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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1020**

In re the Estate of:
Raymond Deforest Trahan, Deceased.

**Filed February 3, 2020
Reversed and remanded
Kirk, Judge*
Dissenting, Johnson, Judge**

Rice County District Court
File No. 66-PR-18-1421

Terence Swihart, Faribault, Minnesota (for appellant Rice County Social Services)

Laura J. Zdychnec, Long, Reher, Hanson & Price, P.A., Minneapolis, Minnesota (for
respondent personal representative)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

The county appeals a district court order denying its petition for an allowance of claim against an estate to recover the cost of medical-assistance benefits provided during the decedent's lifetime. We reverse and remand.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

In May 2010, Raymond D. Trahan began receiving medical-assistance benefits through appellant Rice County Social Services (the county). He continued to receive medical-assistance benefits, including Elderly-Waiver (EW) benefits, until his death on May 12, 2018. EW is a program that provides health services to individuals who need the level of care provided in a nursing home but choose to remain living in the community. On September 13, 2018, the county filed a written statement of claim with the Rice County Court Administrator against Trahan's estate for \$158,384.35, the cost of the medical-assistance benefits paid on behalf of Trahan during his lifetime. On October 18, 2018, respondent Lisa Evert, Trahan's daughter and the personal representative for his estate, sent a notice of disallowance of claim to the county and filed it with the district court the following day. The county then filed a petition for the allowance of the claim and requested that the district court order Evert to pay the claim. The parties agreed to submit the matter based on written briefs, and the district court took the matter under advisement on March 4, 2019.

In support of its petition, the county acquired and submitted a claims history generated by the Minnesota Department of Human Services (DHS). The claims history lists services totaling \$158,384.35. In response, Evert requested information from U-Care, the managed care organization that managed her father's medical-assistance benefits. Evert alleged that the U-Care documentation reflects that her father only received \$25,963.66 worth of medical assistance during his lifetime and, therefore, the county's

petition to allow the claim should be denied. Evert summarized the U-Care documents in a spreadsheet, which she submitted into evidence.

On May 31, 2019, the district court denied the county's petition to allow the claim. The district court determined that Trahan was not eligible for EW because he did not require the level of care provided in a nursing home, and therefore he had been "wrongly" offered the benefits and the benefits had "wrongly continued from year to year." The district court concluded that the EW benefits were not "correctly paid" and could not be recovered by the county. The district court further concluded that because Trahan should not have received EW benefits, the court could not determine which of the other claims listed in the claims summary could be properly recovered, and denied the petition for allowance of the claim in its entirety. This appeal follows.

D E C I S I O N

Medicaid is a joint federal and state program that aims to provide assistance to individuals "whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396-1 (2012). In Minnesota, this program is called medical assistance (MA) and is administered by DHS through each county's human-services agency. Minn. Stat. § 256B.01, .04, subd. 1 (2018). Under the program, individuals with "long-term or chronic-care needs" are eligible for long-term care consultation services. Minn. Stat. § 256B.0911, subd. 1(a) (2018). One such service is the EW program, which provides services to individuals for which there has been "a nursing facility level of care determination" to allow them to remain in the community. Minn. Stat. § 256S.05, subd. 2 (Supp. 2019). Both federal and state law permit claims against an estate

to recover the cost of these services. Under 42 U.S.C. § 1396p(b)(1)(B)(i) (2012), estate recovery is permitted for “any medical assistance correctly paid” for “nursing facility services, home- and community-based services, and related hospital and prescription drug services.” Minnesota law requires the county to file a claim against the estate of a decedent who “received medical assistance services that consisted of nursing facility services, home- and community-based services, or related hospital and prescription drug benefits.” Minn. Stat. § 256B.15, subd. 1a(e)(3) (2018).

The county argues that the district court erred by denying the petition to allow its claim against the estate to recover the cost of MA benefits provided to Trahan. The county timely filed a petition to recover the cost paid on behalf of Trahan for the above-listed services. The claims summary submitted by the county included services that Trahan received through the EW program, which are eligible for estate recovery. The county argues that the district court misapplied the law when it determined that the county did not have a valid claim against the estate because Trahan should not have been deemed eligible for the EW program.

