STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0004

Broadway Child Care Center, Inc., et al.,
Appellants,

vs.

Minnesota Department of Human Services,
Respondent.

Filed January 11, 2021
Affirmed
Bratvold, Judge

Office of Administrative Hearings
File Nos. 21-1801-36183, 21-1801-36184, 21-1801-36182

L.1. Rhyddid Watkins, Martin Hild, P.A., Aurora, Colorado (for appellants)

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Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Kirk, Judge.*

SYLLABUS

The Minnesota Equal Access to Justice Act provides that some parties may seek attorney fees and expenses, but excludes persons providing services under a license from the Minnesota Department of Health or Minnesota Department of Human Services when a party in a matter involving the license, such as an administrative proceeding that grants, suspends, revokes, or renews the license applicable to the provided services.

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

OPINION

BRATVOLD, Judge

Appellants Broadway Child Care Center Inc., Central Childcare Center Inc., and Madina Academy Central Inc. (collectively, "the childcare centers") sought discretionary review under Minn. Stat. § 15.474, subd. 2 (2018), of orders denying their requests for attorney fees and expenses under the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. § 15.471-.474 (2018). We granted review and consolidated the appeals.

MEAJA generally provides that a prevailing party may recover attorney fees and expenses upon a showing that the state's position was "not substantially justified." Minn. Stat. § 15.472(a). But MEAJA excludes some persons as parties eligible to seek fees. Minn. Stat. § 15.471, subd. 6 (defining "party"). We determine that MEAJA excludes a person providing services under licensure by the Minnesota Department of Health (MDH) or respondent Minnesota Department of Human Services (DHS) from seeking attorney fees in a matter involving the license applicable to those services. *Id.*, subd. 6(c). Because the childcare centers are persons providing services under a DHS license and they requested fees incurred in contested-case proceedings involving the temporary suspension of the licenses applicable to those services, we affirm the orders denying their fee requests.

FACTS

In May and June 2019, DHS received reports of suspected licensing violations at the childcare centers and responded by conducting site visits in May and June 2019. During these visits, DHS employees found "significant instances of non-compliance with health and safety standards." After the June site visits, DHS issued orders of temporary and

immediate suspension (TIS) of the childcare centers' licenses. The TIS orders included findings of specific violations for the childcare centers. In general, DHS found that classrooms did not have adequate staff distribution and were over capacity. DHS also found the childcare centers lacked records for children under their care and had no documents showing training for some staff. Based on these findings, DHS determined that "the health, safety, and rights of children in [the child care centers'] care are in imminent risk of harm." The TIS orders provided that, at the close of business on June 14, 2019, the childcare centers were "prohibited from providing child care."

The childcare centers filed administrative appeals and requested contested-case hearings. The childcare centers disputed the DHS findings and responded, for example, that each center had the required child records and staff training documents. Before the hearings concluded, the childcare centers produced documents to DHS. As DHS reviewed these documents, the contested-case proceedings commenced for Broadway and Central.

On August 2, 2019, DHS lifted the TIS orders and asked the administrative law judge (ALJ) to dismiss the contested-case proceedings. DHS's written request stated that information provided by the childcare centers had shown "sufficient compliance" and that there was "no longer an imminent risk of harm to children served by the program[s]." The ALJ dismissed the contested-case proceedings against the childcare centers.

The childcare centers timely applied for attorney fees of $46,825 under MEAJA, and DHS opposed the applications. After a hearing, the ALJ denied the applications for attorney fees in a written decision. The ALJ gave three independent reasons for the denials: first, the childcare centers were not a "party" as defined by MEAJA. This reason is the

heart of this appeal and applies an exclusion provided by Minn. Stat. § 15.471, subd. 6(c). The ALJ explained:

> Here, [DHS] granted [the childcare centers] [] license[s] to provide childcare services, and the TIS directly relates to the provision of those services. [The childcare centers] fall[] squarely into this exclusion and cannot be considered [] part[ies] for purposes of MEAJA.

