

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JENNIFER DAVIO,)
INDIVIDUALLY AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)

Petitioners,)

v.)

NEBRASKA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
CHRISTINE Z. PETERSON,)
CHIEF EXECUTIVE OFFICER, TODD)
LANDRY, DIRECTOR OF DIVISION OF)
CHILDREN AND FAMILY SERVICES,)
and VIVIANNE CHAUMONT,)
DIRECTOR OF DIVISION OF)
MEDICAID AND LONG-TERM CARE,)

Respondents.)

Case No. CI _____

**PETITIONERS MOTION FOR
CLASS CERTIFICATION**
(Class Action)

COMES NOW the Petitioner, by and through her counsel, and moves this Court to certify the class of Petitioners in this case pursuant to Neb. Rev. St. § 25-319. In support of this Motion, the Petitioner states as follows:

1. The named Petitioner brings this action on her own behalf and pursuant to Neb.

Rev. St. § 25-319, on behalf of a class defined as follows:

All parents in Nebraska who have received Aid to Dependent Children and whose Medicaid has been removed due to a sanction for failure to participate in the Employment First program, pursuant to 468 NAC 2-020.09B1(6) and 468 NAC 2-020.09B2f.

2. The class is so numerous that it is impracticable to bring them all before the court.

Respondents admit that there are at least 465 households meeting the class definition

as of January 1, 2008. N-Focus Sanctions Report, May 7, 2008, Exhibit 1, pg. 15.

3. There are questions of law and fact common to the class as a whole. The common facts are that all members received a sanction for failure to participate in Employment First pursuant to 468 NAC 2-020.09B1(6) and all members have had their Medicaid removed due to 468 NAC 2-020.09B1(6) and 468 NAC 2-020.09B2f. The common question of law is the claim that 468 NAC 2-020.09B1(6) and 468 NAC 2-020.09B2f impermissibly exceed the delegation of authority granted by the legislature in Neb. Rev. St. § 68-1723, in violation of Article II § 1 and Article III § 1 of the Nebraska Constitution.
4. Declaratory and injunctive relief are appropriate with respect to the class as a whole because the Respondents have acted on grounds applicable to the entire class.
5. The named Petitioner's claims are typical of the claims of the class.
6. The named Petitioner will fairly and adequately protect the interests of the class.
The Petitioner knows of no conflicts of interest among class members.
7. 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.

WHEREFORE, Petitioner requests this Court issue:

- A. An order certifying a class of:

All parents in Nebraska who have received Aid to Dependent Children and whose Medicaid has been removed due to a sanction for failure to participate in the Employment First program, pursuant to 468 NAC 2-020.09B1(6) and 468 NAC 2-020.09B2f.

DATED: May 20, 2008

Respectfully submitted:

JENNIFER DAVIO, on behalf of
herself and all others similarly
situated, Petitioners

By: _____
Erin A. Ching #23757
Rebecca L. Gould #22246
Nebraska Appleseed Center
for Law in the Public Interest
941 O Street, Suite 920
Lincoln, NE 68508
(402) 438-8853

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2008, the foregoing Motion for Class Certification was filed with the Clerk of the Lancaster County District Court, and that a true and accurate copy of this Motion and Proposed Order was served on the Respondents via United States First Class Mail to the Respondents' counsel Jon Bruning, Attorney General, 2115 State Capitol, Lincoln, NE 68509, and John Weis, Legal Counsel for NDHHS, P.O. Box 95026, Lincoln, NE 68509.

By:

Erin A. Ching #23757
Nebraska Appleseed Center
for Law in the Public Interest
941 O Street, Suite 920
Lincoln, NE 68508
(402) 438-8853

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JENNIFER DAVIO,)
INDIVIDUALLY AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)

Petitioners,)

v.)

NEBRASKA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
CHRISTINE Z. PETERSON,)
CHIEF EXECUTIVE OFFICER, TODD)
LANDRY, DIRECTOR OF DIVISION OF)
CHILDREN AND FAMILY SERVICES,)
and VIVIANNE CHAUMONT,)
DIRECTOR OF DIVISION OF)
MEDICAID AND LONG-TERM CARE,)

Respondents.)

Case No. CI _____

ORDER

Now on this _____ day of _____, 2008, this matter came before this Court on Petitioners' Motion for Class Certification, docket number _____. The Court finds that said Motion should be sustained and a class is hereby certified defined as follows:

All parents in Nebraska who have received Aid to Dependent Children and whose Medicaid has been removed due to a sanction for failure to participate in the Employment First program, pursuant to 468 NAC 2-020.09B1(6) and 468 NAC 2-020.09B2f.

BY THE COURT:

Lancaster County District Court Judge

Prepared and Submitted By:
Erin A. Ching #23757
Nebraska Appleseed Center

for Law in the Public Interest
941 O Street, Suite 920
Lincoln, NE 68508
(402) 438-8853

Exhibit 1