ADVANCE SHEET HEADNOTE
April 11, 2022

2022 CO 18

No. 21SC232, *Arapahoe County Department of Human Services v. Monica Velarde and Michael Moore*—State Administrative Procedure Act—Judicial Review of Final Agency Action—Judicial Enforcement of Agency's Final Order—§ 24-4-106, C.R.S. (2021)—Overpayment of Medical Assistance Benefits.

The supreme court considers whether the thirty-five-day deadline in section 24-4-106(4), C.R.S. (2021), which governs proceedings initiated by an adversely affected or aggrieved person seeking judicial review of an agency's action, applies to proceedings initiated by an agency seeking judicial enforcement of one of its final orders. The supreme court answers no. It holds that the thirty-five-day deadline in subsection 106(4) applies to an adversely affected or aggrieved person's suit seeking judicial review of an agency's action but not to an agency's suit seeking judicial enforcement of one of its final orders. Because the court of appeals incorrectly applied the thirty-five-day deadline in subsection 106(4) in ruling that this judicial enforcement case was untimely filed, the supreme court reverses and remands for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 18

Supreme Court Case No. 21SC232
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA170

Petitioner:

Arapahoe County Department of Human Services,

v.

Respondents:

Monica Velarde and Michael Moore.

Judgment Reversed
en banc
April 11, 2022

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No appearance on behalf of Respondents.

JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 They say that nothing gets done without a deadline. That may well be. But in this case, the district court and the court of appeals incorrectly relied on an inapplicable statutory deadline in ruling that the complaint was untimely filed. Each court was called upon to determine whether a thirty-five-day deadline governing proceedings initiated by an adversely affected or aggrieved person seeking judicial review of an agency's action also applies to proceedings initiated by an agency seeking judicial enforcement of one of its final orders. Both courts answered yes. We, however, answer no.

¶2 The Department of Human Services for Arapahoe County ("the Department") sued Monica Velarde and Michael Moore to enforce a final order it had issued against them to recover Medicaid overpayments. But the Department did so only after undertaking extensive efforts on its own to recoup the fraudulently obtained benefits—a process that spanned more than a decade. The district court dismissed the Department's suit, finding that section 24-4-106(4), C.R.S. (2021), which is part of the State Administrative Procedure Act ("APA"), requires an agency seeking judicial enforcement of one of its final orders to do so within thirty-five days of the order's effective date. A division of the court of appeals affirmed the district court's dismissal, similarly concluding that the Department's complaint had run afoul of the thirty-five-day time limit in

subsection 106(4). *Arapahoe Cnty. Dep't of Hum. Servs. v. Velarde*, 2021 COA 25, ¶ 14, 491 P.3d 452, 456.

¶3 Because the division misread the thirty-five-day deadline as applying both to proceedings brought by an adversely affected or aggrieved person seeking *judicial review* of an agency's action and to proceedings brought by an agency seeking *judicial enforcement* of one of its final orders, we reverse. We hold that the thirty-five-day deadline in subsection 106(4) applies to judicial review cases but not to judicial enforcement cases. We thus remand for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶4 Velarde and Moore have children together and, during the relevant timeframe, shared a residence. Pursuant to an application for public assistance submitted by Velarde, they received food and medical benefits from the state. But in her application, Velarde failed to report that she and Moore shared income, representing instead that Moore was merely her roommate. Because Velarde did not include Moore's income in her application, she and Moore improperly qualified for and received benefits to which they were not entitled.

¶5 After conducting an investigation into payments made to Velarde and Moore between September 2002 and December 2007, the Department determined that they had fraudulently obtained almost $100,000 in food and medical benefits.

Specifically, the Department found that Velarde and Moore had improperly received $16,166 in food benefits and $79,591.17 in medical benefits.

¶6 The Department subsequently mailed two notices to Velarde and Moore: a "Notice of Overpayment," which referred to the $16,166 in fraudulent food benefits, and a "Notice of Proposed Action," which referred to the $79,591.17 in fraudulent medical benefits. The notices made clear that the Department planned to take whatever steps were necessary to recover the amounts specified.

