

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

TERESA KAI and STACY NOLLER, on)	Case No. _____
behalf of themselves and all others similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	COMPLAINT
)	(Class Action)
RON ROSS, as the Director of the)	
Nebraska Department of Health and)	
Human Services,)	
)	
Defendant.)	

PRELIMINARY STATEMENT

1. Plaintiffs, Teresa Kai and Stacy Noller, are both working mothers of young children. Each of these women works full time at a low-wage job despite suffering from serious illnesses that require ongoing medical attention. Because of their low incomes, Plaintiffs have relied on Medicaid to help meet their health care needs. Now, each has received a notice from the Nebraska Department of Health and Human Services terminating their Medicaid coverage because of a new method that the Defendant has adopted to count their income even though their income has remained unchanged. Ms. Kai and Ms. Noller, on behalf of themselves and all others similarly situated, challenge the Defendant's refusal in these circumstances to afford them the Transitional Medical Assistance mandated by the federal Medicaid Act, 42 U.S.C. §§ 1396r-6 and 1396u-1. The Plaintiffs seek declaratory and prospective injunctive relief for themselves and all others similarly situated to prevent the Defendant from continuing to deny them the

desperately needed Transitional Medical Assistance that they are entitled to by law and that will allow them to continue to support their families.

JURISDICTION AND VENUE

2. This action is authorized by 42 U.S.C. § 1983, and by the Supremacy Clause of the United State Constitution, Art. VI, as an action seeking redress of the deprivation of federal rights under the color of state law.

3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts for civil actions arising under the Constitution, laws, or treaties of the United States.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Plaintiff Theresa Kai is 42 years old and resides at 405 Main Street in Pender, Nebraska, with her 10-year-old daughter, Laura.

6. Plaintiff Stacy Noller is 25 years old and resides at 34840 130th Road in Kearney, Nebraska, with her five-year-old daughter, Brenna.

7. Defendant Ron Ross is the Director of the Nebraska Department of Health and Human Services (NDHHS). He is responsible for the general administration and implementation of laws concerning the social services provided to the people of Nebraska, including the Medicaid program. Defendant Ross is responsible for the administration of the State's Medicaid program.

CLASS ALLEGATIONS

8. The named Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of a class defined as follows:

All caretaker relatives in Nebraska with earned income: a) who have received Medicaid for at least three of the six months prior to having their Medicaid benefits terminated due to the Defendant's new method of counting their income; b) who, but for the Defendant's new method of counting their income, would continue to be eligible to receive Medicaid; and, c) who have not been or will not be afforded the transitional Medicaid benefits provided for in 42 U.S.C. § 1396r-6.

9. The class is so numerous that joinder of all members is impracticable.
10. There are numerous questions of law and fact common to the class as a whole. Factually, each class member is a caretaker relative with earned income and each was found eligible for Medicaid before the Defendant changed the manner in which he counted their income. The legal questions common to the entire class include whether they are included within the ambit of 42 U.S.C. § 1396u-1 and whether the Defendant can refuse to provide them with transitional Medicaid benefits under the circumstances of this case.
11. Declaratory and injunctive relief are appropriate with respect to the class as a whole because the Defendant has acted on grounds applicable to the entire class.
12. The named Plaintiffs' claims are typical of the claims of the class.
13. The named Plaintiffs will fairly and adequately protect the interests of the class. Because of their indigence, the named Plaintiffs are represented by the Nebraska Appleseed Center for Law in the Public Interest and the National Health Law Program, whose attorneys have litigated numerous class actions concerning issues similar to those before this Court. Plaintiffs know of no conflicts of interest among members of the class.
14. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that it will avoid the need for numerous separate actions by class members.

STATUTORY AND REGULATORY FRAMEWORK

The Medicaid Act

15. Medicaid is a jointly funded state and federal program that provides medical coverage to certain categories of low-income persons pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 to 1396u. State participation in the Medicaid program is optional. However, a state choosing to participate, and thereby receive federal matching funds for its Medicaid program, must comply with the requirements of the federal Medicaid Act and the rules and regulations governing state Medicaid programs promulgated by the U.S. Department of Health and Human Services (HHS). As a condition of participating in the federal Medicaid program, Nebraska must submit to HHS a Medicaid plan that fulfills the requirements of the Medicaid Act. 42 U.S.C. § 1396a. Nebraska has chosen to participate in the Medicaid program and accepts federal matching funds for its program expenditures.

16. Under the Medicaid program, Nebraska is required to cover certain groups of people and has the option of covering others.

