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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-283**

Raymond L. Semler,
Appellant,

vs.

Crow Wing County Social Services,
Respondent,
Minnesota Department of Human Services,
Respondent.

**Filed August 17, 2010
Affirmed
Stoneburner, Judge**

Crow Wing County District Court
File No. 18CV085983

Raymond L. Semler, Moose Lake, Minnesota (pro se appellant)

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent Crow Wing County Social Services)

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

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's decision affirming the denial of his request for general assistance benefits. Because the record supports the determination of the Commissioner of the Minnesota Department of Human Services that appellant is not eligible for general assistance benefits, we affirm.

FACTS

Appellant Raymond Semler is a patient in the Minnesota Sex Offender Program (MSOP) at Moose Lake Regional Treatment Center. In 2007, while residing at the Moose Lake facility, Semler applied through respondent Crow Wing County Social Services (the agency) for general assistance benefits (GA benefits) from respondent Minnesota Department of Human Services (DHS). The agency found Semler ineligible for GA benefits and Semler appealed. Based on the recommendation of a human services judge (HSJ), Semler's case was remanded to the agency for new calculations applying not only the \$50 disregard of income to which Semler is entitled by statute but also for a determination of eligibility for an additional disregard available in certain circumstances. The agency sent the HSJ the recalculation information and a memo confirming that it was continuing to deny Semler's application because Semler did not qualify for the additional disregard, which requires a discharge plan and a separate savings account for post-discharge expenses. Ultimately, the matter came before the DHS commissioner for a review hearing on the agency's continued denial of Semler's application for GA benefits.

The hearing took place in February 2009 to determine if the agency correctly determined that Semler did not qualify for the additional disregard. At the hearing, Semler admitted that he did not have a discharge plan but asserted that he could get one. The agency explained that in addition to a discharge plan, Semler had to set up a savings account where the additional disregard funds would be deposited and saved for use after discharge. The HSJ recommended that the commissioner affirm the agency's denial of Semler's application for GA benefits. The commissioner adopted the recommendation.

Semler filed a new application for GA benefits which was denied for the months of May, June, and July 2009 because Semler's income exceeded the amount of income that would make him eligible for GA benefits. Semler appealed, specifically challenging the inclusion of cash gifts in the determination of his income. At the hearing on denial of the application, the agency acknowledged that the disqualification for July 2009 was based on projected earned income, and indicated a willingness to make a redetermination based on actual July 2009 earnings, which Semler testified would be significantly less than in May and June 2009. The agency subsequently sent recalculations to the HSJ, based on actual earnings for July 2009, again denying GA benefits because Semler's income exceeded the qualifying amount. The HSJ recommended that the agency's action be affirmed, and the commissioner adopted the recommendations.

Semler challenged the commissioner's decision in district court, arguing that the agency erred by not allowing the additional disregard to determine his income and erred by including cash gifts in the calculation of his income. Semler also asserted a violation of his constitutional right to equal protection. The district court affirmed the

commissioner's decision, concluding that the agency correctly determined that recurring cash gifts constitute income and that Semler's lack of a discharge plan and separate savings account for discharge expenses disqualifies him from the additional disregard of income, making Semler ineligible for GA benefits for May, June, and July 2009. The district court rejected Semler's constitutional challenge because Semler failed to make a colorable claim that he has been intentionally treated differently from others who are similarly situated. In this appeal, Semler challenges the district court's decision affirming denial of GA benefits for May, June, and July 2009.

D E C I S I O N

This court is not bound by the district court's decision in agency appeals, and "may conduct an independent examination of the administrative agency's record and decision and arrive at its own conclusions as to the propriety of that determination." *In re Signal Delivery Serv., Inc. v. Brynwood Transfer Co.*, 288 N.W.2d 707, 710 (Minn. 1980). Judicial review of DHS decisions is limited to determining whether the decision violates the constitution, exceeds the agency's authority, was made on unlawful procedure, is affected by an error of law, lacks substantial evidentiary support, or is arbitrary and capricious. Minn. Stat. § 14.69 (2008); *Zahler v. Minn. Dep't of Human Servs.*, 624 N.W.2d 297, 301 (Minn. App. 2001), *review denied* (Minn. June 19, 2001).