¶7 Although the notices contained an advisement regarding the right to a dispute resolution conference or a hearing before the Office of Administrative Courts, neither Velarde nor Moore took advantage of this appeals process. The Department thus commenced efforts to recoup the fraudulently obtained funds. It first sought to recover the money owed without seeking judicial intervention. For example, the Department (1) withheld a portion of the ongoing food benefits Velarde and Moore were receiving and (2) offset their state and federal tax refunds. This years-long strategy proved partially successful, as it led to the repayment of the fraudulently obtained food benefits. The Department eventually realized, however, that it would need to turn to the judicial system to reduce to judgment the debt related to the medical benefits, which were provided through Colorado's Medicaid program.

¶8 At the end of January 2019—more than ten years after the notices became final orders—the Department filed suit in district court seeking to judicially enforce the final order related to the medical benefits.[1] Thus, the Department requested a judgment in the amount of $79,591.17, plus interest and litigation costs.

¶9 Neither Velarde nor Moore answered the Department's complaint or amended complaint, resulting in the clerk's entry of default. The entry of default indicated that a hearing would be held to ascertain the amount of the judgment. At the scheduled hearing, Velarde and Moore appeared and expressed their intent to contest the Department's demand. Thus, the district court vacated the clerk's entry of default.

¶10 Thereafter, the Department filed a motion for summary judgment. But the district court denied the motion and dismissed the case instead. It found that the Department had failed to bring this judicial enforcement suit within the deadline set forth in section 24-4-106(4), which, as pertinent here, provides that "any person adversely affected or aggrieved by any agency action may commence an action for

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[1] The record is unclear as to when the notices became final orders. We assume without deciding that the division correctly determined that the notices became final orders in 2008.

judicial review in the district court within thirty-five days after such agency action becomes effective." Because more than a decade had elapsed since the effective date of the medical benefits order, the court concluded that it lacked jurisdiction over the matter.[2]

¶11 A division of the court of appeals unanimously affirmed the district court's judgment in a published opinion. *Velarde*, ¶ 1, 491 P.3d at 453. Like the district court, the division determined that subsection 106(4) imposes on agencies a thirty-five-day window to initiate a judicial enforcement proceeding. *Id.* at ¶ 9, 491 P.3d at 455. In so doing, the division reasoned that "judicial review" in section 106 encompasses "judicial enforcement" and, therefore, the thirty-five-day deadline in subsection 106(4) sweeps in judicial enforcement cases. *Id.* at ¶ 10, 491 P.3d at 455. And because the Department had failed to bring its judicial enforcement case within thirty-five days of the medical benefits order, the division held that subsection 106(4) deprived the district court of subject matter jurisdiction. *Id.* at ¶¶ 13–14, 491 P.3d at 455–56.

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[2] At some point, the district court dismissed Moore from the case. That ruling is not before us.

¶12 The Department then sought relief in our court. Mindful of the significant impact and wide-ranging ramifications of the division's decision, we granted certiorari on the following question:

> Whether the court of appeals erred in its interpretation of the plain language of C.R.S. section 24-4-106 by concluding a state agency is jurisdictionally barred from judicially enforcing any final agency action if it fails to do so within the 35-day timeframe prescribed for persons adversely affected by agency actions to seek judicial review of those actions.

II. Analysis

¶13 We first set out the controlling standard of review and the applicable principles of statutory interpretation. After briefly touching on Colorado's Medicaid program, we examine the relevant portions of the APA and discuss the court of appeals' instructive decision in *Gibbs v. Colorado Mined Land Reclamation Board*, 883 P.2d 592 (Colo. App. 1994), *abrogated on other grounds by Shootman v. Dep't of Transp.*, 926 P.2d 1200 (Colo. 1996). Ultimately, we hold that the thirty-five-day deadline in subsection 106(4) applies to an adversely affected or aggrieved person's suit seeking judicial review of an agency's action but not to an agency's suit seeking judicial enforcement of one of its final orders. And, applying that holding here, we conclude that the Department's judicial enforcement case

against Velarde and Moore was not untimely filed under section 106 and should not have been dismissed.[3]

A. Controlling Standard of Review and Applicable Principles of Statutory Interpretation

¶14 The determination of a court's subject matter jurisdiction, when there is no factual dispute, presents a question of law that we review de novo. *Tulips Invs., LLC v. State ex rel. Suthers*, 2015 CO 1, ¶ 11, 340 P.3d 1126, 1131. We likewise review questions of statutory interpretation de novo. *Doe 1 v. Colo. Dep't of Pub. Health & Env't*, 2019 CO 92, ¶ 15, 451 P.3d 851, 855.