When the facts are not in dispute, we review the district court’s application of the law de novo. *In re Estate of Perrin*, 796 N.W.2d 175, 178 (Minn. App. 2011). Here, it is undisputed that Trahan received benefits through the EW program. But the district court determined that Trahan was “wrongly” offered the EW program and that it “wrongly continued from year to year” because, based on the court’s review of the affidavits submitted by Trahan’s children, Trahan did not require the level of care provided by a nursing facility and was therefore not eligible for the EW program. The county argues that

the district court misapplied the law when it made this determination because it is inconsistent with the statutory framework that sets forth the process for making a nursing-facility-level-of-care determination. We agree.

When an individual applies for the EW program, a nursing-facility-level-of-care determination is required. Minn. Stat. § 256S.05, subd. 2. Under the statute, “only face-to-face assessments conducted according to section 256B.0911, subdivisions 3, 3a, and 3b . . . shall be accepted” for initial and ongoing participation in the EW program. *Id.* Minnesota law requires that assessors be certified. Minn. Stat. § 256B.0911, subd. 2b (2018). The collaborative-care plan submitted indicates that Trahan was assessed utilizing the “LTCC” assessment tool, which refers to the long-term care consultation assessment method. This assessment method is outlined by Minn. Stat. § 256B.0911 (2018) and is the assessment method referenced in the statute governing eligibility for the EW program.

Accordingly, the record reflects that Trahan was assessed and approved for the EW program in accordance with the statutory framework, while the district court’s determination was plainly not made in accordance with the statutory requirements. The district court therefore misapplied the law when it made an independent nursing-facility-level-of-care determination and determined that Trahan should not have been deemed eligible for the EW program. Evert argues that there was no method under the statute for Trahan to appeal his participation in the EW program because an appeal is only available when an applicant receives an adverse decision. But it seems absurd to argue that he would feel aggrieved and want to appeal the determination that he was eligible for the program. Trahan did not receive an adverse decision. Rather, he was approved for a program to

which he chose to apply. Trahan subsequently accepted and received benefits through the EW program, and recovery of the costs of such benefits from the estate is explicitly authorized by law. Trahan could have notified the county at any time that he no longer wanted or needed these benefits. There was no reason for him to file an appeal to end his participation in the program. The district court therefore erred by determining that the county could not recover the cost of the benefits paid to Trahan through the EW program.

The district court also determined that the county failed to establish the validity of its medical claims summary by a preponderance of the evidence. But this determination was based largely on the district court's conclusion that it could not discern the charges that could be recouped from those which could not—the benefits received after Trahan was “improperly qualified for” the EW program. Because we conclude that the district court erred in determining that the county could not recover the benefits paid through the EW program, we must remand to the district court to reexamine the record in light of this conclusion. We leave it to the discretion of the district court whether to reopen the record.

Finally, we note that Evert alleged that the county misled Trahan into applying for and accepting EW benefits because a county worker informed Trahan that the cost of the benefits would not be recoverable against the estate. Based on this assertion, she argued in the memorandum of law in support of the denial of the claim, that the principles of due process, notice, and equity should bar recovery of the costs of the benefits Trahan was misled into accepting. The district court acknowledged these arguments but did not reach

any legal conclusions on them. Accordingly, the district court may consider these arguments on remand.

Reversed and remanded.

JOHNSON, Judge (dissenting)

“It is the policy of this state that individuals or couples, either or both of whom participate in the medical assistance program, use their own assets to pay their share of the cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state.” Minn. Stat. § 256B.15, subd. 1 (2018). This general policy is not being challenged by the personal representative of the Estate of Raymond Deforest Trahan. She argued to the district court that, for three reasons that are peculiar to this case, the county is not entitled to the money it seeks from her father’s estate. The district court carefully considered those arguments, made detailed findings of fact and conclusions of law in her favor, and denied the county’s claim. The district court’s findings of fact are not clearly erroneous, and its conclusions of law are not contrary to the applicable statutes and caselaw. Therefore, I respectfully dissent from the opinion of the court.

