No. 19-7538

IN THE

SUPREME COURT of the UNITED STATES

ORIGINAL

PETITIONERS VICTORIA CARLSON, ET VIR,

v.

JODI HARPSTEAD, in her official capacity as Commissioner of the Minnesota Department of Human Services, et al.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

**PETITION FOR WRIT OF CERTIORARI**

Stephen and Victoria Carlson pro-se
P.O. Box 4032
St. Paul, MN 55101

## Question Presented For Review

1) Whether the applicable "plain and unambiguous" language in light of *Hauser v. IdahoDWP* and of Congress's federal statute 42 U.S.C. 1396a(aa) and 42 U.S.C. § 1396a(a)(10)(G)(XIV) ("BCCPTA"), or conforming Minnesota state Legislature's statute Mn.Stat.256B.057 Subd.10(a)-(c) ("MA-BC") requires--or even allows--removal of Victoria as a patient in these government breast cancer treatment payment programs from her Medicaid MA-BC coverage (i) after her husband's 65th birthday in July 2016 when it was terminated; (ii), on her 65th birthday November 11, 2016 when respondents say it could or should have been terminated; or (iii) on July 1, 2017 to the present, when she has not yet finished receiving her required cancer treatment. In light of *Kizor* and *Azar*, should a state agency like MDHS be deferred to so much that they try to use the funds of a federal program to overcome want of local funds endangering patients?

2) Whether in reviewing the appeal of the termination of MA-BC and transfer to the medical assistance for the elderly by the Ramsey County respondents or Minnesota DHS under the state's Administrative Procedures Act Mn.Stat.14.69, DHS and the state courts violated the federal Medicaid requirement for a fair hearing 42 U.S.C. 1396(a)(3), and the constitutionally required procedural due process under the 14th Am. Due Process Clause as set forth in this Court's *Goldberg v. Kelly, Regents v. Roth; Pediatric Specialties v. ADHS* (8th Cir.) and related cases when they deprived Petitioners of their right to prior notice of the county's action and the county's reasons for transferring Victoria and her spouse to a harsh spenddown to 20% below cash-poor level each month instead of her cancer treatment coverage. Whether Minnesota's post-deprivation proceedings, relying on *Matthews v. Eldrige* and various Minnesota due process practices have substantially remedied that initial flawed procedure which deprived Victoria of her statutory entitlement and Constitutional and fundamental rights?

3) Whether Petitioners under the APA may pursue remedies for violation of federal Constitutional rights under 42 U.S.C. §1983 for damages (against the Ramsey county respondents); or for declaratory or injunctive relief (against the Minnesota DHS) for violation of constitutional rights--14th Am. (procedural, substantive due process, equal protection, arbitrary and capricious denial and injury)--or privacy--in the administration of Victoria's MA-BC and BCCPTA coverage--and for requiring unwarranted payments for her cancer treatment from both Victoria and Stephen down to 80% of poverty income monthly to get benefits? Is Minnesota and Ramsey County by §1983 required to pay Victoria right now her MA-BC benefits, and other damages to be determined in further proceedings?

# TABLE OF CONTENTS

(a) Questions presented for review **p. 1**
(b) List of all parties to review **p. 2**
(c) Table of contents and table of authorities Tables p. 1
Table of Authorities **Tables p. 2**
(d) Citations reports of the opinions and orders entered in the case by courts or administrative agencies. **P. 2**
(e) Basis of jurisdiction for this Court **p. 3**
(f) Constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation. **P. 4**
(g) Concise statement of the case
Overview **p. 5**
Some procedural background **p. 5**
Statutory Analysis **p. 10**
The damage of overreaching deference **p. 13**
Procedural due process, deprivation, abuse by government; Equal protection **p. 16**
(h) Direct and concise argument amplifying reasons relied on for allowance of the writ. **p. 22**
Minnesota's Administrative Procedure Act **p. 25**

(i) Appendix

**Appendix i(i)**

In re Victoria and Stephen Carlson, (A18-1380 MNApp.2019) **Pet.App.la15a**
In re Victoria and Stephen Carlson (A18-1380 Minn. 2019)
October 29, 2019 Denial of Petition for Review, **Pet.App.16a**
Final Decision of MN Dept of Human Services June 8, 2017
(Case No. 185231) **Pet.App.17a21a**
Victoria Carlson and Stephen Carlson v. CommsnrMNDHS, etal.
62-CV-17-4889 (RamseyCty Dist.Ct.2018) **Pet.App.22a33a**
*In re Victoria & Stephen Carlson* **Pet.App34a37a**
(A18-1578) (Mn.App.2018)

**Appendix i(ii)**

State Agency Appeals Summary Nov. 16, 2016 **Pet.App.38a40a**
June 15, 2017 notice of action; Comments **Pet.App.41a43a**
Respondent Teryl J. Nelson Notice of Action July 31, 2017 **Pet.App.44a**

Respondent Teryl J Nelson July 5, 2017 notices refusing appeal and payment in response to June 23, 2017 appeal of June 15, 2017 notice of termination of MA-BC benefits July 1, 2017 **Pet.App.45a47a**
Assoc MNDHS General Counsel Brenda Kiepert-Hoithaus August 17, 2017 e-mail **Pet.App.49a**
Victoria and Stephen Carlson v. RamseyCty Community Human Services, DocketNo. 196420 (MNDHS August 30, 2017) **Pet.App.50a51a**

## Appendix (i)(v)

Relevant provisions Texts of U.S. Constitution relevant provisions
*14th Amendment, U.S. Const.* **Pet.App.1f**

Federal statutory texts relevant provisions
42 U.S.C. § 1396a(1) *Mandatory upon subdivision* **Pet.App.1f**
42 U.S.C. § 1396a(2) *Financial participation by State* **Pet.App.1f**
42 U.S.C. § 1396a(3) *Opportunity for a fair hearing* **Pet.App.1f**
42 U.S.C. § 1396a(4) *Methods of Administration* **Pet.App.1f2f**
42 U.S.C. § 1396a(10)(A) *Must Provide* **Pet.App.2f**
42 U.S.C. § 1396a(10)(B) *Amount, duration, scope duration* **Pet.App.2f**
42 U.S.C. § 1396a(a)(30)A *Equal Access Provision* **Pet.App.2f**
42 U.S.C. § 1396a(aa) *BCCPTA* **Pet.App.2f3f**
42 U.S.C. § 1396a(10)(G)(XIV) *Limitations Period of BCCPTA* **Pet.App.3f**
42 U.S.C. §§ 1396c(1),(2) *Compliance with 1396a* **Pet.App.3f4f**

Minnesota statutory texts relevant provisions
Minn.Stat.§ 256.045subd.(10) *Payments pending appeal* **Pet.App.4f**
Minn.Stat.§ 256.045subd.(5) *Orders of Commissioner* **Pet.App.4f**
Minn.Stat.§§ 256B.057subd.(10)(a)-(c) *MA-BC* **Pet.App.4f5f**
Minn.Stat.§ 256B.055subd.(7) MA-EP **Pet.App.5f**
Minn.Stat.§ 256.0451subd.(16) *Scope of hearing issues* **Pet.App.5f6f**
Minn.Stat.§ 256.0451subd.(3) *Agency Appeal Summary* **Pet.App.6f**
Minn.Stat.§ 256.0451subd.(17) *Burden of Persuasion* **Pet.App.6f**
Minn.Stat.§ 256B.05 *Adminstration by County Agencies* **Pet.App.6f7f**
Minn.Stat.§ 256.045subd.(3) *State agency hearings* **Pet.App.7f**

Federal regulatory texts relevant provisions
42CFR§431.220(a)(1) *State agy must grant oppty for hearing* **Pet.App.7f**
42CFR§432 *Adverse decision of local hearing* **Pet.App.7f**
42CFR§431.246 *Corrective Action* **Pet.App.7f**

42CFR§241 *Matters to be considered at the hearing* **Pet.App.7f8f**
42CFR§§431.206 *Informing applicants, recipients* **Pet.App.8f**
42CFR§§431.210 *Content of Notice* **Pet.App.8f**
42CFR§§431.242 *Procedural rights for applicant, recipient* **Pet.App.9f**

