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IN THE SUPREME COURT  
OF THE STATE OF NORTH DAKOTA

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Harold Ring )  
 )  
 Appellant, )  
 )  
 vs. ) Supreme Court No. 20200072  
 )  
 North Dakota Department of )  
 Human Services, )  
 )  
 Appellee. )

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APPEAL FROM THE DISTRICT COURT  
NORTHEAST JUDICIAL DISTRICT  
RENVILLE COUNTY, NORTH DAKOTA  
THE HONORABLE ANTHONY SWAIN BENSON PRESIDING

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BRIEF OF THE APPELLANT

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## STATEMENT OF THE ISSUES

[1] I. Whether the Department of Human Services' decision to deny Medicaid for nursing home coverage complied with Section 75-02-02.1, North Dakota Administrative Code, and did not create an unfair classification of individuals incapable of utilizing Section 75-02-02.1, based on their status as a "vulnerable adult."

[2] II. Whether the Department of Human Services' decision was supported by evidence in the record that Harold Ring's resources were greater than his financial need for Medicaid, and that Harold Ring's nursing home costs exceeded his income and assets when considering Harold Ring's status as a vulnerable adult that was financially exploited by his son, resulting in theft of his assets.

## STATEMENT OF THE CASE

[3] Harold learned his financial resources had been exhausted in 2018. R. 65. After realizing that Harold had no financial resources, an application for Medicaid for nursing home care was made by the nursing home. The application was denied and was not appealed. An application for Hardship was applied for and denied. R. 13. Harold applied for legal representation with the assistance of the nursing home in June of 2018. Harold withdrew his Hardship application and reapplied for Medicaid for nursing home coverage in November of 2018, with the help of his daughter. R. 113. This application was denied and appealed in January of 2019. A hearing was held on March 21, 2019, in the Good Samaritan Nursing Home. R. 7. Administrative Law Judge Jeanne McLean upheld the North Dakota Department of Human Services' (Department) denial. ALJ McLean's decision is the Department's final decision. R. 154.

[4] Harold sought judicial review of the Department's denial in District Court for Renville County. R. 165. The Honorable Anthony Swain Benson affirmed the Department's decision denying Harold medicaid coverage. R. 168. Harold timely filed this appeal on March 6, 2020.

#### STATEMENT OF FACTS

[5] Harold was a ninety-five (95) year old retired farmer who moved into the Good Samaritan Nursing Home, Mohall, North Dakota, in January 2018, where his wife of seventy-two years had already been residing. R. 28. Muriel and Harold Ring were both private pay residents of the Good Samaritan Nursing Home. Muriel passed away on March 7, 2018. Harold and Muriel had four children: Geraldine Kee, Bloomington, MN; Claremont Ring, Mohall, ND; Paul Ring, Mohall, ND; and, Nancy Ring, Mohall, ND, formerly of the Netherlands. R. 35, 43, 157.

[6] Trichelle Smith, Director of Social Services for the Good Samaritan Nursing Home, Mohall, North Dakota testified at Harold's hearing. R. 61. She described an incident prior to Muriel's passing where Paul Ring was forcefully yelling at Harold wanting Harold to sign a check. R. 62. Ms. Smith took the check from Paul. The check was written in the amount of \$5,000 and was written to someone Harold did not know. R. 63. Ms. Smith described Harold as very confused during this incident. R. 63 After this incident Ms. Smith and Harold went over his bank account statements. R. 64, 65. Ms. Smith, informed Harold that he did not have any money in his bank accounts. R. 65. She indicated that Harold was visibly upset and cried when he found out what was happening. R. 65. Ms. Smith made a report of adult abuse with Vulnerable Adult Protection and contacted law enforcement the day of the incident. R. 64, 67.

