

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ROBERT SALTS, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 LANCASTER COUNTY, NEBRASKA and )  
 BERNIE HEIER, LARRY HUDKINS, DEB )  
 SCHORR, RAY STEVENS, and BOB )  
 WORKMAN, as the LANCASTER )  
 COUNTY BOARD OF COMMISSIONERS )  
 for LANCASTER COUNTY NEBRASKA )  
 )  
 Defendant. )

Case No. CI 03-3879

**PETITION AND PRECIPE**

This is a COPY  
Original filed by the  
CLERK DISTRICT COURT  
of Lancaster County, NE  
on OCT 22 2003

**COMES NOW**, the Plaintiff, by and through his attorneys of record, and for his causes of action alleges as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction and venue in Lancaster County District Court are proper pursuant to Neb. Rev. Stat. § 68-142.

**PARTIES**

2. Plaintiff Robert Salts has legal settlement in Dawson County, Nebraska, but is presently residing in Lincoln, Nebraska.
3. Defendants are Lancaster County and the Lancaster County Board of Commissioners, Bernie Heier, Larry Hudkins, Deb Schorr, Ray Stevens, and Bob Workman. The Lancaster County Board of Commissioners is responsible for the administration of Lancaster County's General Assistance Program.

## STATUTORY AND REGULATORY FRAMEWORK

### County General Assistance Programs

4. The county run general assistance program is the only safety net program available for hundreds of Nebraskans who do not qualify for other forms of state or federally funded public assistance programs.
5. By statute, Nebraska counties are charged with the duty to care for the medical needs of the poor in their county. Specifically, Nebraska Revised Statute § 68-104 provides in relevant part: "...the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county."
6. This duty includes caring for non-residents in the county who are in need of medical care. "Whenever any nonresident shall fall sick in any county in this state, not having money or property to pay his or her board, or whenever any poor person not having legal settlement in the county is found in distress, without friends or money, so that he or she is likely to suffer, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary...." Neb. Rev. Stat. § 68-114.
7. While the county has a duty to care for all poor persons within the county, each county is only financially responsible for people who have established legal settlement in the county. "When any poor person does not have a spouse, parent or stepparent supporting him or her or is not eligible for other general assistance programs, the poor person shall receive such relief, referred to as general assistance for purposes of sections 68-131 to 68-148, out of the treasury of the county in which

he or she has legal settlement at the time of applying for assistance, in the manner provided in sections 68-131 to 68-148....” Neb. Rev. Stat. § 68-131.

8. As a result, when a county pays for medical services for a person who has legal settlement in another county, the county may seek reimbursement for those medical expenses from the county of legal settlement. “If a poor person, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she has legal settlement, or by any other sufficient cause, cannot be removed [from the county], than the county taking charge of such individual may sue for, and recover from the county to which such individual belongs, the amount expended for and in behalf of such poor person and in taking care of such person.” Neb. Rev. Stat. § 68-145.
9. Legal Settlement is defined by statute: “The term legal settlement for all public assistance programs shall be taken and considered to mean as follows: (1) Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement in such county. Every person who has resided one year continuously within the state, but not in any one county shall have a legal settlement in the county in which he or she has resided six months continuously....” Neb. Rev. Stat. § 68-115.
10. Each county is required to adopt rules to govern their general assistance program. In these rules, the county must “...provide that all individuals desiring to make application for general assistance shall have opportunity to do so and that general assistance shall be furnished to all eligible individuals....” Neb. Rev. Stat. § 68-133.
11. In addition, each county must “...include a definition of poor persons which will insure that all families and individuals whose available income and assets...are less

than those determined to be necessary...will be eligible to receive general assistance..." Neb. Rev. Stat. § 68-133.

12. Lancaster County has adopted rules and regulations for its general assistance program that include the following residency requirements:

2:101 Residency: An applicant must reside within the geographic boundaries of Lancaster County in order to make application through the Lincoln Office. Individuals residing outside Lancaster County Should be referred to the appropriate county office for assistance. If an individual is not permanently residing in Nebraska and/or Lancaster County, temporary assistance may be granted provided all other eligibility criteria are met.

3:101 Residency: An applicant must meet the requirements of 2:101. Applicants not residing in Lancaster County must also meet the following criteria:

1. The applicant did not enter Lancaster County for the sole purpose of obtaining medical care; and
2. The illness or injury for which medical assistance is requested arose in Lancaster County, Nebraska; and
3. The medical care is provided for a life threatening or life trauma condition.

### **Equal Protection**

13. Art. I § 3 of the Nebraska Constitution provides: "No person shall be deprived of life, liberty or property, without due process of law, nor be denied equal protection of the laws."

14. Art. I § 1 of the Nebraska Constitution provides: "All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the

protection of property, governments are instituted among people deriving their just powers from the consent of the governed.”

15. Art. I § 26 of the Nebraska Constitution provides: “This enumeration of rights shall not be construed to impair or deny others, retained by the people, and all powers not herein delegated, remain with the people.”
16. The Fourteenth Amendment to the United States Constitution provides in relevant part: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....”

#### **FACTUAL ALLEGATIONS**

17. Lancaster County contracts with the Nebraska Department of Health and Human Services to administer its General Assistance program.
18. On May 29, 2003 Robert Salts applied through the Nebraska Department of Health and Human Services for General Assistance for medical needs from Lancaster County. On his application, Mr. Salts listed he needed assistance with medical services and dental services.
19. At the time of application, Mr. Salts was living at Cornhusker Place in Lincoln, Nebraska, and suffered from several medical conditions including an ear infection and large tumors on his left rib cage, and was in need of dental work.