To understand the district court’s ruling, it is important to understand the evidentiary record. Although the county sought a substantial amount of money, it submitted only one piece of evidence to support that claim: an exhibit consisting of a 19-page, 487-line print-out with letter and number codes, abbreviated descriptions of broad categories of services, dates, and dollar figures that add up to \$158,384.35. That document, by itself, does not tell a story, and the county did not introduce any evidence to explain the document or give it meaning. Similarly, in its memorandum of law, the county did not attempt to make sense of the document or extract any meaningful information from it. The county practically disclaimed responsibility for the document, stating that it merely had requested and

received the document from the state department of human services. And the county essentially admitted that the document may not be accurate, stating that “it is not uncommon for total amounts to change” because “amounts billed may be adjusted at a later date” and adjustments may occur “based on when MA providers provide their bill to DHS.” The county’s arguments did not assist the district court by clarifying the document; if anything, the county’s arguments made the document appear less clear and less reliable. The district court said as much, commenting, with apparent understatement, that the county’s argument “does not inspire confidence in the accuracy of the County list of charges.”

On the other hand, the personal representative, Trahan’s daughter, Lisa Evert, introduced a respectable body of evidence contradicting the county’s 19-page print-out and otherwise undercutting the county’s claim. Evert introduced written correspondence between her attorney and the county in which Evert sought explanations of the factual bases of the county’s claim and its 19-page print-out. In response, the assistant county attorney informed Evert’s attorney that, “unfortunately the only specific information the County has is that which has already been provided.” Evert also introduced copies of two care plans that were prepared by county social workers for Trahan in April 2015 and April 2017, which prescribe certain services and state the monthly costs associated with each service. A cursory review of expenses listed in the 19-page print-out shows that it does not correspond to the expenses described in the care plans. Having received no assistance from the county, Evert commendably sought additional information from UCare, which was identified in the care plans as the third-party provider of services to Trahan. The

information provided by UCare, which Evert summarized in a seven-page document, does not correspond to the county's 19-page print-out or the two care plans. Given the information available to her, Evert very reasonably refused to pay the county's claim.

In addition, Evert introduced two affidavits concerning whether her father qualified for the services that the county provided to him. She stated that, while her father received services from the county, he "continued to drive, and he rode his ATV frequently on the trails by his home," "lived alone and independently, drove himself on errands or to doctor appointments, and managed all of his daily living activities (eating, bathing, toileting, transferring, etc.) without assistance as documented in Rice County's care plans." Trahan's son, Dean Trahan, stated that, while Trahan was receiving services from the county, he "managed the Tri-County ATV Park, which consisted of daily monitoring of the people riding their ATVs at the park, all maintenance of the facility including running tractors, a bulldozer, trimming trees along trails, using his gator to patrol the area, [and] mowing over four acres of grass every summer." Dean Trahan also stated that his father accepted the county's services "because he was told they were free services" and that his father "did not know that those services were recoverable" from his estate. Dean Trahan elaborated by stating that a particular social worker, whom he named, told his father "that the services he received were not subject to estate recovery," and that Dean "specifically asked" the social worker "if any of the benefits he received ever needed to be paid back . . . , and she stated, 'No, he is not on any of those programs,'" and, "Ray, take advantage of this, it's free."

The county did not introduce any evidence or argument to respond to or rebut Evert's evidence and argument. The lack of such evidence and argument may be

attributable, in part, to a prior agreement between counsel to forgo a hearing and, instead, simultaneously submit evidence and argument in writing. But nothing prevented the county, after it had received and reviewed Evert's evidence and memorandum of law, from seeking leave from the district court to submit additional evidence and argument. In any event, the district court was required to rule on the county's claim based on the evidence and arguments that the parties chose to present. It should be no surprise that the district court, after reviewing the evidentiary record, denied the county's claim.

I.