¶15 When interpreting a statute, we seek to give effect to the purpose and intent of the General Assembly in enacting it. *Mulberger v. People*, 2016 CO 10, ¶ 11, 366 P.3d 143, 146–47. Our first step in this endeavor is to read the words and phrases of the statute in context, according them their plain and ordinary meaning. *Doe 1*, ¶ 15, 451 P.3d at 855. If the statutory language is unambiguous, "we apply it as written." *Id.* If, however, the statutory language is ambiguous, we look to

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[3] Velarde and Moore did not file an answer brief. Nor did any party submit an amicus brief on their behalf. A group of Colorado state agencies and the Department of Higher Education filed an amicus brief asking us to reverse the division's decision.

other tools of construction. *Colo. Oil & Gas Conservation Comm'n v. Martinez*, 2019 CO 3, ¶ 19, 433 P.3d 22, 28.

¶16 We must consider the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts. *Dep't of Revenue v. Agilent Techs., Inc.*, 2019 CO 41, ¶ 16, 441 P.3d 1012, 1016. Further, we must avoid constructions that would render any statutory words or phrases superfluous or that would lead to illogical or absurd results. *Id.*

B. Colorado's Medicaid Program

¶17 Colorado has chosen to participate in Medicaid, a joint federal-state program created by the Social Security Act. *See* § 25.5-5-101, C.R.S. (2021); 42 U.S.C. § 1396. As its title suggests, the Colorado Medical Assistance Act provides medical assistance to Coloradans "whose income and resources are insufficient to meet the costs of such necessary services." § 25.5-4-102, C.R.S. (2021). Counties and other state entities, as agents of the state, administer medical assistance payments to eligible individuals. § 25.5-1-118(1), C.R.S. (2021). Those state entities are required to cooperate in "the location and prosecution of any person who has fraudulently obtained medical assistance." § 25.5-1-115(2)(a), C.R.S. (2021). Counties also assist in recovering erroneously disbursed medical assistance benefits. *See* § 25.5-4-301(1)(c), C.R.S. (2021) ("Any medical assistance

paid to which a recipient was not lawfully entitled shall be recoverable from the recipient . . . by the county as a debt due the state . . . .").

C. Legal Authority

1. Relevant Portions of the APA

¶18 "[T]he APA applies to every agency of the state having statewide territorial jurisdiction unless a specific provision of the agency's statute or other specific statutory provision is preemptive." *Colo. Ground Water Comm'n v. Eagle Peak Farms, Ltd.*, 919 P.2d 212, 216 (Colo. 1996). We are aware of no statutory provision preempting the APA here.

¶19 The APA contains a "Judicial review" statute. *See* § 24-4-106. That statute provides, in pertinent part:

> (1) In order to assure a plain, simple, and prompt judicial remedy to persons or parties adversely affected or aggrieved by agency actions, the provisions of this section shall be applicable.
>
> (2) Final agency action under this or any other law shall be subject to judicial review as provided in this section . . . .
>
> (3) *An action may be commenced in any court of competent jurisdiction by or on behalf of an agency for judicial enforcement of any final order of such agency.* In any such action, any person adversely affected or aggrieved by such agency action may obtain judicial review of such agency action.
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> (4) Except as provided in subsection (11) of this section, *any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective* . . . . The complaint shall state the facts upon which the plaintiff bases the claim that he or she has been

> adversely affected or aggrieved, the reasons entitling him or her to relief, and the relief which he or she seeks.

§ 24-4-106(1)–(4) (emphases added).

¶20 Subsection (1) makes clear that the legislature intended to offer a straightforward and readily available judicial remedy to any party adversely affected or aggrieved by an agency action. Subsection (2) then specifies that a final agency action is always subject to judicial review as provided in the statute. Following up on subsections (1) and (2), subsection (4) permits an adversely affected or aggrieved person to seek judicial review of an agency action "within thirty-five days after such agency action becomes effective." And subsection (3) creates an avenue for an agency to seek judicial enforcement of one of its final orders. Subsection (3) states, however, that in any such case, an adversely affected or aggrieved person may also seek judicial review of the action the agency is seeking to enforce.

