



LANCASTER COUNTY BOARD OF COMMISSIONERS

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September 22, 2003

Robert L. Salts
721 "K" Street
Lincoln, NE 68508

DECISION ON APPEAL FROM DENIAL OF GENERAL ASSISTANCE

Dear Robert:

You originally applied for General Assistance from Lancaster County on March 26, 2003, seeking help with general living expenses. Your application was denied and you did not file an appeal. On May 29, 2003, you again applied for General Assistance, this time requesting medical services for an ear infection and an ongoing skin condition. This application was also denied by the Nebraska Department of Health & Human Services (HHS). The reason stated for the denial was that you are not a Lancaster County resident. The notice of denial also made reference to Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines. (Exhibit A, p. 12). The notice of denial was mailed to you June 12, 2003, and a timely appeal was filed with HHS July 8, 2003.

The appeal hearing was held August 6, 2003. You appeared at the hearing with legal counsel, D. Milo Mumgaard of the Nebraska Appleseed Center. Mr. Mumgaard was assisted by Clinton J. Guthrie, a senior certified law clerk with the Appleseed Center. Jennifer Hernandez also attended the hearing on your behalf but did not participate in the proceedings. HHS was represented by Susan Klein and Kim Fiero.

Ms. Fiero testified at the hearing. She provided a brief summary of your case (Exhibit A, p. 1). According to her testimony, prior to entering Lancaster County you lived in Lexington (Dawson County) for one and a half years, Kearney (Buffalo County) for three months and Beatrice (Gage County) for one month. Based on this information, she determined your legal settlement for purposes of General Assistance is Dawson County. She further testified you entered Lancaster County for the purpose of receiving inpatient substance abuse treatment at Cornhusker Place. Based on this information, she determined you are ineligible to receive General Assistance from Lancaster County because you entered the County for the sole purpose of receiving medical treatment, the need for the treatment arose outside of Lancaster County, and the assistance you requested was not for a life threatening/life trauma condition. In making this determination, Kim referred to Rule 3:101 of the Lancaster County General Assistance Guidelines. (Exhibit A, p. 1).

You also testified at the hearing. You indicated your current medical needs include dental, large tumors on your left rib cage, an ingrown toenail, and an ear infection. However, you went on to indicate your ear infection has cleared up. Additional information regarding your medical needs is contained in Exhibit B, consisting of 11 pages.

According to your testimony, you have no assets, insurance, social security, Medicaid, or other means to pay for medical services.

Regarding your place of legal settlement, you indicated you came to Lancaster County March 17, 2003 to enter Cornhusker Place for alcohol and drug treatment. Prior to that date, you lived in Beatrice for one month. Before moving to Beatrice, you resided in Lexington for more than one year. You also spent time serving a prison term (released July 15, 2001) and several months in Kearney. (See also Exhibit B, p. 5).

On your behalf, Clinton J. Guthrie argued the sole reason you were denied General Assistance was the fact you are a nonresident of Lancaster County under Rule 2:101, and HHS should not be allowed to now include the nonresident conditions for receiving General Assistance in Rule 3:101 as a basis for denial. He referred specifically to the written denial from HHS which stated, "Your application for General Assistance has been denied. You are not a Lancaster County resident. GA 2:101 and GA 3:101." (See Exhibit A, p. 12).

Moreover, Mr. Guthrie argued Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines are ~~contrary to Nebraska state law~~. Specifically, NEB.REV.STAT. §§68-114 and 144 provide counties have a duty to provide General Assistance to nonresidents and then seek reimbursement from the county of legal settlement. Therefore, Mr. Guthrie asserts you were wrongfully denied General Assistance from Lancaster County for your current medical needs.

As a preliminary matter, my review of your appeal will not be limited to whether HHS rejected your application for the sole reason you are a nonresident of Lancaster. Not only did the written notice specifically refer to Rules 2:101 and 3:101, but Kim Fiero also testified at the hearing she relied on the conditions in Rule 3:101 in making her decision. Moreover, you had the opportunity at the hearing to challenge the legality of Rules 2:101 and 3:101.

For purposes of this opinion, there is no dispute you are not a resident of Lancaster County. According to NEB.REV.STAT. §68-115 (Reissue 1996) provides:

- (1) The term legal settlement for all public assistance programs shall be taken and considered to mean as follows:

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.

- (2) The time during which a person has been an inmate of any public or private charitable or penal institution, or has received care at public expense in any type of care home, nursing home, or board and room facility licensed as such and caring for more than one patient or guest, and each month during which he or she has received relief from private charity or the poor fund of any county shall

be excluded in determining the time of residence hereunder, as referred to in subsection (1) of this section.

