STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1300

In re the Matter of:

Dorothy Geyen,
Respondent,

vs.

Commissioner of Minnesota Department of Human Services,
Appellant,

Carver County Health and Human Services,
Respondent below.

Filed July 12, 2021
Affirmed and remanded
Cochran, Judge

Carver County District Court
File No. 10-CV-19-1076

John B. Waldron, Waldron Law Offices, Ltd., Wayzata, Minnesota (for respondent Dorothy Geyen)

Keith Ellison, Attorney General, Michael N. Leonard, Assistant Attorney General, St. Paul, Minnesota (for appellant Commissioner of Minnesota Department of Human Services)

Mark Metz, Carver County Attorney, Daniel M. Ryan, Assistant County Attorney, Chaska, Minnesota (for respondent-below Carver County Health and Human Services)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Frisch, Judge.

SYLLABUS

Minn. Stat. § 501C.1206(b) (2020), which provides that certain irrevocable trusts become revocable "for the sole purpose" of determining eligibility for medical assistance for long-term-care services, is preempted by federal law.

OPINION

COCHRAN, Judge

Appellant Commissioner of the Minnesota Department of Human Services challenges a district court order reversing the commissioner's determination that respondent Dorothy Geyen was ineligible for medical assistance for long-term care (MA-LTC). The commissioner denied Geyen's application for MA-LTC based on the commissioner's determination that assets in two irrevocable trusts established by Geyen were available to her under applicable eligibility standards, and as a result, Geyen's assets exceeded the MA-LTC eligibility limit. On appeal, the commissioner seeks reversal of the district court's order on alternative grounds. The commissioner first argues that the district court lacked jurisdiction to decide Geyen's appeal of the commissioner's decision. The commissioner next argues that the administrative determination of ineligibility was correct on the merits.

We conclude that the district court had jurisdiction over Geyen's appeal of the commissioner's decision. We further conclude, as the district court did, that the commissioner erred as a matter of law by determining that the irrevocable trust assets were available to Geyen for purposes of determining Geyen's eligibility for MA-LTC. Specifically, we conclude that the assets in the irrevocable trusts were not available to

Geyen under the federal law governing medical assistance, and that the state statute purporting to make the assets available is preempted by federal law. We therefore affirm.

FACTS

The facts are undisputed. In July 2011, Geyen created two irrevocable trusts, Trust A and Trust B. The trust agreements were identical but for their names. Each trust agreement provided that Geyen was the grantor and two of her children were the trustees. The beneficiaries of the trusts were Geyen's children and grandchildren.

The trust agreements indicated that Geyen had or would "irrevocably" transfer cash or other property to each trust. The trust agreements also empowered the trustees with "full power and authority to control" trust assets, except that the trustees were specifically precluded from loaning any assets to Geyen or making any gifts to her. In August 2011, each trust purchased $25,000 in annuities, which became assets of the trusts.

In February 2019, Geyen applied for MA-LTC with elderly waiver, a type of Medicaid benefits available through Minnesota's medical-assistance plan. She submitted her application to respondent-below Carver County Health and Human Services (the county).[1] The county concluded that Geyen's "total counted assets" were slightly over $73,300. In counting Geyen's total assets, the county included the trust assets because it determined that the irrevocable trusts became revocable when Geyen applied for MA-LTC by operation of Minn. Stat. § 501C.1206 (2020). And, because Geyen's assets were higher than the program limit of $3,000, the county sent Geyen an asset-reduction form explaining

[1] County social-service agencies "administer medical assistance in their respective counties under the supervision of" the commissioner. Minn. Stat. § 256B.05, subd. 1 (2020).

that she would have to reduce her assets to $3,000 to qualify for MA-LTC. Accordingly, the county denied Geyen's application.

In April 2019, Geyen appealed the county's denial of her MA-LTC application to the commissioner. Geyen challenged the county's decision to treat the irrevocable trusts as revocable based on Minn. Stat. § 501C.1206, arguing that the state statute conflicts with federal law. A human-services judge, appointed by the commissioner, heard Geyen's appeal and recommended that the commissioner affirm the county's decision on different grounds. Instead of concluding that the trusts became revocable under Minn. Stat. § 501C.1206, the human-services judge concluded that the irrevocable trust assets were available to Geyen under 42 U.S.C. § 1396p(d)(3)(B) (2018), the federal law governing the treatment of irrevocable trusts for Medicaid-eligibility purposes. By an order dated October 7, 2019, the commissioner adopted the recommended decision of the human-services judge. Geyen submitted a request for reconsideration to the commissioner, which was denied. In November 2019, Geyen appealed the commissioner's decision to district court pursuant to Minn. Stat. § 256.045, subd. 7 (2018).

At the time that the appeal was filed, Geyen resided at a care facility and was behind on her payments to the facility. In early December 2019, Geyen's daughter received a letter from the care facility stating that Geyen would be discharged later that month unless her outstanding bill was paid in full. To avoid her mother being discharged, Geyen's daughter—one of the two trustees—began liquidating the trust assets. After liquidating the assets, Geyen's daughter deposited the funds into Geyen's personal checking account. Geyen's daughter, a signer (with power of attorney) but not a joint owner of the account,

then paid the care facility from Geyen's checking account. Geyen became eligible for MA-LTC after payment of the funds from the trusts to the care facility. In an affidavit submitted to the district court, Geyen's daughter asserted that she believed that her liquidation of the trust funds to pay the care-facility bill violated the trust agreements, but she felt that she had no other choice.

In briefing to the district court, the commissioner first argued that Geyen's appeal was moot because Geyen ultimately received MA-LTC. The commissioner then made alternative arguments to support her contention that she properly considered the trust assets in determining Geyen's eligibility for MA-LTC. First, the commissioner argued that the trust assets were available under federal law because the assets could be used to benefit Geyen. Second, the commissioner argued that the trust assets were available under state law, specifically Minn. Stat. § 501C.1206(b), because the trusts "became revocable when [Geyen] applied for MA-LTC." And, in response to an argument raised by Geyen, the commissioner argued that Minn. Stat. § 501C.1206(b) was not preempted by federal law.

