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A10-1303

STATE OF MINNESOTA

IN COURT OF APPEALS

Harold Young,

Appellant,

Vs.

Cal Ludeman, Commissioner of Human Services,
and Steele County Human Services,
Respondents.

RESPONDENT STEELE COUNTY HUMAN SERVICES' BRIEF & APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

I. WHETHER THE COMMISSIONER OF HUMAN SERVICES LACKED AUTHORITY TO REVIEW THE ACTION OF STEELE COUNTY, AS OPPOSED TO THE DISCRETIONARY ACTION OF A "COUNTY AGENCY."

Human Services Judge Margaret Manderfeld found that the Commissioner of Human Services "has jurisdiction over this appeal under Minn. Stat. §256.045, sub. 3."

District Court Judge Joseph A. Bueltel declined to specifically rule on the issue of whether the Commissioner of Human Services had authority to review the matter, but found that the District Court had jurisdiction to review the Commissioner's decision.

II. WHETHER STEELE COUNTY'S TERMINATION OF ITS CONTRACT WITH VALLEYVIEW DENIED APELLANT FREE CHOICE OF QUALIFIED PROVIDERS OF CUSTOMIZED LIVING SERVICES.

Human Services Judge Margaret Manderfeld found that Appellant retained free choice of "qualified providers," after Steele County's termination of its contract with Valleyview.

District Court Judge Joseph A. Bueltel found that Appellant's right to free choice was properly limited to providers that are under contract with Steele County. Judge Bueltel found that the five alternative living placements, with options in Steele County and surrounding counties, constituted adequate access to providers and that none of the actions of Steele County Human Services or the Commissioner denied Appellant's a federal right.

III. WHETHER STEELE COUNTY CAN BE LAWFULLY COMPELLED TO CONTRACT WITH A PARTICULAR VENDOR OF CUSTOMIZED LIVING SERVICES.

Human Services Judge Margaret Manderfeld found that there is no provision of Minnesota law that could force the County Board to execute a contract with a vendor.

District Court Judge Joseph A. Bueltel declined to expressly rule on this issue.

STATEMENT OF THE CASE

Respondent agrees with Appellant's recitation of the procedural posture of this case, as stated in Appellant's "Statement of the Case" in Appellant's Brief at 3-8.

STATEMENT OF FACTS

Effective December 1, 2007, the Steele County Board of Commissioners ("the County") contracted with Valleyview of Owatonna, LLC ("Valleyview"), to purchase services in accordance with Minnesota law, including Minnesota Statutes Chapter 256B. *See* Exhibit 8 (reproduced as Respondent's Appendix Item 1). The services to be provided under the contract included Elderly Waiver (EW) customized living services. *See* Exhibit 8. The contract was signed by the Steele County Board Chair, Steele County's Director of Human Services, an agent of Valleyview, and the Steele County Attorney. *See id.* The contract was to extend to June 30, 2008, unless terminated sooner according to Paragraph 22, "Termination of Contract." *See id.*

In June of 2008, the Steele County Board of Commissioners exercised its contractual right to terminate the contract with Valleyview. *See* "Decision of State Agency on Appeal," signed by Human Services Judge Margaret Manderfeld, dated August 27, 2009, at 2 (reproduced at Appellant's Addendum -1; hereinafter "Decision").

Through his guardian, Appellant was informed by Steele County Human Services of the County Board's decision on or about June 11, 2008. *See id.* at 2. As a result, the County would no longer pay for Appellant's living services at Valleyview, effective June 30, 2008, because

Valleyview would no longer hold a contract with the County to provide such services. *See id.* at 2-3.