Second, the ALJ determined that the childcare centers were not prevailing parties in the contested-case proceedings. Third, the ALJ determined that DHS's position was substantially justified because "it cannot be said that the violations alleged by [DHS] are incapable of placing children in imminent risk of harm."[1]

As mentioned above, we granted discretionary review.[2] Because our review of the ALJ's first reason resolves this appeal, we need not reach the ALJ's other reasons for denying the fee applications.

[1] The ALJ also noted that MEAJA authorizes recovery of reasonable attorney fees and expenses and observed that the childcare centers' expenditures were not reasonable. For example, regarding Madina's fee application, the ALJ observed that the childcare center's "expenditure of nearly $47,000 to obtain [DHS's] rescission does not appear to be reasonable."

[2] Appellants, as aggrieved fee claimants, sought discretionary review under Minn. Stat. § 15.474, subd. 2. *See also Matter of Haymes*, 444 N.W.2d 257, 258-59 (Minn. 1989) (interpreting Minn. Stat. § 3.764, subd. 2, and holding state agency aggrieved by order requiring it to pay attorney fees under MEAJA may seek juridical review by certiorari). Section 15.474 also provides that no appeal may be taken if discretionary review is denied and that our review of a fee determination is for abuse of discretion. Minn. Stat. § 15.474, subd. 2.

ISSUE

Does MEAJA exclude a person providing services under a DHS license from seeking attorney fees when a party in a matter that involves suspending the license applicable to the services provided?

ANALYSIS

The legislature adopted MEAJA in 1986. *See* 1986 Minn. Laws ch. 377, §§ 1-7 at 197-200 (then codified at Minn. Stat. §§ 3.761-.765 (1986)). The law was modeled on the federal Equal Access to Justice Act (FEAJA). *Haymes,* 444 N.W.2d at 258; *see generally* Pub. L. 96-481, tit. II, 94 Stat. 2325 (1980) (adopting FEAJA). Congress enacted FEAJA "to eliminate the barriers that prohibit small businesses and individuals from securing vindication of their rights in civil actions and administrative proceedings brought by or against the Federal Government." *Scarborough v. Principi*, 541 U.S. 401, 406, 124 S. Ct. 1856, 1861 (2004) (quoting H.R. Rep. No. 96-1005, at 9 (1980)).

MEAJA provides that an ALJ shall award attorney fees and other expenses to a "party," other than the state, if the party (a) prevails in a civil action or contested-case proceeding brought by or against the state, and (b) shows that the position of the state was "not substantially justified," *unless* (c) "special circumstances make an award unjust." Minn. Stat. § 15.472(a). MEAJA is an exception to the general rule that a party is not entitled to attorney fees and costs in actions against the state acting in its sovereign capacity. *Lund v. Comm'r of Pub. Safety*, 783 N.W.2d 142, 143 n.1 (Minn. 2010). Because MEAJA is a limited waiver of sovereign immunity, courts strictly construe its language.

See Donovan Contracting v. Minn. Dep't of Transp., 469 N.W.2d 718, 720 (Minn. App. 1991) (citing *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 682, 103 S. Ct. 3274, 3278 (1983)), *review denied* (Minn. Aug. 2, 1991).

MEAJA defines "party" as having three separate requirements. First, MEAJA provides that a party is "a person named or admitted as a party, or seeking and entitled to be admitted as a party, in a court action or contested-case proceeding, or a person admitted by an administrative law judge for limited purposes, and who is" a small business with 500 or fewer employees and whose annual revenues did not exceed $7,000,000 at the time of the proceeding. Minn. Stat. § 15.471, subd. 6(a). Second, MEAJA provides that a party includes partners, officers, shareholders, members, or owners of a qualifying small business. *Id.*, subd. 6(b). Here, the parties on appeal agree that the childcare centers satisfy the first and second requirements of the statutory definition.[3]

The parties disagree, however, about how to interpret and apply the third requirement of the statutory definition, which provides a party does *not* include