At oral argument before the district court, counsel for the commissioner told the district court that Geyen had passed away not long ago. Counsel went on to argue: "So not only are there mootness issues, there may be some standing issues as well in this case, as no one has [been] substituted . . . for Ms. Geyen."

In August 2020, the district court issued its order reversing the commissioner's decision. At the outset of its order, the district court acknowledged that Geyen had died. But the district court declined to address the commissioner's "standing" argument because "Geyen was alive at all relevant times pertaining to this action, the action was begun before

her death, and her [e]state would step into her shoes regardless." And the district court declined to "address the mootness argument raised" by the commissioner because "[i]f the assets of the Trusts did not need to be depleted . . . the Trusts would have most likely remained funded and the beneficiaries . . . would have assets to draw from. Damages were sustained in this case."

On the merits, the district court determined that the commissioner's decision was "unsupported by substantial evidence" and "affected by an error of law." The district court rejected the commissioner's conclusion that the trust assets were available to Geyen for purposes of determining MA-LTC eligibility. Relying on "the applicable federal law," the district court concluded that the irrevocable trusts "should not be viewed as assets in determining" Geyen's MA-LTC eligibility. In reaching this conclusion, the district court emphasized that the irrevocable trust agreements "specifically precluded" the trustees from loaning or gifting any trust assets to Geyen, who the district court found was "not a beneficiary under the Trusts."

The district court also determined that the trust assets did not become available to Geyen by virtue of Minn. Stat. § 501C.1206(b), as argued by the commissioner. The district court concluded that this state statute is preempted by 42 U.S.C. § 1396p(d)(3)(B) because the trust assets would be available under state law but unavailable under federal law for purposes of determining eligibility for MA-LTC. The commissioner now appeals the district court's decision.

ISSUES

I. Did the district court have jurisdiction over Geyen's appeal?

II. Was the commissioner's determination that Geyen was ineligible for medical assistance affected by an error of law?

ANALYSIS

This case involves Medicaid, which is known as medical assistance in Minnesota,[2] and the application of federal Medicaid requirements to Geyen's MA-LTC application. We first provide an overview of Medicaid. We then turn to the specific issues raised by this appeal.

In 1965, Congress enacted Medicaid as Title XIX of the Social Security Act. *Atkins v. Rivera*, 477 U.S. 154, 156, 106 S. Ct. 2456, 2458 (1986); *see* 42 U.S.C. §§ 1396-1396w-5 (2018) (current version of Medicaid).[3] Medicaid is "designed to provide medical assistance to persons whose income and resources are insufficient to meet the costs of necessary care and services." *Atkins*, 477 U.S. at 156, 106 S. Ct. at 2458. Medicaid is a cooperative federal-state program, in which the federal government shares costs with states that choose to participate. *Id.* at 156-57, 106 S. Ct. at 2458. In return, the states must administer their respective state programs in a manner that complies with federal law. *Id.*

[2] *In re Schmalz*, 945 N.W.2d 46, 50 (Minn. 2020).

[3] The American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 9813, 135 Stat. 4, 213, added a new section to Title XIX, but because that section was not part of Title XIX at the time that the commissioner made her eligibility determination and does not affect the resolution of this appeal, we do not otherwise reference it.

at 157, 106 S. Ct. at 2458; *see also* 42 U.S.C. § 1396a (establishing requirements for state medical-assistance plans).[4]

States participating in the Medicaid program are required under federal law to provide coverage to the "categorically needy." *Atkins*, 477 U.S. at 157, 106 S. Ct. at 2458 (quotation omitted); *see also* 42 U.S.C. § 1396a(a)(10)(A)(i) (requiring a state plan to cover certain categories of individuals). "The categorically needy are those who qualify for public assistance under the Supplemental Security Income (SSI) program or other federal programs." *Lewis v. Alexander*, 685 F.3d 325, 332 (3d Cir. 2012); *see also* 42 C.F.R. § 435.4 (2020) (defining "categorically needy"). States may elect to also provide coverage to the "medically needy." *Atkins*, 477 U.S. at 157, 106 S. Ct. at 2459; *see also* 42 U.S.C. § 1396a(a)(10)(C). The medically needy are those who, while not categorically needy, may be eligible for Medicaid because their income and other resources are within limits set by a state under its medical-assistance plan. 42 C.F.R. § 435.4 (defining "medically needy"); *see also Schmalz*, 945 N.W.2d at 51 (describing the "medically needy" as those who "incur medical expenses in an amount that effectively reduces their income to roughly the same position as those" who qualify as categorically needy).

In Minnesota, to be deemed medically needy, and therefore eligible for medical assistance, generally an individual must own no more than $3,000 in countable assets and have an income not exceeding certain defined thresholds. *Schmalz*, 945 N.W.2d at 51

[4] The American Rescue Plan Act §§ 9811(a)(2), 9812(a) (2021), amended parts of 42 U.S.C. § 1396a, but those amendments are not relevant for purposes of this appeal.

(quotation omitted); *see* Minn. Stat. § 256B.056, subds. 3(a), 4 (2020).[5] If an applicant has assets in excess of the limit, she must "spend down" those assets until they are at or below the asset limit to qualify for benefits. *In re Estate of Barg*, 752 N.W.2d 52, 59 (Minn. 2008) (quotation omitted). Here, the county determined that Geyen was not medically needy because, counting the irrevocable trust assets, her total assets exceeded the $3,000 asset limit.