Minnesota regulatory texts relevant provisions
MR§§9505.0135 subp.1,3 *Local agency responsibility* **Pet.App.9f**
MR§§9505.0130 subp.1 *Fair Hearing* **Pet.App.9f**
MR§§9505.0130 subp.1 *Right to Appeal* **Pet.App.10f**
MR§§9505.0130 subp.1 *Appeal process* **Pet.App.10f**

## Appendix (i)(vi)

Petition for Review to Minnesota Supreme Court from MN.App. August 12, 2019 Decision. **Pet.App.52a67a**
Appeal 196240 June 23, 2017 fm 6-15 NOA **Pet.App.68a71a**
Supplementary Appeal 196240 June 27, 2017 **Pet.App.72a73a**
U.S. Supreme Court Correspondence April 30, 2019 **Pet.App.74a**
Affidavit in Support of motion to amend PFR to MN Sup. Ct. filed Dec. 7, 2018, denied Dec. 18, 2018 **Pet.App.75a80a**
Letter from Victoria's oncologist September 24, 2019 noting continuing breast cancer treatment **Pet.App.81a**
Bill and charges for cancer care during treatment **Pet.App.82a85a**
Letter from Victoria's Orthopedic specialist regarding mobility issues and work limitations during cancer treatment **Pet.App.86a**
Letter to creditors for radiology for x-rays for growth during cancer treatment, determined to be benign. **Pet.App.87a**
Bills from creditors for radiology for x-rays for growth during cancer treatment, (determined to be benign) and during ER visits **Pet.App.88a92a**
Bills from creditors ER visits **Pet.App.93a96a**
Excerpts April 12, 2017 submission ("Ex.4") Case. 185231 **Pet.App.1g4g**
Victoria and Stephen Carlson v. Comm'r MDHS et al., **Pet.App.4g6g**
62-CV-17-4889 Excerpts Motion for restoring payments on appeal of Case No. 185231 Nov. 14, 2017
Victoria and Stephen Carlson v. Comm'r MDHS et al., **Pet.App.6g7g**
62-CV-17-4889 Excerpts Motion for Injunctive and 1983 Relief in Case No. 185231 Mar. 2, 2018

Comm's Response to Petitioners" Petition for Peremptory Writ **Pet.App.7g8g**
Relevant excerpts from notices of appeal to district court, Statement of the Case to the Minnesota Court of Appeals **Pet.App.9g27g**

# TABLE OF AUTHORITIES

## State Statutes and proceedings

Minn.Stat.§256B.057subd.10(a)-(c).Certain persons needing treatment for breast or cervical cancer. 1,5,6,7,8,12,13,14,15,16,18,20,21,22,26

Minn. Stat. § 256B.057, subd. 10(a) (2018) 5,7,13,16,22

Minn. Stat. § 256B.057, subd. 10(b) (2018) 14,22

Minn.Stat.§§256.05 4,7,24

Minn.Stat.§256B.055subd.7(a) MA-EP statute 5,8,13,18,24

Minn. Stat. § 256B. 056 5,6

Mn.Stat.§14.65 *Stay of other appeals* 11

MnStat.§§14.63-14.68 11,28,29

Minn. Stat. §14.69 SCOPE OF JUDICIAL REVIEW ("APA") 1,16,28,29

Minn.Stat.§256.0451(17) 4

Minn.Stat.§256.0451(3) 4,9,16,21,22

Minn.Stat. §256.0451 subd. 16 Scope of issues address at hearing 5,6,17

Mn.Stat.§256.045Subd.(5) 4,6

Mn.Stat.§256.045Subd.(3) 4

Mn.Stat.§256.045Subd.(7) 6

Minn.Stat.§256.045Subd.(10)Payments pending appeal. 4,5,6

**Federal Statutes**

Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, 114 Stat. 1381; see also 42 U.S.C. § 1396a(aa) (2012) 1,7,10,12,13,22

42 U.S. 1983 Civil Rights Violation 1,17,19,29-31

42U.S.C.§1396c(1)(2) Effect of failing Medicaid requirements 4

42 U.S.C. § 1396a(a)(10)(G)(XIV) 1,4,6,7,10,12,13,22

§1396a(a)(10)(A),(B) 4

42 U.S. Section 1396a(a)(30)(A) - Equal access provision 4,13,17

42 U.S. Section 1396a(aa) 1,4

42 Title XIX to the Social Security Act, 42 U.S.C. §§ 1396 et seq. (Medicaid) 1,10,13

42U.S.C.§§1396a(1)-(4) 4

42 U.S.C. §1396a(3) Fair Hearing requirements 1

## Congressional Record

146 Cong. Rec. H2690 (daily ed. May 9, 2000) 13,27

https://www.congress.gov/crec/2000/05/09/CREC-2000-05-09.pdf 6, 7

## Federal Constitution


| | |
|---|---|
| Procedural Due Process Clause, U.S. Const. 14th Am. | 1,8,12,13,19,20,21 |
| Substantive Due Process Clause, U.S. Const., 14th Am. | 1,8,12,13,19 |
| Equal Protection Clause, U.S. Const., 14th Am. | 1,8,12,13,19 |
| Arbitrary and Capricious Clause, U.S. Const., 14th Am. | 1,8.12,13,19 |
| First, Third, Fourth, Fifth, and Ninth Amendments Right to Privacy,U.S.Const. | 1,4 |


## Minnesota Constitution


Article I, Sections 2, 7 and 10

Privacy


## Minnesota Supreme Court


*Mammenga v. MNDHS,* 442 N.W.2d 786 (1989) 23

*Women of State of Minnesota v. Gomez*, 542 N.W.2d 17 (1995)

*Thiele v Stich*, 425 N.W.2d 580 (Minn. 1988)

*Koronis Manor Nursing Home v. Dep't of Pub. Welfare*, 249 N.W.2d 448, 449 n.1, n.2 (Minn. 1976), 3 N.1,

*Resident v. Noot*, 305 N.W.2d 311, 313 (Minn. 1981), 3, N. 1


## State Courts of Appeals


*In re Victoria and Stephen Carlson*, A18-1380 (Minn. Ct. App. 2019) App.

*In re Victoria and Stephen Carlson*, A18-1578 (Minn. Ct. App. 2018) App. 6,26


## State District Cases


| | |
|---|---|
| Docket No. 185231 Case 1660448, Victoria and Stephen Carlson | 5,10,11,22 |
| Docket No. 196420 Case 1660448, Victoria and Stephen Carlson | 11,20,21,25 |

## Federal Regulations

§431.206 4

§ 431.210 Content of notice. 4,8-9,16

42CFR§§431.220(a)(1) 4

§431.232 4

§ 431.241 Matters to be considered at the hearing. 4

§ 431.246 Corrective action. 4

## State Regulations

Mn.R §§ 9505.0130 subp.1,3 4

Mn.R §§ 9505.0135 Subp. 1,2 4

Eligibility Procedures Manual (EPM) of DHS 5,21,24

## U.S. Supreme Court

*In re Victoria and Stephen Carlson vs. Tony Lourey, Commissioner, Minnesota Dept. of Human Services* 15

*Carlson, Stephen W. v. MN Dept. of Employment*,13-8124 U.S. (2014) 28

*Azar v. Allina Health Servs.*, No. 17-1484, 587 U.S. __, 2019 1,16,22

*Board of Regents v. Roth*, 408 U.S. 564 (1972) 1,14,16

*Kelly v. Wyman,* 294F.Supp.893,899,900(1968) 10

*Goldberg v. Kelly*, 397 U.S. 254 (1970) 8,9,12,14,16,20

*Kisor v. Wilkie*, No. 18-15, 588 U.S. ___ (2019) 1,16,22

*Perez v. Mortgage Bankers Assn.*, 575 U. S. 92, ___.

