

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JENNIFER DAVIO et.al.,)
)
Plaintiff,) CI08-2202
)
)
vs)
) ORDER
)
CHRISTINE PETERSON, CEO DHHS, et,)
al.,)
)
Defendant.)

Before me are two motions. Filing #3 is a motion to dismiss filed by the Defendants and filing #2 is a motion for class certification filed by the Plaintiffs. Hearing on both motions was held on September 4, 2008 after which the motions were argued orally and in writing. Having considered the evidence and arguments of counsel the court now orders as follows:

1. The motion to dismiss, filing no. #3, is denied. The Defendants are given 21 days to answer the Complaint.

2. The motion for class certification is granted as to the injunctive relief pled and prayed for under Neb. Rev. Stat. §25-1062 et seq, but denied with respect to Plaintiff's appeal pursuant to the APA. The class shall be defined as those persons who, on or after May 20, 2008, are or in the future will be under a sanction pursuant to 468 NAC 2-020.09B1(6) or 468 NAC 2-020.09B2f and, thus, had or will have their medicaid removed for failure to comply with an Employment First contract. Plaintiff is certified as the representative of this class.

My bailiff shall mail a copy of this order to counsel of record.

Dated Dec 12, 2008.

By the Court:


Karen B. Flowers, District Judge