When determining whether an applicant meets the asset limit, a state plan must treat assets in a trust established by the applicant in accordance with the provisions of 42 U.S.C. § 1396p. *See* 42 U.S.C. § 1396a(a)(18) (providing that "[a] [s]tate plan for medical assistance must . . . comply with the provisions of section 1396p of this title with respect to . . . treatment of certain trusts").[6] And 42 U.S.C. § 1396p treats trust assets differently depending on whether the trust is revocable or irrevocable. Assets in a revocable trust established by an individual are considered "available" to the individual. 42 U.S.C. § 1396p(d)(3)(A). Assets in an irrevocable trust established by an individual are considered "available" to the individual "if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual." *Id.* (d)(3)(B)(i). But, if the assets cannot benefit the individual, the corpus of the

[5] Minn. Stat. § 256B.056, subd. 3(b) (2020), provides an exception to the asset limit for persons aged 21 through 64, who are eligible for medical assistance under Minn. Stat. § 256B.055, subd. 15 (2020). No party suggests that this exception applies in this case.

[6] In a 1993 amendment, "Congress made a deliberate choice to expand the federal role in defining trusts and their effect on Medicaid eligibility." *Lewis*, 685 F.3d at 343. The amendment added the language requiring states to comply with section 1396p with respect to trusts. *Id.*

irrevocable trust shall be considered a transfer of assets by the individual as of the date of the establishment of the trust and payments from the trust after this date shall be disregarded. *Id.* (d)(3)(B)(ii).

In addition to following federal rules regarding treatment of trust assets, a state's methodology for determining Medicaid eligibility for the medically needy must be "no more restrictive" than the federal test used to determine eligibility for SSI. *See* 42 U.S.C. § 1396a(a)(10)(C)(i)(III) (providing requirements for a state's standard for determining who is medically needy). A state's methodology is "no more restrictive" than its federal counterpart "if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance." *Id.* (r)(2)(B). Central to this appeal is whether the county and then the commissioner properly denied Geyen's MA-LTC application on the basis that the funds held in the irrevocable trusts established by Geyen in 2011 were "available" to Geyen when she applied for MA-LTC in 2019 and thus were required to be counted in calculating whether Geyen met the asset limit for MA-LTC eligibility.

In Minnesota, a person whose application for MA-LTC is denied may appeal and receive a hearing before a human-services judge appointed by the commissioner. Minn. Stat. § 256.045, subds. 1, 3(a)(1) (2020). The human-services judge makes a recommendation to the commissioner, who issues the final decision. *Id.*, subd. 5 (2020). An applicant aggrieved by the commissioner's decision may appeal to district court. *Id.*, subd. 7 (2020). The district court's decision may in turn be appealed to this court. *Id.*,

subd. 9 (2020). With this background in mind, we turn to the specific issues raised in this appeal.

The commissioner raises jurisdictional and substantive arguments. We first address the jurisdictional arguments and conclude that the district court retained jurisdiction over Geyen's appeal after her death. We then address the commissioner's substantive arguments and conclude that the commissioner erred as a matter of law by determining that the irrevocable trust assets could be counted for purposes of determining Geyen's eligibility for MA-LTC.

I. The district court retained jurisdiction over Geyen's appeal following her death.

"Jurisdiction refers to a court's power to hear and decide disputes." *McCullough & Sons, Inc. v. City of Vadnais Heights*, 883 N.W.2d 580, 584 (Minn. 2016) (quotation omitted). We "review issues of jurisdiction de novo." *Minn. Dep't of Nat. Res. v. Chippewa/Swift Joint Bd. of Comm'rs*, 925 N.W.2d 244, 247 (Minn. 2019). The commissioner argues that the district court lacked jurisdiction over Geyen's appeal because she died before the district court decided the matter. The commissioner contends that Geyen's death deprived the district court of jurisdiction over the appeal because (1) no party was substituted in place of Geyen after her death, and (2) the issue became moot. We address the arguments in turn.

A. The failure to substitute a party following Geyen's death did not deprive the district court of authority to decide the appeal.

First, the commissioner argues that the district court did not have subject-matter jurisdiction over the appeal because "no party was substituted after [Geyen's] death."

"Subject-matter jurisdiction is a court's power to hear and determine cases of the general class or category to which the proceedings in question belong." *Bode v. Minn. Dep't of Nat. Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999) (quotation omitted), *aff'd*, 612 N.W.2d 862 (Minn. 2000). "Whether a court has subject-matter jurisdiction to hear and determine a particular class of actions and the particular questions presented generally depends on the scope of the constitutional and statutory grant of authority to the court." *McCullough & Sons, Inc.*, 883 N.W.2d at 585 (quotation omitted). Because Minn. Stat. § 256.045, subd. 7, authorizes the district court to hear appeals from the commissioner's MA-LTC eligibility determinations, we are not faced with an issue of subject-matter jurisdiction.

Alternatively, the commissioner asserts that Geyen's counsel lacked "standing" to advance the appeal after her death. "Standing is the requirement that a party has a sufficient stake in a justiciable controversy to seek relief from a court." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). "Standing to appeal may be conferred by a statute or by the appellant's status as an aggrieved party." *In re Custody of D.T.R.*, 796 N.W.2d 509, 513 (Minn. 2011). A party's status as an aggrieved party depends on whether "there is injury to a legally protected right." *Id.* (quotation omitted). Here, Geyen became an aggrieved party when the commissioner denied her application for MA-LTC. Further, Geyen was alive when her appeal was filed in district court. We are thus not faced with an issue of standing. Rather the issue, properly construed, is whether the district court

lost authority to decide the appeal following Geyen's death because no party was substituted in her place.[7]

Under the rules of civil procedure, "[i]f a party dies and the claim is not extinguished or barred, the court may order substitution of the proper parties." Minn. R. Civ. P. 25.01(a). The absence of a motion to substitute under rule 25.01 does not justify dismissal of the action because the rule "does not limit the time within which the motion to substitute must be made." *Witthuhn v. Durbahn*, 157 N.W.2d 360, 361 (Minn. 1968). Because the rule includes no time limit, a party can "make such a motion [for substitution] on remand if her position is upheld on the merits." *Id.* Accordingly, the lack of a motion for substitution does not justify dismissal of an appeal. *Id.* And the commissioner does not argue that Geyen's death extinguished her appeal. Thus, while Geyen's attorney should have moved to substitute a new party in Geyen's place following her death, his failure to do so did not deprive the district court of jurisdiction over the action.