*Schweiker v. Hogan*, 457, U.S. 569, 598 (1982) 28

*Mathews v. Eldridge*, 424 U.S. 319 1,20,21

*Wilder v. Virginia Hospital Association*, 496 U.S. 198 30

## U.S. Court of Appeals 8th Circuit

*Pediatric Specialty Care v. Arkansas DHS*, No. 03-1015, 03-2616 (8th Cir. 2004) 1

*Eric Wong v. Minnesota DHS*, 14-3415 (8th Cir. 2016) 1,28

*Hindes v. F.D.I.C...*137 F.3d 148, 168 n. 15 (3d Cir.1998) 29

*BNSF Railway Co. v. O'Dea*, 572 F.3d 785 (9th Cir.2009). 29

*Westside Mothers v. Haveman*, 289 F.3d 852 (6th Cir. 2002) 30

## PARTIES TO THE PROCEEDING

Petitioners Victoria and Stephen Carlson are both appellants from the state courts and DHS administrative agency appeals from a county action to place both spouses in a medical assistance program for the elderly, replacing Victoria's on-going cancer treatment coverage she was getting.

Respondent[1] Jodi Harpstead, is Commissioner of the Department of Human Services (MNDHS) in her official capacity; Tina Curry, Ebony Phillips, and Teryl J. are Respondents in their official capacities as Director, Lead Financial Worker and Case Worker, respectively, of Ramsey County Community Human Services.

## OPINIONS BELOW

The decision of the Minnesota Court of Appeals, (A18-1380) *In re the Matter of: Victoria Carlson and Stephen Carlson, Petitioners, vs. Pam Wheelock, Respondent, Tina Curry, et al., Respondents* (Aug. 12, 2019); and Mn.Sup.Court (Oct. 29, 2019) Pet.App.1a-16a;

MNDHS Commissioner's Final Decision in *Victoria and Stephen Carlson v. Ramsey County Community Human Services,* DocketNo. 185231 (June 8, 2017) Pet.App.17a21a;

RamseyCty.Dist.Ct, *Victoria Carlson and Stephen Carlson v. CommsnrMNDHS, et al.* 62-CV-17-4889 (Jun.21,2018) Pet.App.22a-33a;

Mn.App. *In re Victoria and Stephen Carlson* (A18-1578)(Oct.16,2018) Pet.App.34a37a and Mn.Sup.Ct. (Dec.18,2018) Pet.App.38a

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[1] Substituted for former Commissioners Emily J. Piper, Pam Wheelock, Tony Lourey.

U.S. Supreme Court *In re Victoria and Stephen Carlson 18-8511* (denied May 28, 2019)

U.S. Supreme Court *Carlson, Victoria, et vir v. Piper, Emily J., et al. Application for an order to pay medical assistance 18-8511* (Returned April 30, 2019) Pet.App.39a

MNDHS *Victoria and Stephen Carlson v. Ramsey County Community Human Services,* DocketNo. 196420 (August 30, 2017) is Pet.App. 40a41a.

## JURISDICTION

(i) the date the judgment or order sought to be reviewed was entered - **October 29, 2019, Minnesota State Supreme Court**

(ii) N/A/

(iii) N/A

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question - 28 U.S.C. 1257(a) "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution...or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the...statutes of, or any...authority exercised under, the United States."

claimed under the Constitution or the...statutes of, or any...authority exercised under, the United States."

(v) N/A

## CONSTITUTIONAL PROVISIONS, STATUTES, REGULATION

Portions of the following relevant provisions are set out in Appendix(i)(v) at Pet.App.1f-11f:(*42U.S.C. § 1396a(aa) 2)Optional coverage*; *42U.S.C.§1396a(a)(10)(G)(XIV)* (BCCPTA); 14th Am., U.S. Const., First, Third, Fourth, Fifth, and Ninth Amendments Right to Privacy,U.S.Const. 42U.S.C.§§1396a(1)-(4); §1396a(a)(10)(A),(B); §1396a(a)(30)(A); §1396c(1)(2); 42CFR§§431.220(a)(1), §431.232, §431.246, §431.241, §431.206, §431.210, §431.242; *Minn.Stat.§§256B.057 subd. 10(a)-(c)* ("MA-BC"), §256B.055subd.7 Minn.Stat.§§14.63-69 Minn.Stat.§§256.045subd.(3),(5),(10); §§256.0451(3,(16),(17); Minn.Stat.§§256.05 Mn.R §§ 9505.0130 subp.1,3, 9505.0135 Subp. 1,2.

## OVERVIEW

**Some procedural background**

(Each federal question submitted *supra* was timely and properly raised below so this Court has jurisdiction to review the judgment on a writ of certiorari. Each was raised from before the very first administrative hearing in Case.No.185231--but were not disposed of. Because Subd.16*Scope of Issues Addressed at Hearing* was unconstitutionally interpreted by DHS, as barring discussion of the Constitutional rights of the Petitioners involved, under MN.Stat.256.0451 hearing procedures.[1],[2] We then sought

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[1] "Unfortunately, the law does not permit me to address constitutional claims. Minn.Stat.256.0451,subd.16."Pet.App.21a§CL8

[2] In addition, the issue the court below insists was resolved in the hearing--whether a woman can be booted from the program at the time she turns 65--was not the issue in that hearing. The issue there was, Victoria was *already* removed from the program back in July 2016--which is the month after Stephen turned 65--and when she was supposedly "eligible" if one ignores 10(c) of the MA-BC statute, for a punitive spenddown. Minn.Stat.§256B.056,subd.5c.SeePet.App.19a21a§FF10§§CL5-8. It remained for a future hearing to address the issue--Why had the county terminated her MA-BC by putting us both on MA-EP in July 2016? And what was the authority for the "transfer," even in the county's (eligibility procedures manual) EPM? It was nothing more than a notion, that because two programs, MA-BC and MA-EP existed in which Victoria might be enrolled, and MA-EP had just been triggered, the county concluded that the first, MA-BC thereby ceased to be allowed under law (see infra). That is not a transfer. And DHS noting the county "*reopened* the Appellants Medical Assistance for Breast Cancer" but discontinued it, ordered the county "extend that..while the appeal is pending and until the Agency can provide adequate notice of the program change to the Appellants..Pet.App.19a§FF5 This was not because of some Minnesota Rules of DHS, but a ruling in a binding hearing, and constitutes an order by the Commissioner to pay benefits on appeal-*See*256.0451subd.10. And it was not modified in the only manner allowed by that provision Subd.10. It can only be altered by the HSJ, not the Commissioner, on the specific grounds that "The human services judge may order the local human services agency (Ramsey respondents) to reduce or terminate medical assistance to a recipient before a final order is issued under this section if: (1) the human services judge determines *at the hearing* that the sole issue on appeal is one of a change in state or federal law; and (2) the commissioner or the local agency notifies the recipient before the action." No one asserts this happened here, and the July 1,2017 reduction or termination of MA-BC benefits *cannot be justified* by this

reconsideration and Co-Chief Mentze[3] reviewing our request for reconsideration*See*Pet.App.10g11g determined it was not even plausible that the DHS June 8 order was incorrect in its statutory interpretation of Mn.Stat.256B.057subd.10(a)-(c). This was a favorable ruling for Petitioners and must be respected per Mn.Stat.256.045Subd.5.[4] A later appeal such as that generated by the June 15,2017 NOAPet.App.41a43 cannot reverse this as the court below improperly attempts to do.

Appeal to the RamseyCty court followed. We gave the district court many reasons why it was at least *plausible* that the order was incorrect. We spoke in terms of Mn.Stat.256B.057subd.10 as a whole[5] and noted Mentze had hardly mentioned the federal statute. At Pet.App.12g we address his finding that we were asking DHS to

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provision, which contrary to what the court below found in A18-1578(U.S.18-8511 2019) does apply to the payment on appeal order.*See Infra*

[3] Also with no authority to comment on our excluded Constitutional claims by Subd.(16)*supra*

[4] "Any order of the commissioner issued under this subdivision shall be conclusive upon the parties unless appeal is taken in the manner provided by subd.7. Any order of the commissioner is binding on the parties and must be implemented by the state agency, a county agency..until the order is reversed by the district court, or unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10." MNDHS as the state agency was bound by the order but did not abide.