17. Among those to whom Nebraska is required to provide Medicaid are children and their parents who are receiving, or are deemed to be receiving, Aid to Families with Dependent Children (AFDC). 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I) and 1396u-1(b)(1)(A).

18. While the AFDC program no longer exists, the Medicaid Act requires that certain people continue to “be treated as receiving” AFDC for purposes of receiving Medicaid. 42 U.S.C. § 1396u-1(b)(1)(A).

19. Transitional Medical Assistance is available for up to one year to people who have been “treated as receiving” AFDC for three of the six months before they lose eligibility for AFDC

because of hours of, or income from employment. 42 U.S.C. § 1396r-6(a). In order for a person to be “treated as receiving” AFDC in Nebraska, she or he must be a caretaker relative, as that term was defined in the AFDC program, and have countable income, as determined by the state, that falls below the AFDC income eligibility limit that Nebraska used in July 1996. 42 U.S.C. § 1396u-1(b).

20. At all times relevant to this case, Nebraska’s AFDC income eligibility limit was set at or above \$401.00 for a family of one. 468 NAC 2-009.01A (effective May 18, 2002).

21. Financial eligibility for Medicaid in Nebraska is determined not based on a person’s gross income, but rather by measuring her or his “countable income” against the income eligibility standard, or limit, that the state has established for the category of Medicaid for which the person is applying.

22. Countable income is that portion of a person’s gross income that Nebraska chooses to consider when determining her or his eligibility for Medicaid.

23. The process that a state adopts to decide how much of a person’s gross income it will consider for purposes of determining Medicaid eligibility is called its “income methodology.” 42 U.S.C. § 1396u-1(b)(2)(C).

24. Nebraska has chosen, as it is permitted to do, to provide Medicaid to certain caretaker relatives whose gross income is too high for them to qualify for other categories of Medicaid assistance that Nebraska provides. Nebraska covers people in this group pursuant to what it calls its “medically needy” category. 42 U.S.C. §§ 1396d(a)(ii) and 1396a(a)(10)(C).

25. At all times relevant to this case, the income eligibility standard, or limit, for a family of one in Nebraska’s medically needy category was \$392.00 per month. 468 NAC 4-010 (effective

September 8, 1993) and Nebraska Administrative Code Appendix 468-000-204 (effective February 1, 2000).

“Stacking”

26. Between at least July 1996 and October 2002, Nebraska used a methodology referred to as “stacking” to determine the countable income of caretaker relatives applying for Medicaid under Nebraska’s medically needy category.

27. All of the Plaintiffs in this case were determined to be eligible for Medicaid when the Defendant used the stacking methodology in considering their applications.

28. Stacking involved dividing one family into two or more separate units for purposes of determining the income eligibility of the family’s members for Medicaid. Each child in the family was treated as a separate household of one as was the parent.

29. As mandated by the Nebraska Legislature, once the family was divided, each child was allocated the maximum amount of income she or he could have and still qualify for Medicaid. That amount was the child’s countable income for purposes of making the Medicaid eligibility determination for the family. Neb. Rev. Stat. § 68-1020 (2)(d) (2001) amended by 2002, Spec. Sess., LB8 (2002).

30. After the appropriate amount of income was allocated to each child, any remaining income was attributed to the parent and used as the parent’s countable income for purposes of determining Medicaid eligibility.

31. At the end of the stacking process, no matter how many children were present, in order for the family to qualify for Medicaid, the parent’s countable income had to be below the medically needy income limit for a household of one, i.e., \$392.00 per month.

32. Effective October 21, 2002, Nebraska stopped using the stacking methodology and adopted a new methodology for counting the income of caretaker relatives that results in more of their gross income being counted when determining their eligibility for Medicaid.

33. As a result of this change in the income methodology for calculating Medicaid eligibility, the Defendant has already terminated or will terminate the Medicaid benefits of approximately 10,000 needy caretaker relatives who have earned income.

34. Despite the fact that all of the Plaintiffs in this case were determined by the Defendant to have countable income below the AFDC income limit of \$401.00, the Defendant does not intend to provide Transitional Medical Assistance to the Plaintiffs and the class they seek to represent.

35. The Defendant is able from his computer files to determine on an *ex parte* basis which of the people now being terminated have earned income and have been receiving Medicaid for at least three of the past six months.

The Named Plaintiffs

36. Teresa Kai lives with and is the primary support for her 10-year-old daughter, Laura.

37. Ms. Kai suffers from type II diabetes mellitus, hypertension, depression, asthma, allergies, and anxiety.

38. Ms. Kai's primary source of support is the approximately \$9,750.00 in gross annual income that she earns as a cook at Po Po's, a drive-in restaurant in Pender, Nebraska. Her employer does not provide health insurance.