[7] After the yelling incident, Ms. Smith contacted Harold's daughter, Nancy Ring, with suspicions regarding Paul's treatment of Harold. R. 47. Nancy Ring, had been an accountant

living in Amsterdam for about 20 years. Nancy returned to Mohall, when she became aware of Paul's treatment of her father. R. 44. Harold executed a Power of attorney and Nancy became his attorney-in-fact in June 2018. R. 55.

[8] Nancy's review of Harold's bank accounts showed the majority of checks written on Harold's accounts were either cashed by Paul, deposited in Paul's account or made out to people that Harold did not know. R. 44-60, 63. Nancy found that all of the checks were written out in Paul's hand writing and that many of the signatures matched the writing of the rest of the check.

[9] Nancy found that ten of the checks written on Harold's account were written after the account was closed. Upon making these discoveries, Nancy filed a report of adult abuse with Vulnerable Adult Protection and the Renville County Sheriff. R. 66, 53.

[10] Kaitlyn Lees, Adult Protective Service (APS) worker, also testified at Harold's hearing. R. 73-90 Ms. Lees opined that Harold was a vulnerable adult and that he had been financially exploited. R. 80-81. Lees in reviewing her records also found the previous APS worker Neils Anderson, found Harold was a vulnerable adult. R. 86 APS worker Neils Anderson had been involved with Harold prior to his initial application for medicaid. R. 84. Police reports and complaints were filed by adult protective services in order to hold Paul Ring accountable but were never prosecuted due to prosecutorial discretion. R. 78.

[11] Harold was wheelchair bound and needed help with his daily activities. R. 33. He had a significant hearing deficit. R. 20-41. Harold felt he had enough resources to cover his nursing home costs for some time into the future. R. 29. He had just sold his house before moving into Good Sam for \$197,000. R. 28. Harold's general feeling was that he was okay financially. Harold's only expense was the nursing home payment. R. 29.

[12] Harold's most recent Medicaid application was made on November 29, 2018. R. 113. The application was denied alleging disqualifying transfers and/or that Harold had more income and assets than medical costs. R. 143. Upon Nancy Ring's review of Harold's bank accounts there was no denying the funds had been taken or transferred without anything to show for the transfer. R. 9, 122-129.

[13] Medicaid eligibility worker Crystal Labatore testified that regardless of whether the transfers were made due to coercion or fraud they would be treated as disqualifying transfers and prevent Harold from receiving Medicaid for nursing care services. R. 99. Ms. Labatore also testified that the reputation of Paul Ring around Mohall was not favorable, but that she could not use that as a factor in considering the disqualifying transfers. R. 105. Medicaid policy regarding the disqualifying transfers will not take into account any additional factors, regardless of potential criminal activity. R. 105.

[14] The Department's denial notice reads, "Harold Ring made a disqualifying transfer of assets and/or income valued at \$157,310.83. R. 143. This transfer without adequate compensation makes Harold Ring ineligible for nursing care services for April 1, 2018, through November 29, 2019." N.D.A.C. § 75-02-02.1-33.2. R. 143. Social Services case notes read: "Worker had denied the case for failure to provide information. It was denied incorrectly. It should've been denied for Client share is more than Medical expenses. The client is found otherwise eligible for Medicaid, however due to the DQT imposed with the April 2018 Application, he is ineligible for Nursing Home coverage." R. 138-139. The case notes also included: "There were witnesses that Harold had been co-erced to give his son money by threats. This had been going on for years. His son Paul was into scams and drug activity." R. 138-139.

[15] Harold stated in an affidavit and through testimony that he did not make any transfers of his money in order to make himself eligible for Medicaid benefits. R. 20, 27, 146. Harold stated, that he was unaware of this and did not know where his money had gone. R. 146. He also stated, that he did not give his son, Paul, the authority to write checks on his account or to use any of his property for his own benefit. R. 146. He felt Paul had taken advantage of him. R. 146.