> a person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named

[3] Who is a party eligible to apply for attorney fees under MEAJA has been the subject of prior appeals. For example, in *McMains v. Comm'r of Pub. Safety*, this court examined available legislative history and determined that "the parties entitled to recover fees and expenses under [MEAJA] are small businesses" that meet statutory requirements and prevail against the state in a civil or administrative action. 409 N.W.2d 911, 914 (Minn. App. 1987) (interpreting Minn. Stat. § 3.761, subd. 6(a) (1986)). After deciding that this court could not "expand the various class of persons named by the legislature as persons eligible for benefits" under MEAJA, we held that MEAJA did not authorize awarding attorney fees to an individual who prevailed in implied-consent proceedings. *Id.* at 914-15; *see also Snider v. Minn. Dep't of Transp.*, 445 N.W.2d 578, 580 (Minn. App. 1989) (holding taxpayers certified as a class could seek attorney fees as a party under MEAJA).

> or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services.

Id., subd. 6(c). For ease of reference, we will refer to Minn. Stat. § 15.471, subd. 6(c), as "subdivision 6(c)" or "the exclusion."

The childcare centers argue that the exclusion bars only those providing services under an MDH license *or* those providing services under reimbursement on a cost basis by DHS. They also contend that because they do not provide these types of services, the exclusion does not apply to them. DHS argues that the exclusion bars those providing services under DHS *or* MDH licenses from seeking fees in matters involving the applicable license, and that this exclusion applies to the childcare centers' contested-case proceedings challenging the TIS orders that suspended their DHS licenses.

Whether the childcare centers are excluded by subdivision 6(c) from the definition of parties that may seek fees under MEAJA section 15.472(a) presents a question of statutory interpretation that we review de novo. *A.A.A. v. Minn. Dep't. of Human Servs.*, 832 N.W.2d 816, 819 (Minn. 2013). When interpreting statutes, we seek "to ascertain and effectuate the intention of the legislature." *Id.* at 828; *see* Minn. Stat. § 645.16 (2018) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.").

The first step in interpreting a statute is to determine whether the language is clear and unambiguous. *A.A.A.*, 832 N.W.2d at 819. If the "legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and [we] apply the statute's plain meaning." *Am. Tower, L.P. v.*

City of Grant, 636 N.W.2d 309, 312 (Minn. 2001). A statute is ambiguous if, as applied to the facts of the case, it is susceptible to more than one reasonable interpretation. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72-73 (Minn. 2012). If the statute is ambiguous, then we may look beyond the statutory language to determine legislative intent. *A.A.A.*, 832 N.W.2d at 819; *see generally* Minn. Stat. § 645.16 ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering," for example, "occasion and necessity for the law.").

To guide our interpretation of the exclusion, we refer to the common meaning of the words used. *See Emerson v. Sch. Bd. of Indep. Sch. Dist. 199*, 809 N.W.2d 679, 682 (Minn. 2012) (referring to "plain and ordinary meaning" of statutory words and phrases). When the legislature does not provide statutory definitions, we often look to dictionary definitions to determine the common meaning of a statute's terms. *In re Restorff*, 932 N.W.2d 12, 19 (Minn. 2019). "[W]e are not bound by dictionary definitions when context directs us otherwise." *State v. Gibson*, 945 N.W.2d 855, 858 (Minn. 2020). We also consider a statute "as a whole so as to harmonize and give effect to all its parts." *Van Asperen v. Darling Olds, Inc.*, 93 N.W.2d 690, 698 (Minn. 1958).

