

Case No. A-04-000642

In the Court of Appeals of the State of Nebraska

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ROBERT SALTS,

Petitioner-Appellant,

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,

Respondents-Appellees.

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APPEAL FROM THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

Honorable Bernard J. McGinn, District Judge

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BRIEF OF APPELLANT

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STATEMENT OF THE BASIS OF JURISDICTION OF THE COURT OF APPEALS

This appeal is brought pursuant to Neb. Rev. Stat. § 25-1911 and is an appeal from the final order of Lancaster County District Court Judge Bernard J. McGinn, entered on April 16, 2004. The notice of appeal was filed on May 17, 2004.

STATEMENT OF THE CASE

1. The Nature of the Case. The Plaintiff filed a petition in the District Court of Lancaster County seeking a reversal of an administrative appeal decision by Lancaster County Hearing Officer Kerry Eagan upholding the validity of Lancaster General Assistance Guidelines GA 2:101 and GA 3:101. (T2)
2. The Issues Tried in the Court Below. The issue tried by the District Court was whether Lancaster County exceeded statutory authority in establishing the residency requirements found in GA 2:101 and 3:101. (T16)
3. How the Issues Were Decided and What Judgment or Decree was Entered by the Trial Court. The District Court held that Lancaster County did not exceed statutory authority in establishing its residency requirements. (T21).
4. Scope of Review. A judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record. Neb. Rev. Stat. § 25-1911 (Reissue 2004).

Interpretation of statutes presents a question of law, and an appellate court is obligated to reach an independent conclusion, irrespective of the decision made by the court below. *PSC v. Roberts Cattle Co.*, 268 Neb. 598 (2004).

ASSIGNMENTS OF ERROR

1. The District Court erred in holding that Lancaster County did not exceed statutory authority in establishing durational residency requirements for its General Assistance program found in GA 2:101 and GA 3:101.

PROPOSITIONS OF LAW

1. 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. GA 2:101.
2. 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.
3. 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
4. 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.

5. “[I]n discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *Simon v. City of Omaha*, 267 Neb. 718, 728 (2004).
6. “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).
7. “Medically Necessary: Treatment for a condition is medically necessary if the condition will worsen without medical intervention and interfere with the client’s self-sufficiency or ability to work.” GA 1:116.
8. A statute is only “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).
9. 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).
10. 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.” *Id.*

11. 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).
12. 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.
13. 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).
14. "[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 statutes' validity." *Mason v. State*, 267 Neb. 44 (2003).
15. Not all residency requirements are per se unconstitutional. To be invalid, the requirement must penalize the non-resident for choosing to move. *Memorial Hospital et al., v. Maricopa County et al.*, 415 U.S. 250, 257 (1974). Refusing to provide non-emergency medical care was in fact a penalty. *Id.*
16. "To the extent the purpose of the requirement is to inhibit the immigration of indigents generally, that goal is constitutionally impermissible." *Id.*

17. 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)).

STATEMENT OF FACTS

On March 17, 2003, Robert Salts moved to Lancaster County and entered Cornhusker Place to receive treatment for substance abuse. (T16). 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. *Id.* On May 29, 2003 Mr. Salts applied through the Nebraska Department of Health and Human Services (NDHHS) for Lancaster County General Assistance so he could see a doctor to examine some large tumors on his arm and left rib cage, get treatment for an ear infection and an ingrown toenail, and receive treatment for some dental problems. *Id.* It was determined that Mr. Salts met the financial guidelines to qualify for General Assistance. (E2,20:2,1). On June 9, 2003, despite the fact that he had been living in Lancaster County for three months, Mr. Salts' application for General Assistance was denied on the basis that he was not a resident of Lancaster County. (T17)