In arguing otherwise, the commissioner cites *Glaze v. State*, 909 N.W.2d 322 (Minn. 2018). The commissioner's reliance on *Glaze* is misplaced because *Glaze* involved a criminal matter and addressed a different legal issue. In *Glaze*, the supreme court considered whether attorneys representing a criminal defendant had standing to bring an appeal on behalf of the defendant *after* the defendant died. 909 N.W.2d at 325. The supreme court dismissed the appeal as "nonjusticiable," concluding that the defendant's attorneys lacked standing to appeal because they did not represent an aggrieved party. *Id.*

[7] For the purposes of this appeal, we have continued to refer to the respondent as Geyen because she is the named party and no other person has been substituted.

at 326-27. In *Glaze*, the supreme court discussed *Witthuhn* and recognized the distinctions between the two cases. The supreme court noted that *Witthuhn* established that the absence of a motion to substitute after the death of a party in a civil matter does not justify the district court's order for dismissal because rule 25.01 "does not limit the time within which the motion to substitute must be made." *Id.* at 327 (quoting *Witthuhn*, 157 N.W.2d at 361). We see no reason why the rule announced by *Witthuhn* should not apply here. Because Geyen was alive when she filed her appeal of the commissioner's decision in district court, and because there is no deadline for party substitution under Minn. R. Civ. P. 25.01(a), we reject the commissioner's claim that the district court lost jurisdiction to decide Geyen's appeal when no substitution was made following her death.[8]

B. The appeal did not become moot on Geyen's death.

Second, the commissioner argues that the district court "lacked jurisdiction to decide the underlying issue" because, following Geyen's death, her appeal "was moot." Geyen contends that the appeal before the district court was not moot because the trusts sustained "real damages" as a result of the commissioner's denial of Geyen's MA-LTC application.

"[T]he general rule is that when, pending appeal, an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal should be dismissed as moot." *In re Application of Minnegasco*, 565 N.W.2d 706, 710

[8] This case is also distinguishable from *Glaze* in that the commissioner—rather than the attorney for the deceased party—appealed to this court. The commissioner has standing to appeal the district court's reversal of her eligibility determination, and thus we have jurisdiction over this appeal notwithstanding Geyen's death.

(Minn. 1997). But "[t]he mootness doctrine is not a mechanical rule that is automatically invoked whenever the underlying dispute between the parties is settled or otherwise resolved." *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015). Instead, it is a "flexible discretionary doctrine" that should be applied where "a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Id.* at 4-5 (quotation omitted). Where an issue is "functionally justiciable and of public importance and statewide significance," even if it is technically moot, a court should decide the case. *Schmalz*, 945 N.W.2d at 49 n.3 (addressing whether the supreme court had jurisdiction over the case). "A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making." *State v. Rud*, 359 N.W.2d 573, 576 (Minn. 1984). And a case presents an issue of public importance and statewide significance where it involves an issue of public concern and further harm could occur if the court were to wait for a future case to present the issue. *See In re Guardianship of Tschumy*, 853 N.W.2d 728, 738-41 (Minn. 2014) (discussing cases, including *Tschumy*, that present an issue of public importance and statewide significance).

This case closely parallels *Schmalz*, which also involved a medical-assistance-eligibility determination and the death of the named party during the proceedings. 945 N.W.2d at 48-49, 49 n.3. The supreme court reasoned that the case was "functionally justiciable" because the issue required de novo review and had been adequately briefed and argued by the parties. *Id.* at 49 n.3. The supreme court then reasoned that the issue was of "public importance and statewide significance" because it

implicated "estate planning on the individual level and the expenditure of monies at the state level." *Id.* The supreme court thus concluded that it had "jurisdiction to decide the case on its merits." *Id.*

Similar to *Schmalz*, the issue of whether Geyen was eligible for MA-LTC was briefed and argued by the parties on the merits and involves issues of law. *See, e.g.*, *White Bear Lake Restoration Ass'n ex rel. State v. Minn. Dep't of Nat. Res.*, 946 N.W.2d 373, 379 (Minn. 2020) (stating issues of statutory interpretation are questions of law); *In re Stisser Grantor Trust*, 818 N.W.2d 495, 502 (Minn. 2012) (indicating that interpretation of a trust agreement presents a question of law). And the issue is of public importance and statewide significance because it also implicates "estate planning on the individual level and the expenditure of monies at the state level." *Schmalz*, 945 N.W.2d at 49 n.3. Therefore, assuming without deciding that Geyen's appeal became technically moot on her death, her appeal remained functionally justiciable and the district court properly reached the merits of the case.

In sum, we are not persuaded by either of the commissioner's arguments that the district court lacked jurisdiction over the appeal. Because we conclude that the district court retained jurisdiction, we now consider whether the district court erred by reversing the commissioner's decision that Geyen was ineligible for MA-LTC.

II. The commissioner's determination that Geyen was ineligible for MA-LTC was legally erroneous.

In an appeal from the denial of medical-assistance benefits, we focus on the commissioner's decision, which we independently review without deferring to the ruling

of the district court. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784-85 (Minn. 2016). We may reverse only when the challenging party establishes that the agency's decision was "(a) in violation of constitutional provisions; (b) in excess of the statutory authority or jurisdiction of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) unsupported by substantial evidence in view of the entire record as submitted; or (f) arbitrary or capricious." *Schmalz*, 945 N.W.2d at 50 (citing Minn. Stat. § 14.69 (2020)). With this standard in mind, we consider whether the commissioner erred by concluding that the trust assets were available to Geyen for purposes of determining her eligibility for MA-LTC.

