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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1515**

In re the Matter of:
Doug McGaughey,
Appellant,

vs.

Commissioner of Crow Wing County Social Services,
Respondent,

Minnesota Department of Human Services,
Respondent.

**Filed July 21, 2009
Affirmed
Schellhas, Judge**

Crow Wing County District Court
File No. 18-CV-07-4024

Doug McGaughey, M.L.-Annex, 1111 Highway 73, Moose Lake, MN 55767-9452 (pro se appellant)

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, 213 Laurel Street, Suite 31, Brainerd, MN 56401 (for respondent Commissioner of Crow Wing County Social Services)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101 (for respondent Minnesota Department of Human Services)

Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's decision to affirm the commissioner of human services' denial of his request for general assistance funds, arguing that he is eligible to receive general assistance. We affirm.

FACTS

Appellant Doug McGaughey is a patient in the Minnesota Sex Offender Program (MSOP) at Moose Lake Regional Treatment Center. Appellant applied to Crow Wing County Social Services for general assistance, but his request was denied on the ground that his monthly income exceeded the allowable benefit from the program. Appellant challenged this decision in an appeal to a human services judge (HSJ) and testified on his own behalf at a subsequent Minnesota Department of Human Services hearing. The HSJ recommended affirming the denial on the basis that appellant was ineligible for general assistance because his monthly income was too high. The commissioner of human services adopted the HSJ's recommendation. Appellant challenged the commissioner's decision in Crow Wing County District Court. Based on the parties' written arguments and the transcript of the evidentiary hearing before the HSJ, the district court affirmed the commissioner's decision. This appeal follows.

DECISION

"On appeal from the district court's appellate review of an administrative agency's decision, this court does not defer to the district court's review, but instead independently examines the agency's record and determines the propriety of the agency's decision."

Johnson v. Minn. Dep't of Human Servs., 565 N.W.2d 453, 457 (Minn. App. 1997). This court may not reverse or modify an agency decision unless the decision was (1) in violation of constitutional provisions, (2) in excess of the agency's statutory authority or jurisdiction, (3) made upon unlawful procedure, (4) affected by other error of law, (5) unsupported by substantial evidence in view of the entire record as submitted, or (6) arbitrary or capricious. Minn. Stat. § 14.69 (2008).

“‘General assistance’ means cash payments to persons unable to provide themselves with a reasonable subsistence compatible with decency and health and who are not otherwise provided for under the laws of this state or the United States.” Minn. Stat. § 256D.02, subd. 4 (2008).

It is the policy of this state that eligible households unable to provide for themselves and not otherwise provided for by law *who meet the eligibility requirements of sections 256D.01 to 256D.21* are entitled to receive grants of general assistance necessary to maintain a subsistence reasonably compatible with decency and health.

Minn. Stat. § 256D.01, subd. 1 (2008) (emphasis added). General assistance is granted in an amount equaling the applicable standard of assistance minus nonexempt income, and the first \$50 of earned income per month is disregarded in determining both eligibility for and the amount of general assistance. Minn. Stat. § 256D.06, subd. 1 (2008). Therefore, if an applicant's income minus \$50 exceeds the standard of assistance, the applicant is ineligible for general assistance.

The standard of assistance for an individual in a regional treatment center is determined by the personal needs allowance for medical assistance recipients under

section 256B.35. Minn. Stat. § 256D.44, subd. 3(g) (2008). Here, the HSJ determined that the applicable standard of assistance for appellant was \$82 per month at the time that appellant applied for general assistance, and appellant does not dispute this determination. Appellant also does not dispute the HSJ's finding that his monthly income was \$147.60 at the time of his application. Thus, appellant's monthly income less the \$50 disregard amounted to \$97.60, which exceeded the \$82 standard of assistance.

Appellant argues that he was eligible for general assistance under Minn. Stat. § 256D.05, subd. 1(a)(3) (2008), on the ground that he was placed in "a licensed or certified facility for purposes of physical or mental health or rehabilitation." But section 256D.05, subdivision 1(a), limits eligibility for general assistance to persons "with income and resources less than the standard of assistance established by the commissioner." Because appellant's income exceeded the applicable standard of assistance, his argument fails.

Despite the fact that appellant does not dispute that his income exceeded the applicable standard of assistance, he argues that he was eligible for general assistance because he was eligible for an additional disregard of income. Section 256D.06, subdivision 1b provides that "the county agency shall disregard an additional earned income" of up to \$150 per month for individuals who: (1) reside in a facility licensed under Minn. R. 9520.0500-0690 and 9530.2500-4000, and for whom discharge and work are part of a treatment plan; (2) live in supervised apartments with services funded under Minn. R. 9535.0100-1600 and for whom discharge and work are part of a treatment plan;

or (3) reside in group residential housing and for whom a county agency has approved a discharge plan that includes work.

Appellant did not argue at his hearing before the HSJ that he was eligible for an additional disregard of income. Although appellant cited the text of section 256D.06, subdivision 1b, along with other portions of chapter 256D in his written request for an appeal to an HSJ, he did not claim that he was eligible for an additional disregard of income under section 256D.06, subdivision 1b. Moreover, in his letter to the HSJ requesting reconsideration of his decision, appellant stated that he was requesting general assistance because he was unable to afford clothing, cable television, or stationery on his current income, ignoring the fact that any additional amount disregarded under section 256D.06, subdivision 1b, must be placed in a separate savings account to be used by the individual upon his discharge into the community. Minn. Stat. § 256D.06, subd. 1b. Because appellant raised the argument that he was eligible for an additional disregard under section 256D.06, subdivision 1b, for the first time on appeal, we decline to consider it. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that an argument raised for the first time on appeal is generally considered to be waived).

Appellant also argues that the HSJ erred in determining that the MSOP is not a facility of the kind covered by section 256D.06, subdivision 1b. The HSJ's recommendation, which the commissioner adopted, contains no such determination.

Affirmed.