According to the testimony of yourself and Kim Fiero, prior to entering Cornhusker Place you lived in Beatrice for one month, Kearney for three months, and Lexington for one and a half years. Applying the provisions of §68-115 to these facts leads to the conclusion your legal settlement is in Dawson County.

There is also no dispute you meet the financial guidelines to qualify for General Assistance in Lancaster County. Your Lancaster County General Assistance Application indicates you have no income or resources to pay the cost of your medical expenses. No additional evidence was presented at your hearing to contradict this information. For purposes of this decision it will be assumed you meet the financial qualifications to receive General Assistance.

Thus the issue on appeal is whether Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines are contrary to state law.

The Nebraska state statutes governing the obligation of counties to provide General Assistance are found in Chapter 68 (Paupers and Public Assistance), Article 1 (Miscellaneous Provisions), NEB.REV.STAT. §§68-104-157 (Reissue 1996). In the case of Mary Lanning Memorial Hospital v. Clay County, 170 Neb. 61; 101 N.W. 2d 510 (1960), the Nebraska Supreme Court stated, "At common law the county would not be liable for the relief of the poor for there is no common law liability upon any governmental unit to support poor and indigent persons. The liability, if any, must arise by virtue of statutes making it the duty of the county to do so." ID. 170 Neb. at 64; 101 N.W. 2d at 513. (Citations omitted). Moreover, "All statutes relating to the same subject should be construed and considered together for the purpose of giving effect to legislative intention...All statutes in pari materia must be taken together and construed as if they were one enactment, and, if possible, effect given to every provision." ID. 170 Neb. at 68; 101 N.W. 2d at 515. (Citations omitted).

In order to determine the extent of Lancaster County's duty under §§68-114 and 68-144, it is necessary to interpret these sections within the context of the entire set of statutes governing General Assistance. When viewed in this context, it is clear the County does not have an unconditional duty to provide medical assistance of any nature to all nonresidents. Instead, the County is given broad discretion on how it chooses to address the medical needs of nonresidents.

§68-114 provides:

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...

Two important points regarding this duty is that the assistance provided is temporary, and is limited to assistance which is deemed necessary by the county board. Thus §68-114 gives the counties broad discretion in determining the type of temporary assistance which will be provided to nonresidents.

In addition, §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. Thus any assistance provided by the county to a nonresident would be temporary in nature, and limited to the assistance deemed necessary by the county board.

It should be noted §68-144 goes on to provide a procedure for contacting the county of legal settlement and requesting the authorities of such county to promptly remove the poor person and pay the expense accrued in taking care of such person. This provision will be discussed later in this opinion.

Another important statute is §68-143 which provides, "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 a legal settlement as defined in §68-115." This provision clearly places ultimate responsibility on the county in which the claimant has legal settlement.

Also, county boards have broad authority to establish standards of eligibility for General Assistance which the board deems necessary to ensure the maintenance of minimum health and decency. See NEB.REV.STAT. §§68-131 through 68-133 (Reissue 1996).

When analyzed in the context of all the statutes governing general assistance, it is my conclusion Lancaster County did not exceed statutory authority in establishing the residency requirements in Rules 2:101 and 3:101 of the Lancaster County General Assistance Guidelines.

Rule 2:101 provides, "...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 criteria are found in Rule 3:101:

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.

The first and second conditions are related. 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. Implicit in these conditions is that the applicant has the specific intent to enter Lancaster County for the sole purpose of receiving General Assistance, even though the illness or injury arose in a different county.

The third condition provides a specific guideline for the type of medical care for nonresidents which the County Board deems necessary. The Lancaster County Board has chosen to limit

medical care for nonresidents to situations involving life threatening or life trauma conditions. This distinction can be justified because serious medical emergencies must be addressed immediately. Nonemergencies, however, can be referred to the responsible county for processing in accordance with the General Assistance rules and guidelines of that county. Again, this discretion is vested in the Board pursuant to §68-114.

Moreover, there is nothing in the Nebraska Supreme Court case law cited by your attorney indicating Lancaster County has abused its discretion or exceeded statutory authority in setting these guidelines. The case of Creighton-Omaha Regional Health Care Corporation v. Douglas County, 202 Neb. 686; 277 N.W. 2d 64 (Neb. 1979) involved a resident of Douglas County who received emergency care for injuries he sustained when he was beaten and robbed. Although the hospital immediately notified Douglas County and requested the County Board to arrange for appropriate medical and hospital care for the claimant, no answer was ever received from the County. Given the emergency nature of the situation, the hospital provided care and then sought reimbursement. The holding of the Supreme Court in that case merely reversed the demurrer entered in favor of the County, and remanded the case back to district court for a determination whether the County properly denied General Assistance for the claimant. The language in the Creighton case dealing with nonresidents is dicta, and merely refers to the statutory duty of counties to provide General Assistance to nonresidents. This case does not interpret General Assistance guidelines governing the provision of medical care to nonresidents.

