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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-561**

In re the Matter of:
Rodney Fimon,
Appellant,

vs.

Commissioner of Minnesota Department of Human Services,
Respondent,

Mower County Human Services,
Respondent.

**Filed October 24, 2011
Affirmed
Bjorkman, Judge**

Mower County District Court
File No. 50-CV-10-2325

Peter D. Plunkett, Plunkett & Associates, Inc., Austin, Minnesota (for appellant)

Lori Swanson, Attorney General, Barry R. Greller, Assistant Attorney General, St. Paul, Minnesota (for respondent Commissioner of Minnesota Department of Human Services)

Kristen Nelsen, Mower County Attorney, Aaron Jones, Assistant County Attorney, Austin, Minnesota (for respondent Mower County Human Services)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the district court's decision affirming the decision of the Commissioner of the Minnesota Department of Human Services that appellant is subject to a penalty against his medical-assistance (MA) eligibility for an improper transfer of assets. Appellant argues that (1) the commissioner's decision is not supported by substantial evidence and (2) the district court abused its discretion by refusing to consider additional evidence on appeal from the commissioner's decision. We affirm.

FACTS

On May 1, 2003, appellant Rodney Fimon executed a warranty deed transferring title to his home to his two sons and himself as joint tenants, for consideration of \$500 or less. On July 17, 2009, Fimon executed a warranty deed transferring the property to his two sons, reserving only a life estate for himself, for the same consideration. The July 2009 deed declares: "This is a corrective deed in reference to [the May 2003 deed]."

Fimon applied for MA benefits on December 31, 2009. Mower County Human Services determined that Fimon had, by execution of the July 2009 deed, improperly transferred his interest as a joint tenant without receiving reasonable compensation and imposed a penalty of 3.84 months' ineligibility for benefits.¹

Fimon appealed that decision to the Minnesota Department of Human Services. A human-services judge (HSJ) conducted a hearing at which a county representative and

¹ A small portion of the penalty was based on the December 21, 2009 uncompensated transfer of Fimon's vehicle to one of his sons. Fimon does not challenge this aspect of the penalty.

one of Fimon's sons testified. After reviewing the two deeds and considering this testimony, the HSJ issued recommended findings of fact, conclusions of law, and an order affirming the county's determination that Fimon improperly transferred his interest in the property in July 2009 and is subject to a 3.84-month penalty. The commissioner adopted the recommended findings, conclusions, and order.

Fimon appealed the commissioner's decision to the district court. The district court affirmed, concluding that the commissioner made credibility determinations and that substantial evidence supports the commissioner's decision. This appeal follows.

D E C I S I O N

I. Substantial evidence supports the commissioner's 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." *Young v. Jesson*, 796 N.W.2d 158, 164 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. June 28, 2011). We presume that an agency decision is correct, *Shagalow v. State, Dep't of Human Servs.*, 725 N.W.2d 380, 384 (Minn. App. 2006), *review denied* (Minn. Feb. 28, 2007), and defer to an agency's credibility determinations, *In re Appeal of Rocheleau*, 686 N.W.2d 882, 891 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). We 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 (2010).

Minnesota's MA program is intended to provide "[m]edical assistance for needy persons," in accordance with the federal Medicaid program. Minn. Stat. § 256B.01 (2010); *Rosckes v. Cnty. of Carver*, 783 N.W.2d 220, 224 (Minn. App. 2010). To effectuate that purpose, Minnesota law defines eligibility for MA with respect to an applicant's assets, *see* Minn. Stat. § 256B.056, subd. 3 (2010) (setting forth asset limits for individuals), and limits how applicants may dispose of assets to meet the eligibility requirements. *See In re Kindt*, 542 N.W.2d 391, 398 (Minn. App. 1996) (stating that eligibility for MA depends on the assets available to the applicant and discussing Congress's efforts to limit ways that individuals can make assets unavailable). Specifically, a person seeking MA

may not give away, sell, or dispose of, for less than fair market value, any asset or interest therein, . . . for the purpose of establishing or maintaining medical assistance eligibility. . . . For purposes of determining eligibility for long-term care services, any transfer of such assets within 36 months before or any time after an institutionalized person requests medical assistance payment of long-term care services, or 36 months before or any time after a medical assistance recipient becomes an institutionalized person, for less than fair market value may be considered.

Minn. Stat. § 256B.0595, subd. 1(b) (2010). The law presumes that any transfer for less than fair market value within the look-back period is "made for the purpose of establishing or maintaining medical assistance eligibility" and imposes a penalty of temporary MA ineligibility, the duration of which depends on the value of the asset

transferred. *Id.*; *see also* Minn. Stat. § 256B.0595, subd. 2 (2010) (providing the formula for determining the duration of an improper transfer penalty).

The commissioner concluded that Fimon is subject to a temporary ineligibility penalty of 3.84 months because he transferred his joint tenancy to his sons within the statutory look-back period for less than fair market value. Fimon argues that the record does not support this determination because the July 2009 deed merely corrected the May 2003 deed, which contained a clerical error, so that the only transfer occurred in 2003. We disagree.

First, the clear terms of the deeds do not support Fimon's argument that the 2009 deed merely corrected a clerical error. The May 2003 deed conveyed a one-third joint tenancy in Fimon's property to each of Fimon's two sons. There is no reference to a life estate. The terms of the July 2009 deed are markedly different, conveying the property to Fimon's sons with reservation of a life estate in Fimon. We discern the 2009 deed to do more than simply correct a clerical error.

Second, the commissioner's decision implicitly rejected the testimony of Fimon's son that, despite the 2003 deed's clear terms, Fimon intended at that time to transfer all but a life estate interest in the property. *See Vang v. A-1 Maint. Serv.*, 376 N.W.2d 479, 482 (Minn. 1985) (stating that an actual determination regarding credibility is necessarily implicit in a fact-finder's decision when there is conflicting evidence). A court does not abuse its discretion by deferring to the commissioner's implicit credibility determinations. *See Rocheleau*, 686 N.W.2d at 891 (stating that a reviewing court does not retry facts or make credibility determinations). Accordingly, we conclude that the

record amply supports the commissioner's decision that Fimon transferred his joint tenancy to his sons in July 2009 for less than fair market value and is subject to an improper-transfer penalty.

II. The district court did not abuse its discretion by declining to consider additional evidence.

Fimon also challenges the district court's refusal to consider a November 15, 2010 default judgment that Fimon obtained against his sons in his action to reform the May 2003 deed based on the July 2009 deed. The statute authorizing judicial review of a commissioner's decision on MA eligibility specifically limits the scope of that review, prohibiting the court from taking "new or additional evidence unless it determines that such evidence is necessary for a more equitable disposition of the appeal." Minn. Stat. § 256.045, subd. 8 (2010). And because the district court is engaged in appellate review of the commissioner's decision, it "has the discretion to expand the record only for the purpose of discovering whether the agency properly resolved the matter based on facts *in existence at the time of its decision.*" *Kindt*, 542 N.W.2d at 398.

The focus of Fimon's appeal to the district court was the commissioner's July 1, 2010 decision. This decision predates not only the default judgment but the entire reformation action. Accordingly, the facts relating to the reformation action are not within the scope of the district court's review. And as the district court properly noted, even if the subsequent proceeding is relevant to Fimon's MA eligibility, the commissioner considered and addressed the pivotal issue of whether the 2009 deed

corrected the earlier deed. On this record, we conclude that the district court did not abuse its discretion by not considering the judgment.

Affirmed.