IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 03-1721

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

Plaintiffs-Appellants,

v.

RON ROSS, as the Director of the
Nebraska Department of Health and Human Services,

Defendant-Appellee.

(Class Action)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

The Honorable Laurie Smith Camp, District Court Judge

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

Did the District Court err in denying the plaintiff class members' motion for a preliminary injunction based on the conclusion that the class members did not fit within the ambit of Section 1931 of the Social Security Act (42 U.S.C. § 1396u-1), those that are treated as receiving AFDC benefits; and therefore are not entitled to Temporary Medical Assistance benefits under Section 1925 (42 U.S.C. § 1396r-6).

STATEMENT OF THE FACTS

After November of 2002, the class members were determined ineligible to receive Medicaid benefits pursuant to Nebraska Revised Statute § 68-1020 as amended by Laws 2002, Second Special Session, LB 8, § 2. This new law did not change the eligibility requirements regarding Section 1931 of the Social Security Act (42 U.S.C. § 1396u-1); it affected Section 1902 of the Social Security Act (42 U.S.C. § 1396a) medically needy category. Because Nebraska changed its eligibility methodology for the Section 1902 medically needy category by ending the so-called "stacking" method of determining the maximum income level for Medicaid eligibility which had the effect of reducing maximum income levels, the class members were no longer eligible for Medicaid. The class members were only eligible for the medically needy category and did not receive benefits under the Section 1931 ADC program. Each class member was given proper notice that their benefits would be terminated and that they had the right to appeal.

Plaintiff Teresa Kai is 42 years old and lives in Pender, Nebraska with her ten year old daughter. While Teresa and her daughter were eligible to receive Medicaid benefits, her countable income was $799.87, which was below the Medicaid family maximum income level of $1,130 for her family. The Section 1931 ADC limit was set at $494, thus her income exceeded the Section 1931 ADC limit by $260. Since Teresa

Kai's countable income is above the standard for Section 1931 ADC program benefits, she is not eligible for TMA benefits under Section 1925 (42 U.S.C. § 1396r-6). As of November 1st, 2002, Ms. Kai's income was higher than the maximum income level for the Section 1931 ADC program. See Exhibit 104. Proper notice was sent to her at least 10 days before her ineligibility with the right to appeal. Ms. Kai did appeal and had continued benefits until January 1, 2003.

Plaintiff Stacy Noller is 25 years old and lives in Kearney with her five year old daughter. While Ms. Noller and her family were eligible to receive Medicaid, her countable income was $1,243.39. This fell within the Medicaid family standard for her family, which was set at $1,374. Her countable income exceeded the maximum income level for ADC benefits of $494 for her family. Stacy Noller's income was $507 over the standard for the Section 1931 ADC program. Since she was not within Section 1931 ADC program benefits, she is not currently eligible for TMA benefits. (See Exhibit 103). Proper notice was sent to Ms. Noller within 10 days of her ineligibility. Stacy Noller did not appeal the decision of ineligibility.

SUMMARY OF THE ARGUMENT

The District Court's determination that the Plaintiffs/Appellants have only a "slim" likelihood of success on the merits of the case was correct based upon the law and the facts. (A-78.) That determination was primarily dispositive of the Motion for Preliminary Injunction. (A-26.) The Appellee's position in this case is that the named Plaintiffs/Appellants, as well as members of the defined class, were not recipients of ADC (Title IV-A of the Social Security Act) and Medicaid coverage for themselves and their children pursuant to Section 1931 of the Social Security Act. They were within the Nebraska Medically Needy category which is a federally optional category pursuant to Section 1902 (a)(10)(A)(ii). Additionally, they cannot be treated as receiving such aid (ADC) as also provided in Section 1931 since they do not meet those requirements and they were within the Medically Needy category only.

The Social Security Act provides for Transitional Medical Assistance (TMA) only for those recipients who fall within the purview of Section 1931. Since the Plaintiffs clearly do not fall within that category of clients, they do not qualify for TMA. Their Medicaid benefits were terminated solely due to a change in state law that adjusted the maximum income levels for eligibility applicable to their cases.

For these reasons, the position of the Appellants in this case is wholly without merit.

ARGUMENT

Introduction

This case involves an attempt by the class members to force the State of Nebraska to extend eligibility to them for Transitional Medical Assistance (TMA). They claim that they are eligible for such temporary benefits notwithstanding the fact that they no longer qualify for Medicaid as medically needy caretaker relatives due to the changes in program eligibility brought about as a necessary budget cutting measure by the Nebraska Legislature when it passed LB 8 in the 2002 Second Special Session. This bill amended Nebraska Revised Statute § 68-1020.