The case of Mary Lanning Memorial Hospital v. Clay County, Supra, also does not address the issue of whether the county in that case exceeded its authority in establishing General Assistance guidelines covering nonresidents. That case involved a nonresident from California who was hit by an automobile while walking along a road in Clay County. Although the accident occurred on July 1, 1958, a claim was not filed with Clay County until November 29, 1958. Under these circumstances, the Clay County Board denied the claim. The denial was appealed to the district court, which upheld the denial. The case was again appealed to the Nebraska Supreme Court, which also upheld the denial. Although the Supreme Court conducts an extensive discussion regarding the statutory duty of counties to provide assistance to indigent persons, including its duty to nonresidents under §68-114, the actual holding of the case is based on the untimely notice given to Clay County by the hospital. In other words, the Mary Lanning Memorial Hospital case simply does not address the issue of whether a county exceeds its legislative authority by establishing specific guidelines governing General Assistance for nonresidents.

Since it is my opinion these rules are consistent with the County's statutory duty provided under §68-114, it is necessary to review the finding of HHS that you failed to meet the criteria set forth in these rules. Specifically, it was determined you entered Lancaster County for the sole purpose of receiving medical treatment, the need arose outside of Lancaster County and the assistance requested was not for a life threatening or life trauma condition.

The record shows you entered Lancaster County for the purpose of receiving inpatient substance abuse treatment at Cornhusker Place. However, the medical care you are requesting through General Assistance is unrelated to the treatment you are receiving at Cornhusker Place. Thus you did not enter the County for the sole purpose of receiving medical care at the expense of the General Assistance program of Lancaster County. In my opinion, HHS's interpretation of this criteria was too broad and the medical care for which you entered the County must relate directly to the medical care you are seeking through General Assistance. Therefore, it is my opinion you met the first requirement of Rule 3:101.

Regarding the second requirement, there is not sufficient evidence in the record to determine exactly when the medical conditions for which you are seeking treatment arose. However, it would appear your medical problems involving dental decay, lipomas, and an ingrown toenail existed prior to the time you entered Lancaster County.

Regardless, there is no medical evidence in the file indicating any of these medical problems are a life threatening or life trauma condition. Accordingly, you do not qualify for temporary medical assistance from Lancaster County under Rules 2:101 and 3:101.

However, it is also apparent you have a number of ongoing medical problems which need to be addressed. Under normal circumstances, it would be reasonable to expect you to return to your county of legal settlement (Dawson County) and apply for General Assistance at that venue. On the other hand, there is also a compelling need for you to remain in Lancaster County and complete your inpatient substance abuse treatment at Cornhusker Place.

In this regard, a strict application of the duty to provide temporary medical assistance to nonresidents as set forth under §§68-114 and 68-144 would result in a request to Dawson County to promptly remove you from Lancaster County and reimburse the County for any temporary medical expenses incurred. While legally justifiable, such a result would not be in the best interest of yourself, Lancaster County, or Dawson County.

As previously noted, §68-143 provides that any person becoming chargeable as a poor person in the State of Nebraska shall be chargeable as such in the county in which he or she has established a legal settlement as defined in §68-115. Given the long term nature of your medical conditions, as well as the fact you intend to remain at Cornhusker Place through August, 2004, the most reasonable solution to this dilemma is for you to apply for General Assistance in Dawson County, which is your County of legal settlement, and specifically request you be allowed to remain at Cornhusker Place while receiving inpatient treatment.

Based on the foregoing analysis, the decision of HHS denying your General Assistance application for medical services is upheld. However, your case is remanded to HHS for the purpose of assisting you, within the scope of their capability, in applying for General Assistance from Dawson County. You have the right to appeal this decision by filing a petition in the District Court of Lancaster County within thirty (30) days after service of the decision upon you. Service shall be considered complete on the day this decision is mailed to you at your last known address.

Sincerely,



Kerry P. Eagan
Hearing Officer

cc: D. Milo Mumgaard, Esq.
Clinton J. Guthrie
Linda Hart, HHS
Susan Klein, HHS
Kim Fiero, HHS

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing Decision on General Assistance Appeal this 22nd day of September, 2003 to Robert L. Salts at the address of 721 "K" Street, Lincoln, NE 68508.



Kerry P. Eagan

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