

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ROBERT SALTS,)	
)	Case No. CI 03-3879
Petitioner,)	
)	
v.)	PETITIONER'S BRIEF
)	
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.)	

JURISDICTION

This appeal is brought pursuant to Neb. Rev. Stat. § 68-142. The Petitioner is appealing the decision of the Lancaster County Board of Commissioners, entered by hearing officer Kerry P. Eagan, on September 22, 2003. The petition and praecipe for this appeal were filed on October 22, 2003.

STATEMENT OF THE CASE

On July 8, 2003 the Petitioner filed an administrative appeal with the Nebraska Department of Health and Human Services (HHS) challenging HHS' denial of Lancaster County General Assistance benefits. On September 22, 2003, Kerry P. Eagan, hearing officer for the Lancaster County Board of Commissioners, entered a decision upholding HHS' denial of the Petitioner's application for Lancaster County General Assistance.

The issue tried at the administrative hearing was whether Lancaster County General Assistance Rules 2:101 and 3:101 (hereinafter referred to as GA 2:101 and GA

3:101) are contrary to Nebraska Law. Hearing Officer Kerry P. Eagan held that Lancaster GA 2:101 and GA 3:101 are not contrary to Nebraska Law and upheld the decision by HHS to deny the Petitioner's application for Lancaster County General Assistance on the basis that the Petitioner does not meet the residency requirements contained in GA 2:101 and GA 3:101. The only issue in this case is whether Lancaster County can refuse to take care of Mr. Salts' medical needs based solely on the fact that he does not have legal settlement in Lancaster County.

STANDARD OF REVIEW

“The review shall be conducted by the court without a jury on the record of the county. The court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if any substantial rights of the petitioner may have been prejudiced because the decision is: (a) In violation of constitutional provisions; (b) In excess of statutory authority or jurisdiction of the county; (c) Made upon unlawful procedure; (d) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or (e) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” Neb. Rev. Stat. § 68-142.

“Statutory interpretation presents a question of law. When reviewing questions of law, an appellate court has an obligation to resolve the questions independently of the conclusion reached by the trial court.” *Mason v. State*, 267 Neb. 44 (2003) (citations omitted).

ASSIGNMENTS OF ERROR

1. The Petitioner's substantial rights were prejudiced by the Lancaster County Board's decision to deny Petitioner's application 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, GA 2:101 and GA 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.

2. The Petitioner's substantial rights were prejudiced by the Lancaster County Board's decision to deny Petitioner's application for Lancaster County General Assistance because the Lancaster County Board's decision is in violation of constitutional provisions. Specifically, the decision violates the Petitioner's 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 by discriminating against the Petitioner on the basis of his residency and impinging upon his constitutional right to travel.

STATEMENT OF FACTS

On March 17, 2003, Robert Salts moved to Lancaster County and entered Cornhusker Place to receive treatment for substance abuse. (12:15-18). Prior to living at Cornhusker Place, Mr. Salts lived in Beatrice for one month, Kearney for three months, and Lexington (Dawson County) for one and one half years. (5:1-5). On May 29, 2003 Mr. Salts applied through the Nebraska Department of Health and Human Services for

Lancaster County General Assistance so he could see a doctor to examine some large tumors on his left rib cage, get treatment for an ear infection and an ingrown toenail, and receive some dental work. It was determined that Mr. Salts met the financial guidelines to qualify for General Assistance. Hearing Officer Eagan's Decision pg. 3. On June 9, 2003, despite the fact that he had been living in Lancaster County for three months, Robert Salts' application for General Assistance was denied on the basis that he was not a resident of Lancaster County. (5:15-18).

Kim Fiero, the HHS caseworker who handled Robert Salts' application, determined that Mr. Salts' legal settlement was 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 assistance requested was not for a life threatening/life trauma condition. (5:6-14). Based on these findings, she determined that Mr. Salts did not meet the residency requirements of GA 2:101 and 3:101 and denied his application. *Id.*

ARGUMENT

The county-run General Assistance programs are the only available safety net for thousands of Nebraskans who are not eligible for other state and federal assistance programs, which often require an adult to have dependent children in order to qualify. General Assistance is only provided to the poorest of the poor, requiring an individual to be at or below fifty percent of the federal poverty level in order to qualify. In these tough economic times, even more Nebraskans are finding themselves out of work and in need of some help to get back on their feet. It is no surprise that many of these Nebraskans come to Lincoln where there are more jobs and better access to a wide range of medical

services. Under the present Lancaster County General Assistance Guidelines, many needy Nebraskans, such as Robert Salts, are being unjustly denied desperately needed General Assistance due to durational residency requirements.