It is the contention of Ron Ross and the Department of Health and Human Services that the class members are not eligible for TMA since they do not fall within the category of persons defined at Section 1931 of the Social Security Act (42 U.S.C. § 1396u-1-1 of the Social Security Act (42 U.S.C. § 1396a(a)(5)), each state must designate a single State agency to administer the plan. Nebraska has chosen the Nebraska Department of Health and Human Services (NDHHS) to administer the program.

States are given broad authority to run the programs as long as the minimum federal requirements are met. A state plan must be approved by the Secretary of the Department of Health and Human Services (Secretary) that contains reasonable

standards for determining eligibility for and the extent of medical assistance. The Secretary approved Nebraska's Medicaid state plan, which is in full accordance with the Social Security Act and its regulations. The District Court also stated in the Order that Ron Ross, along with NDHHS, will be able to show that they have acted consistently with federal law. Section 1902 (42 U.S.C. § 1396a(a)(10)(A)) gives the requirements of who should be eligible for Medicaid. The class members do not distinguish between the different categories of Medicaid. They state that a class member "received Medicaid" or became "ineligible for Medicaid" without making a distinction of which category of Medicaid. It is important to look at these categories individually as the federal and state laws regard them differently and Nebraska determines their eligibility differently. It is important that only persons who received Medicaid benefits under the Section 1931 ADC program are eligible for TMA.

States must provide Medicaid benefits to the mandatory groups. ADC grant recipients and anyone who is defined under Section 1931 are within a mandatory group, including those treated as recipients of Aid to Families with Dependent Children (AFDC). Nebraska's AFDC program is called Aid to Dependent Children (ADC). In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) repealed the AFDC program and replaced it with a program called Temporary Assistance to Needy Families (TANF). Recipients of TANF are not

included in the mandatory groups required to receive Medicaid under the Social Security Act.

States are given the option to provide Medicaid benefits to other groups under Section 1902(a)(10)(A)(ii). Nebraska chose to supply Medicaid benefits to the medically needy caretaker relatives for those applicants whose income and/or resources exceed the eligibility requirements for the Section 1931 ADC program. Since Nebraska has chosen to implement the optional categories, it provides benefits to those whose countable income is too high to fit with Section 1931 ADC program. Each state is given the discretion to set the maximum income levels against which countable income is measured, which in turn factors into the eligibility of one of the Medicaid categories.

After the change in the AFDC program, Section 1925 [42 U.S.C. § 1396r-6-6." (A-80.)

The caretaker relatives and children who fall within the Section 1931 ADC program are eligible to receive TMA benefits under Section 1925 once deemed ineligible for ADC if they had earned income in three of the preceding six months. Section 1925 clearly states:

(a) INITIAL 6-MONTH EXTENSION. –

> (1) REQUIREMENT. – Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of title IV in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative . . . shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this title during the immediately succeeding 6-month period in accordance with this subsection.

42 U.S.C. § 1396r-6-6 does not apply to those that fall under the medically needy group that is defined in Section 1902 (42 U.S.C. §1396a(a)(10)(A)(ii)). In fact, the Federal Department of Health and Human Services provided NDHHS with clarification on this issue in a letter dated August 28, 2000.

> Section 408(11) states that a 'family is treated (under Section 1931) as receiving aid under an (AFDC State plan) and was treated as receiving aid in 3 of the preceding 6 months. . . ." This language makes the 'receiving aid' in 1925 become 'receiving Medicaid under Section 1931.' . . . TMA

is based on eligibility for Medicaid only under the 1931 group. Individuals who are eligible under poverty level groups or as medically needy or any other group other than 1931 are not eligible for TMA.

See Exhibit 108, p. 1.

The class members argue that they, as medically needy caretaker relatives, are within the Section 1931 definition of treated as receiving aid under AFDC (ADC in Nebraska). Section 1931 gives a clear definition of persons who shall be considered as treated as receiving:

b) APPLICATION OF PRE-WELFARE-REFORM ELIGIBILITY CRITERIA. –

(1) In general. For purposes of this subchapter, subject to paragraphs (2) and (3), in determining eligibility for medical assistance,

(A) an individual shall be treated as receiving aid or assistance under a State plan approved under part A of subchapter IV of this chapter only if the individual meets

(i) the income and resource standards for determining eligibility under such plan, and

(ii) the eligibility requirements of such plan under subsections (a) through (c) of section 606 of this title and section 607(a) of this title as in effect as of July 16, 1996, and

(B) the income and resource methodologies under such plan as of such date shall be used in the determination of whether any individual meets income and resource standards under such plan.