The commissioner contends that it was appropriate to consider the trust assets as resources available to Geyen in determining whether Geyen was eligible for MA-LTC. The commissioner makes two independent arguments in support of her position. The commissioner first argues that the trust assets were "available" under federal law for purposes of determining Geyen's MA-LTC eligibility because, in the commissioner's view, the terms of the trust agreements allowed the assets to be used for Geyen's benefit. The commissioner next argues that, even if the irrevocable trust assets were not available assets under federal law, the trusts became revocable—and thus the trust assets became available to Geyen—by operation of state law. And the commissioner disputes Geyen's argument, and the district court's conclusion, that the state law is preempted by federal law.

A. The trust funds were not available under federal law.

Under federal law, the determination of whether assets in an irrevocable trust established by an individual are considered available to the individual for Medicaid-eligibility purposes depends on whether any portion of the trust may be distributed back to or used for the benefit of the individual. Section 1396p provides that assets in an irrevocable trust established by an individual are available for purposes of Medicaid eligibility as follows:

> [I]f 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, or the income on 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) (emphasis added). But if "no payment could under any circumstances be made to the individual," then the assets of an irrevocable trust are not available for Medicaid-eligibility purposes. *Id.* (d)(3)(B)(ii).[9] Such assets are considered "disposed [of] by the individual" as of the date that the trust was established.[10] *Id.*

Courts have interpreted the "any circumstances" language in 42 U.S.C. § 1396p(d)(3)(B)(i) broadly. *See, e.g.*, *Daley v. Sec'y of Exec. Office of Health & Human Servs.*, 74 N.E.3d 1269, 1274 (Mass. 2017) (explaining that "[t]he effect of the [any

[9] Certain types of trusts are exempted from the "any circumstances" test, but none of the exemptions are applicable here. 42 U.S.C. § 1396p(d)(4).

[10] A 60-month "look-back" period applies to the establishment of such a trust, meaning that an applicant who transfers assets into an irrevocable trust is ineligible for medical assistance for 60 months following the creation of the trust. 42 U.S.C. § 1396p(c)(1)(A), (B)(i). Here, the "look-back" period had lapsed because Geyen transferred assets to the trusts in 2011, more than five years before she applied for MA-LTC in 2019.

circumstances] test is that if the trustee is afforded even a peppercorn of discretion . . . the entire amount that the applicant could receive" is counted as income (quotation omitted)). If the trustee has any "leeway to respond to emergency and unexpected circumstances, the total amount available to be paid to address such circumstances is counted as fully available to the grantor." 2 Harvey L. McCormick, *Medicare and Medicaid Claims and Procedures* § 27:6 (4th ed. 2020) (quotation omitted). Courts look to the terms of the trust agreement in determining whether there are any circumstances under which payment from the trust could be made to or for the benefit of the individual. *See, e.g.*, *Daley*, 74 N.E.3d at 1276-81 (interpreting trust agreements to determine whether payment could be made to benefit individual under any circumstances).

In the order denying Geyen's application for MA-LTC, the commissioner applied the irrevocable-trust language in 42 U.S.C. § 1396p(d)(3)(B). The commissioner examined the language of the trusts to determine whether there were "any circumstances where payment from the trust[s] could be made" to or for the benefit of Geyen. The commissioner recognized that the trust agreements precluded the trustees from making gifts or loans to Geyen. But the commissioner concluded that other provisions of the trust agreements "do not appear to preclude payments being made to" Geyen. On that basis, the commissioner concluded that the trust assets were available to Geyen for purposes of MA-LTC eligibility.

Geyen argues that the commissioner's interpretation of the trust agreements is erroneous. According to Geyen, the trust agreements are "clear and unambiguous" that Geyen's intent "was to forever and unequivocally take assets of hers and put them beyond

her reach or benefit, much the same as if she were to have otherwise gifted assets at the time." Accordingly, Geyen contends that the commissioner erred by concluding that the trust assets were available to Geyen for medical-assistance-eligibility purposes under 42 U.S.C. § 1396p(d)(3)(B).

When reviewing an agency's decision, "we are not bound by the decision of the agency and need not defer to agency expertise" in resolving questions of law. *Schmalz*, 945 N.W.2d at 50. We review the agency's interpretation of written documents de novo, which here are the trust agreements. *Stisser*, 818 N.W.2d at 502. In construing a trust agreement, our purpose is to "ascertain and give effect to the grantor's intent." *Id.* We must consider the grantor's "dominant intention, which we must gather from the instrument as a whole, not isolated words." *Id.* (quotation omitted). "When the trust agreement is unambiguous, we will ascertain the grantor's intent from the language of the agreement, without resort to extrinsic evidence." *Id.*

With this standard in mind, we review the identical relevant provisions of Trust A and Trust B. The trust agreements provide that Geyen "irrevocably transferred or will transfer" cash or other assets to each trust. The trust agreements specify that Geyen's children and grandchildren are the beneficiaries of the trusts. Geyen was not a beneficiary. The trust agreements further specify in Article 1, paragraph 4 that the "Trustee may *not* loan any assets to Grantor." (Emphasis added.) Similarly, the agreements provide in Article 2, paragraph 22 that "Trustee may *not* make gifts to Grantor." (Emphasis added.) These provisions of the trust agreements evidence Geyen's intent that she, as the grantor, not benefit in any manner from the trusts.