Nebraska has a long history of vesting ultimate responsibility for caring for the needs of the very poor at the county level. The Statutes creating the General Assistance program are clear that no matter where a Nebraskan falls ill within the state, they will be cared for in the county where they are found. Neb. Rev. Stat. § 68-114. Ultimate financial responsibility falls with the county of legal settlement, but this fact does not determine whether someone should receive treatment, only who should pay for that treatment.

In this case, the Lancaster County Board erred in holding that GA 2:101 and GA 3:101 are consistent with Nebraska law. The plain language of the statutes governing the General Assistance program is clear that all counties must provide general assistance to non-residents who are living within their county and in need of help. Moreover, even if Nebraska law is ambiguous, to construe the statutes governing the General Assistance program to allow durational residency requirements would lead to a construction that violates both the United States Constitution and the Nebraska Constitution.

I. NEBRASKA LAW REQUIRES THAT LANCASTER COUNTY PROVIDE GENERAL ASSISTANCE TO NON-RESIDENTS.

The General Assistance Program is governed by a series of statutes found in Chapter 68, Article 1, of the Nebraska Revised Statutes, specifically sections 68-104 through 68-157. These statutes create a duty on the part of counties in Nebraska to provide assistance, including medical assistance, to poor Nebraskans who do not have the financial means to meet even their most basic needs. An examination of the plain

language of these statutes will reveal that the Nebraska Legislature clearly intended that non-residents who applied for General Assistance be provided the same level of care as residents. GA 2:101 and GA 3:101 are in direct violation of this legislative mandate.

The Nebraska Supreme Court has continually recognized the principle that “in the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Sydow v. City of Grans Island*, 263 Neb. 389, 397 (2002) (citations omitted). “If the language of a statute is clear, the words of such statute are the end of any judicial inquiry regarding its meaning.” *First Data Corp. v. State*, 263 Neb. 344 (2002) (citations omitted).

There is no dispute in this case that Robert Salts has met all of the eligibility requirements of the Lancaster County General Assistance program except those contained in GA 2:101 and GA 3:101. Hearing Officer Eagan’s Decision pg. 3. There is also no dispute that Mr. Salts has not yet established legal settlement in Lancaster County pursuant to Neb. Rev. Stat. § 68-115, although he has lived in Lincoln since March of 2003. Finally there is no dispute that Mr. Salts’ county of legal settlement is Dawson County. *Id.* The only issue in this case is whether Lancaster County can refuse to take care of Mr. Salts’ medical needs based solely on the fact that he does not have legal settlement in Lancaster County. This issue is specifically addressed by Neb. Rev. Stat. § 68-144 which provides in relevant part:

If any person shall become chargeable in *any county* in which he or she *has not established a legal settlement* at the time of applying for aid, he or she *shall be*

duly taken care of by the proper authority of the county where he or she may be
found....

Neb. Rev. Stat. § 68-144 (emphasis added).

The plain language of this section is clear and unequivocal that the county where the person is found has the primary responsibility to provide assistance. There is no authorization within § 68-144 for counties to place additional restrictions on non-residents or to require them to return to their county of legal settlement in order to obtain immediate assistance. There is also no language restricting non-residents to emergency services or only treatment for “life threatening or life trauma” conditions.

When Robert Salts applied for General Assistance from Lancaster County on May 29, 2003 his application was denied based on GA 2:101 and GA 3:101. (5:12-14). It is important to point out that had Mr. Salts been a resident of Lancaster County, the assistance he was requesting would have been provided. However, as a non-resident, Robert Salts was required to pass additional residency tests contained in GA 2:101 and GA 3:101 in order to receive help with his medical needs. GA 2:101 appears in the eligibility section of the Lancaster County General Assistance Guidelines and provides:

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.

The last sentence of GA 2:101 leaves open the possibility that non-residents can receive General Assistance if they meet all other criteria. GA 3:101 is the residency requirement for medical assistance and places additional requirements on non-residents.

GA 3:101 provides:

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.

These three additional requirements only apply to non-residents and allow Lancaster County to deny applicants medical assistance if any of the three conditions are not met.

