

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 04-3788

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Maxine D. King,

Appellant,

v.

Michael Leavitt, Secretary, Department  
of Health and Human Services;  
Healthpartners,

Appellees.

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Appeal from the United States  
District Court for the  
District of Minnesota.

[UNPUBLISHED]

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Submitted: October 14, 2005  
Filed: December 16, 2005

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Before BYE, McMILLIAN, and RILEY, Circuit Judges.

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PER CURIAM.

This action for review of an administrative claim for Medicare benefits was brought by Maxine King (King), who died in August 2003. King's daughter, Peggy Anderson (Anderson), has filed a motion to be substituted as the appellant. Anderson

argues this appeal from the district court's<sup>1</sup> adverse judgment is not moot. Following careful review, we disagree.

Anderson does not seek monetary relief or reimbursement, but rather seeks to challenge (1) the finding that King was not entitled to coverage under the Medicare Act for skilled nursing care during some period in the past, and (2) the constitutionality of certain provisions of the Medicare Act. Both issues were mooted by King's death, and an exception to the mootness doctrine does not apply here. See Iowa Prot. & Advocacy Servs. v. Tanager, Inc., 427 F.3d 541, 544 (8th Cir. 2005) ("To come within [the capable of repetition, yet evading review] exception, . . . there must be a reasonable expectation that the same complaining party will be subjected to the same action again, and . . . the challenged action must be of a duration too short to be fully litigated before becoming moot."); Schutz v. Thorne, 415 F.3d 1128, 1138 (10th Cir. 2005) (quoting County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)) ("Constitutional mootness exists 'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'"). In addition, Anderson lacks standing—in her own right or as her deceased mother's representative—to pursue this appeal on behalf of Medicare beneficiaries in general. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Accordingly, the appeal is dismissed and the pending motion is denied.

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<sup>1</sup>The Honorable John R. Tunheim, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Franklin L. Noel, United States Magistrate Judge for the District of Minnesota.