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STATE OF MINNESOTA

IN COURT OF APPEALS

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In re the Matter of the Appeal of Edna R. Rosckes, et al.,

Appellants,

vs.

County of Carver, Community Social Services, Commissioner of the Minnesota  
Department of Human Services,

Respondents.

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**RESPONDENTS' JOINT BRIEF**

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## LEGAL ISSUES

- I. Under Federal and Minnesota law, when an applicant for Medical Assistance is the beneficiary of an irrevocable trust that was established using her own resources, the principal of that trust is deemed available "if there are any circumstances under which payment from the trust corpus could be made to or for the benefit of the individual." 42 U.S.C. § 1396p(d)(3)(B)(i); 256B.056, subd. 3b(b). The trust here was funded entirely with Edna R. Rosckes' resources and the Trustee is given discretion to distribute the principal for Rosckes' benefit. Did the Commissioner of Human Services correctly conclude that the principal was an available resource for eligibility purposes?

*Holdings Below*

The Commissioner held that all of the trust principal was an available resource because the Trustee had discretion to distribute it for Rosckes' benefit. The district court affirmed the Commissioner's order.

*Apposite Authority:*

42 U.S.C. § 1396p(d)(3)(B)(i) (2007 Supp. I)

Minn. Stat. § 256B.056, subd. 3b(b) (2008)

*In re Kindt*, 542 N.W.2d 391 (Minn. Ct. App. 1996)

*Cohen v. Comm'r of Div. of Med. Assistance*, 668 N.E.2d 769 (Mass. 1996)

- II. A Commissioner of Human Services' administrative order may only be appealed by an aggrieved party. An aggrieved party is someone who is adversely affected by an order because it "operates on his rights of property or bears directly upon his personal interest." There is no evidence in the record that Bernard Rosckes, in his capacity as Trustee, is adversely affected by the Commissioner's order. Did the district court correctly conclude that Bernard Rosckes is not an aggrieved party and thus could not appeal the Commissioner's order?

*Holdings Below*

The district court held that Bernard Rosckes, as Trustee, was not an aggrieved party and dismissed him from the appeal.

*Apposite Authority:*

Minn. Stat. § 256.045, subd. 7

*In re Getsug*, 186 N.W.2d 686 (Minn. 1971)

- III. A Commissioner of Human Services' administrative order may only be appealed by an aggrieved party. At death, an individual's cause of action survives only to her estate's personal representative. There is no evidence in the record that

Edna R. Rosckes' attorney is the personal representative of her estate. Did the district court err when it concluded that her attorney had standing to appeal the Commissioner's order?

*Holdings Below*

The district court held that Rosckes' attorney had standing to appeal the Commissioner's order to district court.

*Apposite Authority:*

Minn. Stat. § 256.045, subd. 7

Minn. Stat. § 573.01

*In re Poupore's Estate*, 157 N.W. 648 (Minn. 1916)

*Onuska v. State of Connecticut Dep't of Soc. Servs.*, 2000 WL 1918026 (Conn. Super. 2000)

- IV. A prevailing party may seek fees against the State pursuant to Minnesota Statutes section 15.472 if the State's position was not "substantially justified." Are fees available to Appellant because the Commissioner's order was not substantially justified and Appellant is eligible for under the fees statute?

*Holdings Below*

The district court affirmed the Commissioner's order so, therefore, did not reach this issue.

*Apposite Authority:*

Minn. Stat. § 15.572 (a)

Minn. Stat. § 15.571, subd. 6

Minn. Stat. § 15.471, subd. 7

*McMains v. Comm'r of Pub. Safety*, 409 N.W.2d 911 (Minn. Ct. App. 1987)

## STATEMENT OF THE CASE AND FACTS

Edna R. Rosckes (“Rosckes”) was the sole beneficiary of a self-settled trust established February 18, 2002. Appellant’s Appendix (“AA”) AA 1 at Recital ¶ 1 and Article I. The Trust principal consists entirely of Rosckes’ resources. AA 10, and AA 77-78 at ¶¶ 4, 8, and 9. Rosckes’ son, Bernard Rosckes, is the trustee. AA 2. Article III of the Trust Agreement provides the following terms regarding the distribution of income and principal for Rosckes’ benefit:

3.1 During the lifetime of the Settlor, the trustees shall not pay to the Grantor any net income from the trust estate. The net income, if any, shall be added to the principal assets of this trust. If at any time or from time to time the Trustees shall find that the income available to Grantor from all sources is not sufficient to reasonably provide for her care, comfort and support, then and in such event the Trustees shall, in the exercise of their sole and complete discretion, expend all or any part of said balance of said income, but not the principal assets, for and behalf of the Grantor in order to reasonably provide for such care, comfort and support.