[5] The court has thrown out 10(b) as did the district court, although we insisted and that court did read the provision into the record at our request because it's material to the proceedings but excluded. It is discussed, incorrectly by the DHS at Pet.App.20a§CL4. But that is the last time respondents or the courts have mentioned 10(b), clinging to a "plain language" focus on 10(a). Our position is that Mn.Stat.§256B.057subd.10a cannot be understood in isolation from (b) and (c) since (b) provides for the ending of treatment as being no longer needed and (c) for exempting eligible recipients from income requirements. "A person meeting the criteria in paragraph (a) is eligible for medical assistance without meeting the eligibility criteria relating to income and assets in section 256B.056, subdivisions 1a.." Subd.1a. is "Income and assets generally." So the spenddown would not seem to apply to Victoria's MA-BC "Unless specifically required by state law or rule or federal law or regulation." Which it is not.

"invalidate federal law." He clearly did not know or care what the federal law is:

> "Yet the Commissioner clings to find[] that "A state administrative review process like ours certainly cannot invalidate federal law. [Victoria's] claims have no merit in the face of the clear requirement that a person be under age 65 in order to get Medical Assistance as a person needing treatment for breast or cervical cancer." So the MDHS position is that she cannot get MA as a person needing it. But she DID get it, as just such an individual, to use the language of the [federal]statute. Mentz starts off saying "for some time" she was eligible."Pet.App.12g

The federal lawPet.App.2f3f specifically refers to "individuals"*see*42USC1396a(aa) that "are described" by these initial criteria. So the federal law seems to be carefully written to bring into the program eligible individuals--who throughout their treatment do not cease to be those individuals. Those same individuals then are not weeded out by 10(a) but are clearly subject to termination under the limitations period and respondents and the state courts want to ignore those clear terms. That is 10(b), which is §1396(a)(10)(G)(XIV) which says those individuals described "who [are] eligible for medical assistance only because of subparagraph(A)(10)(ii)(XVIII)"--which relates right back to 1396a(aa)–"shall be limited to medical assistance provided *during the period in which such an individual requires treatment for breast or cervical cancer.*"it.added And Victoria still does, and still did when DHS denied reconsideration and allowed the county to continue acting improperly to violate and ignore the binding June 8, 2017 order, instead stoppingPet.App.41a47a all appeals and all payments on appeal. So our request for reconsideration was very

plausible. And we sought to enforce the federal statute, not to invalidate it.

Throughout the administrative process, DHS stressed that their administrative review process is not robust enough to inform patients (and those family members required to pay our way down to 20% below poverty with MA-BC medical bills) what the action really is or what authority they have for the action, or to allow us to question the constitutionality of the action.

Here the action is per DHS " The Agency sent out a HealthCare Notice of Action[] October 5,2016 that said that the Appellant's medical assistance would stop on October 31, 2016 because she did not meet her spenddown requirements."Pet.App.18a§FF1 [6]

And we appealed that noticeId. to the county and HSJ. Federal regulations (consistent with the the 14thAm.DPC and *Goldberg*) require:"

> "A notice...must contain [a] statement of what action the agency..intends to take and the effective date of such action; (b) A clear statement of the specific reasons supporting the intended

[6] Here the notice did not state clearly, even in the past, that respondents had removed Victoria from MA-BC in July 2016, or why respondents were requiring spenddowns in the first place.Pet.App.19a§FF9 And it's scope was not limited only the document's intended action of ending MA-EP for both of us, but also left undetailed the unspoken July 2016 action (for which no notice had ever been given). We are not including it because respondents and Minnesota courts have already found Pet.App.12a; that it was improper, and they have moved on to defending the July 1,2017 hard cut-off of Victoria's MA-BC, relying on HSJKralik with no jurisdiction(Pet.App.5a). *See*Pet.App.26a"On June 15, 2017, after the Commissioner determined Ramsey County's October 2016 NOAs [taken together, so the Oct.26 NOA argument is of no consequence here] failed to provide proper notice to Appellant of her transition from the MA-BC program to the MA-EP program, Ramsey County sent out another NOA(Pet.App.38a40) notifying Appellant she would no longer be enrolled in the MA-BC program as of July 1, 2017, but she was eligible for the MA-EP program, subject to a monthly spenddown."

> action;(c) The specific regulations that support, or the change in Federal or State law that requires, the action."*42CFR§431.210 Content of notice.*

But adequate notice also requires an agency appeal summary Mn.Stat.256.451Subd.3(c) informing the appellant about the legal basis for the action or determination. The court below purports to say the same AAS(Pet.App.38a40a) which *failed* in the June 8,2017 Order is nevertheless sufficient to fulfill that notice requirement for the June 15,2017 action, because that date is later than November 16,2016 when the same document was prepared and served.[7] And so in the pretended Kralik "appeal" proceedings that court says the county did not need to provide another AAS informing Petitioners of the action--transferring to another program--required by the DHS order.

> (c) The contents of the state agency appeal summary *must be adequate to inform the person involved in the appeal of the evidence on which the agency relies and the legal basis for the agency's action or determination*.Mn.Stat.256.0451Subd.3(c)

These state laws and regulations are intended to comport with this Court's adequate notice requirements in *Goldberg v. Kelly*(397 U.S. 254,1970):

> "the recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decisionmaker.

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[7] The court further argues that "Appellant received adequate notice of *the eligibility issue* in dispute prior to the April 2017 evidentiary hearing before the HSJ."Pet.App.11a12a But an eligibility issue, even in dispute, is neither an action nor a determination which Petitioners are entitled by the laws infra and the previous June 8 order to defend against, in the face of the risk of breast cancer with dropped and degraded treatment.

> Pp.266-270. See also p.269 "While post-termination review is relevant, there is one overpowering fact which controls here. By hypothesis, a welfare recipient is destitute, without funds or assets...Suffice it to say that to cut off a welfare recipient in the face of ..."brutal need" without a prior hearing of some sort is unconscionable unless overwhelming considerations justify it. *Kelly v. Wyman,* 294F.Supp.893,899,900(1968)." (cited by *Goldberg* district court, noted with approval 269.

We raised the lack of adequate notice in our district court appeal infra as we had at the HSJ hearing.(Pet.App.9g*Apr.12,2017*-p.1) "[We] take appeal from the final decision of the Commissioner of Human Services...in AppealNo.185231 from the action of RamseyCty Community Human Services, terminating, on October 5, 2016 (moreover without adequate notice or any notice) Victoria's Medicaid benefits under the federal Breast and Cervical Cancer Prevention & Treatment Act."

**More Statutory Analysis**

The questions we present to you, 1-3, are substantially the same we raised in our Pet.forReview p.1-2 of Pet.App.58a.)[8] In addition as set forth infra, we raised the issues in our Notices of Appeal from CaseNo.185231#Ind.2-Aug.2017;CaseNo.196420#Ind.12-Nov.2017; and Statement of the Case with the court below August 20,2018. We have

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[8] N.1"Victoria has been deprived of her statutory entitlement and her Constitutional and fundamental rights, she is exposed to injury and risk which are not appropriate treatment in the eyes of Congress in passing [the] act, and she and Stephen have had imposed on us by DHS determinations and County actions burdens not intended by the federal program, which calls for completion of treatment without any payment by the eligible recipient or their spouse. Stephen is a proper appellant." This adequately describes the statutory analysis Q1 argument.

collected excerpts on all three questions from both appeals to the district court and the Mn.Appls.Ct. in Pet.App.9g27g. Because the No.185231 appeal first raised many federal issues, we do not repeat them in the No.196420 appeal.[9] Furthermore, by operation of Mn.Stat.§14.65 *Stay of other appeals,*[10] since the other appeal had a telephone pre-hearing conference August 24,2017 while we filed for judicial review in the appellate court August 22,2017. For this reason it's hard to disagree that Kralik lacked jursidiction, and so her proceedings as far as this ongoing appeal from No.185231 must be a nullity.