Kim Fiero, the caseworker who handled Mr. Salts' application, determined that Mr. Salts' county of 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 the assistance requested was not for a life threatening/life trauma condition. *Id.* Based on these findings, she determined that Mr. Salts did not meet the durational residency requirements of GA 2:101 and 3:101 and denied his application. *Id.* Mr. Salts filed an appeal with Lancaster County challenging the denial of General Assistance based on the durational residency requirements. *Id.* Lancaster County found that while Mr. Salts' did not come to Lancaster County for the medical treatment requested, and that his need for treatment did in fact arise within Lancaster County, his needs did not arise to the level of being a life threatening/life trauma condition. (E2,22-23:2,1). Because Mr. Salts failed

to meet the last requirement of GA 3:101, Lancaster County upheld the caseworker's decision to deny Mr. Salts' application for General Assistance. *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 Lancaster County 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 Mr. Salts, are being unjustly denied desperately needed General Assistance and medical 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. § 68-144. Ultimate financial responsibility falls with the county where the individual has established legal settlement, but this fact does not determine whether someone should receive treatment, only which county should pay for that treatment. Neb. Rev. Stat. § 68-115.

In this case, the district court 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 are clear that all counties must provide General Assistance to those who have not yet established legal settlement but 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 State Constitution and the Nebraska Constitution.

I. NEBRASKA LAW REQUIRES THAT LANCASTER COUNTY PROVIDE GENERAL ASSITANCE TO THOSE WHO HAVE NOT YET ACHIEVED LEGAL SETTLEMENT IN LANCASTER COUNTY.

There is no dispute in this case that Mr. Salts met all of the eligibility requirements of the Lancaster County General Assistance program except those contained in GA 2:101 and GA 3:101. (E2,20:2,1). 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. *Id.* 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' non-emergency medical needs based solely on the fact that he has not yet established legal settlement in Lancaster County.

Lancaster County's General Assistance program is governed by the Lancaster County General Assistance Guidelines. There are two rules within the guidelines dealing with residency, GA 2:101 and GA 3:101. 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.

It is important to note that Lancaster County has interpreted the term Residency as it is used in GA 2:101, to be synonymous with the term “legal settlement” as used in Neb. Rev. Stat. § 68-115. This must be the case since clearly Mr. Salts was living within the geographic boundaries of Lancaster County and had been doing so for three months at the time he filed his application for General Assistance. (T16).

The last sentence of GA 2:101 leaves open the possibility that those who do not have legal settlement in Lancaster County may receive General Assistance if they meet all other criteria. GA 3:101 is the residency requirement for medical assistance and places additional requirements on those who have not yet achieved legal settlement. 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:

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

These three additional requirements only apply to those who have not achieved legal settlement and allow Lancaster County to deny applicants medical assistance if any of the three conditions are not met.

Kim Fiero, the caseworker handling Mr. Salts case for Lancaster County, determined that Mr. Salts did not meet any of the three extra criteria and was therefore ineligible for medical assistance under the General Assistance program. (T17). Lancaster County Hearing Officer, Kerry Eagan, however, found that Mr. Salts did move to Lancaster County for medical treatment

but not for the conditions for which he was requesting assistance. (E2,21-22:2,1). He also found that Mr. Salts' conditions probably arose after he moved to Lancaster County. *Id.* However, Mr. Eagan did hold that Mr. Salts failed to meet the third extra requirement, namely, that his conditions, which included large 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.*

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 their most basic needs. An examination of the plain language of these statutes reveals that the Nebraska Legislature clearly intended that those who had not yet achieved legal settlement in a given county, who applied for General Assistance, would be provided the same level of care as those who had established legal settlement. GA 2:101 and GA 3:101 are in direct violation of this legislative mandate.

There are two statutes at issue in this case Neb. Rev. Stat. §§ 68-144 and 68-114. Neb. Rev. Stat. § 68-144 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....*

(emphasis added). Neb. Rev. Stat. § 68-114 provides in relevant 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....

(emphasis added).

The Nebraska Supreme Court has continually recognized the principle that “[I]n discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense.” *Simon v. City of Omaha*, 267 Neb. 718, 728 (2004). “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).