42 U.S.C. § 1396u-1-1 as they were not treated as receiving AFDC benefits.

I.

THE DISTRICT COURT PROPERLY DENIED THE CLASS MEMBERS' MOTION FOR PRELIMINARY INJUNCTION AS THEY CLEARLY DO NOT FIT WITHIN THE AMBIT OF SECTION 1931; AND THEREFORE ARE NOT ENTITLED TO TMA BENEFITS UNDER SECTION 1925.

A. The Class Members Clearly Do Not Fall Within the Plain Language of Section 1931.

The District Court concluded that "when the Plaintiffs' slim chance of success on the merits is considered with the other factors, the Court is persuaded that the preliminary injunction should not issue." (A-89.) The Court also concluded that:

> . . . [T]he Defendant has demonstrated that he has followed state and federal law to the best of his ability in determining who is eligible for Medicaid benefits and who is not. The Court believes that the Defendant will be able to show at trial that he has administered the Medicaid program in Nebraska consistent with federal law.

(A-89.) The class members have the burden of proof and they have failed to show that the Appellee did not conform to federal mandates or that the class members fall within the Section 1931 category of those that would have received AFDC benefits in

1996. The language of the applicable provisions of the Social Security Act clearly shows that Ron Ross, through NDHHS, has performed within the parameters set by Congress.

These provisions, found in Section 1931, are at the heart of the conflict between the parties in this case. In essence, anyone whose net income falls below the ADC maximum eligibility limit set by Nebraska in 1996 will still be eligible to receive Medicaid benefits under Section 1931. Anyone who receives benefits under the Section 1931 ADC program is also eligible for TMA benefits for 6 months after a determination of ineligibility due to increased earned income. The Class members allege that they should receive these TMA benefits because the maximum income standard to which their countable income was compared was below the ADC standard in 1996. The class members fail to look into exactly how Defendant determined the maximum income level by not taking into account what factors were used to determine eligibility.

Section 1902 gives parameters for what groups of people a state must include to participate in the Medicaid program and receive federal funding. There are two specified groups of people as discussed in the statutory scheme. The first group is found under Section 1902(a)(10)(A)(i) (42 U.S.C. § 1396a(a)(10)(A)(i)). Under this provision, Congress has provided the individuals that must receive medical assistance

under the Medicaid Act. One of the included groups is those receiving aid under part A of Title IV of the Social Security Act, which are the AFDC grant recipients. Section 1931(b)(1) (42 U.S.C. § 1396u-1-1):

> According to Section 1931, when determining whether a person should be treated as having received AFDC benefits, -and therefore entitled to TMA under Section 1925 – the benefit administrator, ultimately this Court, must apply the income methodologies that were used by the State in July 1996.

The ADC method used before welfare reform was a two step process. Nebraska's gross income test had a maximum limit of $542 for AFDC families of two in 1996. First, the gross income of the family was compared to 185% of the applicable standard of need (185% of $293 = $542) as a threshold test required by federal law at the time. 468 NAC 2-009.02.[1] A family whose gross income fell below 185% of the AFDC standard of need then had a full budget completed with a determination of net income compared to the applicable standard of need. If the net income was less than the applicable standard of need, then that amount was the ADC grant amount payable to the family. The ADC eligibility then resulted in automatic Medicaid coverage for the family.

[1] This regulation was effective February 27th, 1994 but is no longer in effect.

The ADC budgeting methodology instituted in 1997 to determine the countable income compared to the maximum income level set by the state was different from the prior budgeting methodology as described above. Countable income is essentially the net income of the family using parameters set forth by the Social Security Act and applicable federal and state regulations. Gross income is subjected to various reductions (or disregards) thus yielding net or countable income. The final countable income used in determining eligibility of caretaker relatives is significantly less than the actual gross income. See Exhibits 103 and 104. The class members have not argued that this specific methodology is more restrictive.