...

3.5 Subject to the rights of the primary beneficiary under Paragraph 3.1, until the trust terminates, the trustee may pay income and principal to the primary beneficiary at such times and in such portions as the trustee deems advisable.

AA 1-2.

On January 24, 2008, Rosckes, acting through Bernard Rosckes, applied through Carver County Community Social Services for Medical Assistance to cover the expenses of her nursing home care. AA 66. At the time of her application, the value of her trust’s principal was approximately \$133,690.

AA 64.

On May 6, 2008, Rosckes was notified that the Carver County Attorney had determined that the trust principal to be an available asset, the value of which exceeded the eligibility limit of \$3,000 for Medical Assistance. AA 61, 77. Rosckes interpreted that notice as a denial of Medical Assistance and appealed to the Minnesota Commissioner of Human Services. AA 77 at ¶ 1. On June 2, 2008, Carver County issued a formal notice of action denying Rosckes' application on the ground that she had available assets greater than the \$3,000 eligibility limit. AA 66, 58.

Rosckes died on June 8, 2008. AA 62. 77.

The administrative appeal was presented to the Commissioner on stipulated facts. AA 62-67, 76. On July 14, 2008, a human services judge issued recommended findings of fact, conclusions of law, and decision. AA 80. The recommendation identified federal Medicaid provisions contained in 42 U.S.C. § 1396p(d) as controlling on the question of to what extent the assets in a self-settled irrevocable trust are deemed to be available for eligibility purposes. AA 79. The particular provision provides that "if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which . . . payments to the individual could be made shall be considered resources available to the individual." 42 U.S.C. § 1396p(d)(3)(B)(i) (2007 Supp. I). The human services judge concluded that that statute required the \$133,000 in trust principal to be deemed available because of the Trust Agreement provision that the trustee "may pay income and principal to the primary beneficiary at such times and in such portions as the trustee deems advisable."

AA 79-80. The human services judge concluded that that trust provision satisfied the statute's "any circumstances" requirement. AA 80.

On July 15, 2008, the Commissioner's delegee adopted the recommended findings, conclusions, and decision as the Commissioner's Order. AA81. Rosckes' attorney requested reconsideration and, on August 25, 2008, the Commissioner's delegee affirmed the order on reconsideration. AA 82.

On September 23, 2008, Rosckes' attorney appealed the Commissioner's order to Carver County District Court (Hon. Kevin W. Eide). AA 72. The appeal was purported to be on behalf of Rosckes directly and Bernard Rosckes in his capacity as trustee of the Edna R. Rosckes Irrevocable Trust. *Id.*

Subsequently, the court issued two orders. On February 9, 2009, in response to the Commissioner's suggestion that the court lacked jurisdiction because Rosckes had died and therefore an appeal could not be taken unless through the personal representative of her estate, the court concluded that it did have jurisdiction because the appeal had been filed by Rosckes' attorney. AA 89 (applying Minn. R. Civ. App. P. 143.02). However, the court also concluded that Bernard Rosckes was not a party to the original appeal, was not an aggrieved party, and therefore had to be dropped as a named party in the appeal. AA 89. On August 31, 2009, after briefing and argument on the merits, the court affirmed the Commissioner's order. AA 91.

On September 2, 2009, the Commissioner served Rosckes' attorney with notice of the August 31, 2009 order. Rosckes' attorney then appealed to this Court in a Notice of Appeal dated October 2, 2009. AA 96. As at the district court, the appeal is made in the

name of Rosckes and Bernard Rosckes. *Id.* On October 12, 2009, the Commissioner and Carver County served a Notice of Review on the February 9, 2009 order concerning subject matter jurisdiction. Respondents' Appendix ("RA") 1.