¶21 While both subsections 106(3) and 106(4) reside under the "Judicial review" umbrella, they identify two distinct legal proceedings: those initiated "by or on behalf of an agency" seeking "judicial enforcement" of a final order, and those initiated by an "adversely affected or aggrieved" person seeking "judicial review" of an agency action. Thus, regardless of the section's "Judicial review" heading, the legislature clearly distinguished between *judicial review* of an agency action,

which *an adversely affected or aggrieved person* may request, and *judicial enforcement* of an agency's final order, which *the agency that issued the order* may request.

¶22 Importantly, the legislature set a thirty-five-day deadline for judicial review cases but not for judicial enforcement cases. A plain reading of subsections 106(3)–(4) establishes as much. First, subsection 106(4) directs the filing timeliness requirement to any adversely affected or aggrieved person who brings a suit seeking judicial review of an agency action. That subsection doesn't mention judicial enforcement cases, let alone extend the thirty-five-day deadline to them. Second, in addressing judicial enforcement cases, subsection 106(3) doesn't contain a filing deadline at all. Nor does it reference the deadline in subsection 106(4) governing judicial review cases.

¶23 Notably, another part of section 106, subsection 106(4.5), does explicitly refer to the thirty-five-day deadline. *See* § 24-4-106(4.5) (indicating that, subject to the provisions of a separate statute, "the board of county commissioners of any county . . . may commence an action . . . *within the time limit set forth in subsection (4) of this section for judicial review*" of certain agency actions (emphasis added)). Had the legislature intended to apply the thirty-five-day deadline in subsection 106(4) to judicial enforcement cases, it presumably would have included a reference to subsection 106(4)'s deadline in subsection 106(3)—just as it did in subsection 106(4.5).

¶24 In our view, both the plain language of subsections 106(3)–(4) and the overall statutory scheme of section 106 demonstrate that the thirty-five-day deadline applies to judicial review cases but not to judicial enforcement cases. Stated differently, an adversely affected or aggrieved person wishing to request judicial review of an agency's action (including in the course of a judicial enforcement case) must do so within thirty-five days of the effective date of such action, but an agency wishing to request judicial enforcement of one of its final orders is not bound by that deadline.

¶25 Amici aptly point out that construing section 106 as the courts below did risks illogical or absurd results, which we're required to avoid. *See Agilent Techs.*, ¶ 16, 441 P.3d at 1016. It is often impractical, if not altogether impossible, for an agency to confirm within thirty-five days whether a party has complied with one of its final orders. Indeed, compliance with a final order frequently requires more than thirty-five days. Hence, applying the thirty-five-day deadline in subsection 106(4) to judicial enforcement cases would require many agencies to prematurely and unnecessarily initiate legal proceedings almost immediately after a final order—regardless of whether the respondent is in full compliance with that order.

¶26 Suppose, for instance, that the Medical Board orders a doctor to work under the supervision of a monitor for one year to correct deficiencies in the doctor's

practice. No later than thirty-five days after its final order becomes effective, the Board would have little choice but to file a judicial enforcement case. Even if the doctor is in full compliance with the Board's order, the Board would still feel compelled to initiate a legal proceeding. Otherwise, it would risk being forever barred from seeking judicial enforcement of its order. Such an approach would stifle and undermine agencies' and respondents' attempts to resolve compliance issues on their own. And it would substantially increase judicial enforcement litigation.

¶27 Conversely, under the precedent set by the division, a respondent could comply with an agency's final order for thirty-five days and then intentionally flout the order on day thirty-six. If the agency had abstained from filing a judicial enforcement case based on the respondent's performance during the first thirty-five days, it would be left holding the bag—with no recourse to judicially enforce its order. This could set the stage for gamesmanship and abuse.

¶28 And because the division's holding applies to all agencies, it could potentially threaten the health and safety of Coloradans. Given the high stakes, we perceive no reason to back agencies into a corner: bring a judicial enforcement case within thirty-five days of a final order despite a respondent's current compliance with it or forever lose the ability to seek judicial enforcement of that

order. More importantly, nothing in section 106 allows us to reasonably infer that this is what our General Assembly intended.

¶29 In sum, we conclude that the thirty-five-day deadline in subsection 106(4) does not apply to judicial enforcement cases. The division in *Gibbs* impliedly reached the same conclusion almost thirty years ago. We turn to that opinion next.

