

for the Court's determination; therefore, no Answer is required. To the extent an Answer is required, said allegations are denied.

5. Defendant generally admits the allegations contained in paragraphs 14, 15, 16, and 17 of Plaintiff's Complaint.
6. Defendant generally admits the allegations contained in paragraphs 18 and 19 of Plaintiff's Complaint when such paragraphs are read in conjunction; however, Defendant alleges the appropriate statutory language refers to "individuals" rather than "children and their parents." Defendant further alleges that as the AFDC program no longer exists, any references to the term "AFDC" is as a reference point only.
7. Defendant generally admits that the legal and factual allegations contained in paragraph 20 of Plaintiff's Complaint; however, Defendant alleges 42 U.S.C. §§ 1396r-6 and 1396u-1 are inapplicable and irrelevant to the instant case.
8. Defendant generally admits the allegations contained in paragraph 21 of Plaintiff's Complaint. Defendant alleges that countable income is calculated differently under various categories of Medicaid.
9. Defendant generally admits the allegations contained in paragraph 22 of Plaintiff's Complaint; however, Defendant alleges that an individual's gross income is a factor in calculating that individual's countable income when determining eligibility for various categories of Medicaid. Defendant further alleges that countable income is calculated differently under the various categories of Medicaid.

10. Defendant generally admits the legal and factual allegations contained in paragraph 23 of Plaintiff's Complaint; however, Defendant alleges 42 U.S.C. § 1396u-1 is inapplicable and irrelevant to the instant case.
11. Defendant admits that Nebraska has chosen, as it is permitted to do, to provide Medicaid to caretaker relatives whose *countable income* is too high for them to qualify for other categories of Medicaid that the State of Nebraska provides, and admits that Nebraska covers individuals in this group pursuant to what it calls its "medically needy" category. 42 U.S.C. § 1396a(a)(10)(C). Defendant denies the State of Nebraska has chosen, as it is permitted to do, to provide Medicaid to caretaker relatives whose *gross income* is too high for them to qualify for other categories of Medicaid that Nebraska provides. Defendant denies the remaining allegations contained in paragraph 24 of Plaintiff's Complaint.
12. Defendant denies the allegations contained in paragraph 25 of Plaintiff's Complaint.
13. Defendant admits Plaintiff Bowlin was once determined eligible for Medicaid under Nebraska's medically needy category and denies the remaining allegations contained in paragraph 26 of Plaintiff's Complaint.
14. Defendant admits when NDHHS reviews an application for Medicaid under the medically needy category, NDHHS individually evaluates the caretaker's gross income as a factor for eligibility depending on the individual circumstances. Defendant generally denies the remaining allegations contained in paragraph 27 of Plaintiff's Complaint.

15. Defendant alleges NDHHS uses *income disregards* selected by the State of Nebraska to calculate countable income, which is then compared to the appropriate standards based on the category of Medicaid for which the individual's eligibility is being determined. Defendant further alleges that the State of Nebraska has chosen to use several *income disregards* in determining net countable income under the medically needy category, which include an earned income disregard, a child income disregard, and a health insurance disregard. Defendant generally denies the remaining allegations contained in paragraph 28 of Plaintiff's Complaint.
16. Defendant alleges that once all income disregards are applied, the remaining amount is the countable income for the purposes of determining the *caretaker's* eligibility for Medicaid under the medically needy category. Defendant denies that once all income disregards are applied, the remaining amount is the countable income for the purposes of determining the *parent's* eligibility for Medicaid under the medically needy category and Defendant generally denies the remaining allegations contained in paragraph 29 of Plaintiff's Complaint.
17. Defendant alleges that at the end of this process, in order for a *caretaker* to qualify for Medicaid *under the medically needy category*, he or she must have a countable income below the medically needy income limit for his or her household size. Defendant further alleges that if the caretaker is not eligible for Medicaid under the medically needy category, the caretaker may be eligible for the medically needy

excess income program. Defendant generally denies the remaining allegations contained in paragraph 30 of Plaintiff's Complaint.