**The MNDHS website contains this official information:**

> **"When will my [MA-BC] coverage end?** Your coverage will end when your doctor says you no longer need treatment for your cancer." [this has not happened here] (https://mn.gov/dhs/people-we-serve/adults/health-care/health-care-programs/programs-and-services/breast-cervical-cancer.jsp)

According to the Ramsey County (local agency) respondents, and on many occasions, that turned out not to be the case.Pet.App.19aFF§8,CL§4. On *Apr.12(*Pet.App.(vi)1g4g), based on

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[9] The main difference between the two appeals is that Petitioner's documented the July 1,2017 final refusal to pay any benefits on appeal or allow a hearing or even appeal. And second the addition of the constitutional claim of privacy (see Pet.App.20g21g).

[10] "When review of or an appeal from a final decision is commenced under sections Minn.Stat.14.63 to 14.68 in the court of appeals, any other later appeal under sections §§14.63-14.68 from the final decision involving the same subject matter shall be stayed until final decision of the first appeal."Id. These two appeals involved the same subject matter.

extended communications with the county from October 2016 to April 2017 (the time of the one and only evidentiary hearing)(accepted as "Ex.4" at N.1Pet.App.18a.) we urged that in general:

> "It is our position--and reason for appealing this and all the actions we have appealed from the Ramsey County DHS ("County" or "appellees") in 2014, 2015[11] and 2016--that appellees have in Vikki's case frustrated and denied the intended operation of[12] the Minnesota Medical Assistance Breast and Cervical Cancer, as an optional Medicaid program under the "*Breast and Cervical Cancer Prevention and Treatment Act of 2000*"Id.

That early administrative appeal document goes immediately into all three federal questions *supra* based on what we could have understood at the time about what the county was doing. Only in Pet.App.1a15a have the state courts explained,*infra* how they think the respondents when they removed her in the manner they did--then continuously withheld benefit payments on appeal for Victoria's needed medical care,[13]--somehow acted within the authorization of the language and intention of the law as embodied in the state's own version of BCCPTA:MA-BC.(together "Treatment Statutes") And it is

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[11] As Ex.4 described, Petitioners were forced to appeal NOA's in 2014 and 2015 terminating MA-BC coverage (and she would have lost that coverage had she not provided an appeal within 10 days). In 2014 Victoria was forced to apply for Medicare while she was age 63, and then in 2015 at age 64 forced to file with the government a perfunctory application for disability (denied)--both years as a condition of continuing breast cancer coverage. At the hearing the HSJ declined to discuss any past years, as not being germane to the subject of the appeal. But we think it is germane to the excluded constitutional and civil rights issues.SeePet.App.21a§CL8.

[12] In other words violated Victoria by *unduly burdening* the exercise of her constitutionally protected interest (14th.Am.) under the federal statute to complete the breast cancer treatment program that had been begun--SeePet.App.11a:"Respondents do not dispute that appellant's entitlement to MA-BC benefits represents a protected interest. For purposes of this appeal, we therefore accept that a protected interest is at stake."citing *Goldberg v. Kelly*, 397 U.S. 254, 262-64

[13] Some has had to be cancelled, other care has demanded cash payments from her, even for cancer care.SeePet.App.75a96a.

shocking, as this case has shocked the conscience by removing low-income women in breast cancer treatment from their coverage for treatment still ongoing--saving only the 20% of the cost of most medical payments, as 80% is covered by Medicare--leaving Victoria and many women underinsured, with degraded coverage that does not meet the standard of Medicaid,e.g. Equal Access Provision. Moreover, requiring both the women and their spouses to "spenddown" with paid medical bills and receipts, each month, to just 80% of poverty level during cancer treatment, when ability to work is limited.SeePet.App.86a And worse yet the DHS and Minnesota courts now expunge the unconstitutional violations of her statutory entitlements beginning July 2016 by as it were seeking to settle with Petitioners and then "agree" that they complied with the language of the statute and due process infra.

Only through the Minnesota court's own words Pet.App.1a15a do we at last have notice why the county repeatedly did this, removed Victoria--they recycle limited state funding to the program and don't want to meet their obligation under 1396a(2)Pet.App.1f to pay for the women in treatment, even the remaining 20% where Medicare is in effect, supposedly so there will be "adequate funding" for women who can't get Medicare,viz.,

> "The congressional record [one random remark] indicates that the program was intended to cover "women who are not eligible for Medicaid and too young for Medicare, but are caught in that crack of not having insurance coverage."146 Cong. Rec. H2690 (daily ed. May 9, 2000)(statement of Rep.Myrick)...Congress limited eligibility to include only individuals under the age of 65.Pet.App.6a7a..she is over 65 years old, and eligible for and receiving "creditable coverage" in the form of Medicare benefitsId.9a [and as noted elsewhere, MA-EP] The age classification in section256B.057,subd. 10*(a)*, is not arbitrary; rather, it is legitimately and logically

> connected to the eligibility age for Medicare, and accordingly, a reduced need for MA-BC benefits.Id.10a..As previously discussed, the MA-BC program was intended to cover women ineligible for Medicaid and too young for Medicare. The exclusion of individuals 65 and older is a reasonable means for ensuring that adequate funding remains for the targeted recipients of the MA-BC program.Id.10a11a,13a.

Our response(Pet.App.52a67a) in seeking Mn.Sup.Ct review has been to argue Pet.App.64a that DHS's very denial (after the initial favorable ruling) of our asserted right to hear the government's statement of our respective statutory entitlements *prior to* being deprived of them (for medical care to my wife is clearly a major concern in this) is founded in the overweaning and abusive deferral of the courts to this stilted DHS version of her federal rights in the complete Minn.Stat.256B.057Subd.10. We cite *Goldberg* and *Roth* as establishing substantive rights, vested rights in the ongoing protected federal interest in payment to completion of treatment, which are contained in MA-BC Subds.(b) and (c) that given due process we need to be allowed to present, and get an answer on. Without that answer, with the clever ruse that all the state needs to do is keep repeating "plain language under 65" which is a senseless ruling, we cannot defend her rights, her substantive rights and entitlements. And of course the Mn.App. and Mn.Sup.Ct. are very sanguine that the payments were ruthlessly cut off forcing us to spend all our time at every turn trying to get the HSJ to give them back, trying to get the

county to obey the order to give them back, trying to get the district court to give them back multiple times (but it was "beyond her jurisdiction)", trying to get the Mn.App. and Mn.Sup.Ct. to enforce the law to pay on appeal (even trying to get certiorari in *In re Victoria and Stephen Carlson vs. Tony Lourey, Commissioner, Minnesota Dept. of Human Services*—No.18-8511 (U.S. 2019). So the stranglehold of forcing medical cutback and search for work to pay unpaid medical bills was an abusive weapon that the courts deferred to, to prevent rational discussion of the Congressional intent and language of both the state and federal breast-cancer treatment statutes. Much of this could have been pursued with value to Petititioners in a truly expert DHS (and payments during that process were already ordered although defied by Teryl Nelson and company), and not a DHS with an agenda--primarily guarding limited local funds to give to "targeted recipients"[14] their initial, but not complete treatment payments. The court below promoted defiance and nullification of the favorable decision we obtained at the trial, truncated and chaotic as it was. But their statutory analysis is highly flawed as we argued however briefly to the Mn.Sup.Ct. seeking review.

Applicants for MA-BC have certain rights, statutory entitlements, analyzing the MA-BC statute--if they qualify they need

[14] A truly bigoted term that we urge this Court to get rid of.

to be enrolled, period. But Victoria, and others meeting the requirements of Subd.10(a) *are* enrolled and treatment is begun, *Roth* says, *Goldberg* says and even the court below said there are federal protected interests which can't simply be ignored, and yes, need to be given a hearing by law. If while she still needs the cancer treatment, an action or determination deprives her of that, there needs to be an honest, probing inquiry not only with satisfactory notice *supra* which meets the requirements of *42CFR§431.210 Content of notice.et alia,* but a compliant agency appeals summary. They need to articulate, and not avoid, why this transfer to MA-EP is a correct reading of the federal law. RamseyCty can't, but this Court must demand that of the DHS and Minnesota courts.