Evert's first argument to the district court was that the county is not entitled to any reimbursement for expenses it incurred on Trahan's behalf on the ground that all such expenses were not "correctly paid" because Trahan did not require a nursing-facility level of care, which is a prerequisite of the program in which services were provided to him.

Evert argued to the district court that the applicable federal statute authorizes a state or county to recover only the expenses of "medical assistance *correctly paid* on behalf of an individual." See 42 U.S.C. § 1396p(b)(1) (2018) (emphasis added). She further argued that none of the expenses of the services provided to Trahan were "correctly paid" because he was not eligible for those services because he did not require a nursing-facility level of care. She identified a state statute providing that a person requires a nursing-facility level of care only if he or she satisfies any one of seven criteria, such as needing assistance in at least four activities of daily living (such as bathing, dressing, eating, grooming, and walking), needing assistance in using a toilet, and having significant difficulty with memory. See Minn. Stat. § 144.0724, subd. 11 (2018 & Supp. 2019). The district court

adopted the legal premises of Evert’s argument and concluded that Trahan “did not qualify for the Elderly Waiver program, which was wrongly offered and wrongly continued from year to year” and that the county’s claim must be denied because it “incorrectly qualified Mr. Trahan for the program.”

On appeal, the county does not dispute that 42 U.S.C. § 1396p(b)(1) applies. Also, the county does not contend that Trahan’s condition satisfied the criteria in Minnesota Statutes section 144.0724, subdivision 11, or that he was otherwise eligible for the services he received. Rather, the county argues only that the district court did not have subject matter jurisdiction to determine Trahan’s eligibility for the services he received, that Evert should not be allowed to argue in 2019 that Trahan was ineligible for services because Trahan had accepted the services between 2010 and 2018, and that allowing the district court to retrospectively determine Trahan’s eligibility for services would be contrary to public policy. The majority does not agree with the county’s argument concerning subject-matter jurisdiction but nonetheless concludes that Evert should not be permitted to challenge the county’s prior decision that Trahan was eligible for the services he received.

I see no reason to conclude that the district court was not authorized to determine whether Trahan was eligible for the services he received. Given the application of 42 U.S.C. § 1396p(b)(1), the county may recover the expenses of the services provided to Trahan only if the expenses were “correctly paid.” As a general matter, district courts frequently are asked to determine whether a party to a civil action acted correctly. The occasions when a party’s prior actions are exempt or immune from judicial disapproval are rare and well defined. In this case, there is no authority for the proposition that the district

court was without authority to determine whether the county's previous determination of eligibility was correct. Whether the county properly determined that Trahan was eligible for the services he received is simply a matter of proof.

On that issue, the county bore the burden of proof, as it acknowledged in its memorandum of law to the district court. Yet the county introduced no evidence that Trahan was eligible for the services he received. Notably, the care plans on which the majority opinion relies, which were introduced by Evert, *do not state that Trahan is eligible for the services he received, either expressly or by implication*. Furthermore, the care plans do not contain any information that would allow a reasonable fact-finder to conclude that Trahan satisfied the criteria in section 144.0724, subdivision 11. In fact, the care plans support the district court's conclusion that Trahan was *not* eligible. In the 2015 care plan, the county's social worker wrote that Trahan "enjoys staying busy at his home," "lives near the ATV park which he continues to help manage/run," and "is limited in his ability due to his shortness of breath." Nothing in the 2015 care plan suggests that Trahan satisfied any of the criteria for a nursing-facility level of care. See Minn. Stat. § 144.0724, subd. 11. Moreover, there is no care plan in the record concerning Trahan's condition in 2010, when he first began receiving services. The only evidence in the record of his condition in 2010 are the affidavits of Evert and of Dean Trahan, who described Trahan's lifestyle in ways that are inconsistent with a determination that he required a nursing-facility level of care.

In light of the evidentiary record, the district court did not err in its findings of fact or in its ultimate determination that Trahan did not require a nursing-facility level of care,

that he was ineligible for the services he received, and, thus, that the expenses incurred by the county were not “correctly paid.”

II.