However, between June 30, 2008 and December 31, 2008, a managed care organization (South Country Health Alliance) agreed to provide payments for Appellant's EW living services at Valleyview. *See id.* at 3. Effective January 1, 2009, Steele County would cease to provide EW benefits for Appellant's living services at Valleyview because the County had no contract with Valleyview. *See* Exhibit 5 (reproduced as Appellant's Appendix -1). However, Appellant's EW benefits remained intact and Steele County Human Services offered five alternative placements for Appellant. *See* Decision at 3-4. These alternative placements included two providers within Steele County and three outside of Steele County. *See id.* at 4; Transcript of February 20, 2009 Hearing in Docket No. 107153 (hereinafter "Transcript") at 50.

Appellant appealed the decision to stop providing EW funds for his living services at Valleyview pursuant to Minn. Stat. §256.045, which allows administrative review of adverse action by a "county agency." *See* Decision at 6; Minn. Stat. §256.045, sub. 3(1), sub. 6.

At the evidentiary hearing held on February 20, 2009, Steele County Human Services Director Kelly Harder described the decision-making process of the County Board in terminating the contract with Valleyview. *See* Transcript at 56-59. Mr. Harder stated, "I cannot and do not make independent contractual decisions in the county." Transcript at 59. Mr. Harder testified that the financial impacts of contracting with Valleyview could also pose health and safety concerns based on the County's lack of adequate staffing and corresponding inability to provide [case management] care at an appropriate level. *See* Transcript at 23-24, 33-34.

Lisa Rotegard, Manager of the Department of Human Services' Aging and Adult Services, also testified at the February 20, 2009 hearing. The first question Ms. Rotegard was asked by Appellant's counsel was, "Does the county have a duty to contract with a qualified vendor, in order to accentuate a recipient's free choice of provider?" Ms. Rotegard replied, "they have an obligation to contract with any provider who they *choose to authorize* services from..." Transcript at 60 (emphasis added). Ms. Rotegard explained that, "the current state of affairs in Minnesota is that the entering into a contract is the way we at the state understand that a provider is in fact qualified. We delegate that to counties through the contracting process." Transcript at 61.

In response to further questioning by Appellant's counsel, Ms. Rotegard stated that, in the absence of a contract with the County, it was her view that "the provider [Valleyview] is not in the position to be paid." Transcript at 63.

To clarify her position, Ms. Rotegard testified that a "qualified provider" would be one that meets the minimum state standards *and* holds a contract with the county. *See* Transcript at 68-69 (emphasis added). Ms. Rotegard was not aware of any authority in state or federal law that could force the County to contract with any particular vendor. *See* Transcript at 69, 75.

Ms. Rotegard also testified that Steele County was not unique in its refusal to contract with a provider, even though that provider may be licensed by the State. *See* Transcript at 70. Ms. Rotegard stated, "I believe there's many providers who are not under contracts to counties" and agreed that the decision to contract fell with within the County's discretion. *See id.*

Ms. Rotegard also testified that, "...I don't know that there's been any interpretation that absolutely requires every provider who comes to the door to be contracted with and...typically if

there is adequate access to the range of services within a local situation and that choice is given among qualified providers, with whom the county has a contract, that those [free choice] criteria are met." Transcript at 64.

Based on the record before her, Judge Manderfeld found "[t]he appellant does have free choice of providers." Decision at 7. Judge Manderfeld adopted Ms. Rotegard's position that a "qualified provider" is not simply one that is licensed by the state, but that also holds a contract with a "lead agency" – in this case Steele County. *See* Decision at 7. Judge Manderfeld ultimately found that, "The county's decision does not impinge on the appellant's freedom of choice among providers because that choice is limited to qualified providers." Decision at 7.

The Commissioner of Human Services adopted Judge Manderfeld's Findings of Fact, Conclusion of Law and Order on August 28, 2009. *See* Decision at 8.

Appellant filed a supplement to the record following the February 20, 2009 hearing and before Judge Manderfeld's decision in August of 2009. The submission is entitled 'Bulletin," with a reference number of 09-25-03. This item is reproduced in Appellant's Addendum at ADD-32. The "Bulletin" unambiguously states that, "Prior to *authorizing* and receiving services from a contractor, the lead agency must ensure the contract includes all elements, as required by federal and state laws and the waiver plan." (Emphasis added.) The "Bulletin" does not purport to require any lead agency to contract with any particular vendor, only that they must use an approved contract template "when contracting with Elderly Waiver (EW)...providers." Appellant's ADD-32.

