

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

COPY

ROBERT SALTS,)
)
 Petitioner,)
)
 vs.)
)
 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.)

Case No. CI 03-3879

ORDER

This matter came before the court on February 13, 2004, for hearing on the petitioner's appeal of the finding of the Lancaster County Board of Commissioners dated September 22, 2003, which found that the petitioner, Robert Salts, was not entitled to the issuance of Lancaster County General Assistance because he does not meet the residency requirements contained in GA 2:101 and GA 3:101. The petitioner was represented by attorney Rebecca L. Gould, and Deputy County Attorney Kristy Mundt appeared for the respondents. Exhibits 1 and 2 were received into evidence and the matter was argued and submitted on briefs. The court, being fully informed, now finds and orders as follows:

FACTS

On March 17, 2003, the petitioner moved to Lancaster County to receive substance abuse treatment at Cornhusker Place. Prior to his treatment in Lincoln, the petitioner resided in Beatrice, Nebraska for one month, Kearney, Nebraska for three months, and Lexington, Nebraska for one and one half years. On May 29, 2003, the petitioner applied through the Nebraska Department of Health and Human Services for Lancaster County General Assistance to receive medical treatment for an

ear infection, an ongoing skin condition, and dental work. On June 9, 2003, the application was denied by the Nebraska Department of Health and Human Services (HHS) because the petitioner was not a resident of Lancaster County. On July 8, 2003, the petitioner filed an appeal challenging the denial of his application for general assistance, and a hearing was held on August 6, 2003. It was determined that the petitioner was ineligible to receive general assistance from Lancaster County because he entered the county for the sole purpose of receiving medical treatment, the need for treatment arose outside of Lancaster County, and the assistance requested was not for a life threatening or life trauma condition. On September 22, 2003, Kerry Eagan, hearing officer for the Lancaster County Board of Commissioners, upheld the denial of the petitioner's application for Lancaster County General Assistance. Following the denial, the petitioner filed an appeal with this court on October 22, 2003.

STANDARD OF REVIEW

The petitioner's appeal is an appeal from the decision of the Lancaster County Board of Commissioners pursuant to Neb. Rev. Stat. § 68-142. Accordingly, the review is 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.

DISCUSSION

At issue in this case is the Nebraska statutes governing the obligation of counties to provide general assistance to nonresident indigents. The obligation of the court, in the consideration and application of a statute, is to determine and give effect to the purpose and intention of the Legislature as ascertained from the entire language thereof considered in its plain, ordinary, and popular sense. *Kosmicki v. State*, 264 Neb. 887, 652 N.W.2d 883 (2002). It is the duty of the court to give effect to the whole and each part of the statute if not in conflict with the legislative intent and to reconcile the different provisions of it, if possible, so as to make them logical, harmonious, and sensible. *Ledwith v. Bankers Life Ins. Co.*, 156 Neb. 107, 54 N.W.2d 409 (1952). In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning. *Krumwiede v. Krumwiede*, 264 Neb. 378, 647 N.W.2d 625 (2002). It is not the duty of the court to read meaning into a statute which is not there or to expand the statute beyond its plain terms.

Neb. Rev. Stat. § 68-114 applies to nonresidents such as the petitioner. While the petitioner asserts that this statute is not applicable because of the third sentence describing a poor person belonging to another state, this argument avoids the crucial language - "if such poor person...belongs to another state...." The statutory language then continues to provide additional instruction as to the providing of assistance to nonresidents belonging to another state. By the distinguishing language "if such poor person...belongs to another state..." the preceding language clearly applies to nonresidents of other counties and other states alike. The statute cited by the petitioner, § 68-144, while also applicable to the petitioner, simply provides for the legal settlement procedures between counties and assures that the county providing assistance will receive payment for expenses accrued in providing care.