The plain language of these sections is clear and unequivocal that the county where the person is *found* has the primary responsibility, the duty, to provide necessary assistance and care for those who have not yet established legal settlement in the county. Lancaster County and the district court based their decision that GA 2:101 and GA 3:101 are consistent with the statutory duty imposed by Neb. Rev. Stat. §§ 68-114 and 68-144 based on the phrase “as it shall deem necessary,” found in § 68-114. (T19-20). The district court reasoned that this phrase indicates “...it is not mandatory for the counties to provide medical assistance to nonresidents, only that if the county determines it is necessary and chooses to do so....” (T20).

While this phrase does provide that counties have some discretion in deciding what benefits and care will be provided to those who have not yet established legal settlement, it does not mean unfettered discretion as suggested by the district court. If counties are given the discretion suggested by the district court, counties could simply decide it was not necessary to provide any benefits or assistance at all to those without legal settlement in the county. This kind

of construction was specifically warned against by the Nebraska Supreme Court 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).

Moreover, such a construction requires that you ignore the first part of the sentence that outlines parameters of the duty. The first part of the sentence clearly provides a context for how the term "necessary" is to be read within the statute. The first part of the sentence lists out a number of scenarios in which the county has a duty to provide assistance, including: to deal with sickness, to alleviate distress, and prevent suffering. Neb. Rev. Stat. § 68-114. A more realistic reading and one more consistent with the plain language of the entire statute is that the word "necessary" means the county has a duty to cover things that are reasonable and would address sickness and prevent suffering. Certainly, a county does not have to provide any and all assistance that a person may request; they simply must provide those things that are reasonably necessary to ensure the health and safety of those who have not yet established legal settlement.

In fact, Lancaster County has sufficiently addressed this issue as it applies to those who have established legal settlement by providing a definition of "medically necessary" within its General Assistance Guidelines. GA 1:116 provides: "Medically Necessary: Treatment for a condition is medically necessary if the condition will worsen without medical intervention and interfere with the client's self-sufficiency or ability to work." Mr. Salts was seeking treatment for large tumors on his arm and rib cage, an ear infection, an ingrown toenail, and dental problems. (T16). It is important to point out that, based on GA 1:116, the definition of

“medically necessary,” had Mr. Salts had legal settlement in Lancaster County, the assistance he was requesting would have been provided.

Mr. Eagan and the district court suggested that because Mr. Salts is not eligible for assistance from Lancaster County, he should return to his county of legal settlement for care. (T21). For Mr. Salts, this would mean traveling half way across the state to Lexington to receive care. Mr. Salts and all those found financially eligible for General Assistance lack the financial resources to pay for basic needs such as food, clothing, and shelter. Asking these individuals to travel even into another county to receive care is an impossible request for most. For this reason, the Nebraska Legislature constructed a system where when people move to another county but have not yet achieved legal settlement, they are to be cared for by the county where they are found. Neb. Rev. Stat. § 68-144. Once the county has provided for a person without legal settlement, they can seek reimbursement for those expenses from the person’s county of legal settlement pursuant to Neb. Rev. Stat. § 68-145, which 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.

The existence of this procedure for collecting from the county of legal settlement, not only clarifies that those without legal settlement are to be cared for where they are found, but further alleviates the concerns that Lancaster County has about conserving its fiscal resources.

Lancaster County will suffer no financial loss by providing Mr. Salts with medical care. These costs can simply be billed to Dawson County.

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 poor people who fall sick within the county, but have not yet achieved legal settlement; an act expressly prohibited by the plain language of Neb. Rev. Stat. § 68-144. Because the plain language of § 68-144 and § 68-114 are 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 and § 68-114 are 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 those who have not yet achieved legal settlement at the same level and in the same way it provides assistance to residents. Moreover, the construction proposed by Lancaster County, if adopted, would lead to a violation of Mr. Salts' constitutional rights to equal protection under the United States Constitution and the Nebraska Constitution and therefore cannot be sustained by this Court.

A. Even If § 68-114 And § 68-144 Are Ambiguous, The Interpretation Offered By Mr. Salts is More Consistent With The Purpose And Objectives Of The General Assistance Program.