STANDARD OF REVIEW

On appeal, the Court may review the Order of the Commissioner pursuant to Minn. Stat. § 14.69 to determine:

> whether the commissioner violated the constitution, exceeded its authority, engaged in unlawful procedure, erred as a matter of law, issued a decision unsupported by substantial evidence, or acted arbitrarily or capriciously.

Minn. Stat. § 14.69 (1996). *See also* Elim Homes, Inc. v. Minnesota Dept. Human Services, 575 N.W.2d 845, 847 (Minn. Ct. App. 1998). "The appellate court defers to the agency's expertise in finding facts and will affirm the agency's decision so long as it is lawful and reasonable." *Id.*

An agency acts in a quasi-judicial manner "when the commission hears the view of opposing sides presented in the form of written and oral testimony, examines the record and makes findings of fact." Appeal of Signal Delivery Serv., Inc., 288 N.W.2d 707, 710 (Minn. 1980). When an agency acts in a quasi-judicial capacity, an appellate court applies the "substantial evidence" test on review. *See* In re Petition of N. States Power Co., 416 N.W.2d 719, 723 (Minn. 1987). Substantial evidence is defined as: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency, 644 N.W.2d 457, 466 (Minn. 2002).

The substantial evidence test requires the reviewing court to evaluate the evidence relied upon by the agency. *See* Cable Communications Bd. v. Nor-West Cable Communications Partnership, 356 N.W.2d 658, 668-69 (Minn.1984). If the administrative agency has engaged in "reasoned decisionmaking," the reviewing court should affirm, even if the reviewing court may

have reached a different conclusion had it been the fact finder. *See id.* It follows that, "Substantial judicial deference is given to administrative fact-finding." Info Tel. Commc'ns, L.L.C. v. Minn. Pub. Utils. Comm'n, 592 N.W.2d 880, 884 (Minn.Ct.App.1999), *review denied* (Minn. July 28, 1999). *See also* Reserve Min. Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977) (holding that decisions of administrative agencies enjoy a "presumption of correctness" and deference should be shown to agencies' expertise). The burden is on the party challenging the agency to prove that the agency's decision is not supported by substantial evidence. *See* In re Hibbing Taconite Co., 431 N.W.2d 885, 891 (Minn.Ct.App.1988).

ARGUMENT

I. THE COMMISSIONER OF HUMAN SERVICES LACKED AUTHORITY TO REVIEW THE ACTIONS OF STEELE COUNTY, AS OPPOSED TO THE DISCRETIONARY ACTIONS OF A "COUNTY AGENCY."

Respondent argued at the February 20, 2009 hearing that the action challenged by Appellant was not discretionary action undertaken by Steele County Human Services, but rather was action taken by the County Board, namely the termination of the contract with Valleyview. (T. at 9-10). Minnesota law provides for administrative review of *county agency* action. Minn. Stat. §256.045, sub. 3(1), 5, 6(a) (2008) (emphasis added). Specifically, the statute provides that, "In all matters dealing with human services committed by law to the discretion of the county agency, the commissioner's judgment may be substituted for that of the county agency." *Id.* Conversely, the administrative review statute does not give the Commissioner of Human Services the authority to dictate action to the County itself.

The term "County agency" is not defined in Minn. Stat §256B.0915. However, the term is defined elsewhere in Minnesota law to include an "agency designated by the county board of commissioners. *See* Minn. Stat. §§245A.02, sub. 6; 256D.02, sub. 12. It is clear from the plain meaning of the term "county agency" that the term refers to a county body subordinate to the County Board and not the County Board itself.