In Mn.14.69(d) argument we implored the supreme court "The Act does not provide for removing Victoria at age 65 and certainly not before. It violates the canons of judical construction and therefore *Kizor, Azar* for the Respondents and Minnesota courts to force the Minnesota Legislature to pack both the initial qualifications for the program and the end of benefits ("EOB") terms into the same provision 10(a) of the statute, making it ambiguous, when the Legislature has wisely used 10(a)-(c).SeeApp.Reply.Br.pp21-28"

Deference impacted very meaning of statutes and language. The courts' deference to an overreaching DHS also extended to Subd.16

their interpretation of exclusion constitutional issues from being heard and responded to by the government in Minn.Stat.256 proceedings; casting aside a statutory order to pay benefits on apepal following a favorable ruling reversing the county because it just came from "an initial request for benefits on appeal," though was actually an order by DHS, refusing to call the action and policy of basically random removal (considering the random entry into the program in terms of nearness to the age 65 end-of-coverage) from the program a "program change" even though "program change is used repeatedly throughoug the June 8 order.

And we also seek an impact study (Pet.App.59a,issue3). Under the plain language of §1396a(a)(30)A "to assure that payments are consistent with efficiency, economy, and quality of care" on the countless women for whom this program change are hurt. If access fails the percentages of deaths which could have been avoided go up as a direct consequence.

In violation of this and Meanwhile her treatment is degraded. Her life is more at risk right now. We want treatment restored and an impact study on the women of Minnesota."(Pet.App.61a) "including 42 U.S.C.1983 liability for damages, declaratory and injunctive relief, an impact study of the program change imposed on Appellants;"

**The damage of overreaching deference**

While we were awaiting Pet.App.1a15a this Court handed down *Kizor* and *Azar*, two cases dealing with deference to overreaching

federal agencies. DHS is a state agency, but it is administering and handling the funding for a federal program specifically intended for Victoria. But that agency, whose expertise the state wants to depend on to know what MA-BC is all about and to faithfully implement it, sided with a reckless county to deliberately deprive uncounseled appellees relegated by cancer to welfare, not only of her cancer coverage and basic income[15] for household but of basic fairness--and we assert fundamental and federal protected rights are are stake when you're promised coverage to fight cancer.

Ramsey county went further than just Medicare or age 65 as an unspoken, undetailed, ground for MA-BC removal in July 2016--removing her just because she became eligible for MA-EP. And respondents and the state courts know this and dissemble to defend the indefensible--in effect settling with us, to cover up the "improper"Pet.App.5a but not--they say--unconstitutional and unlawful action, removal by extending "coverage" until July 1,2017, but no further. In fact the June 15 notice-of-action which the state court says issued "[i]n accordance with DHS's June 8 order"Pet.App.4a actually warned(Pet.App.42a) that if the MNHealthCareProgramsID card was used "after your coverage ends[July 1] you MAY be guilty of a crime." So not only was she not given payment on appeal after being ordered by DHSPet.App.19a,§FF5 she was threatened with criminal prosecution before her Aug. 24 "hearing"Pet.App.49a50 could be held and before she could appeal to the district court Aug. 22. The "pending appeal" anticipated in Pet.App.19a§FF5 had not ended, yet Victoria was threatened with criminal punishment if she tried to use payments

[15] All to enlarge limited local funds.

on appeal to pay 20% of her medical bills (SeePet.App.75a96a for the list of bills and demands for payment even to get cancer care). That's a 1983 civil rights and 14thAm. constitutional violation. It's reckless disregard for a protected federal interest and federal right.

Another important point the state has misrepresented[16] is the practice of cutting off benefits if an appeal is not filed within 10 days.[17] See Pet.App.42a under "important appeal rights". "[Y]ou can also appeal. To keep your benefits until the appeal, you must appeal within 10 days, or If you miss the 10 day deadline, you can appeal within 30 from the date you get this notice, but your benefits will not start again unless you win the appeal...." The statement given to the Mn.App. by the DHS to whom they defer was false. Timely appeal is 30 days, not 10. These women can't even figure out what is being done to them within 10 days. But if they can't appeal and ask for benefits on appeal within those 10 days they're finished. They can never win an appeal to get the benefits back and even if they do as Petitioner's did in this case, it won't be treated honorably by a local government scamming for limited funds for the "most needy."

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[16] The court below wrote this last year(Mn.App.18-1578,Pet.Add.34a34a): Under administrative rules governing the department of human services, "A local agency shall not reduce, suspend, or terminate eligibility when a recipient [timely] appeals [a benefits determination] under subpart 2 ... unless the recipient requests in writing not to receive continued medical assistance while the appeal is pending." Minn. R. 9505.0130, subp. 1 (2017). The appeal under subpart 2 that is referenced is the initial, administrative appeal to the commissioner of human services. See Id., subp. 2 (providing for appeal, hearing, and decision by commissioner). Consistent with Minn. R. 9505.0130, the commissioner noted that Carlson had elected to continue receiving benefits during the pendency of the appeal and directed that Carlson continue to receive benefits through the pendency of the appeal."

[17] The court below erred when it deferred to DHS on this because this law is intended to benefit Victoria as a cancer patient, not the county trusted with the funds and the responsibilities..

For this reason we have always appealed every NOA from this agency within 10 days, including in 2014 and 2015 and they should have the records. Right now we're trying to keep Victoria's cancer care going successful.

**Procedural due process, deprivation and abuse by government; Equal protection**

> "Appellant's pre-termination hearing on the merits of her MA-BC eligibility, and subsequent [Kralik No.196420] prehearing confirming she was properly noticed before terminating her from the MABC program - after the Commissioner determined her ineligible - satisfies the Fourteenth Amendment Procedural Due Process Clause. Public assistance recipients are entitled to a hearing prior to the termination of benefits "to produce an initial determination the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against erroneous termination of his benefits." Pet.App.20a21a citing *Goldberg*

Here the Ramsey county court bent over backwards to accomodate the highly irregular procedure and variance from the law to allow DHS to take away cancer care and civil rights.[18] She appears to be finding that there was adequate notice (Victoria was "properly noiticed"). However Judge Flourey in N.21 straight-up overrules DHS finding there was adequate notice. SeePet.App.12a

> "Appellant received adequate notice of the issues in dispute prior to the hearing before the HSJ, and that hearing, as well as the

[18] The court below argues that there is no violation of due process because in July 2016 the county already terminated her, and so "Any subsequent hearing on the issue of appellant's MA-BC eligibility would not reduce the risk of an erroneous deprivation of her rights....Providing appellant another hearing on an issue that was already resolved would serve solely as an administrative burden with no corresponding benefit to appellant." Again, Judge Flourey overrules the DHS who ordered the adequate notice and under *Goldberg* that requires a fair hearing, which statutorily is called for by the federal and state laws(*infra*). It's hard to disagree that the erroneous deprivation--one of them--already occurred! *Mathews* is not applicable here and this Minnesota court needs to be reversed.

> procedures that followed, constitute sufficient due process. Procedural due process "is flexible and calls for such procedural protections as the particular situation demands." Mathews, 424 U.S. at 334, 96 S. Ct. at 902 (quotation omitted). Any subsequent hearing on the issue of appellant's MA-BC eligibility would not reduce the risk of an erroneous deprivation of her rights..