2. *Gibbs*

¶30 In *Gibbs*, the Colorado Mined Land Reclamation Board ordered Gibbs to stop mining operations and pay a civil penalty because he didn't have a mining permit. 883 P.2d at 593–94. Gibbs did not comply with the Board's final order and did not seek judicial review of it within the thirty-day statutory deadline.[4] *Id.* at 594. More than a year later, the Central Collection Service, operating on behalf of the state, filed suit seeking judicial enforcement of the Board's final order against Gibbs. *Id.* Gibbs counterclaimed seeking judicial review of the Board's action. *Id.* However, relying on subsection 106(4), the district court dismissed the counterclaim as untimely because Gibbs had failed to seek judicial review within thirty days of the Board's action. *Id.*

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[4] The deadline in subsection 106(4) at that time was thirty days, not thirty-five days.

¶31 Gibbs appealed, arguing that the time limitation in subsection 106(4) applied only to cases *initiated* by an adversely affected or aggrieved person seeking review of a final agency action. *Id.* In other words, according to Gibbs, the deadline didn't apply when an adversely affected or aggrieved person sought judicial review in the course of a judicial enforcement case initiated by an agency. *Id.* The division disagreed. *Id.* at 595. It held instead that subsection 106(4) set forth "a time limit for bringing an action for judicial review of 'any agency action.'" *Id.* Therefore, determined the division, any claim seeking judicial review—including "in the course of an agency enforcement proceeding"—must be deemed untimely and "subject to dismissal" if it was filed outside the deadline in subsection 106(4). *Id.*

¶32 The *Gibbs* division appeared to understand the deadline in subsection 106(4) as we do—namely, as applying to all judicial review claims (including those brought in the course of judicial enforcement cases), but not to any judicial enforcement claim brought by an agency. We agree with *Gibbs* that after the deadline in subsection 106(4) expires, an agency may still bring a case for judicial enforcement, but the adversely affected or aggrieved person is barred from seeking judicial review of the agency's action (even in the form of a counterclaim). *See Gibbs*, 883 P.2d at 595.

¶33 The division below did not cite *Gibbs*. Instead, it relied on several other court of appeals cases and reached the opposite conclusion: "The failure to seek enforcement within thirty-five days of the date the action becomes effective, as subsection 106(4) requires, deprives a court of jurisdiction to review the matter." *Velarde*, ¶ 11, 491 P.3d at 455 (citing *Roosevelt Tunnel, LLC v. Norton*, 89 P.3d 427, 429 (Colo. App. 2003); *Allen Homesite Grp. v. Colo. Water Quality Control Comm'n*, 19 P.3d 32, 34 (Colo. App. 2000); *Cheney v. Colo. Mined Land Reclamation Bd.*, 826 P.2d 367, 368 (Colo. App. 1991)).

¶34 But all those cases discuss a *party's* right to seek *judicial review* of an agency's action, not an *agency's* right to seek *judicial enforcement* of one of its final orders. *See Roosevelt Tunnel*, 89 P.3d at 429 ("As relevant here, any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty days after such action becomes effective.") (internal quotations omitted); *Allen Homesite Grp.*, 19 P.3d at 34 ("Under section 24-4-106(4) of the APA, a party must file an action for judicial review challenging a final adverse agency ruling within thirty days after the ruling becomes effective."); *Cheney*, 826 P.2d at 368 (holding that petitioner's motion was properly dismissed "since the motion was not filed within the thirty-day period provided for seeking judicial review"). As such, they are inapposite.

D. Application

¶35 Because the thirty-five-day deadline in subsection 106(4) does not apply to judicial enforcement cases brought by agencies, the district court and the division erred in relying on it here. The Department's complaint was not subject to the thirty-five-day deadline in subsection 106(4) and should not have been dismissed.

III. Conclusion

¶36 We conclude that the thirty-five-day deadline in subsection 106(4) applies to cases brought by an adversely affected or aggrieved person seeking judicial review of an agency's action but not to cases brought by an agency seeking judicial enforcement of one of its final orders. Since the division incorrectly applied subsection 106(4)'s deadline to this judicial enforcement case brought by the Department, we reverse and remand for further proceedings consistent with this opinion.