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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1623**

Mary Edholm,
Appellant,

vs.

Minnesota Department of Human Services, et al.,
Respondents.

**Filed June 17, 2013
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-CV-11-23237

Brian P. Farrell, Brian P. Farrell, P.A., Maple Grove, Minnesota (for appellant)

Lori Swanson, Attorney General, Corrie A. Oberg, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Human Services)

Mike O. Freeman, Hennepin County Attorney, Carla J. Hagen, Assistant County Attorney, Minneapolis, Minnesota (for respondent Hennepin County Human Services and Public Health Department)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Kirk,
Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges the district court's order affirming respondent department of human services' order denying appellant medical-assistance benefits, arguing that the department erred by calculating her assets to include the contents of an irrevocable trust. We affirm.

FACTS

Appellant Mary Edholm created the Mary Edholm Irrevocable Trust on September 16, 2004. The trust designated two of Edholm's sons as the trustees and her five children as the beneficiaries. A provision in the trust provides: "The Trustmaker hereby reserves the right to borrow income or principal of the trust without providing adequate interest and/or without providing security for the loan. The purpose of this provision is to cause this trust to be a Grantor Trust under I.R.C. Section 675(3) and the applicable Treasury regulations." The trust contains approximately \$124,000 in assets.

At some point after Edholm created the trust, she applied for medical assistance. In July 2011, respondent Hennepin County Human Services and Public Health Department sent Edholm written notice that the trust's assets were deemed available assets and, as a result, she was ineligible for medical-assistance benefits. Edholm appealed to respondent Minnesota Department of Human Services.

In October, a human-services judge (HSJ) held an evidentiary hearing. Shortly afterward, the HSJ issued an order recommending that the commissioner of human services affirm the county's determination that the trust assets are available to Edholm for

the purpose of determining her medical-assistance eligibility. The HSJ determined that the terms of the trust establish that interest-free payments could be made to Edholm from the trust at any time. The commissioner adopted the HSJ's recommendation.

Edholm appealed to the district court pursuant to Minn. Stat. § 256.045, subd. 7 (2012). Following a hearing, the district court affirmed the commissioner's order. This appeal follows.

DECISION

In an appeal from a district court's review of an agency decision, this court "independently evaluate[s] the administrative decision in light of the agency's record." *In re Kindt*, 542 N.W.2d 391, 398 (Minn. App. 1996) (emphasis omitted). In doing so, we accord the agency's decision a presumption of correctness. *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 39 (Minn. 1989). We may reverse or modify the agency's decision only if the petitioner's substantial rights have been prejudiced because the agency's decision contains errors of law, is unsupported by substantial evidence, or is arbitrary and capricious. Minn. Stat. § 14.69 (2012).

Whether assets in a trust are available for the purpose of determining whether an individual is eligible for medical-assistance benefits is a question of law, which this court reviews de novo. *Rosckes v. Cnty. of Carver*, 783 N.W.2d 220, 224 (Minn. App. 2010). This court usually is not bound by an agency's decision when reviewing issues of law, but we give considerable deference to an agency's interpretation when the agency's construction of its own regulation is at issue. *St. Otto's Home*, 437 N.W.2d at 39-40.

“The Medicaid program is a jointly financed federal-state program designed to provide health care to needy individuals.” *In re Carlisle Trust*, 498 N.W.2d 260, 263 (Minn. App. 1993). In Minnesota, the Medicaid program is referred to as “medical assistance” and is governed by Minn. Stat. §§ 256B.001-.84 (2012). *Id.* at 263 & n.1. The medical-assistance program “was intended to ensure medical care for persons who lacked the resources to pay for it, and to be the payor of last resort.” *Rosckes*, 783 N.W.2d at 224 (quotation omitted). To be eligible, an individual must not own more than \$3,000 in assets. Minn. Stat. § 256B.056, subd. 3. Only assets that are “available to the applicant or recipient” are considered to determine an individual’s eligibility. 42 U.S.C. § 1396a(a)(17) (Supp. V 2011).

Before 1986, some individuals exploited a loophole in the federal Medicaid law by placing assets in irrevocable trusts to preserve their eligibility for Medicaid and their assets for their heirs. *Rosckes*, 783 N.W.2d at 225; *Kindt*, 542 N.W.2d at 395. In 1986, Congress passed a statute to address its concern about this practice. *Rosckes*, 783 N.W.2d at 225. Congress later repealed the statute and then recodified an amended version of the statute at 42 U.S.C. § 1396p(d) (2010). *Id.* As currently codified, the statute provides that, in the case of an irrevocable trust, “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)(1) (2006). Under Minnesota law, this provision applies to trusts established after August 10, 1993. Minn. Stat. § 256B.056, subd. 3b(b).

Here, the terms of the irrevocable trust that Edholm created give her the right to borrow from the trust's income or principal "without providing adequate interest and/or without providing security for the loan." Edholm acknowledges that the trust leaves her the power to *borrow* from the income or principal of the trust, but argues that this does not constitute a *payment* from the trust because she has an obligation to repay any loan she receives from the trust. However, the federal Medicaid statute provides that "if there are *any circumstances* under which payment from the trust *could* be made to or for the benefit of the individual," then those resources are considered to be available to the individual. 42 U.S.C. § 1396p(d)(3)(B)(i) (emphasis added). This language is very broad and inclusive. Because Edholm's trust gives her an unlimited ability to access the trust's assets, it is encompassed by the broad terms of the statute. In addition, as the district court found, this interpretation of the statute is consistent with Congress's intent to limit Medicaid benefits to the needy and prevent individuals from transferring their assets to irrevocable trusts to qualify for Medicaid. *See Rosckes*, 783 N.W.2d at 225.

Edholm further argues that the provision allowing her to borrow from the trust was included in the trust for tax purposes. The trust provides that the purpose of the provision is "to cause this trust to be a Grantor Trust under I.R.C. Section 675(3) and the applicable Treasury regulations." Under that statute, "[t]he grantor shall be treated as the owner of any portion of a trust" when "[t]he grantor has directly or indirectly borrowed the corpus or income and has not completely repaid the loan, including any interest, before the beginning of the taxable year." I.R.C. § 675(3) (2006). According to this provision, the statute treats Edholm as the owner of any portion of the trust's assets that she borrows

from the trust for tax purposes. This provision provides support for the commissioner's determination that the trust's assets are resources that are available to Edholm because it demonstrates that Edholm retains some control over the trust.

Affirmed.