Evert’s second argument to the district court was that the county is not entitled to any reimbursement for expenses it incurred on Trahan’s behalf on the ground that all such expenses were not “correctly paid” because a Rice County social worker expressly told Trahan, before he accepted services, that the county could not seek to recover the expenses from his estate.

Evert’s second argument was based on the statements in her own affidavit and in Dean Trahan’s affidavit concerning the representations that were made to their father by the county’s social workers to the effect that the services were “free” and not subject to recovery from his estate. The county did not address this issue in any way. The county did not introduce any evidence to contradict or rebut Evert’s evidence, such as an affidavit of the social worker identified in Dean Trahan’s affidavit, and the county did not present any responsive argument in a memorandum of law.

The district court made findings that fully agree with Evert’s argument on this issue. The district court stated that Evert presented “compelling” evidence that Trahan “did not receive proper notice because the social worker cajoled [him] into accepting services by representing that they were free and not subject to estate recovery.” The district court further stated that Trahan’s “decision was made on erroneous facts,” which “violates procedural due process and further muddies the waters of what, in fact, is due to the State.” But, as the majority opinion observes, the district court did not expressly make any

conclusions of law with respect to this issue, perhaps because the district court already had two other bases for denying the county's claim. I agree with the majority that Evert's second argument remains unresolved and that, given the majority's resolution of Evert's first and third arguments, the district court should further consider the second issue and finally determine it on the merits.

III.

Evert's third argument to the district court was that, even if Trahan did require a nursing-facility level of care such that the county is entitled to reimbursement for expenses it incurred on Trahan's behalf, the county is not entitled to the full amount it seeks because only a lesser amount of expenses were "correctly paid." Evert did not suggest an alternative dollar amount that was correctly paid, but her summary of UCare's records of payments (which do not include the county's case-management services, which were valued at \$180 per month) adds up to \$25,694.

Evert's third argument was based, in part, on the two care plans. The 2015 care plan called for two services (homemaking and nurse visits), which, according to the care plan, costed \$158 and \$161 per month, respectively, and case-management services, which costed \$180 per month, for a total of \$499 per month. The 2017 care plan called for three services (homemaking, delivered meals, and nurse visits), which costed \$240, \$99, and \$163 per month, respectively, and case-management services, which costed \$180 per month, for a total of \$681 per month. These services were to be provided or paid by UCare. Evert's third argument also was based on the summary of UCare's records of payments, which shows that UCare's payments are greater than what the county's social workers

approved in the two care plans that are based on the social workers' assessments. More importantly, Evert's evidence shows that UCare's payments are significantly less than what the county seeks to recover with respect to any particular period of time.

The district court characterized Evert's third argument as "true," stating that there were "substantial discrepancies between the County's claimed charges, the County's care plans that detailed the agreed-to services, and the UCare-generated list of payouts." The district court also stated, "It is impossible to divine from the County list [*i.e.*, the 19-page print-out] *why* the services were charged." The district court also stated that "many of the charges on the County's list were for services of a sort not contained in the care plans." The district court concluded, "The County has not met its burden in validating that the claimed amount is more likely proper and accurate than not."

On appeal, the county argues simply that it has a valid claim for \$158,384.35. But the county does not attempt to argue that the district court's findings are clearly erroneous. Indeed, the district court's findings are well supported by the evidence in the record. The county's evidence is inadequate by itself. The district court did not clearly err by reasoning that the county's 19-page print-out is unreliable and insufficient. When considered alongside Evert's evidence, the weakness of the county's evidence becomes more apparent. If the county's care plans indicate what services are proper (which is the premise of the majority's decision to reverse the district court with respect to Evert's first argument), the county has not proved that the amounts on its 19-page print-out were "correctly paid."

Thus, I would conclude that the district court did not clearly err by finding that the county failed to satisfy its burden of proving the validity of its claim for \$158,384.35.

There is no reason why the county should get a second opportunity to persuade the district court of the validity of its claim, let alone a second opportunity to introduce evidence on the issue.

For the reasons stated above in parts I and III, I would affirm the district court's decision to deny the county's claim.