In this case, Kim Fiero, the HHS caseworker, determined the Robert Salts did not meet any of the three extra criteria and was therefore ineligible for medical assistance under the General Assistance program. (5:6-14). Hearing Officer Kerry Eagan found that Robert Salts did come to Lancaster County for medical treatment but not for the conditions for which he was requesting assistance. Hearing Officer Eagan's Decision pg. 5. He also found that Robert Salts' conditions probably arose after he entered Lancaster County. *Id.* at 6. However, Mr. Eagan did hold that Mr. Salts failed to meet the third extra requirement, namely that his conditions, which included lumps on his ribs and arm, dental problems, an ingrown toenail, and an ear infection, were not life threatening or life trauma conditions and upheld the denial on that basis. *Id.*

Mr. Eagan suggested that because Mr. Salts is not eligible for assistance from Lancaster County, he should return to his county of legal settlement for care. *Id.* However, this is clearly not what the Nebraska Legislature intended because they explicitly provided a method for counties to recover any costs associated with the care of non-residents. Once the county has provided for a non-resident, they can then seek reimbursement for those expenses from the person's county of legal settlement. Neb. Rev. Stat. § 68-145.

As Mr. Salts experienced, the durational residency requirements contained in GA 2:101 and GA 3:101 operate to allow Lancaster County to refuse to take care of non-resident poor people who fall sick within the county, an act expressly prohibited by the plain language of Neb. Rev. Stat. § 68-144. They also only allow non-residents to receive care for life threatening conditions, where residents can receive assistance with non-life threatening conditions. Because the plain language of § 68-144 is clear and GA 2:101 and GA 3:101 are in direct violation of that statute, Lancaster County should be required to provide medical assistance to Mr. Salts dating back to his date of application on May 29, 2003.

II. EVEN IF THE STATUTES GOVERNING THE GENERAL ASSISTANCE PROGRAM ARE AMBIGUOUS, THE ONLY POSSIBLE READING IS THAT RESIDENTS AND NON-RESIDENTS MUST BE TREATED ALIKE.

Should this court decide that the plain language of Neb. Rev. Stat. § 68-144 is ambiguous an examination of the purpose or goal of the group of statutes will show that Lancaster County is required to provide general assistance to non-residents at the same level and in the same way it provides assistance to residents. Moreover, the construction proposed by the Defendants would lead to a violation of Mr. Salts' constitutional rights to equal protection under the United States Constitution and Nebraska's Constitution and therefore cannot be sustained by this Court.

It is a long-standing principle of statutory interpretation that “[a] statute is open for construction when the language used requires interpretation or may reasonably be considered ambiguous.” *Sydow v. City of Grand Island*, 263 Neb. 389, 397 (2002) (citations omitted). When construing an ambiguous statute, a court looks to “the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served

and then places on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose.” *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 52 (2002). Specifically when looking at the statutes governing the General Assistance program, “...the law must be construed so as to make it effective, otherwise it would be in the power of the authorities having charge of the poor to neglect or refuse to relieve the destitute.” *Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686, 690 (1979).

While there is no statute that expressly states the purpose of the General Assistance program, it is clear from the statutes that the counties were given the express duty to provide for poor Nebraskans who do not qualify for other assistance programs. Specifically, the county boards are charged with the duty to “furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs....” Neb. Rev. Stat. § 68-104. This duty was specifically extended to non-residents as well:

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 a 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. *See Creighton-Omaha Regional Health Care Corp. v. Douglas County*, 202 Neb. 686 (1979) (recognizing that the county boards have a duty to provide for non-residents;) *Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61 (1960) (recognizing that counties have a duty to care for both residents and non-residents;) Neb. AG Opinion No. 113, (1985) (holding that counties have a duty to provide assistance to non-residents including undocumented individuals.)

The only way for the counties to fulfill this express duty is for them to provide medical assistance to non-residents, such as Robert Salts, in the same way they provide assistance to those who have established legal settlement within the county. Under Lancaster County's interpretation of the statutes, non-residents such as Robert Salts, will not be able to receive assistance for their medical needs. Because this interpretation runs contrary to the express goals of the General Assistance program it cannot be adopted.

When a court examines a collection or series of statutes, the entire series of statutes "may be conjunctively considered and construed in *pari materia* to determine the intent of the Legislature so that different provisions of the act are consistent, harmonious, and sensible." *In re Interest of DeWayne G. & Devon G.*, 263 Neb. 43, 52 (2002). In this case, the Defendants argue that because § 68-114 contains the phrase, "as they deem necessary" that the counties can place additional restrictions on non-resident applicants, such as not covering those who come to the county to receive medical treatment and only covering life-threatening or life trauma conditions. Hearing Officer Eagan's Decision pg. 4.

However, this approach is not consistent with the principles of statutory construction. The goal when construing a statute is to give effect to as much of the statute or series of statutes as possible. To allow counties to place additional restrictions on non-residents would allow counties to refuse to care for non-residents in the county where they are found and would render § 68-144 and § 68-145 meaningless.