18. Defendant specifically denies the allegations contained in paragraph 31 of Plaintiff's Complaint. Defendant alleges Plaintiff Bowlin was not eligible for or receiving benefits under 42 U.S.C. § 1396u-1 during the relevant time period, nor did Plaintiff Bowlin have an AFDC countable income below the AFDC countable limit. Plaintiff intentionally and blatantly misrepresents that Defendant determined Plaintiff Bowlin had a countable income below the AFDC income limit. Defendant further alleges Plaintiff Bowlin's countable income under Nebraska's AFDC program was \$971.54 in September 2003, which is above the \$611.00 income limit for a household of three under Nebraska's AFDC program.
19. Defendant admits she is able to determine whether Plaintiff Bowlin has earned income or has received Medicaid based on her computer files; Defendant denies the remaining allegations contained in paragraph 32 of Plaintiff's Complaint.
20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 33, 34, 35, and 36 of Plaintiff's Complaint.
21. Defendant denies Plaintiff has no means of paying for additional medical tests due to the State of Nebraska's medically needy excess income program, in which Plaintiff has chosen not to participate. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 37 of Plaintiff's Complaint.

22. Defendant alleges Plaintiff Bowlin received Medicaid under the medically needy category beginning in October 2002, and admits Plaintiff Bowlin received such Medicaid through December 2003. Defendant denies the remaining allegations contained in paragraph 38 of Plaintiff's Complaint.
23. Defendant generally admits Plaintiff Bowlin went through a recertification process to determine her Medicaid eligibility in September 2003. Defendant alleges such reviews occur every six months, with Plaintiff Bowlin to report any changes in income within ten days of such changes. As a result, Defendant alleges Plaintiff's Medicaid eligibility was subject to change at any time between the regular six-month recertifications. Defendant further alleges that in the September 2003 budget prepared by Plaintiff Bowlin's caseworker, Plaintiff Bowlin was deemed to have a medically needy countable income of \$270.55 a month, which was below the \$492.00 income limit for a household of three under Nebraska's medically needy program. Plaintiff intentionally and blatantly misrepresents her countable income as being \$270.55 if calculated under Nebraska's AFDC program. When properly calculated, Plaintiff Bowlin's countable income under Nebraska's AFDC program was \$971.54 in September 2003, which is above the \$611.00 income limit for a household of three under Nebraska's AFDC program. Defendant denies the remaining allegations contained in paragraph 39 of Plaintiff's Complaint.
24. Defendant generally admits the allegations contained in paragraph 40 Plaintiff's Complaint.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 41 of Plaintiff's Complaint.
26. Defendant alleges Plaintiff Bowlin went through the Medicaid eligibility recertification process on or about December 2, 2003, due to an increase in Plaintiff Bowlin's income. Defendant generally admits the remaining allegations contained in paragraph 42 of Plaintiff's Complaint.
27. Defendant generally admits Plaintiff Bowlin received a notice that her Medicaid was ending effective on or about January 1, 2004; however, Defendant specifically alleges Plaintiff Bowlin received such notice on or about December 3, 2003, and that Plaintiff Bowlin was informed of Nebraska's medically needy excess income program and her right to appeal. Defendant denies the remaining allegations contained in paragraph 43 of Plaintiff's Complaint.
28. Defendant denies Plaintiff Bowlin is without access to her doctors and additional tests; Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 44 of Plaintiff's Complaint.
29. Defendant denies the allegations contained in paragraphs 45, 46, 47, and 48 of Plaintiff's Complaint.
30. Defendant denies each and every remaining allegation contained in the Plaintiff's Complaint except those allegation that have been expressly admitted herein, or those which are admissions against Plaintiff's interest.

AFFIRMATIVE DEFENSES

1. Plaintiff Bowlin failed to exhaust her administrative remedies under Neb. Rev. Stat. § 68-139.
2. Plaintiff improperly alleged her claim falls under 42 U.S.C. § 1396u-1. Plaintiff Bowlin was receiving medically needy Medicaid benefits under 42 U.S.C. § 1396a(a)(10)(C) and therefore does not qualify for Transitional Medical Assistance.
3. Plaintiff Bowlin was offered and continues to be eligible for the State of Nebraska's excess income program under the medically needy Medicaid category.

WHEREFORE, Defendant prays that the Plaintiff's Complaint be dismissed with prejudice at Plaintiff's cost.

NANCY MONTANEZ, Defendant,

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CERTIFICATE OF SERVICE

It is hereby certified that on July 12, 2004, a copy of the foregoing Answer and Affirmative Defenses was electronically filed with the clerk of the court using the CM/ECF system which sent copies to Plaintiff's attorneys Rebecca L. Gould and Patricia A. Knapp.

s/Royce N. Harper
Royce N. Harper
Senior Assistant Attorney General

15-426-24