



determination, Ms. Fiero referred to Rule 3:101 of the Lancaster County General Assistance Guidelines. (BOE 5:6-14).

On September 22, 2003, Kerry Eagan, hearing officer for the Lancaster County Board of Commissioners, upheld HHS's denial of Mr. Salts's application for Lancaster County General Assistance. This appeal timely followed.

### ARGUMENT

The Nebraska state statutes governing the obligation of counties to provide General Assistance are found in Neb.Rev.Stat. §§ 68-104 through 68-157 (Reissue 1996). Pursuant to these statutes, specifically §§ 68-131 through 68-133, each county shall establish standards of eligibility for General Assistance which the count board deems necessary to ensure the maintenance of minimum health and decency. In establishing these standards of eligibility, a county is given broad discretion on how it chooses to address the medical needs of nonresidents. Section 68-114 provides in pertinent part:

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...**

The County does not have an unconditional duty to provide medical assistance of any nature to all nonresidents. According to § 68-114, the County's duty is limited to temporary assistance and assistance which is deemed necessary by the county board. In addition, Section 68-144 provides:

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. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such poor person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Although this section seems to provide a broad duty to counties to provide General Assistance to nonresidents, it must be read in conjunction with § 68-114. See Mary Lanning Memorial Hospital v. Clay County, 170 Neb. 61, 68; 101 N.W.2d 510, 515 (1960) (stating that all statutes relating to the same subject should be construed and considered together for the purpose of giving effect to legislative intent). Thus, any assistance provided by the county to a nonresident would be temporary in nature, and limited to the assistance deemed necessary by the board. In addition, section 68-144 could arguably be construed as to require that the sole duty of the county where the poor person may be found is to send notice to the county of legal settlement and request removal of such poor person. That section does not define “duly taken care of” in terms of providing medical assistance, but rather goes on to explicitly define the duty of the county in which the poor person is found.

Lancaster County did not exceed its statutory authority in establishing the residency requirements in Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines (Guidelines). Rule 2:101 provides that “...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.” Those other eligibility criteria are found in Rule 3:101 of the Guidelines. Rule 3:101 states that 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.

There is no dispute that Mr. Salts is subject to the eligibility guidelines set forth in Rule 2:101 and Rule 3:101 as Mr. Salts's county of legal settlement is Dawson County pursuant to Neb.Rev.Stat. § 68-115. The first and second conditions are related and 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. See Hearing Officer Eagan's Decision, Page 4.

The third condition provides a specific guideline for the type of medical care for nonresidents which the County Board deems necessary. By establishing this condition, the County Board has chosen to limit medical care for nonresidents to situations involving "life threatening or life trauma conditions." Nonemergencies can be referred to the county in which the claimant has established legal settlement pursuant to Neb.Rev.Stat. § 68-143, which states that "any person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established legal settlement..." The aforementioned guidelines contained in Rule 3:101 reflect the discretion vested in the County Board pursuant to § 68-114; and therefore, are not contrary to state law. The County Board has only a conditional duty to provide temporary medical assistance to a nonresident and did not abuse its discretion when Mr. Salts was denied General Assistance from Lancaster County.

Moreover, contrary to Plaintiff's assertion, Mr. Eagan did not suggest that Mr. Salts return to his county of legal settlement (Dawson County) for care. Rather, Mr. Eagan noted that "a

strict application of the duty to provide temporary medical assistance to nonresidents as set forth under §§ 68-144 and 68-144 would result in a request to Dawson County to promptly remove [Mr. Salts] from Lancaster County and reimburse the County for any temporary medical expenses incurred.” Hearing Officer Eagan’s Decision, Page 6. Because it appears Mr. Salts’s medical conditions are long term, Mr. Eagan went on to explain that the most reasonable solution is for Mr. Salts to apply for General Assistance in Dawson County and specifically request that he be allowed to remain at Cornhusker Place while receiving inpatient substance abuse treatment. Id.

The Defendants concede that the Supreme Court case, Memorial Hospital et al., v. Maricopa County et al., cited in Petitioner’s Brief, Page 12, raises a similar issue to the present case and seems to be on point. Yet, in the present case, Mr. Salts is not being denied General Assistance statewide, but rather is being referred to the county with financial responsibility to seek General Assistance for his ongoing, long term care needs. Recognizing a public policy concern, Lancaster County did not seek removal of Mr. Salts to Dawson County, as there is clearly a compelling need for Mr. Salts to remain in Lancaster County and complete his inpatient substance abuse treatment at Cornhusker Place. Hearing Officer Eagan’s Decision, Page 6. In denying General Assistance to Mr. Salts based on Rules 2:101 and 3:101 of the Guidelines, Lancaster County exercised its discretion under § 68-114 and found that Mr. Salts did not qualify for temporary medical assistance from Lancaster County.

### **CONCLUSION**

For the foregoing reasons, the Defendants respectfully requests that the decision denying General Assistance be affirmed and payment of any court costs be assessed against the Plaintiff.

DATED this 4 day of February, 2004.

THE COUNTY OF LANCASTER, and  
LANCASTER COUNTY BOARD OF  
COMMISSIONERS, et. al.,  
Defendants.

GARY E. LACEY  
Lancaster County Attorney

By: Kristy Mundt  
Kristy Mundt, #22699  
Deputy County Attorney  
Justice and Law Enforcement Center  
575 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508  
(402) 441-7321

CERTIFICATE OF SERVICE

I, Kristy Mundt, certify that a true and accurate copy of the above Response was sent, U.S. Mail, prepaid postage, to Plaintiff's attorney of record, Rebecca L. Gould, Nebraska Appleseed Center, 941 "O" Street, Suite 105, Lincoln, Nebraska 68508; this 4 day of February, 2004.

Kristy Mundt  
Kristy Mundt, #22699  
Deputy County Attorney