

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1302**

In re the Matter of:
Helen Chorolec,
Appellant,

vs.

The Commissioner of Department of Human Services,
Respondent,

Anoka County,
Respondent.

**Filed April 24, 2023
Reversed and remanded
Bratvold, Judge**

Anoka County District Court
File No. 02-CV-21-3844

Steve G. Heikens, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, R.J. Detrick, Assistant Attorney General, St. Paul, Minnesota (for respondent commissioner)

Brad Johnson, Anoka County Attorney, Robert I. Yount, Assistant Anoka County Attorney, Anoka, Minnesota (for respondent county)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

SYLLABUS

To timely appeal an order of the commissioner of human services under Minn. Stat. § 256.045, subd. 7 (2022), a party must serve the notice of the appeal within 30 days after the commissioner issues the challenged order and must file the notice with the district court.

The party need not file the notice with the district court within 30 days after the commissioner issues the challenged order.

OPINION

BRATVOLD, Judge

Appellant Helen Chorolec challenges a district court order dismissing as untimely her appeal from a maltreatment determination issued by respondent commissioner of human services. Chorolec argues the district court erred by interpreting Minn. Stat. § 256.045, subd. 7, to require that the notice of appeal be both served and filed within 30 days after the challenged order's issuance. Because the statute unambiguously provides that only service of the notice of appeal must be accomplished within 30 days after the challenged order's issuance, we reverse and remand.

FACTS

On September 13, 2019, Anoka County Human Services notified Chorolec that respondent Anoka County found maltreatment of a vulnerable adult was substantiated based on Chorolec's neglect and emotional abuse of her 90-year-old mother, Olga, for whom Chorolec was a guardian and caregiver. Chorolec requested reconsideration of the maltreatment determination, and the administrative-law judge (ALJ) held an evidentiary hearing. In a June 23, 2021 order, the ALJ recommended affirming the maltreatment determination based on a finding of neglect and reversing the finding of emotional abuse. On June 24, 2021, the chief ALJ signed the order, adopting it without change as the final decision of the commissioner. On July 24, 2021, Chorolec served the commissioner with a

notice of appeal. On August 11, 2021, Chorolec filed the notice of appeal and proof of service in district court.

On February 3, 2022, the commissioner moved to dismiss the appeal for lack of jurisdiction, arguing that Chorolec's appeal was untimely because she filed the notice more than 30 days after the June 24, 2021 order was issued. Chorolec opposed the motion.

After a hearing, the district court issued a written order granting the commissioner's motion. The district court stated that the applicable law "do[es] not allow the notice and proof of service to be filed with the court administrator at [Chorolec's] convenience." Rather, the district court determined that section 256.045 "clearly includes the requirement to file with court administration" within 30 days. The district court also found that Chorolec filed the notice of appeal after the 30-day period, and therefore concluded the appeal was untimely under Minn. Stat. § 256.045, subd. 7.

Chorolec appeals.

ISSUE

Does Minn. Stat. § 256.045, subd. 7, require a party aggrieved by an order of the commissioner of human services to file a notice of appeal with the district court within 30 days after the commissioner issued the order being challenged?

ANALYSIS

Chorolec seeks review of the commissioner's decision that she maltreated her mother by neglect, which is governed by Minn. Stat. § 256.045, subd. 7 (subdivision 7). The parties agree subdivision 7 requires that, in order to be timely, an appeal be served within 30 days of the date the commissioner issued their decision. The parties disagree whether subdivision 7 requires that, in order to be timely, an appeal be filed within the

same 30-day time limit. The district court determined that the 30-day time limit applies to the filing requirement and that Chorolec did not file her appeal within 30 days, so it was untimely. Thus, the sole issue on appeal is whether the 30-day time limit in subdivision 7 applies to filing. This appears to be a question of first impression.¹

Statutory interpretation presents a question of law that appellate courts review de novo. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015). “The goal of statutory interpretation ‘is to ascertain and effectuate the intention of the legislature.’” *Svihel Vegetable Farm, Inc. v. Dep’t of Emp. & Econ. Dev.*, 929 N.W.2d 391, 394 (Minn. 2019) (quoting Minn. Stat § 645.16 (2018)). If the language of the statute is clear, we apply the plain language of the statute. *Engfer*, 869 N.W.2d at 300. “[W]ords and phrases are construed . . . according to their common and approved usage . . .” Minn. Stat. § 645.08(1) (2022); accord *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quoting Minn. Stat. § 645.08(1) (2018)). The parties offer different plain-language interpretations.

¹ After oral argument to this court and under Minn. R. Civ. App. P. 128.05, the county submitted a letter stating that pertinent authority came to its attention after briefing but before our decision. The letter points to *Reynolds v. Minnesota Department of Human Services*, 737 N.W.2d 367 (Minn. App. 2007), as offering guidance on whether the 30-day time limit applies to both service and filing. In *Reynolds*, we considered whether the district court erred in dismissing under subdivision 7 an appeal in which service and filing occurred on the same day. 737 N.W.2d at 369. The issue decided in *Reynolds*, however, was whether Minn. R. Civ. P. 6.05 applies to appeals under subdivision 7 and adds three days to the time allowed for service of the notice of appeal. *Id.* We decided that rule 6.05 applies to subdivision 7 and reversed the district court’s decision. *Id.* at 372. *Reynolds* did not consider or decide whether the 30-day time limit applies to filing the notice of appeal.