We resolve the issue on appeal by first interpreting subdivision 6(c) using the common meaning of key words and phrases. We next consider the three points of disagreement among the parties: grammatical rules to help understand how clauses in subdivision 6(c) relate to each other, precedent referring to subdivision 6(c) as "excluding certain health providers," and the scope of licensing matters that are excluded. In sum, we determine that subdivision 6(c)'s language is plain and unambiguous and excludes the

childcare centers from the definition of a party that may seek attorney fees and expenses under MEAJA.[4]

A. Common meaning of key terms

We break down our interpretation of the key terms in subdivision 6(c) by recognizing that the exclusion has two key phrases. First, the exclusion applies to "a person providing services pursuant to licensure." Minn. Stat. § 15.471, subd. 6(c). "Providing" is a present-tense transitive verb, and the dictionary definition of "provide" is "to make available," or "to supply something needed or desired." *The American Heritage Dictionary of the English Language* 1418 (5th ed. 2011). "Pursuant" connects the person providing services with licensure. The supreme court recently defined "pursuant to" as "under," "in accordance with," "in compliance with," the subject. *Getz v. Peace*, 934 N.W.2d 347, 355 (Minn. 2019).[5] Next, *Black's Law Dictionary* defines "licensure" as synonymous with "licensing" and meaning "a governmental body's process of issuing a license." *Black's Law Dictionary* 1106 (11th ed. 2019); *see also American Heritage*, *supra*, at 1013 (defining "licensure" as "the act or instance of granting a license").

In the second key phrase, the exclusion applies, as relevant here, to "a person . . . named . . . as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services." Minn. Stat. § 15.471,

[4] Even though the parties disagree about how to interpret subdivision 6(c), they agree that its language is clear and unambiguous.

[5] The supreme court cited *Black's Law Dictionary* 1272 (8th ed. 2004) for the definition of "pursuant" as well as *A Dictionary of Modern Legal Usage* 721 (2d ed. 1995) (defining "pursuant to" as "in accordance with; under; as authorized by; or in carrying out").

subd. 6(c). *Black's Law Dictionary* defines "matter" as "a subject under consideration, esp. involving a dispute or litigation." *Black's Law Dictionary* 1172 (11th ed. 2019). In its principal provision, MEAJA clarifies "matter" by stating that fee and expense awards shall be awarded to a party "in a civil action or contested-case proceeding other than a tort action, brought by or against the state." *See* Minn. Stat. § 15.472(a).

Subdivision 6(c)'s second phrase, then, excludes from the definition of "party," a person named in a civil action or contested-case proceeding "which involves the licensing . . . applicable to those services." "Involve" is defined as "to relate to or affect." *American Heritage*, *supra*, at 923. "Licensing" is defined as "to give or yield permission to or for" and "to grant a license to or for; authorize." *Id.* at 1013. The exclusion, however, refers to "*the* licensing," a definite article, rather than "a license." *See State v. Struzyk*, 869 N.W.2d 280, 286 (Minn. 2015) ("It is textually significant that the Legislature used 'the,' rather than 'an,' for example."). The definite article for "the licensing" refers back to "providing services pursuant to licensure," and the meaning is underscored because the exclusion also states that "the licensing" is "applicable to those services." *See generally id.* (determining that "the" assault and "the" person "relate back" to the first reference in the sentence).

Thus, when we read the two key phrases together and apply the common meaning of their terms, the exclusion in Minn. Stat. § 15.471, subd. 6(c), applies to a person providing services under a license by the MDH or DHS and who is a party to a civil action or contested-case proceeding that affects the party's license applicable to the provided services. Because the person is not a "party" within the meaning of section 15.471,

subd. 6(c), the person may not seek attorney fees and expenses as a "party" under section 15.472(a).

The parties read the exclusion differently and focus on three points, which we discuss in turn.

B. Grammatical rules interpreting how clauses in the exclusion relate to each other

The parties disagree about how the clauses in the exclusion relate to each other. The childcare centers read subdivision 6(c) as providing "two conditions in parallel," and argue that the correct interpretation under the distributive canon requires that we follow and apply the parallel conditions. The childcare centers conclude that the plain meaning of the first key phrase in the exclusion bars only persons licensed by MDH, or for whom DHS oversees reimbursement on a cost basis. In contrast, DHS argues that the exclusion applies to persons providing services under licenses *or* cost-basis reimbursement by either MDH *or* DHS when seeking attorney fees in a matter involving either licensing rates, procedures, or methodology, *or* in a matter involving reimbursement rates, procedures, or methodology. We consider these different grammatical arguments in turn.