Judge Manderfeld found that the Steele County Board of Commissioners voted unanimously to terminate the contract between Steele County and Valleyview as of June 30, 2008. It was only due to the termination of the contract that the County notified Appellant that he could no longer receive EW funding for his residence at Valleyview. The contract termination did not affect Appellant's case management services.

Thus, the operative action is the termination of the contract by the County Board. This was not a discretionary act by Steele County Human Services – a "county agency," but rather an act by the County's legislative body to terminate a contract it did not believe to be in the County's best interests, as articulated by Kelly Harder. *See* Transcript at 56-59. Indeed, Steele County Human Services Director Harder testified, "I cannot and do not make independent contractual decisions in the county." Transcript at 59.

Judge Manderfeld did not address the Constitutional question of whether the relief sought by Appellant would violate separation of powers and Respondent does not raise that issue in this appeal. However, she also did not specifically address whether the challenged action was that of a "county agency," over which the Commissioner would have jurisdiction, versus the action of a County Board, over which the Commissioner would not have jurisdiction, pursuant to Minn. Stat. § 256.045, sub. 6.

Respondent requests the Court to find as a matter of statutory interpretation that the Commissioner lacked authority to review the action of the County Board. A decision that is "in excess of the statutory authority or jurisdiction of the agency" provides a basis for the Court to "reverse or modify" the decision. Minn. Stat. § 14.69(b).

Judge Manderfeld had the authority to conduct a hearing and recommend an order to the Commissioner of Human Services. Minn. Stat. §256.045, sub. 5. The Commissioner of Human Services had the authority to adopt the recommendation of the Human Services Judge and issue an order to a "county agency." Minn. Stat. §256.045, sub. 5. Nowhere does Section 256.045, nor any other provision of Minnesota law, give the Commissioner the authority to dictate a course of action to the County Board as elected representatives of Steele County.

Thus, if the Court agrees that the Commissioner lacked authority to hear this case at all, the proper remedy is to "reverse or modify" the Commissioner's Order to the extent the case was improperly brought before an administrative law judge. As a result, Appellant's further claims are moot and the Court should dismiss this appeal and not consider the merits of Appellant's arguments challenging the Commissioner's Order.

II. STEELE COUNTY'S TERMINATION OF ITS CONTRACT WITH VALLEYVIEW DID NOT DENY APELLANT FREE CHOICE OF "QUALIFIED" PROVIDERS OF CUSTOMIZED LIVING SERVICES.

If the Court finds that the Commissioner had authority to hear this case, the Court should affirm the Commissioner's Order on the merits. The Commissioner held that, despite Steele County's termination of its contract with Valleyview, Appellant retained free choice among qualified providers of EW customized living services. Because this conclusion is the result of

"reasoned decisionmaking," is supported by substantial evidence, and is consistent with State and Federal law, the Court should affirm the Commissioner's Order.

A. UNDER FEDERAL LAW, APPELLANT IS GUARANTEED FREE CHOICE OF AMONG "QUALIFIED" PROVIDERS OF MEDICAID SERVICES.

Respondent does not dispute that there are "free choice" assurances for EW participants based on the Social Security Act ("Act") and the Federal regulations adopted to implement the Act. However, a State shall not be found out of compliance with the Act solely because it imposes certain specified allowable restrictions on freedom of choice. *See* 42 C.F.R. §431.51(a)(2) (reproduced at Appellant's Addendum – 30).

A Medicaid recipient may obtain services from any provider that is: (1.) *Qualified* to furnish the services; and (2.) willing to furnish the services. *See* 42 C.F.R. §431.51(b)(1) (emphasis added). However, the preceding does not prohibit, "[s]etting reasonable standards relating to the *qualifications* of providers." *See* 42 C.F.R. §431.51(c)(2) (emphasis added). Requirements of the Act may be waived if the specific practice in the provision of Medicaid services is "cost effective, efficient, and consistent with the objectives of the Medicaid program." *See* 42 C.F.R. §431.55(a) (reproduced as Respondent's Appendix Item 2.) Thus, States are obligated to "ensure that access to medically necessary services of adequate quality is not *substantially* impaired." *See* 42 C.F.R. §431.55(d) (emphasis added). Further, States may restrict recipients to obtaining services from (or through) *qualified* providers that comply with the State standards specified in the State's waiver request. *See* 42 C.F.R. §431.55(f) (emphasis added).