20. Prior to living at Cornhusker Place, Mr. Salts had lived in Beatrice for one month, Kearney for three months, and Lexington for one and one half years.
21. On June 9, 2003 Robert Salts' application for General Assistance was denied on the basis that he was not a resident of Lancaster County.
22. Kim Fiero, the Nebraska Department of Health and Human Services caseworker who handled Mr. Salts' application, determined that Mr. Salts was a resident of Dawson County, that he entered Lancaster County to receive inpatient substance abuse treatment at Cornhusker Place, that the need for medical treatment arose outside of Lancaster County, and that the need for the assistance requested was not for a life threatening/life trauma condition. Based on these findings she determined that Mr. Salts did not meet the residency requirements of Lancaster County General Assistance regulations 2:101 and 3:101 and denied his application.
23. The notice of denial provided to Mr. Salts cited GA 2:101 and GA 3:101 as the regulations supporting the denial.
24. On July 8, 2003, Mr. Salts filed an appeal contesting the denial of General Assistance on the grounds that Lancaster General Assistance regulations 2:101 and 3:101 are contrary to Nebraska law.
25. A hearing was held on August 6, 2003, in front of Kerry Eagan, Chief Administrative Officer for the Lancaster County Board of Commissioners.
26. On September 22, 2003, Mr. Eagan delivered his decision upholding the validity of Lancaster County General Assistance regulations 2:101 and 3:101. The decision found that regulations 2:101 and 3:101 were consistent with Nebraska law and that Mr. Salts

was not eligible for General Assistance because he did not meet the residency requirements contained in regulation 3:101.

27. The Plaintiff files this appeal of the decision of the Lancaster County Board of Commissioners pursuant to Neb. Rev. Stat. § 68-142.
28. Lancaster County General Assistance regulations 2:101 and 3:101 are used to deny medical assistance to indigent Nebraskans who do not have legal settlement in Lancaster County.
29. Lancaster County General Assistance regulations 2:101 and 3:101 violate Nebraska Revised Statutes §§ 68-104, 68-114, and 68-144, which require that all Nebraska counties provide general assistance to all poor persons in their county regardless of their county of legal settlement.
30. Lancaster County General Assistance regulations 2:101 and 3:101 create two classes of needy residents, indistinguishable from each other except that one is composed of residents who have resided a year or more in Lancaster County and the other is composed of those who have resided less than a year in Lancaster County.
31. The class of residents that have resided for at least a year in Lancaster County are eligible to receive general assistance regardless of if they are here to receive medical treatment, where their injuries arose, and whether or not they are life threatening.
32. The class of residents that have resided in Lancaster County for less than a year are only eligible to receive general assistance if they have not come to Lancaster County for medical treatment, if their injuries arose in Lancaster County, and their condition is life threatening.

33. This classification based on residency impinges on the fundamental constitutional right to travel within the state of Nebraska by removing the only available safety net for indigent Nebraskans who do not qualify for other forms of public assistance, and therefore penalizing indigent Nebraskans who choose to move to Lancaster County.

#### **ASSIGNMENTS OF ERROR**

34. The Plaintiff's substantial rights were prejudiced by the Lancaster County Board's decision to deny Plaintiff's appeal for Lancaster County General Assistance because the Lancaster County Board's decision was in violation of constitutional provisions. Specifically, the decision violates Mr. Salts' right to equal protection under the law found in the Fourteenth Amendment to the United States Constitution and Article 1 Section 3 of the Nebraska Constitution.
35. Lancaster County General Assistance regulations 2:101 and 3:101 authorize discrimination based on residency and impinge upon Mr. Salts' constitutional right to travel.
36. The Plaintiff's substantial rights were prejudiced by the Lancaster County Board's decision to deny Plaintiff's appeal for Lancaster County General Assistance because the Lancaster County Board's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Specifically, Lancaster County General Assistance regulations 2:101 and 3:101 violate Nebraska law by allowing Lancaster County to deny medical assistance to non-residents, an act prohibited by Neb. Rev. Stat. §§ 68-104, 68-114, and 68-144.

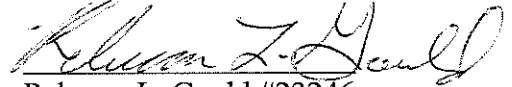


WHEREFORE, Plaintiff respectfully requests that this Court reverse the decision of the Lancaster County Board of Commissioners and grant Plaintiff such further relief as this Court deems just.

DATED: October 22, 2003

ROBERT SALTS, Plaintiff

By:



Rebecca L. Gould #22246

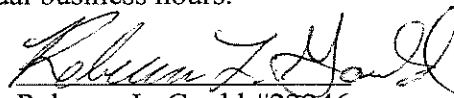
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PRAECIPE

TO THE CLERK OF THE DISTRICT COURT OF LANCASTER COUNTY:

Please prepare a Summons for personal service in the above captioned matter to be served by the Sheriff of Lancaster County, along with a copy of the petition upon each of the Defendants, Lancaster County, and Bernie Heier, Larry Hudkins, Deb Schorr, Ray Stevens, and Bob Workman, as the Lancaster County Board of Commissioners, who all can be found at 555 South 10<sup>th</sup> Street, Room 110, Lincoln, Nebraska 68508, during usual business hours.

By:



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