We are not convinced that the exclusion's first key phrase is illuminated by the distributive canon, as the childcare centers contend.[6] The distributive canon provides that

[6] It is not entirely clear whether the distributive canon is interpretive or constructive. *Compare* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 214-16 (2012) [hereinafter *Reading Law*] (describing distributive phrasing as a contextual canon) *with* 2A N. Singer & S. Singer, *Sutherland Statutes and Statutory Construction* § 47:26, p. 448-50 (rev. 7th ed. 2014) (describing distributive canon as an aid to interpretation). Appellate courts generally use interpretive canons to aid in understanding the plain meaning of a statute. *See State v. Riggs*, 865 N.W.2d 679, 682

"where a sentence contains several antecedents and several consequents, courts should read them distributively and apply the words to the subjects to which, by context, they seem most properly to relate." *Encino Motorcars, LLC v. Navarro*, 138 S. Ct. 1134, 1141 (2018) (quotation omitted). It is true that appellate courts often turn to the rules of grammar to interpret statutes. *State v. Scaffer*, 104 N.W. 139, 139 (Minn. 1905) ("Though statutes are to be construed in this first instance in accordance with the ordinary rules of grammar, the grammatical sense must in all cases yield to the clearly disclosed legislative intent."); *see also* Minn. Stat. § 645.08(1) (2018) ("words and phrases are construed according to rules of grammar and according to their common and approved usage.").

But in subdivision 6(c), the key question is whether "or" is conjunctive or disjunctive. Appellate courts "normally interpret 'or' as disjunctive, rather than conjunctive." *Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008). Because context does not suggest otherwise, we read the several uses of "or" in subdivision 6(c) as disjunctive. Thus, the exclusion applies to persons providing services under either licensure *or* reimbursement on a cost basis, by either MDH *or* DHS, when a party in a matter that involves the licensing *or* reimbursement. The childcare centers' interpretation ignores the disjunctive meaning of "or" in subdivision 6(c), and so we reject it.

(Minn. 2015). Constructive canons, on the other hand, aid appellate courts in understanding ambiguous statutory language. *Id.* at 683 (stating that if the language is unambiguous, reviewing courts do not resort to the canons of statutory construction). Thus, if the distributive canon is constructive, we need not consider it because we determine that subdivision 6(c)'s language is plain and unambiguous. We will assume, without deciding the issue, that the distributive canon is interpretive.

We understand DHS's interpretation of the second key phrase in subdivision 6(c)—that the legislature intended "rates, procedures, or methodology" to modify both licensing and reimbursement—to implicitly rest on the series-qualifier canon.[7] The series-qualifier canon provides that "[w]hen there is a straightforward parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." *State v. Stay*, 935 N.W.2d 428, 432 (Minn. 2019) (quoting *Reading Law, supra,* at 147). We cannot say that the construction of subdivision 6(c) is "straightforward" or "parallel" and therefore we conclude that the series-qualifier canon does not apply here.

We conclude that the last-antecedent canon is a "better fit" to understand the second key phrase based on a full reading of subdivision 6(c). *See Stay*, 935 N.W.2d at 432 (rejecting series-qualifier canon and finding last-antecedent canon to be "better fit" because it was "helpful" to understand the statutory language). The last-antecedent canon "instructs that a limiting phrase ordinarily modifies only the noun or phrase that it immediately follows." *Id.* (quoting *Larson v. State*, 790 N.W.2d 700, 705 (Minn. 2010)). The supreme court has explained that a court should not apply the last-antecedent canon if doing so would render any of the statute's language superfluous or if elements are separated by punctuation or a line break. *See In re Estate of Butler*, 803 N.W.2d 393, 397-98

[7] We have recognized that the series-qualifier and last-antecedent canons are canons of interpretation that may be used to aid our understanding of unambiguous statutory language. *See Estate of Pawlik*, 845 N.W.2d 249, 251-52 (Minn. App. 2014) (discussing "two canons of statutory interpretation: the last-antecedent canon and the series-qualifier canon"), *review denied* (Minn. June 25, 2014); *see also Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 624, 133 S. Ct. 1326, 1343 (2013) (Roberts, C.J., concurring) ("The canon of interpretation known as the rule of the last antecedent . . . .").