The petitioner also relies on the U.S. Supreme Court case of *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S. Ct. 1076 (1974), however; this case is distinguishable because unlike the State of Arizona, the State of Nebraska is not refusing to treat a nonresident and denying statewide assistance. Rather, the State is merely determining which county is to be responsible for the petitioner's medical assistance expenses. It is undisputed that the petitioner is a resident of Dawson County, Nebraska, and because the petitioner's medical conditions are not life threatening, Dawson County is to be charged with providing assistance to the petitioner. Unlike the petitioner in *Memorial Hospital*, the petitioner here is not being penalized for his intrastate migration. He is not being refused medical care by the state of Nebraska. There is nothing unconstitutional about the Nebraska Legislature providing that the county of residence shall be responsible for the medical expenses of its indigent residents.

In the case of *Mary Lanning Memorial Hospital v. Clay County*, 170 Neb. 61, 101 N.W.2d 510 (1960), the court held that “[t]here is no common-law liability upon a county to support poor and indigent persons. Any liability must arise by a statute imposing the duty upon the county and prescribing the manner of its discharge.” *Id.* at 64. Accordingly, the statute imposes the duty upon the county to provide medical assistance to indigent persons “as they deem necessary.” Neb. Rev. Stat. § 68-114 (2003). The distinguishing factor between *Mary Lanning Memorial Hospital* and the case at hand is that in the prior case, the court determined that the petitioner's injuries “were critical and needed immediate attention to prevent his death.” *Id.* at 62. Nowhere in the record is there any evidence that the petitioner's medical needs required immediate attention.

By including the language “as they deem necessary” it was clear that the legislature was providing counties with discretion to provide assistance for the medical needs of nonresidents as

needed. This language clearly shows that 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, the county of residence will be responsible for reimbursement to the providing county. The purpose of the statute is to provide for compensation to counties providing medical assistance to nonresidents. In accordance with Neb. Rev. Stat. § 68-114, Lancaster County has enacted provisions to comply with the statutes to provide assistance to indigent persons. The General Assistance Program lays out residency requirements in GA 2:101 which 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.

These other eligibility criteria are outlined in GA 3:101 which 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.

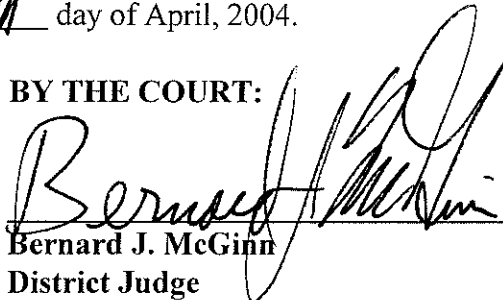
It is uncontested that the petitioner is not a resident of Lancaster County, but rather has legal settlement in Dawson County, Nebraska. It is also uncontested that the petitioner meets the financial requirements of the General Assistance Program. However, Lancaster County does not have an unconditional duty to provide medical assistance of any nature to all nonresidents. Rather, the statutes provide the county with broad discretion on how it chooses to address the medical needs of

nonresidents. Lancaster County did not exceed statutory authority in establishing these residency requirements. The hearing officer for the Lancaster County Board of Commissioners recommended that the petitioner apply for general assistance in Dawson County as the county of residence and request that he be allowed to remain in Lancaster County for treatment. This appears to be the appropriate course of action for the petitioner to follow. The requested medical treatment is not life threatening, and, therefore, it is the responsibility of Dawson County to provide general assistance to the petitioner because the petitioner does not fall within the residency requirements of the Lancaster County General Assistance program. In accordance with the decision of the hearing officer, this case is remanded to HHS for the purpose of assisting the petitioner, within the scope of their capability, in applying for general assistance from Dawson County.

IT IS ORDERED that there is sufficient evidence in the record to support a finding that the petitioner is not entitled to Lancaster County General Assistance because he does not meet the enumerated residency requirements. Accordingly, the decision of the Lancaster County Board of Commissioners dated September 22, 2003, which denied the petitioner's application for Lancaster County General Assistance, is hereby affirmed.

DATED AND SIGNED this 16th day of April, 2004.

BY THE COURT:


Bernard J. McGinn
District Judge

cc: **Rebecca L. Gould**, Attorney for Petitioner
Deputy County Attorney General Kristy Mundt, Attorney for Respondents