Notwithstanding the language of these provisions, the commissioner contends that other language in the trust agreements—most of which was cited in the commissioner's order—indicates that the trust assets could have been used to benefit Geyen. First, the commissioner argues that the "general language" of Article 2 of the trust agreements supports the conclusion that the funds could have been used to benefit Geyen. That language states that the "Trustee will have full power and authority to control and manage the Trust Estate . . . and to do all acts and things which Trustee, in the exercise of Trustee's absolute and uncontrolled discretion, may deem needful, desirable, or expedient . . . ." But in that same paragraph, the trustees' "full power" is qualified by the language "except as may be specifically required elsewhere in this Agreement." Because the trust agreements specifically prohibited the trustees from making gifts and loans to Geyen, we conclude that the general language of Article 2 did not authorize the trustees to use the trust assets in a manner that could benefit Geyen.

Second, the commissioner argues that paragraphs 8 and 13 of Article 2 include language that "could allow the trustees" to use the trust funds to benefit Geyen. Paragraph 8 allows the trustees to allocate all or any part of trust receipts, including "rents, capital gains, and dividends in cash, stock, or property" between income and principal. This paragraph does not authorize or contemplate any payments to Geyen (or anyone else). Paragraph 13 enables the trustees "whenever required or permitted to divide or distribute any trust property." But no language in this paragraph authorizes the trustees to divide or distribute property to Geyen, who was not a beneficiary of the trusts. And paragraphs 8 and 13 both include the qualifying language "[u]nless inconsistent with other provisions of

this instrument." In light of the provisions banning gifts and loans to Geyen in "other provisions," we conclude that paragraphs 8 and 13 do not support the commissioner's position.

Third, the commissioner argues that paragraph 23 of Article 2 allows the trustees to use the funds to benefit Geyen. Paragraph 23 of Article 2 allows the trustees to "enter into one or more irrevocable annuity agreements." But the commissioner does not explain how the ability to enter into irrevocable annuity agreements could have been used to benefit Geyen. This paragraph provides no support for the commissioner's position.

Fourth, the commissioner argues that paragraph 24 of Article 2 allows the trustees to use the funds to benefit Geyen. This paragraph empowers the trustees "[t]o do any and all things *not inconsistent with* the foregoing powers and authority which Trustee may deem necessary, advisable, or expedient in the administration of the Trusts created in this Agreement." (Emphasis added.) Here again, the language of the paragraph prohibits actions that are inconsistent with other provisions of the trust, including the provisions banning gifts and loans to Geyen.

Reading the trust agreements as a whole and giving effect to the grantor's intent, we conclude that none of the provisions relied on by the commissioner allow payments from the trusts to Geyen or payments for her benefit. In other words, reading the trust agreements as a whole, there are no circumstances under which any payment could have been made to or for the benefit of Geyen. Because the trust agreements precluded such payments, the commissioner erred by concluding that the funds were available under

42 U.S.C. § 1396p(d)(3)(B) for purposes of determining whether Geyen was eligible for MA-LTC.

We are not persuaded otherwise by the commissioner's argument that the trust assets were available to Geyen because one of the trustees ultimately liquidated the trust assets to pay Geyen's outstanding care-facility bill. The commissioner contends that the payment to the care facility was not a prohibited gift or loan because the trustee made the payment "directly" to the care facility. Essentially, the commissioner argues that the payment was not prohibited by the trust agreements because it "was not the delivery of a gift to [Geyen], nor was there any apparent intent to make a gift."

The commissioner's argument is misplaced. First, the record shows that the trustee *did not* pay the care facility directly. Rather, the trustee first deposited the money into Geyen's checking account and then paid the care facility. Second, the deposit of funds into Geyen's bank account and subsequent payment of the outstanding care-facility bill with those funds was a gift, albeit a prohibited gift, to Geyen. A gift is "[s]omething that is bestowed voluntarily and without compensation." *The American Heritage Dictionary of the English Language* 741 (5th ed. 2018). The trustee's deposit of the trust funds was voluntarily bestowed to Geyen with no expectation that Geyen would be able to repay the funds. And the trustee depositing the funds into Geyen's bank account shows donative intent and delivery. *See Barnier v. Wells*, 476 N.W.2d 795, 797 (Minn. App. 1991) (concluding that payments received met legal elements of a gift). In her affidavit, the trustee recognized that she violated the trust agreements by making this gift, but felt that she had no choice because the care facility threatened to evict Geyen. Because the trust

agreements prohibited the payment of trust funds to Geyen, the payment itself does not support the conclusion that the funds were available to Geyen under the terms of the trust agreements. And, even if the trustee had paid the care facility directly, that payment likewise would have been a prohibited gift to Geyen because the payment was for a debt that Geyen owed and the payment was voluntarily bestowed by the trustee without compensation. The commissioner's argument to the contrary is unconvincing.

The commissioner also argues that if Geyen's "intent was for the trusts to not be able to pay for the costs of her long-term care, the trusts could have explicitly stated so." The commissioner cites *In re Carlisle Trust* as an example of trust language that explicitly stated an intent for the trust assets to not supplant medical assistance. 498 N.W.2d 260 (Minn. App. 1993). But, in *Carlisle*, the trustee had discretion to "make distributions" to the grantor provided that the distributions were made "only to supplement and not to supplant such public assistance available for maintenance, health care or other benefits." *Id.* at 265. Where the trustee has the ability to make distributions to the grantor, such limiting language serves a purpose. But here, where the trust agreements are intended to prevent any payments under any circumstances to the grantor, language specifically forbidding payments for long-term care would be redundant.

In sum, because the trust agreements did not permit the trustees to make payments to or for the benefit of Geyen under any circumstances, the commissioner erred by concluding that the trust funds were available to Geyen under 42 U.S.C. § 1396p(d)(3)(B). And the eventual payment from the trusts to Geyen to satisfy her care-facility bill does not disturb this conclusion because that payment was not authorized by the trust agreements.

As a result, the commissioner's decision that the assets from the irrevocable trusts were countable for MA-LTC-eligibility purposes under 42 U.S.C. § 1396p(d)(3)(B) was affected by an error of law.

B. The trust funds were not available by operation of state law because federal law preempts the state statute that purports to convert certain irrevocable trusts to revocable trusts.