[16] Harold does remember signing some blank checks but did not fill in who they were for or any amounts. R. 38-39. Harold provided two signature cards from his two banks that had his signature and his late wife's signature on them but neither signature card showed Paul Ring listed as a signatory on the bank accounts. R. 38-39, 148-150. He did not feel he would ever need the County's help. R. 29. Harold did not intend to make any transfers to Paul Ring. R. 26-27. Paul had taken his checks and had used them without his authority. R. 26, 27, 146.

[17] Paul Ring was never Harold Ring's Power of Attorney and Paul was never authorized in any manner to act on Harold's behalf. R. 25, 26-27, 146, 148, 149, 150. On April 5, 2018, Paul Ring was charged with, and convicted of, issuing a check without an account. R. 50, 51. The check was from an account Harold had previously closed out. R. 50. Oddly, Harold the account owner, and the supposed check signor, was not charged with any criminal act because law enforcement had to have determined that Paul had forged the check and presented it for payment. See Case No. 38-2018-CR-00012.

[18] The scope of review requires that a court affirm the order of the agency unless it shall find that any of the following are present:

1. The order is not in accordance with the law;



2. The order is in violation of the constitutional rights of the appellant;
3. Provisions of this chapter have not been complied with in the proceedings before the agency;
4. The rules or procedure of the agency have not afforded the appellant a fair hearing;
5. The findings of fact made by the agency are not supported by a preponderance of the evidence;
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant; or,
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendation by a hearing officer or an administrative law judge.

If the order of the agency is not affirmed by the court, it must be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

N.D.Cent.Code § 28-32-46.

[19] In determining whether the agency's findings of fact are supported by a preponderance of the evidence, the court does not make independent findings of fact or substitute the court's judgment for that of the agency. Rather, the court determines only whether a reasoning mind reasonably could have determined that the factual conclusions reached were proved by the weight

of the evidence from the entire record. Jones v. N.D. Workers Comp. Bureau, 461 N.W.2d 273 (N.D. 1990).

[20] When an appeal from an administrative agency involves a legal question, the supreme court will affirm the agency's decision unless it is not in accordance with the law. Estate of Kruger ex rel. Krueger v. Richland County Social Servs., 526 N.W.2d 456 (N.D. 1994).

#### SUMMARY OF THE ARGUMENT

[21] This case involves the judicial review of a North Dakota Department of Human Services' (Department) decision under North Dakota's Administrative Agencies Practice Act. See Chapter 28-32 of the North Dakota Century Code. Harold Ring (Harold) a ninety-five year old resident of the Good Samaritan Nursing Home applied for Medicaid and was denied initially due to disqualifying transfers and subsequently to being over assets. Harold Ring was financially exploited by his son and did not transfer any property for the purpose of becoming eligible for Medicaid nursing home care. Upon last applying for Medicaid, Harold had no available assets.

[22] It is the Appellant's position that the Department has an inherent conflict between its duty to protect vulnerable adults and its duty to establish medicaid eligibility. The Department's failure, or more appropriately the State's failure, to protect Harold Ring has resulted in great injustice. R. 8-9, 28.

[23] The Department's decision to deny Harold Ring Medicaid coverage for long term care was not in accordance with the law. In addition, the Department's conclusions of law are not supported by its finding of fact and the evidence of the record as a whole.

## LEGAL ARGUMENT

[24] I. The Department's decision to deny Medicaid for nursing home coverage did not comply with Section 75-02-02.1 of the North Dakota Administrative Code, and created an unfair classification of individuals incapable of utilizing Section 75-02-02.1, based on their status as a "vulnerable adult."

[25] In North Dakota, a "Vulnerable Adult" means an adult who has a substantial mental or functional impairment. N.D.Cent.Code § 50-25.2-01(17). A "Substantial functional impairment" means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment. N.D.Cent.Code § 50-25.2-01(15).