Subdivision 7 provides:

[A]ny party who is aggrieved by an order of the commissioner of human services . . . may appeal the order to the district court of the county responsible for furnishing assistance . . . *by serving* a written copy of a notice of the appeal upon the commissioner and any adverse party of record *within 30 days* after the date the commissioner issued the order, . . . and *by filing* the original notice and proof of service with the administrator of the district court.

Minn. Stat. § 256.045, subd. 7 (emphasis added). The requirements to serve and to file the notice of appeal are stated in separate clauses of the same sentence. When interpreting statutory language, we consider punctuation and sentence structure. *State v. Irby*, 967 N.W.2d 389, 393 (Minn. 2021) (describing the “first step” in interpreting a statute as examining “text, structure, and punctuation”). The 30-day time limit is separated from the filing requirement by a comma and the words “and by.” The legislature’s use of punctuation and sentence structure signifies the beginning of a different and distinct clause. *See, e.g., State v. Khalil*, 956 N.W.2d 627, 634-35 (Minn. 2021) (relying in part on punctuation and sentence structure to interpret a statute). Thus, we conclude that subdivision 7 unambiguously provides that the 30-day time limit applies to service of the notice of appeal and not to filing with the district court.

Chorolec argues that this court’s decision in *In re V & J Farm, LLC* arrived at a similar result in interpreting a statute requiring service and filing of a notice of appeal. 974 N.W.2d 582 (Minn. App. 2022). In *V & J Farm*, this court determined that a 30-day time limit for filing a notice of appeal in a drainage proceeding did not apply to service of the notice of appeal. *Id.* at 588-89 (interpreting Minn. Stat. § 103E.091, subd. 2 (2020)).

The county argues that *V & J Farm* is distinguishable because the filing and service requirements were in separate subparts and not in the same sentence. We are not persuaded. Though the statutory language at issue in *V & J Farm* has a different structure than Minn. Stat. § 256.045, subd. 7, the unambiguous language of both statutes provides that the 30-day time limit applies only to service or filing, but not to both.²

Our interpretation of subdivision 7 is shared by the Eighth Circuit. *See Wong v. Minn. Dep't of Hum. Servs.*, 820 F.3d 922, 928-30 (8th Cir. 2016). Wong sought to overturn the dismissal of his appeal, arguing he timely filed and served the notice of appeal challenging the commissioner's order denying benefits. *Id.* at 927. The Eighth Circuit considered whether Wong's appeal was untimely because he filed the appeal after expiration of the 30-day time limit in subdivision 7. *Id.* at 928. The Eighth Circuit determined that "a straightforward reading of the text [in subdivision 7] shows that the thirty-day period modifies *only* the service requirement presented in the first half of the statute." *Id.* The Eighth Circuit reasoned that "[h]ad the legislature wished to phrase the statute so that the requirement applied to both service and filing, it could have written the statute in a manner that indicated the limit encompassed both actions." *Id.* (emphasis

² The county's brief to this court also argues that in the text of subdivision 7, "the additional modifier for timing of service is lacking," and this "indicates the Legislature in section 256.045 intended for the 30-day timeline to control both actions." We reject this argument because requiring a time limit for either service or filing does not necessarily mean that both acts be completed within that time limit. *See V & J Farm*, 974 N.W.2d at 588-89; *see also Gen. Mills, Inc. v. Comm'r of Revenue*, 931 N.W.2d 791, 800 (Minn. 2019) ("When the Legislature uses limiting or modifying language in one part of a statute, but omits it in another, we regard that omission as intentional and will not add those same words of limitation or modification to parts of the statute where they were not used.").

omitted) (citing *State v. Struzyk*, 869 N.W.2d 280, 288 (Minn. 2015)). Based on this reasoning, the Eighth Circuit determined Wong’s appeal was timely. *Id.* at 930.

The county argues that *Wong* was “wrongly decided,” in part because if the time limit applies only to service and not to filing, an aggrieved party would have no deadline for filing. We disagree. As the Eighth Circuit stated, “a plaintiff has little incentive to delay filing an appeal from the allegedly erroneous decision of the Commissioner.” *Id.* Under Minn. Stat. § 256.045, subd. 5 (2022), “[a]ny order of the commissioner is binding on the parties . . . until the order is reversed by the district court.” An aggrieved party therefore has an incentive to promptly file and proceed with an appeal because the commissioner’s order is binding until reversed.

Because the unambiguous language of subdivision 7 does not include a 30-day time limit in the clause requiring filing, the district court erred by dismissing Chorolec’s appeal as untimely.

Chorolec also argues that the district court erred by denying her request for a hearing under Minn. Stat. § 256.045, subd. 8 (2022). In denying Chorolec’s hearing request, the district court determined that “[t]here is no legal basis for the Court to modify or vacate the commissioner’s order. Furthermore, a hearing on Appellant’s motion is not necessary.” The district court’s reasoning is not entirely clear. Because we conclude the district court erred in dismissing the appeal, we need not reach this issue. On remand, the district court may reconsider Chorolec’s request for a hearing or clarify its reason for denying the request.

DECISION

Under Minn. Stat. § 256.045, subd. 7, an aggrieved party seeking district court review of an order by the commissioner of human services must serve the notice of appeal within 30 days after the challenged order's issuance. The aggrieved party also must file the notice of appeal in district court but need not do so within 30 days after the challenged order's issuance.

Reversed and remanded.