

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ROBERT SALTS,)	
)	Case No. CI 03-3879
Plaintiff,)	
)	
v.)	PETITIONER'S REPLY 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.)	

INTRODUCTION

In this case, the Defendants used the durational residency requirements in GA 2:101 and GA 3:101 to deny Robert Salts medical assistance. This action is in direct violation of the statutes governing the General Assistance programs and to read the statutes to allow such an act would render the statutes unconstitutional. In their brief, the Defendants fail to provide a justification for these rules that comports with the plain language of the statutes and that can pass constitutional muster.

ARGUMENT

This is a simple statutory construction case. The starting place in any statutory construction case is the plain language of the statute. *First Data Corp. v. State*, 263 Neb. 344 (2002). Neb. Rev. Stat. § 68-144 clearly states that the county where the person is found has a duty to care for them. The Defendants concede that the plain language of § 68-144 creates a broad duty on counties to provide general assistance to non-residents. Defendants' Brief pg. 3. However, the Defendants suggest that § 68-144 must be read in conjunction with § 68-114, which requires a county to provide assistance "as it shall

deem necessary.” Defendants argue that this “as it shall deem necessary” language in § 68-114 grants county boards broad discretion to place limitations on the type of assistance that will be offered to non-residents. *Id.* at 2.

A careful examination of § 68-114 reveals that it was not intended to apply to individuals like Robert Salts. The title of § 68-114 is “Nonresident poor persons; temporary aid; relief *when legal residence not determined.*” (emphasis added). This title clearly indicates that this statute applies only when a person’s legal settlement cannot be determined. Additional evidence that this is the case is found in the body of the statute. The second sentence specifically references applicants who belong to another state, and the third sentence references people whose legal settlement cannot be ascertained by the county. In this case, legal settlement has been determined and therefore § 68-114 does not apply.

Moreover, § 68-144 was clearly intended to apply to non-residents, such as Robert Salts, whose legal settlement has been determined, but who are residing in a county other than their county of legal settlement. The title of § 68-144 is “Poor person; duties of county where found and county of legal settlement.” The language contained in § 68-144 clearly deals with the facts of this case, a Nebraskan, in need of assistance, residing in a county other than his/her county of legal settlement. Under § 68-144 Lancaster County has a duty to take care of Robert Salts and can seek to recover any expenses associated with that care from Dawson County.

While it is true that § 68-144 requires Lancaster County to notify Dawson County to come and get Robert Salts and take him back to Dawson County, there are other

options available when such an act would not be in the best interests of the individual.

Neb. Rev. Stat. § 68-145 provides:

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 a legal settlement, or for any other sufficient cause, cannot be removed, then 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.

In Robert Salts case, the Defendants concede that it is not in his best interest to leave Lancaster County in the middle of his treatment program. Defendants' Brief pg. 5. Neb. Rev. Stat. § 68-145 provides a means for Robert Salts to stay in Lancaster County, be cared for under their General Assistance program, and to have any expenses associated with his care billed to Dawson County until legal settlement has been established.

The Defendants also argue that the language "duly taken care of" contained in § 68-144 is not defined and therefore does not necessarily mean they have to provide non-emergency medical care to non-residents such as Robert Salts. Defendants' Brief pg. 3. However, the second sentence of § 68-144 references that the county of legal settlement must pay for the expenses accrued in taking care of the non-resident. If "duly taken care of" did not mean providing General Assistance or medical assistance than there would not be any costs to recover. In addition, § 68-145 also uses the language "taking care of" in referencing expenses that can be recovered when a person cannot return to their county of legal settlement, indicating that "taking care of" means providing benefits, not just contacting the county of legal settlement as the Defendants assert. Defendants' Brief pg. 3.

Therefore, because § 68-114 does not apply to the case at hand, and because the plain language of § 68-144 clearly creates a duty on Lancaster County to take care of

Robert Salts, GA 2:101 and 3:101, exceed the authority granted to Lancaster County and should be struck down.

However, if this Court feels that the mandate contained in § 68-144 is ambiguous, or that reading the statutes governing the General Assistance program together creates ambiguity, then the next step is to place a construction on the statutes that is consistent with the purpose of the General Assistance program and maintains the validity of the statutes. *Mason v. State*, 267 Neb. 44 (2003).

Defendants' interpretation of the statutes is not consistent with the purpose of the General Assistance program and results in a constitutional violation. The Defendants argue that the statutes should be construed to grant county boards the authority to limit the benefits that are provided to non-residents. The result of the Defendants' interpretation is that non-residents who do not qualify for other forms of assistance are denied medical care and can only receive care if they return to their county of legal settlement. This result is clearly in opposition to the stated purpose of the General Assistance program, which is to provide assistance to those who do not qualify for assistance through the Department of Health and Human Services. Neb. Rev. Stat. § 68-104. The Petitioner offers a construction where residents and non-residents are provided the same level of care. This interpretation of the statutes is consistent with the purpose of the General Assistance program.

Even assuming that both the Petitioner's and the Defendants' constructions are plausible, this Court cannot adopt a construction that will invalidate the statute. The Defendants concede that the *Memorial Hospital et al., v. Maricopa County et al.*, raises similar issues to this case and seems to be on point. Defendants' Brief pg. 5. The only

argument offered as to why the decision in *Memorial Hospital* is not binding on this case is that Mr. Salts is not being denied General Assistance statewide. This assertion ignores the entire premise of the case. The statute in *Memorial Hospital* was a statute requiring a year's residence in a county as a condition to receiving non-emergency hospitalization or medical care at a county's expense. Arizona residents who chose to migrate within the state were barred from receiving non-emergency medical care, just as indigent Nebraskans who choose to migrate to Lancaster County are denied non-emergency medical care based on GA 2:101 and GA 3:101.

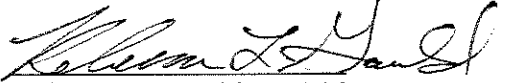
Under the Defendants' rationale, in order for Mr. Salts to receive non-emergency medical care he must maintain a residence in Dawson County, which he has neither the income or resources to do (12:4-14), and hope that they would allow him to continue his treatment at Cornhusker Place, or continue to live in Lancaster County but forgo treatment for his medical conditions for a full year until he established legal settlement. This is exactly the kind of restraint on the right to travel that the Supreme Court held violated the equal protection clause contained in the Fourteenth Amendment to the United States Constitution, absent a compelling governmental interest. The Defendants do not offer any compelling governmental interests furthered by GA 2:101 and GA 3:101. Therefore, the Defendants' construction of the statutes is unconstitutional and cannot be adopted by this Court.

CONCLUSION

For all of the forgoing reasons, the Petitioner renews his request that this Court reverse the decision of the Lancaster County Board, invalidate GA 2:101 and GA 3:101 and grant his application for medical assistance dating back to the date of his application.

Dated: February 11, 2004

ROBERT SALTS, Petitioner

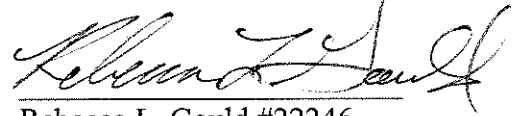
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of this Reply was hand delivered to the Defendants' counsel, Kristy Mundt, Deputy County Attorney, at the Justice and Law Enforcement Center, 575 South 10th Street, Lincoln, Nebraska 68508 on February 11, 2004.

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