[26] Harold was a vulnerable adult. At the time of his medicaid application, Harold was 95 years old. Harold was wheelchair bound and needed help with his daily activities. R. 20-41, 33. He had a significant hearing deficit. R. 20-41. Harold's circumstances were very unsettling to him and caused him a great deal of mental anguish. R. 20-41. Harold could not live independently at least since his entry into the Good Sam nursing home in January of 2018. R. 20-41.

[27] These descriptions of Harold alone show that he needs help living independently and falls within the category of having a substantial functional impairment. By codified definition, Harold was a vulnerable adult due to his substantial functional impairments both physically and those observed by others mentally. R. 20-41.

[28] Expert opinion from the Adult Protective Service (APS) worker Kaitlyn Lees further supports the idea that Harold is a vulnerable adult by definition and professional opinion. Ms.

Lees testified that in her professional opinion and in the opinion of the previous APS worker Neils Anderson, Harold was by definition a vulnerable adult. R. 73-90.

[29] Through application of North Dakota law and professional opinion of APS, Harold Ring fits the codified definition of a vulnerable adult. Therefore, Harold should have been afforded the protection provided for vulnerable adults.

[30] Previous discussion shows that Harold, being a vulnerable adult, meets the first element in financial exploitation requiring that the individual is a vulnerable adult. Next Harold must show that there was a misuse of property or resources by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful improper means. Paul Ring used his familial relationship with Harold as a way to access Harold in the nursing home and then threatened and coerced Harold into signing blank checks. It is also likely that Paul completed and signed many checks all on his own. As many as ten checks were presented after the account was closed.

[31] Trischelle Smith described one such incident prior to Muriel's passing where Paul was forcefully yelling at Harold in order to get a check signed. She confiscated the check and verified the amount as \$5,000 written to someone Harold did not know.

[32] After Trichelle Smith discovered Paul Ring yelling at Harold, she described Harold as very confused. Also after this incident Trichelle indicated that she and Harold went over his bank account statements and they realized he was out of money. She indicated that Harold was visibly upset and cried when he found out what was happening.

[33] It was very upsetting, and emotionally traumatic to Harold that all of his financial resources were gone. Physically and mentally, Harold is no longer able to protect himself. He is totally

dependent on others to keep him safe from harm. Harold's testimony at the administrative hearing further supports this statement. Harold within the transcript was confused and unsure of how the present date fell into place with past sales and financial transactions. This could have been caused by his hearing deficit and by several individuals making statements or asking questions all at the same time. However, all of the questions at the hearing were done in a manner that allowed Harold to continue at his own pace. It is clear from the testimony that a more aggressive manner described by Ms. Smith as being used by Paul Ring would have been successful in coercing the funds from his father. R. 20-40.

[34] In North Dakota, "Financial exploitation" means use or receipt of services provided by the vulnerable adult without just compensation, the taking, acceptance, misappropriation, or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. N.D.Cent.Code § 50-25.2-01(7). Harold was financially exploited.

[35] Harold's youngest daughter, Nancy Ring, moved back from the Netherlands where she had lived for roughly 20 years after being contacted by Good Sam. Nancy became Harold's POA and began looking into Harold's finances and found that many checks had been written to Paul Ring mostly off of Harold's Gate City Bank account. The checks were not cashed in sequence. Besides checks written to Paul, there were checks written to individuals that Harold did not know. Nancy testified that all of the checks were written out in Paul's hand writing and that many of the signatures matched the writing of the rest of the check. Nancy testified that ten of the checks written on Harold's account were written after the account was closed.

[36] The ten checks written on Harold's bank account after it was closed is clearly a criminal act. Harold was a vulnerable adult and the acts of Paul must be considered financial exploitation. Yelling at a 95 year old person to sign a check cannot be a disqualifying transfer. Theft is a criminal act. The fact that law enforcement or the attorney general has failed to protect Harold does not bind the Department to an absurd result. The Department has refused to follow other state precedent before. See Reinholdt v. N.D. Department of Human Services, 2009 ND 17.