Exhibit 6 (reproduced at Appellant's Addendum – 9) is the Minnesota Department of Human Services' "Application for a §1915(c) HCBS Waiver." Several key components are relevant to this appeal:

1.) "The State has broad discretion to design its waiver program to address the needs of the waiver's target population. (Exhibit 6, Page Application: 1.)

2.) "...the design and operational features of a waiver program will vary depending on the specific needs of the target population, the resources available to the State,...and other factors." (Exhibit 6, Page Application: 1.)

3.) "[The Minnesota Department of Human Services] delegates certain waiver operations to county agencies...including,...authorizing services; and monitoring the services provided." (Exhibit 6, Page Application: 4.)

4.) "The State assures that when an individual is determined to be likely to require [services], the individual (or, legal representative) is:

    1. Informed of any feasible alternatives under the waiver; and
    2. Given the choice of either institutional or home and community-based waiver services."

    (Exhibit 6, Page Application: 8.)

5.) "Free Choice of Provider: In accordance with 42 CFR §431.51, a participant may select any willing and *qualified* provider to furnish waiver services..." (Exhibit 6, Page Application: 9.) (emphasis added)

Given the citations above, the Federal EW framework should be understood to provide for:

1.) Reasonable "free choice" among "qualified" providers, as opposed to absolute or unfettered access to any potential provider;

2.) "Reasonable standards" set by the State relating to the "qualifications" of providers;

3.) EW programs to account for cost-effectiveness, as long as access to providers is not "substantially impaired;"

4.) Broad discretion for the State to design waiver programs; and

5.) State authority to delegate aspects of waiver operations to counties, including "authorizing services."

B. MINNESOTA LAW ENSURES REASONABLE FREE CHOICE AMONG "QUALIFIED" PROVIDERS.

Against this backdrop of Federal law, Minnesota sets forth its framework for participating in the EW program in Minnesota Statute §256B.0915 (reproduced at Appellant's Addendum – 19). In candor to the Court, this section was amended, effective July 1, 2009 and is somewhat different than the version of the statute that was argued before Judge Manderfeld. The relevant differences will be noted below.

Section 256B.0915 sets forth distinct subdivisions for "case management services" and "customized living services." *Compare* Minn. Stat. §256B.0915 subs. 1a & 1b to subs. 3e, 3f, & 3h. "Customized living services" are at the heart of this appeal.

In 2009, The legislature removed the word "negotiated" from §256B.0915 subs. 3e(a) and (b), which address payment for "customized living services." The current statute only requires that payments for EW "customized living services" be "authorized" by the lead agency (County), while the previous version of the statute required payment to be both "negotiated and authorized" by the County.

Despite removing the word "negotiated," the statute still contemplates a "payment agreement" for "customized living services" "authorized" by the lead agency. *See* Minn. Stat. § 256B.0915, subs. 3e(a), 3h. The definition of "lead agencies" includes counties who authorize services under section 256B.0915. *See* Minn. Stat. § 256B.0915, sub. 1b(5).

Minn. Stat. § 256B.0915, sub. 3f also remains unchanged. That subdivision states that:

> Persons or agencies must be employed by or under a contract with the lead agency... in order to receive funding under the elderly waiver program, except as a provider of supplies and equipment when the monthly cost of the supplies and equipment is less than $250.

In addition, although counties *may* purchase social services by grant or purchase of service contract from agencies or individuals approved as vendors, they are under no statutory obligation to do so. *See* Minn. Stat. §256.0112, sub. 1 (reproduced at Appellant's Addendum – 27).

