28, 2017. Indeed, the human-services judge found that DHS "delay[ed]" by not processing the information until February 8, 2018. The district court used the same terminology. Nonetheless, DHS's processing of the information was not untimely as a matter of law. The applicable statute provides that the department must determine an applicant's eligibility within 45 days. *Id.* Ka's argument is based on the premise that DHS should have determined his eligibility within only one day of receiving information about his projected income in 2018. Both the commissioner and the district court determined that the department did not violate any statute or administrative rule by not processing the requested information so quickly.

On appeal, Ka attempts to overcome the commissioner's and the district court's reasoning by contending that DHS did not comply with three statutory provisions governing the MinnesotaCare program. We question whether these statutory provisions are relevant to the argument he made to the human-services judge and to the district court or whether they are offered in support of arguments that are being made for the first time on appeal. In any event, the statutes do not establish that Ka is entitled to the relief he seeks.

First, Ka contends that DHS did not comply with a statute stating, "The commissioner shall establish procedures to analyze and correct problems associated with medical care claims preparation and processing under the medical assistance and MinnesotaCare programs," which includes a duty to "analyze impediments to timely processing of claims, provide information and consultation to providers, and develop methods to resolve or reduce problems." Minn. Stat. § 256.9655, subd. 1(2) (2018). This statute appears to be concerned solely with the processing of claims, not the processing of applications and the determination of an applicant's eligibility for benefits. Ka does not explain how the commissioner failed to comply with the statute, and we perceive no obvious non-compliance.

Second, Ka contends that DHS did not comply with a statute stating that "[t]he commissioner or county agency shall use electronic verification through MNsure as the primary method of income verification" and that, "[i]f there is a discrepancy between reported income and electronically verified income, an individual may be required to submit additional verification to the extent permitted under the Affordable Care Act."

Minn. Stat. § 256L.05, subd. 2 (2018). This statute is of no assistance to Ka because electronically verified income is not intended to replace reported income but merely to supplement it.

Third, Ka contends that DHS did not comply with a statute that provides, “An enrollee’s eligibility must be redetermined on an annual basis.” Minn. Stat. § 256L.05, subd. 3a(a). He contends that, because he first applied for MinnesotaCare benefits in October 2017, DHS was not permitted to re-determine his eligibility until October 2018. But the same statute provides, “Beginning July 1, 2017, the commissioner shall adjust the eligibility period for enrollees to implement renewals throughout the year according to guidance from the Centers for Medicare and Medicaid Services.” *Id.* There is nothing in the administrative record concerning any relevant guidance from the Centers for Medicare and Medicaid Services. Without any such information, we cannot determine whether DHS violated the statute by attempting in November and December of 2017 to re-determine Ka’s eligibility for MinnesotaCare benefits in 2018.

We note that Ka does not contend that DHS is mistaken in its determination that the fee-for-service program does not require DHS to pay the fees charged by MCC. He apparently concedes that the benefits he would have received if he had been enrolled in the MinnesotaCare program in January 2018 are not available in the fee-for-service program. Accordingly, we need not discuss the benefits that are available to persons in the fee-for-service program. The commissioner’s decision that Ka was ineligible for MinnesotaCare benefits in January 2018 is determinative of Ka’s request that DHS pay the MCC bill.

In sum, the district court did not err by affirming the commissioner's decision.

Affirmed.