Again, this is deference by contortion (over-flexibility). He is referring to the Kralik pre-hearing conference and refusal of a hearing. Victoria had notice from the October 5, 2016 flap with the admittedly improper removal from MA-BC that there was an "eligibility issue". But as discussed *supra*, under federal regulations and the state's AAS reqwuirements, notice has to be detailed, explain the reasons.[19] Further this AAS, which was rejected by DHS, does not inform the persons involved in the appeal (because Stephen is being charged a spenddown to 80% of poverty) of the evidence on which the agency relies and does not give a legal basis for the agency's action or determination, as required by Minn.Stat.256.451.Subd.3(c). Pet.App.38a40a is just shop talk documenting what parts of the EPM the officials looked at, not how what they did was legal. They did not explain why we were being charged a spenddown and the official reviewing Teryl Nelson's actions seemed perfectly content(Pet.App.38a

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[19] See p.9supra: "a clear statement of the specific reasons supporting the intended action;(c) The specific regulations that support, or the change in Federal or State law that requires, the action." Here there was a hodge-podge of explanations about the spenddown that DHS has ruled was improperly applied in July 2016 remove Victoria from MA-BC. The county's reasons do not explain why she was termined months before. In Pet.App.39a the are: "The Eligibility Policy Manual state that the Basis of Eligibility for Medical Assistance for Breast/Cervical Cancer, requires that the woman must be age 64 or younger, and not otherwise covered under Medicare. Victoria turn age 65 on November 11, 2016, and she is eligibility for Medicare as of November 1, 2016, therefore she is no longer eligibility for Medical Assistance for Breast/Cervical Cancer." The action was reversed, properly. The idea that is she was given advance notice she would be removed November 1 or November 11 and detailed reasons, perhaps citing Minn.Stat.256B.057Subd.10 so she could oppose it that that would have been adequate notice, this would be a different case. But she was already off, only because she was eligible for a spenddown with her husband.

that "MA was closed for failing to meet her spenddown. This meant that Victoria didn't incur $500 in medical bills and therefore was not eligible for Medical Assistancce (MA). Victoria reports that she was not asked to provide medical bills and that she should not have any medical bills because she is on hte SAGE [MABC] program."

So there wasn't adequate notice. But the court below improperly reverses DHS on this because "Here, the county's appeal summary apprised appellant of the MA-BC eligibility issue, as did an October 26 notice." Well we knew there was aneligility issue because the county was quoting from the eligility manual. But to explain why a spenddown was being charged since July, the AAS had to explain That Victoria was not eligible fors MA-BC because creditable insurance, MA-EP made her ineligible. This is the foreseeable result of using initial eligibility criteria in Subd.10(a) alone as end-of-coverage criteria. It is not plain and unambiguous that the same provision should be used in two conflicting ways, especially when the legislature has provided a limitations provision, Subd.10(b) for just that purpose.

We believe the state courts her, in conflict with this Court's recent *Kizor* and *Azar* decisions, rather than defending our rights and entitlements under the Treatment Statutes have improperly deferred to the MDHS and done worse.[20] Those Minnesota courts did not simply defer to the final decision in CaseNo.185231(Pet.App.17a21a), with MDHS expertly interpreting and applying the Treatment Statutes but protecting patients' rights under applicable laws that came before

[20] While Stephen has not been treated for breast cancer he has been enrolled without notice in MA-EP taking Victoria off MA-BC and causing both to be forced to spend ourselves down to 80% of poverty each month. Both of us are proper appellants and Petitioners.

them.[21] The district court cited which said the Mn.Sup.Ct. "adhere[s] to the fundamental concept that decisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience."further citations omitted.

But in *Mammenga* that court drew a distinction between different kinds of unreasonableness:

> "The decision may be in violation of a constitutional provision if, for example, the agency rule applied in the decision lacks a rational basis so as to constitute a denial of due process. This kind of unreasonableness is, however, different from the kind of unreasonableness that renders an agency decision "arbitrary or capricious."

Here both kinds of unreasonableness are present and the case requires this Court to step in and establish some procedural boundaries. The unreasonable of the law is present because contrary to the court below, it is not a permissible objective to randomly distinguish between eligible recipients with vested rights in the same treatment program--to completion--because of the age they will be when they complete it, where they have all met the initial requirements to be in the same program. Repeat. The same program, not different or lesser or partial versions of th esame. And that is what we contested supra.

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[21] The courts below rely on *Mammenga v. Dept. of Human Services*, 442 N.W.2d 786 (1989): "While we are not bound by an agency's interpretation of its governing statute, it is also true that '[w]hen the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the Department charged with its administration.' Krumm v. R.A. Nadeau Co., 276 N.W.2d 641, 644 (Minn.1979)."

In addition, here the respondents' conduct is arbitrary and capricious really deterring a true discussion of the basic constitutionality of the policy enforced by the EPM. Because they were overruled, and now they are back. This time, under the supervision of DHS, they ignore the order, and now they just cut off all appeals, all benefits on appeal and they go to a second HSJ and pretend with DHS that the order did not include payment of benefits on appeal and that the whole case is dismissed and reversed.

"An agency decision may be arbitrary or capricious if the decision is based on whim or is devoid of articulated reasons. Markwardt v. State Water Resources Bd., 254 N.W.2d 371, 374 (Minn.1977) (an agency decision is arbitrary or capricious where "its determination represents its will and not its judgment."). To say that a decision is unreasonable is not, however, the same thing as saying the agency rule which is applied in the decision is unreasonable."

In this case it is the clear will of the county and their supervisors at DHS[22] not to allow the policy of booting women at 65 or even earlier to be tested with constitutional rights and constitutional procedures--specifically the notion that the county will transfer, automatically, patients to MA-EP with a family spenddown[23]

And the Minnesota Courts contrary to *Mammenga* help them. The RamseyCty district court stepped in to "defer" (under to become a

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[22] SeeMnSta.§ 256B.05 Administration by county agencies "The county agencies shall administer medical assistance in their respective counties under the supervision of the state agency and the commissioner of human services.."

[23] "Spousal income is counted when determining eligibility for medicalassistance for both disabled and aged individuals."Pet.App.39a"

partner in abuse in its Ramsey County, empowering DHS to accept and improperly *protect and excuse* further improper conduct from the county respondents after the June 8 order issued--beginning June 15,2017SeePet.App.41a43a--when they refused to abide by the June 8 DHS order to give us adequate notice (of whatever they thought they were doing); grant an appeal with a hearing; and pay benefits on the appeal ordered at Pet.App.19a§FF5.[24] The court below then deferred to a later proceeding, Appeal from CaseNo.196420(Pet.App.68a71a;50a51a) in which DHS argued they had reversed, and dismissed the whole affair. The court below found "due to appellant's pending appeal in district court, the HSJ recommended dismissing the second appeal for lack of jurisdiction. On August 30, 2017, DHS adopted the recommendation of the HSJ." With this improper DHS action,[25] DHS and the attorney general convinced the court below that Victoria was not entitled to received the benefits on appeal ordered.

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[24] As we have said in a related case A18-1578, Pet.App.34a37,Pet.App.19a§FF5 constitutes an order by the Commissioner under Minn.Stat.Subd.10 (this Court declined to grant certiorari on that in 18-8511 *In re Victoria and Stephen Carlson vs. Tony Lourey, MNDHS Commr,et al*(2019). But we urge the Court to grant certiorari in that case as well, because it is within your jurisdiction and these two companion cases should be decided together because of the critical nature of this cancer program and the numbers of women at risk.

[25] "When review of or an appeal from a final decision is commenced under sections 14.63 to 14.68 in the court of appeals, any other later appeal under sections 14.63 to 14.68 from the final decision involving the same subject matter shall be stayed until final decision of the first appeal." The appeal from the final decision in CaseNo.185231 was filed August 22,2017 and so the appeal in No.196420 was stayed by operation of law. This is consistent with what the court below foundPet.App.5a. But all the state courts improperly treat a finding of no jurisdiction (because the appeal is stayed) as a "dismissal" of the entire appeal, including the order for continuing payments on appeal and of the need for an appeal itself, and of the requirement adequate notice (which must lead to a hearing).

The same court in A18-1578 erroneously found that "In an August 30, 2017 order, the commissioner *dismissed* Carlson's appeal from the subsequent notice of MA-BC benefits termination"!