[37] Harold testified that he felt his son Paul had taken advantage of him. That Paul had taken his checks and had used them without his authority.

[38] Adult Protective Service (APS) worker Kaitlyn Lees, testified that she contacted law enforcement a number of times in an attempt to press law enforcement to take action against Paul Ring for the financial exploitation of Harold. Her unwavering testimony is of a professional tasked with protecting both the vulnerable and financially exploited.

[39] The testimony of numerous parties as to Paul's aggressive behavior towards his father, and the exhibits showing the number of checks cashed by Paul Ring must be enough evidence to persuade even the staunchest skeptic that Harold was taken advantage of and financially exploited by his son.

[40] The Department's refusal to take APS findings of a vulnerable adult, who is both mentally and physically suffering from substantial functional impairment to be found to have made genuine disqualifying transfers, creates a specific classification of Medicaid applicants. These alleged disqualifying transfers were financially exploited by a third party and regardless of the relationship were coerced and criminally acquired. Public policy cannot hold a vulnerable adult accountable for transfers made under such circumstances. Financially exploitation of a

vulnerable adult must create a rebuttable presumption that protects vulnerable exploited adults from the unfair inequitable finding of a disqualifying transfer.

[41] The Department's decision in Harold's case and its conduct in determining Medicaid eligibility under Harold's circumstances creates a classification that would make it impossible for such individuals to successfully establish eligibility.

[42] The Department argues that Harold had more assets and income than his medical costs. Of course to arrive at this conclusion you have to accept the argument that Harold did not timely appeal his initial application regarding the disqualifying transfers and therefore he foregoes this argument.

[43] This is further abuse to a vulnerable adult by the Department. There is no evidence how Harold's first application was submitted. There was no evidence presented by the Department that Harold made this application or failed to appeal the decision. The premise that Harold Ring a 95 year old vulnerable adult is now barred from arguing that he did not make a disqualifying transfers is without legal basis.

[44] The Department's decision is not in accordance with the law.

[45] II. The Department's decision was not supported by evidence in the record that Harold Ring's resources are greater than his financial need for Medicaid, and that Harold Ring's nursing home costs exceeded his income and assets when taking Harold Ring's status as a vulnerable adult that was financially exploited by his son, resulting in theft of his assets.

[47] The Department's decision that Harold has more income and assets than medical expenses is not supported by the evidence. The Department's decision that Harold is ineligible for Medicaid is based upon disqualifying transfers. "The client is found otherwise eligible for

Medicaid, however due to the DQT imposed with the April 2018 application, the client is ineligible for Nursing Home coverage.” R.138. The Department nor the ALJ cite any authority for making this conclusion.

[48] The North Dakota Legislature enacted the Vulnerable Adult Protection Services Chapter to the North Dakota Century Code. See Chapter 50-25.2 N.D.Cent.Code

[49] The Department with the advice and cooperation of the county social service boards is tasked with the development, administration and implementation of the Adult Protective Services Program. See N.D.Cent.Code § 50-25.2-02.

[50] N.D.Cent.Code § 50-25.2-05 includes North Dakota law enforcement in the process of protecting vulnerable adults. In Harold’s case, North Dakota law enforcement failed to protect him after several reports were made of Harold’s need for protection. The Sheriff of Renville County while prosecuting Paul Ring on the theft of guns and one check written on Harold’s closed bank account ignored Paul Ring’s taking of more than \$157,000. See Case No. 38-2018-CR-00012 and Case No. 38-2018-CR-00049.

[51] The Sheriff’s Department in the gun case accepted Harold’s statement that he did not give Paul authority to take his guns but when Harold tells the same Sheriff’s Department that Paul wrote checks on his bank accounts they decline to prosecute. Case No. 38-2018-CR-00049.