It is only after the family has received Medicaid benefits under the Section 1931 ADC program that they may be eligible for Temporary Medical Assistance under Section 1925. The Associate Regional Administrator for Medicaid and State Operations, Thomas W. Lenz, with jurisdiction over Nebraska has specifically told the Appellee that those eligible under the medically needy category are not eligible for TMA, only those that have received aid under the 1931 ADC group. See Exhibit 108. Section 1925 provides that anyone with earned income who received AFDC benefits for the immediately preceding 3 out of 6 months shall be eligible for continued assistance for 6 months. The class members' gross income far exceeded their $401 ADC maximum income level (standard of need) and therefore they were not eligible

under the Section 1931 ADC program and therefore not eligible for TMA. See Exhibits 103 and 104.

The class members are ineligible for Section 1925 TMA benefits for many reasons. First of all, if their income had made them eligible for ADC, the class members would have been automatically Medicaid eligible and no further eligibility determinations would have occurred. At the time of their application, the class members exceeded the eligibility requirements for the Section 1931 ADC program standards. The class members did not formerly receive benefits under the AFDC program nor are they treated as having received AFDC benefits according to the terms of Section 1931. Nebraska specifically looks at each applicant caretaker relative and their children to determine if they would fit within the Section 1931 ADC program group. The NDHHS Deputy Administrator for the Office of Economic and Family Support, Michael B. Harris, testified that "eligibility is determined based upon that family's total income and total resources against program standards." (Tr. 26:14-15.) When processing eligibility, a computer program automatically calculates who would be eligible under the ADC program standards, and then determines if applicant families fit under any optional category if ADC eligibility is not present. The program standards provide for a "maximum income level" which is where the line is drawn to determine eligibility for Medicaid benefits. If the applicant's countable income

exceeds the program standards or that maximum income level then the applicant will not be eligible. The maximum income level is different for different sizes of families.

The medically needy category was specifically designed for those caretaker relatives whose income exceeds standards for Section 1931 ADC but may still need Medicaid. If a family's income exceeds the higher medically needy maximum income level then the caretaker relatives are no longer eligible for benefits through any other provision. The children, as in this case, may continue to receive Medicaid coverage due to their individual status.

The medically needy category comes from the second group defined under Section 1902(a)(10)(A)(ii), which allows states to choose additional optional groups that may be covered under Medicaid. All of the class members fell within this optional category for medically needy caretaker relatives, as their income was too high to be eligible for Section 1931 ADC, or treated as receiving Section 1931 ADC. Medically needy caretaker relative is an optional category under Medicaid with a higher eligibility level than the ADC program. Prior to LB 8, the countable income was compared to the maximum income level, which was determined through the so-called "stacking" methodology. The class members have misunderstood the "stacking" methodology in stating that it involves the determination of countable income with allocation of

different amounts of income to the caretaker relatives and to their children. That was not the case. Each applicant family was viewed as a whole, with the whole being made up of the component income levels attributable to each family member. "Stacking" determined the maximum income level allowed for a certain family not countable income.

Stacking" entailed using an income level component that was set for each caretaker relative and adding them to the child's maximum income level component to determine the family's maximum income level. See Exhibit 101. Since medically needy caretaker relative medical assistance, by its definition, is for the category of families with dependent children, there were always at least two in the family applying for Medicaid. Therefore the medically needy caretaker relative's component was never used alone to determine eligibility for the family. Family eligibility was always determined on a combined basis. The medically needy income level component for caretaker relatives was set at $392. This is where the class members stop calculating the eligibility level in their contention that the component of the maximum income level is lower than the AFDC standard of need. The value of $392 was not used as a maximum income level, only as a component to determine the maximum income level for the family. The actual total consisted of the medically needy caretaker relative's standard and the child's or children's combined standards. The lowest maximum

income level possible to determine eligibility of a family of two (school age child and caretaker relative) was $1,130 for a caretaker relative and a child between the ages of 6 and 18. The highest maximum limit for a family of two was $1,499 for a caretaker relative and an infant under the age of one. This number results from adding together the income level component for the mother found in the Nebraska Administrative Code Appendix 468-000-204 and the income level component for the children found in 477 NAC 4-001. The Class members misunderstand "stacking" in that the component for the mother alone ($392) was never considered as the maximum income level. Therefore, the lowest maximum income level possible for a Medicaid family of two standard of $1,130 is not more restrictive than the comparable ADC gross income maximum eligibility limit of $542. If we look at Teresa Kai for instance, we can see that the actual maximum income level was $1,130. This took the component for Teresa at $392 and added it to the school age child Medicaid component set at 100 percent of the Federal Poverty Level for her daughter of $738. See Exhibit 104. The class members allege to the District Court that "the only remaining question is whether the medically needy income standard which the Plaintiffs were required to meet in order to qualify for Medicaid was equal to or lower than the income eligibility standard that Nebraska used for its AFDC program in 1996." Plaintiffs' Brief in Support of Preliminary Injunction, p. 14. The medically needy income standard (maximum

income level) that Teresa Kai was required to meet was set at $1,130. This is clearly not equal to or lower than the eligibility methodology set for the AFDC program in 1996. See Exhibit 105.

