

STATEMENT OF FACTS

Local Rules for the District of Nebraska require the moving party to list each material fact in the case to which the party believes there is no genuine issue to be tried and the specific document or evidence that establishes each fact. The material facts that must be established in this case are: 1) that Plaintiffs meet the requirements to be “treated as receiving AFDC” established by 42 U.S.C. § 1396u-1; and 2) that Plaintiffs meet the eligibility requirements for TMA established by 42 U.S.C. § 1396r-6. Plaintiffs submit the following as a list of material facts established by the pleadings and evidence in this case:

1. Plaintiffs received Medicaid under a less restrictive income and resource methodology than was used by Nebraska’s AFDC program in 1996. (Answer, ¶ 23) (§ 1396u-1).
2. Using the less restrictive methodology, Plaintiffs met the income and resource limits for Nebraska’s AFDC program as it existed in 1996. (Answer, ¶ 1, ¶ 18, and ¶ 23,) (§ 1396u-1).
3. The income limit for AFDC for a family of a given size is higher than the income limit for Nebraska’s medically needy category for a family of the same size. (468 NAC 2-009.01A (effective May 18, 2002); 468 NAC 4-010 (effective September 8, 1993); NAC Appendix 468-000-204 (effective February 1, 2000); (Answer ¶ 18) (§ 1396u-1).
4. Plaintiffs are caretaker relatives. (Answer, ¶ 1) (§ 1396u-1).
5. Plaintiffs received at least three months of Medicaid in the six months prior to their termination from the Medicaid program (Answer, ¶ 22) (§ 1396r-6).
6. Plaintiffs lost Medicaid due to their hours of or income from employment. (Answer, ¶ 26 and Defendant’s Preliminary Injunction Exh. 12 (Email from George Kahlandt to Shelly Witt dated January 22, 2003)) (§ 1396r-6).

JURISDICTION AND VENUE

This action is authorized by 42 U.S.C. § 1983, as an action seeking redress of the deprivation of federal rights under the color of state law. 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. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

STANDARD OF REVIEW

District courts may grant summary judgment for a party when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). *See also, Rheineck v. Hutchinson Tech., Inc.*, 261 F.3d 751, 755 (8th Cir. 2001). No genuine issues of material fact exist in this case and no purpose would be served by a trial; the only question before this Court is which party is entitled to judgment as a matter of law, and this issue may properly be resolved by summary judgment. *Id.*

ARGUMENT

I. PLAINTIFFS ARE AMONG THOSE DESCRIBED IN 42 U.S.C. § 1396u-1.

The only contested issue in this case is a matter of law and is simply whether the plain language of § 1396u-1 covers people who become eligible for Medicaid pursuant to Nebraska's medically needy income methodology. There is no question that it does. This issue was squarely decided by the Eighth Circuit Court of Appeals in *Kai v. Ross*, 336 F.3d 650 (8th Cir. 2003). In *Kai* the Eighth Circuit held that the plain language of § 1396u-1 did in fact include people who received Medicaid under Nebraska's medically needy category and found that the plaintiffs were therefore likely to succeed on the merits of their claim. *Id.* at 654.

The *Kai* Court based its decision on the language found in subsection (b) of the statute, which provides in relevant part: "...In General.- For purposes of this subchapter, *subject to paragraphs (2) and (3)*, in determining eligibility for medical assistance...." 42 U.S.C. § 1396u-1 (emphasis added). This language is what allows groups who would not have qualified for AFDC when that program was in existence to be provided TMA. Paragraph (2) allows states to increase or decrease eligibility levels and resources standards or to adopt less restrictive methodologies for calculating countable income. Nebraska chose to use a less restrictive methodology for its medically needy category. *See* 468 NAC 4-007 (effective October 15, 2002); NAC Appendix 468-000-303; and (Answer ¶ 23). This methodology, when applied to the Plaintiffs, gave them countable income below the AFDC income limit. (Answer ¶ 23). Once below the AFDC income limit, the Plaintiffs came under the mandates of § 1396u-1, which requires that they be "treated as receiving AFDC" for purposes of the Medicaid Act. Those who are treated as receiving AFDC are entitled to TMA if they meet the requirements of § 1396r-6, which will be addressed below.

Further evidence of Congressional intent to cover groups such as Nebraska's medically needy caretakers can be found in that same phrase in subsection (b). The "subchapter" referred to in that phrase is subchapter XIX of the Social Security Act which is the entire Medicaid Act. The words "medical assistance" found at the end of the phrase are also a reference to all categories of Medicaid, not any particular group of recipients. Therefore, this section applies when determining eligibility for all categories of Medicaid, including Nebraska's medically needy category. Therefore, based on a plain reading of § 1396u-1 and the Eighth Circuit's decision in *Kai*, it is clear that the Plaintiffs are within the ambit of § 1396u-1 and as a matter of law are entitled to TMA.