(Minn. 2011) (disapproving proposed statutory interpretation because "the qualifying phrase would be superfluous"); *see also City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 595 (Minn. 2016) (explaining that a "semicolon or a line break might signify that a . . . clause modifies all that goes before," but the lack of either signal suggests otherwise).

Applying the last-antecedent canon to the second phrase in the exclusion, we conclude that "rates, procedures, or methodology" modifies only "reimbursement," and not "licensing." To interpret it otherwise would apply the exclusion to a party "in a matter which involves the licensing rates, procedures, or methodology applicable to those services," as well as "in a matter which involves the reimbursement rates, procedures, or methodology applicable to those services." But this interpretation disregards that "the licensing" refers back to "licensure" in the first phrase of subdivision 6(c). Also, neither party contends that "on a cost basis" in the first phrase of subdivision 6(c) modifies "licensure" as well as "reimbursement." Both parties read "on a cost basis" to only modify "reimbursement." Thus, if we apply the last-antecedent canon to all of subdivision 6(c), it gives meaning to the disjunctive "or" in "licensure *or* reimbursement on a cost basis" and gives meaning to "the licensing *or* reimbursement rates, procedures, or methodology."

While the last-antecedent canon is helpful, it is unnecessary to interpret the exclusion. Based on its unambiguous language, we conclude that subdivision 6(c) excludes two groups from as parties that may seek attorney fees. One excluded group is persons providing services under an MDH or DHS license when a party in a matter that involves the MDH or DHS licensing applicable to those services. The second excluded group is

persons providing services under reimbursement on a cost basis by MDH or DHS when a party in a matter that involves the reimbursement rates, procedures, or methodology applicable to those services. The legislature's intent is readily discernable from the plain and unambiguous language of subdivision 6(c). Thus, statutory construction is neither necessary nor permitted, and we apply the statute's plain meaning. *See City of Grant*, 636 N.W.2d at 312 (stating when the legislature's intent is "clearly discernable" from the plain language, statutory construction is unnecessary).

C. Precedent referring to subdivision 6(c)

The childcare centers argue that we should follow precedent interpreting MEAJA's definition of party to exclude only licensed health-service providers. Because the childcare centers are not licensed to provide health services, they contend that precedent compels a holding that they are not within the exclusion. It is correct to say that, in *McMains*, this court stated that subdivision 6(c), "excludes certain health providers." 409 N.W.2d at 913-14.

But we do not find helpful *McMains*'s quick reference to the exclusion because *McMains* did not interpret the language of subdivision 6(c).[8] *See id.* at 913-15. Instead, *McMains* addressed a different issue: whether an individual motorist, whose license was at first revoked but who obtained a rescission in an implied-consent proceeding, is a party

[8] *McMains* interpreted and applied MEAJA, then codified as Minn. Stat. §§ 3.761-.765. The revisor renumbered MEAJA in 1994. The legislature has not substantively amended MEAJA since its adoption in 1986, other than to revise maximum revenues of a party under subdivision 6(a). 2000 Minn. Laws ch. 439, § 1 at 439. There is therefore no material difference between the version of subdivision 6, as discussed by *McMains*, and the current version of Minn. Stat. § 15.471, subd. 6.

under MEAJA and entitled to attorney fees. *Id.* at 913. *McMains* interpreted subdivision 6(a) and (b) as providing that a party under MEAJA is a small business that meets the requirements of subdivision 6(a), plus the business's partners, officers, shareholders, members, or owners as provided in subdivision 6(b). *Id.* at 914. Based on the unambiguous language of subdivision 6(a) and subdivision 6(b), *McMains* held that an individual motorist is not a party under MEAJA. *Id.* at 915. Subdivision 6(c) was mentioned briefly in one sentence, but not discussed or analyzed. *Id.* at 913.