In addition, to the extent that the phrase "as they deem necessary" creates some doubt, the Nebraska Supreme Court has consistently recognized the principal that when a statute is designed to effectuate a beneficent purpose, it should be liberally construed in

favor of those the statute is designed to benefit. *Mason v. State*, 267 Neb. 44 (2003) (citations omitted). In this case, it better achieves the beneficent goals of the General Assistance statutes to cover the medical needs of non-residents in the county where they are found, rather than requiring them to return to their county of legal settlement for treatment. This is especially true in this case where Mr. Salts is in the middle of a course of treatment for substance abuse and is not in a position to leave Lancaster County.

One final principal of statutory construction relevant to this case is that a court cannot interpret a statute in such a way that it would render the statute unconstitutional. “[W]hen a challenged statute is susceptible to more than one reasonable construction, a court uses the construction that will achieve the purposes of the statute and preserve the statute’s validity.” *Mason v. State*, 267 Neb. 44 (2003).

In an almost identical case to this one, *Memorial Hospital et al., v. Maricopa County et al.*, 415 U.S. 250 (1974), the Supreme Court struck down a county imposed durational residency requirement that denied non-residents access to non-emergency medical care on the basis that it violated the non-resident’s right to equal protection. In *Memorial Hospital*, the court found that a one year durational residency requirement “created two classes of needy residents ‘indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction.’” *Id.* at 254 (citing *Shapiro v. Thompson*, 394 U.S. 618, 627 (1969)). The Court held that this classification impinged upon a non-resident’s constitutional right to travel. *Id.* at 256.

Not all residency requirements are per se unconstitutional, to be invalid the requirement must penalize the non-resident for choosing to move. *Id.* at 257. In

Memorial Hospital, the Court held that refusing to provide non-emergency medical care was in fact a penalty. “To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioration in his health...The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.” *Id.* at 261.

Because the residency requirement impinged upon a fundamental right, the Court applied strict scrutiny, requiring the county to show that the residency requirement furthered a compelling state interest. *Id.* at 263. Maricopa County argued that the requirement was needed to “insure the fiscal integrity of its free medical care program by discouraging an influx of indigents, particularly those entering the County for the sole purpose of obtaining the benefits of its hospital facilities.” *Id.*

The Court found that this was not a compelling governmental interest. “To the extent the purpose of the requirement is to inhibit the immigration of indigents generally, that goal is constitutionally impermissible.” *Id.* The Court went on to recognize that “a State may no more try to fence out those indigents who seek (better public medical facilities) than it may try to fence out indigents generally. An indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities.” *Id.* at 264 (citing *Shapiro v. Thompson*, 394 U.S. at 631 (1969)).

The construction of §§ 68-114 and 68-144 offered by the Defendants in this case, would allow and has allowed them to create two different classes of individuals, indistinguishable from each other except that one group has established legal settlement

in Lancaster County and the other group has established legal settlement in some other Nebraska County. The first group is allowed to receive General Assistance and medical assistance for non-life threatening or life trauma conditions and the second group is not. This classification based on residency penalizes Nebraskans such as Mr. Salts for choosing to leave their county of legal settlement by denying them medical assistance.

Applying strict scrutiny to this case, Lancaster County must provide a compelling governmental interest to support its actions. The only justification for these policies presented by the Defendants is that “they are designed to prevent the situation where a claimant is injured or becomes ill in another county and then enters Lancaster County for the sole purpose of obtaining medical care from General Assistance for that specific illness or injury.” Hearing Officer Eagan’s Decision pg. 4. This is the same justification used by Maricopa County and was found by the Supreme Court not to be a compelling governmental interest.


Therefore, should this Court decide that §§ 68-114 and 68-144 are ambiguous, the only viable construction of the statute is that Nebraska counties, including Lancaster County, are required to care for non-residents in the county where they are found and cannot refuse to provide non-emergency medical care to these individuals. Any other construction would be inconsistent with the goals of the general assistance program and would lead to an unconstitutional result.

CONCLUSION

For all of the forgoing reasons, GA 2:101 and GA 3:101 should be invalidated and Robert Salts' application for medical assistance should be approved dating back to the date of his application.

Dated: January 21, 2004


ROBERT SALTS, Petitioner

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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of this Reply was sent via U.S. Mail to the Defendants' counsel, Kristy Mundt, Deputy County Attorney, Justice and Law Enforcement Center, 575 South 10th Street, Lincoln, Nebraska 68508 on January 21, 2004.

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