On appeal, Semler argues that he is eligible for an additional disregard from his income, which would make him eligible for GA benefits, reasserts his equal protection argument, and argues that he was denied due process by the HSJ and the district court.

I. The commissioner correctly concluded that Semler does not qualify for an additional disregard of income under Minn. Stat. § 256D.06, subd. 1b (2008).

The disregard to which Semler asserts he is entitled is governed by Minn. Stat.

§ 256D.06, subd. 1b, which provides, in relevant part, that a county agency shall disregard income of up to \$150 per month for:

(1) persons residing in facilities licensed under Minnesota Rules, parts 9520.0500 to 9520.0690 and 9530.2500 to 9530.4000, and for whom discharge and work are part of a treatment plan The additional amount disregarded must be placed in a separate savings account by the eligible individual, to be used upon discharge from the residential facility into the community.

Semler has admitted that he does not have a discharge plan or a separate savings account.

And Semler has stated that he wants GA benefits to pay his current expenses, ignoring the fact that the amount of the additional disregarded amount must be placed in a separate savings account to be used for post-discharge expenses. On this record, we conclude that the agency did not err in determining that Semler is ineligible for the additional disregard.

II. The commissioner correctly included cash gifts in the calculation of Semler's income.

“‘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). “In determining eligibility for and the amount of assistance . . . the county agency shall disregard the first \$50 of earned income per month.” Minn. Stat. § 256D.06, subd. 1 (2008). If an applicant’s nonexempt income minus \$50 exceeds the standard of assistance, the applicant is ineligible for GA benefits. *Id.*; Minn. Stat. § 256D.05, subd. 1(a) (2008). It is not disputed that the standard of assistance applicable in this case was \$89 per month.

Chapter 17.15.12 of the DHS Combined Manual governs how cash gifts are considered for purposes of determining eligibility for GA benefits and requires counting as income:

- Cash the unit receives on a regular basis.
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- The full cash gift when the cash is received from 1 source and exceeds \$30 per unit member per calendar quarter.
- The remainder of irregular cash gifts when the [first] \$30 was excluded.

The manual requires excluding as income the following cash gifts:

- Irregular cash gifts totaling \$30 or less per unit member per calendar quarter.
- Up to \$30 of irregular cash gifts totaling more than \$30. This exclusion applies only if each gift is for \$30 or less.

Semler does not dispute that he regularly received gifts from his family in May, June, and July 2009, and that the amount of the gifts exceeded \$30 in each of those months.

The purpose of GA benefits is to allow “eligible households . . . to maintain a subsistence reasonably compatible with decency and health.” Minn. Stat. § 256D.01, subd. 1. Semler disputes the application of the statute to him because he would like more money to “live and pay his bills,” but as respondent Crow Wing County Human Services aptly points out, this argument, “ignores the fact that his basic living expenses, room, board, [and] utilities are already being [paid for].” The commissioner did not err in concluding that cash gifts were properly included in computation of Semler’s income, and Semler does not dispute that his earned and unearned income, including gifts, minus the \$50 disregard, exceeded \$89 in May, June and July, 2009.

III. Semler has failed to establish a violation of his equal-protection or due-process rights.

Semler argues that he is being treated differently than similarly situated persons. The constitutionality of a statute is a question of law, which this court reviews de novo. *State v. Behl*, 564 N.W.2d 560, 566 (Minn. 1997). Statutes are presumed to be constitutional, and courts declare a statute unconstitutional “with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn.1989). “An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to those to whom they compare themselves.” *St. Cloud Police Relief Ass’n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996), *review denied* (Minn. Jan. 7, 1997).

In the district court and on appeal, Semler has failed to identify the category of persons that he considers to be similarly situated to himself, other than comparing

himself, via caselaw citation, to “needy dependent children.” MSOP residents and needy dependent children are not similarly situated, and Semler has failed to identify any similarly situated MSOP residents who are being treated differently due to the enforcement of section 256D.06, subdivision 1b. Because Semler has not established this essential element of an equal-protection claim, Semler has failed to demonstrate that application of section 256D.06, subdivision 1b violates his right to equal protection of the laws.

Although Semler asserts a due-process violation, he has not briefed or argued this issue. Issues not briefed on appeal are waived. *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982).

Affirmed.