39. To treat her conditions, Ms. Kai requires nine prescription medications. Ms. Kai estimates that the monthly cost of her prescription medications is \$610.00. She has no savings and cannot afford the medications on her own.

40. Ms. Kai has run out of her high blood pressure medication and only has enough of her other prescriptions to last until February 1, 2003.

41. Ms. Kai has received Medicaid continuously for over four years. On October 22, 2002, she received a notice from NDHHS that she would lose her Medicaid benefits effective November 1, 2002.

42. On November 1, 2002, Ms. Kai filed an appeal with NDHHS. A hearing was held on November 22, 2002, and on December 12, 2002, Ms. Kai received a decision affirming the termination of Medicaid benefits.

43. Ms. Kai's Medicaid benefits were terminated January 1, 2003, because her countable income, as determined by using the Defendant's new income methodology, exceeded the income eligibility limit.

44. Ms. Kai fears that without her medication and regular access to her doctors, her conditions will make it impossible for her to work and may well become life threatening.

45. Stacy Noller lives in Kearney, Nebraska, with her five-year-old daughter, Brenna, for whom she is the primary source of support.

46. Ms. Noller suffers from bipolar disorder and schizophrenia.

47. Ms. Noller's primary source of income is \$16,640.00 in gross annual income she earns as a secretary at Summit Heating and Air Conditioning in Kearney, Nebraska. Ms. Noller's employer does not provide health insurance.

48. To control her medical conditions, Ms. Noller must take four prescription medications and sees a therapist once a week and a psychiatrist every six weeks. Ms. Noller estimates that

the monthly cost of her prescription medications is \$200.00 and that her monthly therapy costs are \$280.00.

49. Ms. Noller has not been able to see her therapist since January 1, 2003.

50. Ms. Noller began receiving Medicaid in 1999 and continued to be covered until January 1, 2003.

51. On November 25, 2003, Ms. Noller received a notice from NDHHS that her Medicaid benefits were being terminated effective January 1, 2003, because her income, as calculated using the Defendant's new income methodology, put her above the income eligibility limit for Medicaid.

52. Ms. Noller cannot afford the medications and access to her therapist on her own. Without her medications and access to her therapist, Ms. Noller believes it will be impossible for her to continue working.

IRREPARABLE INJURY AND NO ADEQUATE REMEDY AT LAW

53. Defendant's refusal to provide the named Plaintiffs and Plaintiff class members with transitional Medicaid benefits causes irreparable injury to Plaintiffs' physical, emotional, and financial well-being.

54. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

55. Defendant's refusal to provide transitional medical assistance to Plaintiffs and the class they represent violates 42 U.S.C. § 1396r-6(a)(1).

SECOND CLAIM FOR RELIEF

56. Defendant's failure to notify Plaintiffs and the class they represent of their right to Transitional Medical Assistance benefits and of the circumstances under which those benefits may be terminated violates 42 U.S.C. § 1396r-6(a)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class as defined in ¶ 8;
- B. Enter a declaration pursuant to 28 U.S.C. § 2202 that Defendant's refusal to provide Transitional Medical Assistance benefits to people with earnings who were receiving Medicaid benefits under Defendant's medically needy category in at least three of the six months immediately preceding the month of their termination, and who lost their eligibility for Medicaid due to the Defendant's new method for counting their income violates 42 U.S.C. 1396r-6(a)(1);
- D. Preliminarily and then permanently enjoin Defendant from discontinuing the Medicaid benefits of caretaker relatives with earned income unless and until Defendant has determined, in accordance with the declaration of this Court, that such individuals or families are not eligible for an alternative category of Medicaid assistance, including transitional Medicaid;
- E. Preliminarily and then permanently enjoin Defendant from refusing to provide Transitional Medical Assistance benefits to all people with earned

income who were receiving Medicaid benefits under Defendant's medically needy category in at least three of the six months immediately preceding the month of their termination and who, but for Defendant's new method of counting their income would continue to be eligible to receive Medicaid;

- F. Preliminarily and then permanently enjoin Defendant from refusing to notify each family with earned income that was receiving Medicaid under Defendant's medically needy category in at least three of the six months immediately preceding the month of their termination, of their right to receive Transitional Medical Assistance without filing a new application and of the circumstances under which that assistance may be terminated.
- G. Award Plaintiffs their costs and reasonable attorneys' fees as provided for by 42 U.S.C. § 1988; and
- H. Grant such other and further relief as the Court may deem just and proper.

DATED: January 29, 2003.

TERESA KAI and STACY NOLLER, on behalf of
themselves and all others similarly situated,
Plaintiffs

By: _____

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