B. The Class Members Have Confused What Methodology Was Changed with LB 8.

The class members allege that they were terminated from Medicaid due to a change in the method of counting income. This is incorrect. The reason they were determined ineligible involved a change in the eligibility standards which translated into reduced maximum income levels; it was not a change in the income budgeting methodology. Countable income is actually the net income of the family used to determine if a family's income is below the maximum income level determined by the state in accordance with federal law. This amount is determined through calculations which apply certain disregards to the reported and verified income of the family or "unit." This determination is the actual "income methodology" employed by the State of Nebraska. Prior to the reform mandated by LB 8, maximum income levels for Medicaid eligibility were computed through the so-called "stacking" methodology. Countable income is compared to the applicable medically needy maximum income level in order to determine Medicaid eligibility.

Before October 15, 2002, Nebraska used the "stacking" method of determining whether a family was eligible for Medicaid when they were not eligible for ADC due to excess income. Each individual had their own income level based on their category of Medicaid eligibility. The family's maximum income level was based on adding together the caretaker relative's component to each child's component maximum income level based upon the category of eligibility for each child. The child or children's component maximum income level for eligibility is found at 477 NAC 4-001-001 and not Section 1931. Regardless of family size, the Medicaid family maximum income level achieved through stacking was always two to four times greater than the Section 1931 ADC level for the same size family. This fact was clearly shown at the hearing on the Motion for Preliminary Injunction.

The Appellants place great reliance on the case of *White v. Martin*, Civ. No. 02-4154-CV-C-NKL (W.D. Mo.). This reliance is clearly misplaced. In reviewing the District Court's Preliminary Injunction decision in *White* (A 39.), it is abundantly clear that the plaintiffs in Missouri were receiving Medicaid coverage pursuant to Section 1931 of the Social Security Act. The Court found that these Missouri plaintiffs had received aid through their Section 1931 AFDC program which stems from Title IV-A of the Social Security Act. The State of Missouri does not have a separate Medically Needy optional category of Medicaid coverage as does the State of Nebraska. The

unchallenged evidence adduced at the hearing on the Motion for Preliminary Injunction in the instant case made it very clear that the plaintiffs received their Medicaid coverage as members of the Medically Needy option coverage group, not under Title IV-A or Section 1931 ADC coverage. (Tr. 24-26.) This distinction alone renders the *White* case inapplicable to the case at bar.

The very fact that the Plaintiffs herein received Medicaid coverage as Medically Needy clients and not as either active ADC clients or as persons treated as receiving ADC benefits that would bring them under the coverage of Section 1931 with regard to TMA benefits, makes it inescapable that the plaintiffs herein do not have any reasonable likelihood of success on the merits of their claims. TMA does not apply to Medically Needy clients. See Exhibit 108. Section 1925 TMA coverage requires that clients have received Title IV-A aid (ADC) or be treated as having received such aid as provided in Section 1931. The evidence in this case shows that the plaintiffs, as Medically Needy category clients, did not fit within these categories that would allow TMA to be extended to them regardless of why their Medically Needy category Medicaid coverage was terminated.

CONCLUSION

For the reasons set forth above, this Court should affirm the decision of the District Court and deny the Appellants' appeal.

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I, _____, being first duly sworn, depose and state that two copies of the brief in the above entitled case were served upon the Appellants by depositing said copies in the United States Mail, postage-paid, addressed to Appellants' attorneys of record:

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Subscribed in my presence and sworn to before me this _____ day of May, 2003.

_____

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CERTIFICATE OF COMPLIANCE

The foregoing brief was formatted using Corel WordPerfect Version 8. The undersigned hereby certifies that the Appellee's Brief complies with the typeface and page and volume limitations imposed by Fed. R. App. P. 32(a)(5) and 32(a)(7), and that according to an electronic word count of those sections designated in Fed. R. App. P. 32(a)(7)(B)(iii), there are _____ words in the brief. A diskette is enclosed containing a copy of the brief and has been scanned for viruses using Norton Antivirus Corporate Edition.

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