The commissioner next argues that even if the trust funds were not available to Geyen under the provisions of federal law applicable to irrevocable trusts, the trusts "actually became revocable" by "operation of Minnesota law" when Geyen applied for MA-LTC and that the funds were available to Geyen on that basis.[11] We consider first whether the state law in question, Minn. Stat. § 501C.1206(b), caused Geyen's trusts to become revocable and second whether this state statute is preempted by federal law.

1. *The State Statute*

The interpretation of a statute is a question of law that this court reviews de novo. *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 590 (Minn. 2021). The object of this inquiry "is to ascertain and effectuate the intention of the legislature." *Id.* (quotation omitted). "If the legislative intent is clear, we apply the statute according to its plain meaning." *Id.* (quotation omitted).

[11] While the county relied on section 501C.1206, the commissioner's order was not based on this legal theory. Instead, the commissioner advanced this legal theory before the district court as an alternative ground for affirming the commissioner's order. The district court considered the commissioner's argument and rejected it, concluding that the state law was preempted by federal law. Because the district court decided the issue, we consider the commissioner's alternative theory on appeal as well.

Minn. Stat. § 501C.1206(b) provides that when a state or local agency makes a determination on an individual's application for "long-term care services" provided by the state's medical-assistance program, "any irrevocable inter vivos trust . . . created on or after July 1, 2005, containing assets or income of an individual or an individual's spouse . . . becomes revocable for *the sole purpose of* that determination." (Emphasis added.)[12] The commissioner argues that, by operation of section 501C.1206(b), the irrevocable trusts established by Geyen in 2011 became revocable for purposes of determining her eligibility for MA-LTC upon her application in 2019. And based on the operation of section 501C.1206(b), the commissioner contends that the trusts should be treated as revocable trusts rather than irrevocable trusts under federal law for purposes of determining Geyen's eligibility for MA-LTC. The commissioner further contends that, because the corpus of a *revocable* trust is considered "available to the individual" under 42 U.S.C. § 1396p(d)(3)(A)(i), the trust funds were properly considered resources available to Geyen for purposes of determining her eligibility for MA-LTC.

We agree that section 501C.1206(b) plainly provides that certain irrevocable trusts "become[] revocable for the sole purpose of" determining MA-LTC eligibility and thereby purports to make those trust funds available for MA-LTC eligibility purposes. But that

[12] For purposes of section 501C.1206, the term "long-term care services" has the meaning given in Minn. Stat. § 256B.0595 (2020), dealing with medical assistance. That statute defines "long-term care services" to include services in a nursing facility, certain intermediate-care-facility services, and certain home and community-based services including those provided pursuant to elderly waiver. Minn. Stat. § 256B.0595, subd. 1(g).

conclusion does not end our analysis. The question then becomes whether section 501C.1206(b) is preempted by federal law.

2. *Preemption*

Under the Supremacy Clause, the federal government may preempt state law. U.S. Const. art. VI, cl. 2 (stating that the "Laws of the United States" are "the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"). Congress may preempt state law in one of three ways: "by express provision, by implication, or by a conflict between federal and state law." *DSCC v. Simon*, 950 N.W.2d 280, 287-88 (Minn. 2020) (quotation omitted). Only conflict preemption can exist in the Medicaid context because, by leaving room for state action, Congress has neither expressly nor impliedly preempted state law. *Barg*, 752 N.W.2d at 63. "Conflict preemption occurs when compliance with both state and federal laws is impossible, or when the state law is an obstacle to the accomplishment of Congress's purpose and objectives." *Simon*, 950 N.W.2d at 288 (quotation omitted).

"Whether federal law preempts state law is primarily an issue of statutory interpretation, which we review de novo." *Barg*, 752 N.W.2d at 63. The "ultimate touchstone" of the preemption inquiry is congressional intent. *Id.* (quotation omitted). Though preemption is disfavored, a court will determine a state law is preempted if it conflicts with federal law and the court is "not able to ascertain an appropriate limiting construction." *Martin ex rel. Hoff v. City of Rochester*, 642 N.W.2d 1, 16 (Minn. 2002). In the context of Medicaid eligibility, state programs "must comply with requirements of federal statutes and regulations." *Schmalz*, 945 N.W.2d at 50.

One such requirement of federal law is that state Medicaid plans comply with the provisions of section 1396p with respect to the treatment of trusts. 42 U.S.C. § 1396a(a)(18). As discussed above, that federal law provides for different treatment of revocable and irrevocable trusts established by an individual in determining eligibility for Medicaid coverage. For *revocable* trusts, the corpus of the trust shall be considered available to the individual for eligibility purposes. 42 U.S.C. § 1396p(d)(3)(A)(i). But, for *irrevocable* trusts that cannot benefit the individual, states are required to *exclude* the trust corpus from consideration in determining eligibility for Medicaid. *Id.* (d)(3)(B)(ii). Minnesota law, however, mandates that an irrevocable trust "becomes revocable" for MA-LTC-eligibility purposes when an applicant applies for MA-LTC if the irrevocable trust was created on or after July 1, 2005, and contains assets of the applicant (or the applicant's spouse). Minn. Stat. § 501C.1206(b). By deeming irrevocable trusts to be revocable "for the sole purpose of [the MA-LTC] determination," section 501C.1206(b) conflicts with the federal requirements governing the treatment of irrevocable trusts. And, as a result, the Minnesota statute stands as an obstacle to Congress's intent regarding the treatment of irrevocable trusts for Medicaid-eligibility purposes.