We conclude that *McMains* is not precedent supporting the childcare centers' argument that subdivision 6(c) excludes *only* persons with MDH licenses from seeking attorney fees.

D. The scope of licensing matters excluded

The childcare centers specifically challenge the scope of licensing matters covered by the exclusion. The childcare centers argue that, even if subdivision 6(c) excludes persons with DHS licenses, it excludes them when parties *only* in matters involving "the licensing," which they contend is the *granting* of a license and *not* the suspending of a license. The childcare centers rely on various dictionaries, including *Black's Law*, which defines "licensing" as involving "the many procedures administrative agencies perform in conjunction with issuance of various types of licenses." *Black's Law Dictionary* 921 (6th ed. 1996).[9] We refer to a similar *Black's Law* definition of "licensing" in our analysis.

[9] The childcare centers' brief also cites online dictionaries for definitions of "licensing." *See, e.g.*, *Merriam-Webster Online Dictionary*, www.merriam-webster.com (last visited Dec. 17, 2020) (defining "licensing" as "to issue a license to"). While we were unable to

Even so, we are not persuaded by the childcare center's narrow interpretation of the exclusion because their interpretation fails to consider the context of "licensing" within the entirety of subdivision 6(c).

Appellate courts read all of the terms of a subdivision together and strive to give effect to all terms. *See Van Asparen*, 93 N.W.2d at 698. The childcare centers focus on "the licensing" found at the end of subdivision 6(c), but they ignore other words in the second key phrase. First, the childcare centers ignore the legislature's decision to exclude parties from seeking attorney fees in a matter "which *involves* the licensing . . . applicable to those services." Minn. Stat. § 15.471, subd. 6(c) (emphasis added). As discussed above, the word "involves" directs us to exclude matters that "relate to or affect" the licensing applicable to the services being provided by the party. *See id.*; *American Heritage*, *supra*, at 923. Matters *involving* the granting, suspending, revoking or renewing of a license *relate to or affect* the licensing applicable to services.

Second, the childcare centers ignore the legislature's decision to use "*the* licensing," a definite article referring to "licensure" found in the first key phrase of subdivision 6(c). *See Riggs*, 865 N.W.2d at 684 (recognizing that the definite article "the" is "a word of limitation that indicates a reference to a specific object" (quotation omitted)). In the first key phrase, subdivision 6(c) excludes a person "providing services pursuant to licensure." Minn. Stat. § 15.471, subd. 6(c). We must assume that the legislature intended to use the present tense and give meaning to that intent. The legislature did *not* say that excluded

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access some of the cited definitions, it did not affect our analysis because *Black's Law* has a similar definition.

persons are *applying* to provide services under a license. Because excluded persons are "providing services pursuant to licensure," the matters excluded are not limited to the initial granting of a license. Subdivision 6(c) contemplates that person excluded as parties *are providing* services under a license and seeking attorney fees for a matter *involving* the licensing applicable to those services. Thus, we reject the view that subdivision 6(c) excludes parties in matters involving *only* the granting of a license because this would not give effect to all terms in the exclusion.

We gain support for this reading of the exclusion by referring to another statutory definition. MEAJA defines the "contested case" for which a prevailing party may seek attorney fees and states that MEAJA excludes "a contested case to establish or fix a rate or grant or renew a license." Minn. Stat. § 15.471, subd. 3. Because subdivision 3 excludes contested cases that grant or renew a license, we consider it when interpreting subdivision 6(c)'s exclusion of "a matter which involves the licensing." Minn. Stat. § 15.471, subd. 6(c). We are mindful that we interpret a statute to give effect to all parts and not to render any part superfluous. *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020) ("When possible, we interpret statutes to give effect to all parts and no word, phrase, or sentence will be held superfluous, void, or insignificant."); *see generally* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions.") If we were to adopt the childcare centers' interpretation of the exclusion to bar parties eligible to seek attorney fees *only* in those matters involving the granting or renewing of a license, we would render subdivision 3 superfluous.