II. PLAINTIFFS SHOULD HAVE BEEN "TREATED AS RECEIVING AFDC" PURSUANT TO 42 U.S.C. § 1396u-1.

The Defendant, in her Answer and exhibits, concedes all of the relevant facts showing that the Plaintiffs meet the requirements of § 1396u-1. To be "treated as receiving AFDC," the Plaintiffs must have countable income below the AFDC 1996 income limit. 42 U.S.C. § 1396u-1(b)(1)(A)(i). The medically needy income limit for a household of a given size is below the income limit for Nebraska's AFDC program. *See* 468 NAC 2-009.01A (effective May 18, 2002) (listing the income guidelines for the ADC program as it existed in July 1996); 468 NAC 4-010 (effective September 8, 1993) (describing eligibility for Nebraska's medically needy category); NAC Appendix 468-000-204 (effective February 1, 2000) (the medically needy income limit for a household of a given size). Defendant concedes this point when she admits that the AFDC income limit for a household of three is \$611.00 and that while receiving Medicaid under the medically needy category, Ms. Bowlin had countable income of \$270.55, which is well below the AFDC income limit. (Answer ¶18 and ¶ 23).

The second requirement to be “treated as receiving AFDC” is that the Plaintiffs must look like someone who could have received AFDC, or in other words, Plaintiffs must be caretaker relatives. 42 U.S.C. § 1396u-1(b)(1)(A)(ii). Defendant concedes that Plaintiff Bowlin is a caretaker relative. (Answer ¶ 1). The class definition also requires all Plaintiffs to be caretaker relatives. (Complaint ¶ 7).

The final requirement is that in calculating countable income for purposes of § 1396u-1, the income methodology for the AFDC program as it existed in 1996 must be used, unless the state has chosen to use a less restrictive income and resource methodology. 42 U.S.C. § 1396u-1(b)(1)(B) and (b)(2)(C). Defendant concedes that she used a less restrictive income methodology for the medically needy category than was used by Nebraska’s AFDC program in 1996. (Answer ¶ 23). Specifically, Defendant illustrates that under the medically needy methodology, Plaintiff Bowlin had countable income of \$270.55, but under the AFDC 1996 methodology, Plaintiff Bowlin had countable income of \$971.54. *Id.* This choice to use a less restrictive methodology brings the Plaintiffs under § 1396u-1 and entitles them to TMA. After considering all the elements, it is clear that there are no issues of material fact remaining and Plaintiffs satisfy the requirements of § 1396u-1.

III. PLAINTIFFS MEET THE ELIGIBILITY REQUIREMENTS FOR TRANSITIONAL MEDICAL ASSISTANCE.

Once an individual falls within § 1396u-1, he/she must still meet the other eligibility requirements for TMA. 42 U.S.C. § 1396r-6(a)(1) sets out these requirements:

Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid...under part A of title IV [AFDC] 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, ...without any reapplication for benefits under the plan, remain eligible for [Medicaid] during the immediately succeeding 6-month period in accordance with this subsection.

The first requirement is that the individual be “treated as receiving AFDC.” *Id.* As is discussed above, the Plaintiffs are covered by § 1396u-1 and meet all of the requirements to be “treated as receiving AFDC.” Second, an individual must have received at least three months of Medicaid in the six months before they were terminated. *Id.* The Defendant concedes that the Plaintiffs meet this requirement. (Answer ¶ 22). Finally, the individual must lose their Medicaid due to hours of or income from employment. Plaintiffs meet this requirement also. Plaintiff Bowlin, lost her Medicaid due to a \$0.50 raise she received from her employer. (Defendant’s Preliminary Injunction Hearing Exh. 12). There are clearly no issues of material fact that remain with regard to whether Plaintiffs meet the requirements of § 1396r-6.

CONCLUSION

For all of the foregoing reasons, the Plaintiffs respectfully request that this Court grant Plaintiffs’ motion for summary judgment and find in favor of the Plaintiffs as a matter of law.

Dated: November 5, 2004.

KELLY BOWLIN, on behalf of
herself and all others similarly
situated, Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2004 the foregoing Memorandum Brief in Support of Plaintiffs' Motion for Summary Judgment was filed with the Clerk of the United States District Court for the District of Nebraska using the CM/ECF system which will send notification of such filing to Royce N. Harper and Jaime Placek.

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