**(h) Argument amplifying why the writ should issue**

We could reargue the floor debates in the House and Senate in passing these provisions. The court below at the urging of DHS and the Minnesota AG's office say it was to fill a crack. That crack could be to provide "appropriate cancer treatment" for as short a period of a day until the patient turned 65 whatever her condition was, or as long as say 10 years, if that is the treatment prescribed. But it's important to know this program was not just for Medicaid patients. There's no such program for Medicare. Medicaid was selected for a special program, a categorical program. These are low-income women of all races--and ages. But you can't in the program if when you meat all the other criteria you're over 65. What has surely not been shown is that these people intended to take people in the program out for any reason except exactly what Congress and the Legislature pass as the limitations provision.

And for the MNDHS to attempt to prove otherwise by saying the courts may not look beyond the plain letter of one or two initial criteria, and to use them also for end-of-coverage rules is a cheap gimmick, designed to protect limited localfunds at the expense of the vulnerable cancer patients, the very same discussed in this brief excerpt from Fowler, another speaker in that debate with Rep.Myrick.

> "This bill will literally save the lives of thousands of women. In 1990, Congress recognized the importance of screening for breast and cervical cancer, and authorized the CDC to provide such services to uninsured, low-income women. The program has been very successful, screening more than 1 million women. But once these women have been diagnosed, many cannot afford the necessary treatment. It is time we allowed States to offer treatment to these women through their Medicaid programs. I do not want us to look another one of these women in the eye and say, you do have cancer, but we cannot help you. I appreciate the commitment of the Speaker, the gentleman from Illinois (Mr. HASTERT), to bring this bill to the floor by Mothers Day, out of respect to all women who face these serious health threats. I urge my colleagues' support."

This bill does not say, we are going to pass a bill for people in the Medicaid program who can't get treatment. It does not even say it's for women under 65 who have been screened. It speaks of not being able to afford the necessary treatment, not of being in a crack. Fowler does not say "I do not want us to look another one of these women under 65 n the eye and say, you do have cancer but we cannot help you--because we have better things to do for the most needy and we have limited local funds."

Very definitely Fowler does not say to states "we're going to give you funds nominally to treat breast cancer through coverage during a limitations period but you can take them and remove the women from the coverage if they happen to grow older before they finish their treatment--then you take the money if you wish, just to make sure you have adequate local funds to meet your 25% match for eligible women." This demeans the program and makes it worse than charity care--which often fails.

The court below purported to find a way this experience with Ramsey county passes the test. The test to say it was constitutional, it

was fair, it was a slam based on plain language and it's all about booting women often the coverage at 65 and imposing a huge spenddown on all of them and their spouses--because of *Schweiker v. Hogan* in 1982. We argue that this case, this conduct by DHS and Ramsey county do <u>not</u> pass the requirements of Mn.Stat.§§14.63-69, or meet the purpose of that part of Minnesota law--particularly in §14.001 "to increase the fairness of agencies in their conduct of contested case proceeding..to simplify the process of judicial review of agency action as well as increase its ease and availability."

But the real problem here is with Minnesota. In 2013 Stephen won a ruling here in a bankruptcy adversarial case[26] in which the 8th Circuit had permitted Minnesota to keep state administrative agency proceedings out of federal courts. A similar case, Sprint v. Jacobs, also came to this Court at the time and this is the Minnesota case that said to Minnesota, you need to stop sheltering federal cases from review.

In a recent case of Wong v. Piper, it was the 8th Cir. who now intervening in the commissioner's proceedings, telling the state we have to allow these cases to be taken to federal courts because they involve federal rights and a state can't do that (But here it's even worse, since in those administrative proceedings they are Constitutional free under Subd.16 supra). The 8th Cir. found

> "Such federal jurisdiction "generally encompasses judicial review of state administrative decisions." Id. at 169. Indeed, the Supreme Court has explained: "There is nothing in the text of § 1367(a) that indicates an exception to supplemental jurisdiction for claims that require on-the-record review of a state or local administrative determination." Id.
>
> "In the face of this well-established principle permitting federal review, Minnesota's statute[27] outlines only a state-court mechanism for appeal; it does not contemplate federal review, much less the effect of such review on the finality of the Commissioner's decision. Based on this omission, the district court determined that the statute precluded the exercise of federal jurisdiction. We disagree.

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[26] *Carlson, Stephen W. v. MN Dept. of Employment*,13-8124 U.S. (2014), which involved Petitioner Stephen in a bankruptcy adversarial in a filing of both Petitioners', during which Victoria's 2013 SAGE and MA-BC diagnosis occurred, involved a questionable cut-off of Stephen's emergency unemployment benefits which put us at risk.

[27] Providing for judicial review, Minn.Stat.256.045 Subd.7.

> "We are not the first court to confront a state statute that contemplates only state-court review of administrative action. The Third Circuit confronted a similar issue in Hindes v. F.D.I.C...137 F.3d 148, 168 n. 15 (3d Cir.1998). The Ninth Circuit reached the same conclusion in BNSF Railway Co. v. O'Dea, 572 F.3d 785 (9th Cir.2009).

Thus, there is a split among the circuits on this issue of allowing protection of federal interests before the DHS.

**Minnesota's Administrative Procedures Act(APA)**

The appeals process from the removal from Treatment Statute benefits begins with an appeal filed with the county or DHS which is governed by Minn.St. and then under Subd.7 goes to the district court as an appellate court (the HSJ is the trial court deferred to on adoption by the Commissioner) under the APA, Mn.Stat. The Minnesota court below approved of everything that was done and we objected to the MN.Sup.Ct. on everything. DHS and the county (supervised by DHS) violated the constitution, acted in excess of statutory authority, made the protested decisions (removal, spenddown, refusal to pay ordered benefits on appeal) upon unlawful procedure, was affected by other errors of law, is unsupported by substantial evidence in view of the entire record as presented, and is arbitrary and capricious, representing the will of respondents, and not the law. And sheltered by Minnesota laws and practices that shield their decisions from federal review

As noted at Pet.App.8a,[28] we have raised 1983 claims. To paraphrase *Hauser*, under 42 U.S.C. § 1983, we have a right to challenge the actions and determination, and conduct that are in conflict with the federal statute.

Thus, 42U.S.C.§1983 provides a cause of action to enforce a federal statutory right if (1) the statute was intended to benefit the plaintiff; (2) the statute imposes a congressional mandate rather than a preference; and (3) the plaintiff's interest in the statute is not vague and amorphous. *Wilder v. Virginia Hospital Association*, 496 U.S. 198, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990); Westside Mothers v. Haveman, 289 F.3d 852 (6th Cir. 2002). Federally enforceable rights have routinely been found after applying the test in the Medicaid context. See Frew v. Hawkins, 540 U.S. ___ No. 02-628 (January 14, 2004); Westside Mothers v. Haveman, supra; Miller vIn this case, Petitioner's claims fall within the test. The Medicaid statute clearly intends to benefit individuals, such as Mrs. Carlson, who have breast or cervical cancer. In Minnesota which has chosen this category of coverage, the Medicaid statute mandates coverage for women with

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[28] "Appellant[s] nominally seek[] injunctive relief and remedies under 42 U.S.C. § 1983 (2012). The district court determined that appellant's requests for an injunction and relief under section 1983 were not within its jurisdiction because they exceeded the scope of the powers afforded under Minn. Stat. § 14.69. Appellant argues that those claims were properly before the district court. Because appellant's substantive claims are unavailing, the availability of injunctive relief and relief under section 1983 is of no consequence. See 42 U.S.C. § 1983 (requiring a deprivation of rights)"

breast or cervical cancer. Ms. Carlson's interest in the statute is not vague or amorphous because the BCCPTA provides explicit criteria describing the women to be covered.

**CONCLUSION**

The petition for a writ of certiorari should be granted. Respectfully submitted,

Victoria L. Carlson
Appellant/Petitioner
P.O. Box 4032
St. Paul, MN 55101
(651) 528-1102

Stephen W. Carlson
Appellant/Petitioner/Representative of Victoria
P.O. Box 4032
St. Paul, MN 55101
(651) 528-1102

Signed January 25, 2020

I certify that this document conforms with Supreme Court word count being 8,665 words using google docs including footnotes
Stephen W Carlson