Thus, we hold that "a matter which involves the licensing" is a matter involving or relating to the licensing applicable to the services provided. For that reason, subdivision 6(c) excludes from the definition of "party," those licensed persons who are parties in civil actions or contested-case proceedings involving whether to grant, renew, revoke, or suspend their licenses.

Finally, the childcare centers contend that subdivision 6(c) cannot exclude matters involving the suspension of a license because this court decided otherwise in an unpublished order in a 2014 appeal.[10] The ALJ considered the unpublished order and did not find it persuasive because, as a matter of law, "the suspension of a child care license relates to licensing for the provision of child care services." We agree with the ALJ for two reasons.

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[10] In an unpublished opinion, this court reversed a TIS order involving the relator's childcare license, characterizing the order as unsupported by substantial evidence. *In re Temp. Immediate Suspension of Family Child Care License of Gilbertson*, No. A13-1259, 2014 WL 996968, at *4 (Minn. App. Mar. 17, 2014), *review denied* (Minn. Sept. 16, 2014). Relator moved for attorney fees and costs under MEAJA, which the panel decided by separate order. *In re Temporary Immediate Suspension of Family Child Care License of Gilbertson*, No. A13-1259 (Minn. App. June 30, 2014). The panel's order addressed "whether relator meets the statutory definition of a party entitled to recover fees and expenses under [] MEAJA." *Id.* at 2. In a split decision, the panel concluded that the legislature intended MEAJA to benefit small businesses and awarded relator $12,000 in attorney fees and $5,165.01 in expenses. *Id.* at 4. Because there was "no showing that the underlying proceedings or this appeal related in any way to 'licensing or reimbursement rates, procedures, or methodology applicable' to the provision of child-care services," the panel concluded that subdivision 6(c) did not bar relator's application for attorney fees. *Id.* at 3. Judge Peterson dissented, however, reasoning that relator sought fees "for proceedings relating to 'licensing . . . applicable to' the child-care services she provided pursuant to a license" issued by DHS. *Id.* at 5. Therefore, Judge Peterson concluded that relator was excluded from the definition of a "party" and could not recover fees under MEAJA. *Id.* The parties appear to agree that ALJs have treated this order as persuasive and awarded attorney fees under MEAJA in proceedings involving license suspensions.

First, unpublished orders of this court are not precedential. *See generally* Minn. R. Civ. App. P. 136.01 (providing that, when deciding the merits of an appeal, a panel may issue a "precedential opinion"); *Jackson ex rel. Sorenson v. Options Residential, Inc*., 896 N.W.2d 549, 553 (Minn. App. 2017) ("[W]e are bound by precedent established in the supreme court's opinions and our own published opinions.").

Second, we do not find the previous order persuasive. For the reasons already stated, we conclude that matters in which childcare licenses are suspended are matters "which involve[] the licensing . . . applicable to" the services provided by the childcare centers under DHS licensure.

In sum, MEAJA's unambiguous language excludes the childcare centers from the definition of "party" because they are "providing services pursuant to licensure" by the DHS and because this matter "involves the licensing . . . applicable to those services." *See* Minn. Stat. § 15.471, subd. 6(c). Because the childcare centers are not parties entitled to apply for attorney fees or expenses under MEAJA, we do not reach the other issues raised by the childcare centers and need not determine whether the childcare centers were prevailing parties or whether DHS's position was substantially justified. *See* Minn. Stat. § 15.472 (a).

DECISION

Because the childcare centers are excluded from the definition of a "party" in Minn. Stat. § 15.471, subd. 6(c), and are therefore not entitled to seek attorney fees or expenses

under MEAJA, we affirm the decision of the ALJ denying the childcare centers' applications for attorney fees and expenses.

Affirmed.