#### **BACKGROUND: TRUSTS AND MEDICAL ASSISTANCE ELIGIBILITY**

Minnesota participates in Medicaid through its Medical Assistance program.<sup>1</sup> Medicaid and Medical Assistance combine federal and state funds to pay for medical care for people whose income and resources are insufficient to meet their health care needs. *See Atkins v. United States*, 477 U.S. 154, 156 (1986); *see also McNiff v. Olmsted County Welfare Dep't*, 176 N.W.2d 888, 892 (Minn. 1970); 42 U.S.C. § 1396 *et. seq.* (2007 Supp. I).

In establishing Medicaid, Congress stated its intent that Medicaid be the payment source of last resort and that all other available resources must be used before Medicaid funds are made available to eligible recipients. *See* S. Rep. No. 146, 99th Cong., 2d Sess. 312 (1985), *reprinted in* 1986 U.S.C.C.A.N. 279; *In re Barkema Trust*, 690 N.W.2d 50, 55 (Iowa 2004); *Kryzsko v. Ramsey County Soc. Servs.*, 607 N.W.2d 237, 239 (N.D. 2000). To that end, program statutes and rules require applicants for Medicaid to spend the vast majority of their assets on their care before they can qualify for assistance.

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<sup>1</sup> "Medicaid" will be used to refer to the federal program generally and "Medical Assistance" to refer to Minnesota's particular program.

Medical Assistance's status as a safety net program for society's neediest is reflected in its eligibility standards. Single people with asset resources over \$3,000 are ineligible. Minn. Stat. § 256B.056, subd. 3 (2008).

Although intended only for society's neediest, there is an unfortunate history of people with resources – sometimes significant resources –taking advantage of Medicaid to preserve their own assets. One such problem area is the sheltering of an individual's assets from Medicaid eligibility consideration by placing them in an irrevocable trust of which the individual is also the beneficiary resulting in the classic situation of “having your cake and eating it too.” *Cohen v. Comm'r of Div. of Med. Assistance*, 668 N.E.2d 769, 772 (Mass. 1996).

Starting in the mid-1980s, Congress began to take steps to address the problem. *Id.* at 771-72. In 1986, Congress amended the Medicaid Act to deem the principal of what is known as a “Medicaid Qualifying Trust” to be available to the maximum extent of a trustee's discretion. *Id.* at 772. That statutory provision was replaced, for purposes of any trust established after August 10, 1993, by what is now codified at 42 U.S.C. 1396p(d). *Id.* at 473. Comprehensive discussions of the development of these Medicaid statutes are available elsewhere. *See In re Kindt*, 542 N.W.2d 391, 395-99 (Minn. Ct. App. 1996); *Cohen*, 668 N.E.2d at 771-73; *Miller v. State Dep't of Soc. & Rehab. Servs.*, 64 P.3d 395, 400-02 (Kan. 2003).

As applicable here, the federal Medicaid statute provides, in the case of an irrevocable trust established by the individual using her own assets, that “if there are any circumstances under which payment from the trust could be made to or for the benefit of

the individual, the portion of the corpus from which . . . payment to the individual could be made shall be considered resources available to the individual.” 42 U.S.C. § 1396p(d)(3)(B)(i) (2007 Supp. I). In 1995, Minnesota’s Medical Assistance law was amended to incorporate this federal Medicaid provision. Minn. Stat. § 256B.056, subd. 3b(b) (2008); Act of May 25, 1995, ch. 207, art. 6 § 28; 1995 Minn. Laws 1163, 1180.

## SCOPE OF REVIEW

The Court's review of the Commissioner's order is provided for by Minnesota Statutes section 256.045, subdivision 9, which allows for appeal "as in other civil cases" from a district court's order reviewing a Commissioner's decision. Minn. Stat. § 256.045, subd. 9 (2008). The Court's review is limited to evaluating the Commissioner's decision in light of the record presented at the administrative hearing. *In re Kindt*, 542 N.W.2d at 398. Appellant has the burden of demonstrating that the Commissioner's order should be reversed on grounds that it is based on an error of law, or that it is not based on substantial evidence, or because it is arbitrary or capricious. *Brunner v. State*, 285 N.W.2d 74, 75 (Minn. 1979); *Markwardt v. State Water Res. Bd.*, 254 N.W.2d 371, 374 (Minn. 1977); *In re Flygare*, 725 N.W.2d 114, 118 (Minn. Ct. App. 2006). Administrative adjudications within an agency's area of expertise are presumptively valid. *Herman v. Ramsey County Cmty. Human Servs. Dep't*, 373 N.W.2d 345, 347 (Minn. Ct. App. 1985).