Despite the Legislature's removal of the word "negotiated" from the "customized living services" subdivisions, it is clear that a *contract* with Steele County is a prerequisite for EW payments to Valleyview under Minnesota law. Under the current law, Steele County would still have to "authorize" EW payments for "customized living services" under a "payment agreement" that is specified as a "contract" under §256B.0915, sub. 3f. It is equally clear that no provision of State or Federal law *requires* a county to contract with a particular vendor. The provisions of § 256B.0915 and §256.0112 further the stated purposes of the EW program and represent "reasonable standards relating the qualifications of providers" which are within the "broad discretion" given to the State to develop EW programs, including delegation to the counties to "authorize and monitor services."

The State and Federal frameworks provide a legal basis upon which the Commissioner's factual and legal conclusions were based, after consideration of the evidence presented in the record.

C. THE EVIDENCE PRESENTED AT THE FEBRUARY 20, 2009 HEARING SETS FORTH THAT VALLEYVIEW WAS NOT A "QUALIFIED" PROVIDER ONCE STEELE COUNTY TERMINATED ITS CONTRACT WITH VALLEYVIEW.

Lisa Rotegard testified that a provider is "qualified" to receive EW payments through the contracting process, which is delegated to the counties as discussed above. Thus, she distinguished a "qualified" provider from one who is simply enrolled or licensed by the State. Ms. Rotegard's position is consistent with the State and Federal frameworks discussed above, which allow free choice among "qualified" providers and require a provider to hold a county contract in order to receive EW funding.

Holding a county contract is a "reasonable standard" relating to provider qualifications contemplated in 42 C.F.R. §431.51(c)(2). It is a reasonable standard because it delegates local oversight in implementing a program that would likely be unworkable at the state level. Such delegation is contemplated in the C.F.R., the State's application for the waiver, and Minnesota law requiring a county contract with a provider as a condition of EW payments.

Ms. Rotegard further stated that if there is "adequate access to the range of [local] services and that choice is given among qualified providers, with whom the county has a contract those criteria [free choice] are met." This approach is also reasonable and consistent with State and Federal law, which do not grant absolute or unfettered free choice, but rather free choice among "qualified" providers. States may restrict recipients to obtaining services from (or through) *qualified* providers that comply with State standards. *See* 42 C.F.R. §431.55(f). Minnesota has chosen to require a contract with a county in order to receive EW payments under Minn. Stat. § 256B.0915, sub. 3f.

Mr. Young's guardian testified that she had been given five residential living alternatives for Mr. Young, with options in Steele County and surrounding counties. These are providers with whom Steele County has chosen to contract and are, therefore, "qualified" under the EW program. Thus, there is no "substantial impairment" of Appellant's free choice among "qualified providers." Steele County has assured Appellant free choice of qualified providers, as it is obligated to do. However, Steele County is not obligated to contract, or continue to contract, with every possible EW provider, regardless of the vendor's State licensure status.

D. BASED ON THE LAW AND THE EVIDENCE IN THE RECORD, THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE ORDER OF THE COMMISSIONER.

The Commissioner's Order is based upon the Findings of Fact and Conclusions of Law set forth by Judge Manderfeld. Judge Manderfeld adopted the definition of a "qualified" provider set forth by Ms. Rotegard, which is entirely consistent with State and Federal law. Judge Manderfeld credited the testimony of Kelly Harder that the decision to terminate the contract with Valleyview was not arbitrary, but was based upon the County Board's assessment of the legal, financial, and adequacy of care considerations discussed by Mr. Harder. Most importantly, Judge Manderfeld concluded that, "Appellant does have free choice of providers...The county's decision does not impinge on the appellant's freedom of choice of providers because that choice is limited to qualified providers." Decision at 7.

The facts, authorities and arguments set forth above establish that there is substantial evidence to support this finding and that the finding is correct as a matter of law. Judge Manderfeld engaged in "reasoned decisionmaking," taking into account the positions held by

both Appellant and Respondent. As such, Appellant cannot meet his burden and the Court should affirm the Commissioner's Order.