It is a long-standing principle of statutory interpretation that a statute is only "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). 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.” *Id.*

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 those without legal settlement as well, and counties were specifically charged with providing care necessary to deal with sickness, distress, and to prevent suffering. 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); and 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 Mr. 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 Mr. Salts, will not be able to receive

assistance for their non-emergency medical needs. Because this interpretation runs contrary to the express goals of the General Assistance program of dealing with sickness, distress, and preventing suffering, it cannot be adopted.

In addition, to the extent that the phrase “as they deem necessary” creates some ambiguity, the Nebraska Supreme Court has consistently recognized the principle 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 those who have not yet achieved legal settlement in the county where they are found, rather than requiring them to return to their county of legal settlement to receive assistance. This is especially true in this case where Mr. Salts was in the middle of a course of treatment for substance abuse and not in a position to leave Lancaster County.

B. The Interpretation Offered By Lancaster County Would Lead To An Unconstitutional Result.

One final principle of statutory construction relevant to this case is that a when there are two plausible interpretations of a statute, 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 statutes’ validity.” *Mason v. State*, 267 Neb. 44 (2003).

The Constitutional right implicated in this case is the right to travel. While the United States Supreme Court has yet to affirmatively recognize a right to intrastate travel, it has clearly referenced that such a right likely exists. *See Memorial Hospital et. al., v. Maricopa County et al.*, 415 U.S. 250 (1974). In addition, a number of circuit courts have affirmatively found a right to intrastate travel within the federal constitution. *See Johnsen v. City of Cincinnati*, 310 F. 3d

484 (6th Cir. 2002); *Lutz v. City of York, Pa.*, 899 F.2d 255 (3rd Cir. 1990); *Gomez v. Turner*, 672 F.2d 134 (DC Cir. 1982); *King v. New Rochelle Mun. Hous. Auth.*, 442 F.2d 646 (2nd Cir. 1971); *Cole v. Housing Authority of Newport*, 435 F.2d 807 (1st Cir. 1970).

A second source for the right to intrastate travel is the Nebraska Constitution. While the Nebraska Supreme Court has not specifically found a right to interstate travel within the Nebraska Constitution, other states with similar constitutional language have found such a right. *See Watt v. Watt*, 971 P.2d 608 (Sup. Ct. Wyo. 1999). The construction offered by the district court and Lancaster County violates the equal protection clause by discriminating against those who choose to migrate to Lancaster County but have not yet attained legal settlement and impinges on Mr. Salts right to intrastate travel

In an almost identical case to this one, *Memorial Hospital et al., v. Maricopa County et al.*, 415 U.S. 250 (1974), the United States 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 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 district court and Lancaster County in this case would allow and has allowed Lancaster County to create two different classes of individuals, indistinguishable from each other except that one group has established legal settlement and the other group has yet to establish legal settlement in Lancaster 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 legal settlement penalizes Nebraskans such as Mr. Salts for moving to Lancaster County 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 Lancaster County 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.” (E2,21:2,1). This is the same justification that the Supreme Court found not to be a compelling governmental interest in Maricopa County. *Id.*

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 those who are residing but have not yet achieved legal settlement in Lancaster county 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.

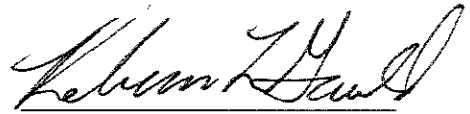
CONCLUSION

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

DATE: September 7, 2004

ROBERT SALTS, Appellant

By:



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PROOF OF SERVICE

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

I, Rebecca L. Gould, being first duly sworn, depose and state that two copies of the brief in the above-entitled case were served upon the Appellee by depositing said copies in the United States Mail, first class postage prepaid, addressed to counsel for the Appellee, Kristy Mundt, Deputy County Attorney, Justice and Law Enforcement Center, 575 South 10th Street, Lincoln, NE 68509.

DATED: September 7, 2004


Affiant

Subscribed and sworn to before me, a notary public, on this 7th day of September, 2004.




Notary Public