Whether trust principal is an available resource to a beneficiary for Medical Assistance eligibility purposes is a question of law. *Flygare*, 725 N.W.2d at 118; *In re Carlisle Trust*, 498 N.W.2d 260, 263 (Minn. Ct. App. 1993). Here, this question hinges on the interpretation of language in the instrument establishing the trust, which is also a matter of law. *Flygare*, 725 N.W.2d at 118. In examining a trust instrument, a court will not read into it provisions that do not expressly appear or arise by implication from the plain meaning of the words used. *See In re McCann's Will*, 3 N.W.2d 226, 230 (Minn. 1942).

## ARGUMENT

### **I. THE TRUST PRINCIPAL IS AN AVAILABLE RESOURCE TO ROSCKES UNDER FEDERAL AND STATE LAW BECAUSE THE TRUSTEE HAD DISCRETION TO MAKE DISTRIBUTIONS FOR ROSCKES' BENEFIT.**

As noted above, in 1995 Minnesota incorporated the federal Medicaid eligibility provisions relating to self-settled trusts established after August 10, 1993. This law requires Minnesota to deem to be an available resource whatever part of a trust's corpus that could be paid under "any circumstances" to or for the benefit of the beneficiary. That law applies regardless of whether a trustee exercises any discretion under the trust and whether there is "any restriction on when or whether distributions may be made from the trust" or are "any restrictions on the use of distributions from the trust." 42 U.S.C. § 1396p(d)(2)(C) (2007 Supp. I). In short, the law requires one to ask how much of the trust principal could the trustee distribute using the maximum extent of his authorization. Phrased conversely, the question is whether the trustee is restricted from distributing any part of the trust principal to or for the beneficiary's benefit.

Because there is no doubt that the trust here is a self-settled trust, the only question is how much of the principal the trustee could distribute to or for Rosckes' benefit. The plain language of the trust agreement provides discretion for the trustee to distribute *all* of the principal. Trust Agreement, Article III ¶ 3.5 (providing that "the trustee may pay . . . principal to the primary beneficiary at such times and in such portions as the trustee deems advisable."). Consequently, under state and federal statutes, the Commissioner was required to consider the trust principal to be an available resource and affirm Carver County's eligibility denial.

Appellant has raised several arguments in attempting to avoid the consequences of the state and federal eligibility laws.

Appellant's primary argument relies on the beginning clause of the trust provision. That clause states that the trustee's discretion is "[s]ubject to the rights of the primary beneficiary under Paragraph 3.1." Appellant contends that this preface places a limitation on the trustee's authority such that he actually has no discretion to make distributions from principal. That contention is not supported by the trust's terms.

Paragraph 3.1 initially provides that the trustee "shall not pay" to Rosckes any income. Trust Agreement, Article III ¶ 3.1. However, it then provides Rosckes with a right to have the income used "to reasonably provide for [her] care, comfort and support." *Id.* That right is triggered when the income available to Rosckes from other sources "is not sufficient to reasonably provide for her care, comfort and support." *Id.* That right, though, is limited to use of trust income, not principal. *Id.*

Therefore, the "right" that the trustee's discretion is subject to is simply Rosckes' right to the trust income when her other income is insufficient. That right is a limitation on the trustee's otherwise broad discretion over distributions (or nondistributions event to the extent of exclusion) from income and principal. That right, however, does not limit the trustee's broad discretion over trust principal.

Appellant also argues that Minnesota caselaw, not statutory law, should control. Even if that could be so, the two cases she relies upon are inapplicable. Neither *O'Shaughnessy* nor *Carlisle* involved self-settled trusts. The trust in *O'Shaughnessy* was established by the beneficiary's grandparents. *United States v. O'Shaughnessy*, 517

N.W.2d 574, 576 (Minn. 1994). The trust in *Carlisle* was established by the beneficiary's mother. *Carlisle*, 498 N.W.2d at 262. While *Carlisle* did involve the question of Medical Assistance eligibility, *O'Shaughnessy* was about attachment of a federal tax lien. *O'Shaughnessy*, 517 N.W.2d at 576. Neither case considered the federal and state statutes applicable here. To the extent that Appellant may be claiming that those two cases somehow override the federal and state statutes, the Court of Appeals has already rejected such an argument and this Court should reject it, too. *Kindt*, 542 N.W.2d at 399 (rejecting argument that the *Carlisle* decision meant the beneficiary was eligible even if he was not eligible under statute).