[52] The state of North Dakota has done a disservice to Harold Ring. In spite of the efforts of APS to protect a 95 year old citizen pursuant to the Vulnerable Adult Protection Act, the State’s law enforcement agency has refused to enforce the protections provided by law. Not only is Harold Ring denied protection but he is being punished for growing old and vulnerable.



[53] When there has been a disqualifying transfer Medicaid allows for the applicant to prove that assets have been returned. Harold and any vulnerable adult who is being financially exploited will not know that this is going on until it is too late. To recover assets lost to financial exploitation, law enforcement must investigate and criminal charges must be filed against the exploiting party. The court would then have to require restitution be paid in the amount of the transfers. It should not fall on the victims to enforce the laws and prosecute their transgressors all while they are substantially functionally impaired.

[54] The Department understandably has an obligation to determine Medicaid eligibility but the Department cannot in good faith fulfill this obligation while ignoring the vulnerable adults they are also charged with protecting. In the present case the Department had full knowledge that Harold was being financially exploited. Department case notes state: “There were witnesses that Harold had been coerced to give his son money by threats. This had been going on for years. His son Paul was into scams and drug activity.” R. 138-140.

[55] There is no North Dakota case law that addresses a financially exploited vulnerable adult making a disqualifying transfer. But common sense must tell us that you can't yell at a 95 year old person to sign a check and then turn around and call his signature a voluntary disqualifying transfer. There is nothing voluntary about this.

[56] There is a Vermont case decided in 2011, wherein the son moved his 91 year old mother into a nursing home and sold her house paid, her nursing home bill for few months and then stopped paying. The son argued that it was “God's will” that he use his mothers income. The court affirmed the agencies decision finding that mother was a vulnerable adult and that her son financially exploited her. In re Marvin Waldman, 2011 WL 4977673.

[57] The cynical argument is that Harold did not get evicted. He was still well taken care of. The nursing home can afford to suffer the cost of Harold's denial. The real argument is that Harold worked his whole life and paid taxes. He was a God fearing respectable member of a small community who did not deserve to be treated the way he was. It seemed like everyone knew he was being exploited but him. Some how or another we need to keep this from happening.

[58] The Department of Human Services conclusions of law and decision were not supported by its findings of fact and by the evidence of the record as a whole.

#### CONCLUSION

[59] Harold did not make transfers of his property for the purpose of making himself eligible for medicaid benefits. Harold is a vulnerable adult. Harold's son Paul Ring financially exploited his father. The financial exploitation of Harold must not be considered disqualifying transfers.

[60] WHEREFORE, Harold Ring respectfully requests the decision of the Renville County Social Service Board and the Department of Human Services be reversed and that Harold Ring be found eligible for Medicaid for nursing home care consistent with laws of North Dakota.

Dated this 18th day of May, 2020.

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IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

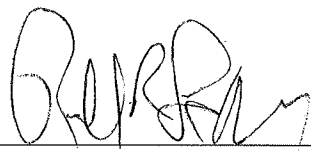
Harold Ring,	)	
	)	
Appellant,	)	Supreme Court No. 20200072
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
North Dakota Department of Human	)	
Services,	)	
	)	
Appellee.	)	

The undersigned attorney, does hereby certify that a true and correct copy of the above and foregoing **Notice of Appeal to the North Dakota Supreme Court** was served upon following persons by electronic mail and/or through the Odyssey Electronic File and Serve System on the 18th day of May 2020:

Tiffany Joy Grossman  
tgrossman@nd.gov

Office of the Attorney General  
500 N. Ninth St.  
Bismarck, ND

Dated this 18th day of May, 2020.

  
\_\_\_\_\_  
LEGAL SERVICES OF N.D.  
By: Richard R. LeMay ID 04665

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Appellee.	)	

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## CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for Appellant, in the above-matter, and as the author of the Appellant's brief, hereby, certifies compliance with Rule 32 of the North Dakota Rules of Appellant Procedure. The brief was completed in Word Perfect and publish to Portable Document Format (PDF).

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