III. STEELE COUNTY CANNOT BE LAWFULLY COMPELLED TO CONTRACT WITH A PARTICULAR VENDOR OF CUSTOMIZED LIVING SERVICES.

Judge Manderfeld also concluded that, "There is no provision of Minnesota law which could force the [County] board to execute a contract with a vendor." Respondent has not found, nor has Appellant provided, any authority to the contrary. Appellant presented his position at the February 20, 2009 hearing that, "the county has to establish they have the discretion to not do this contract." T. at 12. This position is untenable and flies in the face of the very nature of what a contract is. A "forced contract" is a contradiction in terms.

The Legislature chose to require a "contract" between a service provider and a county in order to receive funding under the EW program. *See* Minn. Stat. § 256B.0915, sub. 3f. *See also* Transcript at 61 (Ms. Rotegard testified that, "the current state of affairs in Minnesota is that the entering into a contract is the way we at the state understand that a provider is in fact qualified. We delegate that to counties through the contracting process.").

It is a bedrock principle of statutory construction that words are to be construed according to their common and approved usage. *See* Minn. Stat. § 645.08(1). The common understanding of a contract is an agreement for mutual consideration reflecting the mutual assent of the parties to it. *See e.g.* New England Mut. Life Ins. Co. v. Mannheimer Realty Co. 188 Minn. 511, 513, 247 N.W. 803, 804 (Minn.1933) (holding that, "There is no contract where there is no mutual and final assent to all the essential terms of a bargain. Such assent lacking, as it is here, to some

of such terms, there is no contract.") Moreover, when the words of a law are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit. *See* Minn. Stat. § 645.16.

If the Legislature had intended that the counties, or other lead agencies, were to be forced into a relationship with a licensed provider, it could have certainly said so. The Legislature could have also expressly stated that any licensed provider is eligible for EW payments simply by virtue of its license status. Instead, by expressly requiring a "contract" in order to receive EW funding, under Minn. Stat. § 256B.0915, sub. 3f, the Legislature clearly and unambiguously spoke.

Thus, in the absence of legislative direction otherwise, the County cannot be forced into a contractual relationship. *Accord* In re Welfare of the Children of J.B., 782 N.W.2d 535, 549 (Minn. 2010) (recognizing that, "Counties are creations of the Legislature...Counties can exercise only those powers expressly granted to them by the Legislature...Conversely, counties are required to carry out those functions assigned to them by the Legislature.") (internal citations omitted).

The Steele County Board considered the contractual situation with Valleyview and determined that it was no longer in the County's best interests as of June 30, 2008. The County Board properly exercised its discretion to invoke its contractual right to terminate the contract with Valleyview. As a governmental body, the County Board has broad discretion and the Court should not interfere with the exercise of that discretion if there is a rational basis for it, even if the action is debatable. *See* Alliance for Metropolitan Stability v. Metropolitan Council, 671 N.W.2d 905, 920 (Minn. Ct. App. 2003). Steele County chose to terminate its contract with

Valleyview and that decision-making process was summarized by Director Harder at the February 20, 2009 hearing. *See* Transcript at 56-59. There was clearly a rational basis set forth for the County's action, which was also summarized by Judge Manderfeld's Findings of Fact. See Decision at 4-5. Consequently, the Court should defer to the County's broad discretion.

Respondent's position is that in the absence of a contract with Steele County, there is no basis for EW funding of Appellant's residence at Valleyview, provided that Mr. Young's EW benefits remain intact and he has a choice among qualified providers for living services. The Commissioner's Order agreed with this proposition as a matter of law and fact. Appellant now seeks a remedy from this Court that is not available in the law – namely to force Steele County to contract with Valleyview. As such, this Court should affirm the Order of the Commissioner.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to AFFIRM the Commissioner's Order.

Dated: October 26, 2010

Respectfully submitted,

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