Finally, Appellant asserts that the Commissioner's 1996 stipulation to dismissal of a different case applies here. That assertion is meritless. First, the stipulation itself provides that "this Stipulation of Dismissal may not be offered by these parties as evidence or precedent in and future hearings." RA 6 at ¶ 1. Second, Appellant has not provided a copy of the trust agreement in that case to demonstrate that the trust there was similar to the one here. Third, that trust was established in 1991 which is before the enactment of the federal and state statutes now applicable to the Rosckes trust (established in 2002). Fourth, the "admissions against interest" suggested by Appellant to exist are just speculations about the possible content of what would be privileged attorney-client communications.

None of Appellant's arguments warrant concluding that the Commissioner was unjustified in affirming the denial of Appellant's Medical Assistance application.

## **II. BERNARD ROSCKES IS NOT AN AGGRIEVED PARTY TO THE COMMISSIONER'S ORDER.**

Bernard Rosckes (apparently) appeals the district court's dismissal of him as a party to the appeal after the court concluded that he was not an aggrieved party and thus did not have standing to appeal the Commissioner's order. He contends that he is an aggrieved party because he is the Trustee of the Edna R. Rosckes Irrevocable Trust. It is his burden to demonstrate that he is an aggrieved party.

An "aggrieved party" is defined as "one who is injuriously or adversely affected by the judgment or decree when it operates on his rights of property or bears directly upon his personal interest." *In re Getsug*, 186 N.W.2d 686, 689 (Minn. 1971). The district court found that the Trustee was not a party to the original medical assistance application and that there was no evidence in the record "indicating that because the Department of Human Services denied Ms. Rosckes medical assistance based on the existence of the Trust, that decision necessarily means that the Trust is responsible for her medical expenses." AA 89. Thus, there are no facts that the Commissioner's order will adversely affect any right in property or personal interest of the Trustee. The district court correctly dismissed the Trustee as a party.

## **III. THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION BECAUSE AN APPEAL OF THE COMMISSIONER'S ORDER WAS NOT PERFECTED BY AN AGGRIEVED PARTY.**

Subject matter jurisdiction refers to a court's authority or power to consider an action or to issue a ruling that will dispose of the issues raised. David F. Herr & Roger S. Haydock, 1 *Minnesota Practice* § 12.5 (4th ed. 2002). "Subject matter jurisdiction

cannot be conferred by consent of the parties, it cannot be waived, and it can be raised at any time in the proceeding.” *Tischer v. Housing & Redevel. Auth. of Cambridge*, 693 N.W.2d 426, 430 (Minn. 2005). A court should determine an issue of subject matter jurisdiction before considering the merits. *See Herr & Haydock, supra*, § 12.5.

At death, an individual’s cause of action — such as an appeal of an administrative order to district court — survives only to the individual’s personal representative. *See* Minn. Stat. § 573.01 (2008). Consequently, after Rosckes’ death, only an appeal by a duly appointed personal representative could invoke the district court’s appellate jurisdiction to review the Commissioner’s order. Minn. Stat. § 524.3-703(c) (2008) (“a personal representative of a decedent domiciled in this state at death has the same standing to sue and be sued in the courts of this state and the courts of any other jurisdiction as the decedent had immediately prior to death.”). In similar circumstances, the Connecticut Superior Court, comparable to our district court, persuasively reasoned, on the basis of that state’s cause of action survival statute, that it was without jurisdiction when the Medical Assistance recipient died before the appeal to district court and the appeal was not made by a personal representative. *Onuska v. State of Connecticut Dep’t of Soc. Servs.*, 2000 WL 1918026 (Conn. Super. 2000) (copy provided at RA 8-11).