Section 501C.1206(b) also conflicts with the federal mandate that the eligibility requirements for state medical-assistance programs must be "no more restrictive" than the requirements for eligibility under federal law. 42 U.S.C. § 1396a(a)(10)(C)(i)(III); *see Geston v. Anderson*, 729 F.3d 1077, 1079, 1081-83 (8th Cir. 2013) (analyzing whether a state methodology was more restrictive than federal eligibility requirements). A program requirement is considered "no more restrictive" if "additional individuals may be eligible

for medical assistance and *no individuals who are otherwise eligible are made ineligible for such assistance*." 42 U.S.C. § 1396a(r)(2)(B) (emphasis added). By virtue of section 501C.1206(b), Minnesota law is more restrictive than the federal law regarding the counting of assets contained in an irrevocable trust for eligibility purposes. Federal law precludes counting assets in an irrevocable trust established by an applicant under certain circumstances. 42 U.S.C. § 1396p(d)(3)(B)(ii). But section 501C.1206(b) requires those same assets in an irrevocable trust created by an applicant on or after July 1, 2005, to be counted toward the asset limit. This provision of state law renders ineligible applicants who established irrevocable trusts after July 1, 2005, and who otherwise would be eligible under federal law.

Thus, section 501C.1206(b) is a more restrictive methodology than its federal counterpart because individuals who would otherwise be eligible under federal law are deemed ineligible by operation of the state statute. *See* 42 U.S.C. § 1396a(r)(2)(B) (defining "no more restrictive" methodology). And we are unable to ascertain a limiting construction that would avoid this conclusion because section 501C.1206(b) directly conflicts with the federal rules governing assets in irrevocable trusts. *See Martin*, 642 N.W.2d at 16 (concluding that no limiting instruction was possible where the state law was in "direct conflict" with a "clear and broad" rule of federal law). Accordingly, we agree with the district court that Minn. Stat. § 501C.1206(b) conflicts with and is therefore preempted by federal law.

The commissioner's argument to the contrary is unavailing. The commissioner argues that there is no conflict between state and federal law because Minn. Stat.

§ 256B.056 (2020), not Minn. Stat. § 501C.1206, governs eligibility for medical assistance. The commissioner notes that Minn. Stat. § 256B.056, subd. 3b(b), requires trusts to be treated in accordance with 42 U.S.C. § 1396p(d) for purposes of MA-LTC determinations and therefore argues that state law accords the same treatment to trusts as federal law for MA-LTC-eligibility purposes. The commissioner further contends that "section 501C.1206(b) merely makes irrevocable trusts revocable . . . as a matter of state property law."

The commissioner's argument ignores that section 501C.1206(b) provides that certain irrevocable trusts "become[] revocable for the *sole* purpose of" MA-LTC eligibility determinations. (Emphasis added.) By providing that certain irrevocable trusts become revocable, section 501C.1206(b) by its terms is designed to interfere with the application of the provisions of 42 U.S.C. § 1396p(d) dealing with irrevocable trusts. Thus, notwithstanding the language of Minn. Stat. § 256B.056, subd. 3b(b), irrevocable trusts subject to section 501C.1206(b) will not be treated according to 42 U.S.C. § 1396p(d) if section 501C.1206(b) is allowed to operate. As a result, Minn. Stat. § 256B.056 does not cure the conflict that exists between section 501C.1206(b) and 42 U.S.C. § 1396p(d)(3)(B) for MA-LTC-eligibility purposes.

Further, we are not persuaded otherwise by the commissioner's contention that section 501C.1206(b) does not conflict with federal law because it is a "matter of state property law." A similar argument has previously been considered and rejected by a federal court. In *Lewis v. Alexander*, Pennsylvania government officials argued that a Pennsylvania statute governing so-called "special needs trusts" was not preempted by the

"no-more-restrictive rule" established in 42 U.S.C. §§ 1396a(a)(10)(C)(i)(III) and 1396a(r)(2)(B) because the Pennsylvania statute was "not directed toward Medicaid eligibility but rather represent[ed] part of Pennsylvania's general regulations of trusts." 276 F.R.D. 421, 429, 437 (E.D. Pa. 2011), *aff'd in part and rev'd in part on other grounds*, 685 F.3d 325 (3d Cir. 2012). While recognizing that this argument was "superficially appealing," the district court reasoned that the Pennsylvania statute was "not exempt from a preemption analysis simply because it is a law regulating state trusts." *Id.* at 437-38. The district court explained that, regardless of how a state statute is framed, a state statute is preempted wherever "it is impossible to comply with both the federal and state law" or "the state law frustrates Congressional intent." *Id.* On appeal, the Third Circuit affirmed the district court's reasoning in relevant part. *Lewis*, 685 F.3d at 346-51 (noting that Congress's intent is the ultimate touchstone of preemption analysis and concluding several provisions of the state statute were preempted). Similarly, section 501C.1206(b) is not exempt from a preemption analysis simply because it involves the regulation of trusts.

The plain language of section 501C.1206(b) demonstrates that the statute does more than merely make "irrevocable trusts revocable . . . as a matter of state property law" as argued by the commissioner. Section 501C.1206(b) is part of Minnesota's methodology for determining MA-LTC eligibility notwithstanding that it is codified in chapter 506, dealing with property, rather than chapter 256B. The commissioner's argument to the contrary elevates form over substance, and we reject it.

In sum, Minn. Stat. § 501C.1206(b) conflicts with Congress's intent regarding the treatment of irrevocable trusts under federal law for purposes of determining an

individual's eligibility for Medicaid benefits, including MA-LTC, and is therefore preempted.

DECISION

Because Geyen's death did not deprive the district court of jurisdiction to decide her appeal of the commissioner's order denying her application for MA-LTC, the district court did not err by reaching the merits of her appeal. And, because the trust agreements did not authorize payments from the trust to or for the benefit of Geyen, and because Minn. Stat. § 501C.1206(b) is preempted by federal law, the district court did not err by concluding that the commissioner's determination that Geyen was ineligible for medical assistance was affected by an error of law. We affirm the district court's decision, but because no party was substituted for Geyen following her death, we remand to the district court to allow for a motion to substitute a party in place of Geyen.

Affirmed and remanded.