Here, the district court incorrectly reasoned that because the Commissioner still heard Rosckes’ appeal and issued an order that Respondents thus waived the issue of jurisdiction. However, there was no waiver of the issue of the district court’s subject matter jurisdiction to hear an appeal where the appeal had not been perfected according to statutory conditions. Arguably, because Rosckes died after her agency appeal had

already been properly made, there was no error in the Commissioner continuing the matter to its administrative end and issuing an order. Even if Respondents' actions could be considered waiver, subject matter jurisdiction is not something that the parties can consent to or waive.

The district court's reliance on Minn. R. Civ. App. P. 143.02 is also misplaced. That rule provides that "[i]f a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by the decedent's personal representative or . . . by the attorney of record." That rule only applies to proceedings *already* properly within judicial branch jurisdiction. The problem faced here is properly invoking into the judicial branch jurisdiction in the first place. The judicial branches authority – and hence its court-promulgated rules of procedure – is not properly invoked unless a party first properly complies with the statutes that create a cause of action or appeal right.

The Minnesota Supreme Court's decision in *In re Poupore's Estate*, 157 N.W. 648 (Minn. 1916), explains the principles of jurisdiction that apply here. In that case, a petition was filed in the name of a widow in probate court proceedings on her husband's estate. *Id.* at 649. The petition sought the widow's statutory allowance from the husband's estate. *Id.* The probate court's decision was appealed to the district court. *Id.* The district court only partially allowed the petition. *Id.* Then an appeal was made to the state supreme court in the widow's name. *Id.* It was then discovered that the widow had died *before* the filing of the petition in probate court. *Id.*

The supreme court explained that when a court *already* has jurisdiction over the parties and a party dies, then the court can proceed to the final disposition of the case. *Id.*

at 649. However, when a party is dead at the time the suit is commenced – i.e., *before* the court has jurisdiction – then any judgment is void because “no sort of jurisdiction can be obtained against one who was dead when suit was commenced against him as a defendant, *or in his name as plaintiff.*” *Id.* (emphasis added). Although there was a provision for substitution if a party died when an appeal was pending, the court observed that “[t]here is no provision for a substitution when a party in whose name an action is brought or against whom it is prosecuted is dead at the time of its commencement.” *Id.* at 649. The court held that it would “not proceed with an appeal when it is shown that a party to it is dead. When a party is dead at the time of suit brought the opposing party may move to dismiss the proceeding or vacate a judgment or dismiss an appeal.” *Id.* The court did note, nonetheless, that the action could be maintained by a properly appointed personal representative.

Here, no appeal was made by an aggrieved party within the statutory period for doing so. Bernard Rosckes as Trustee is not an aggrieved party and thus his purported appeal is insufficient. Rosckes herself was deceased and thus the appeal could only have been made through her personal representative, which was not done.

#### **IV. THE FEES STATUTE RELIED UPON BY APPELLANT DOES NOT APPLY HERE.**

Appellant contends that the fees statute requires that the Commissioner pay his fees and costs because the Commissioner’s order and position are not substantially justified. That statute, however, does not apply to Appellant. The statute provides for fees to “a prevailing party,” other than the state, in a civil action by or against the state. Minn. Stat. § 15.472 (a) (2008). The definition of “party” excludes Appellant. That term

means “a person named or admitted as a party . . . and who is: (1) an unincorporated business . . . having not more than 500 employees . . . ; and (2) an unincorporated business . . . whose annual revenues did not exceed \$7,000,000 at the time the civil action was filed.” Minn. Stat. § 15.471, subd. 6 (2008). The Court of Appeals has already recognized the fact that the fees statute only applies to small businesses, not to every proceeding involving the state. *McMains v. Comm’r of Pub. Safety*, 409 N.W.2d 911, 914 (Minn. Ct. App. 1987). In addition, Appellant is not a prevailing party because the Commissioner and the district court decided against her on the merits. Finally, the Commissioner’s position is indeed substantially justified.

**CONCLUSION**

The Commissioner and County respectfully request that the Court affirm the Commissioner’s administrative order that Appellant was ineligible for Medical Assistance or reverse the district court’s order on subject matter jurisdiction grounds.

Dated: Dec. 2, 2009

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

**WITH MINN. R. APP. P 132.01, Subd. 3**

The undersigned certifies that the Brief submitted herein contains 4,385 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2003, the word processing system used to prepare this Brief.

A handwritten signature in black ink, appearing to read 'R. C. VUE-BENSON', with a long horizontal line extending to the right.

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