

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

ANGELA KOSMICKI,

Case No. CI 00-4209

Appellant,

LANCASTER COUNTY

vs.

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ORDER

STATE OF NEBRASKA,  
NEBRASKA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
and RON ROSS, Director,

Appellee.

This matter came before the court for hearing on January 9, 2001. Attorneys Sue Ellen Wall and Milo Mumgaard appeared for the appellant, Angela Kosmicki. Senior Assistant Attorney General Royce Harper and Mike Rumbaugh appeared for the appellees, the State of Nebraska, the Nebraska Department of Health and Human Services, and Ron Ross, Director of the Nebraska Department of Health and Human Services. The court, being fully informed, now finds and orders as follows:

FACTS

This is an appeal of the October 17, 2000, Finding and Order by the Nebraska Department of Health and Human Services implementing an Employment First sanction pursuant to the Welfare Reform Act, Neb. Rev. Stat. § 68-1708 through § 68-1737 (Reissue 1996), against the appellant, Angela Kosmicki (Kosmicki). At the request of the appellant, a Stay was granted by the court and appellant's benefits were reinstated pending final resolution of the appeal.

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Kosmicki first applied for Employment First assistance from the Gering, Nebraska office for the Nebraska Department of Health and Human Services in September, 1998, while she was living in Scottsbluff. On November 9, 1998, Kosmicki signed an Employment First self-sufficiency contract as required by the Welfare Reform Act. Neb. Rev. Stat. § 68-1719 (Reissue 1996). Her contract called for her to complete an Associate of Arts degree at Western Nebraska Community College according to her Employment First service plan. This started Kosmicki's 24-month time limit on the receipt of cash assistance. See, Neb. Rev. Stat. § 68-1724 (Reissue 1996) (limiting cash assistance to period of time not to exceed two years). Kosmicki attended Western Nebraska Community College and was in good standing as of May 12, 1999.

In August of 1999, Kosmicki's case was closed in Gering after she informed her case worker that she was moving to Lincoln, Nebraska.

In February of 2000, Kosmicki left Lincoln and returned to Scottsbluff to escape an abusive relationship. Kosmicki re-applied for assistance in Gering.

In April of 2000, Kosmicki informed her case worker that she was moving to the Friendship Home, a domestic violence shelter in Lincoln, Nebraska. Kosmicki's public assistance case was transferred from Gering to Lincoln.

On May 12, 2000, Kosmicki met with Patrick McClure (McClure), a case worker in Lincoln, who reviewed her old assessment and recent experiences. A new Employment First service plan was completed. According to the new plan, Kosmicki would do an independent job search but if she was unsuccessful, she would attend Curtis and Associates on June 19, 2000. Kosmicki attended Curtis and Associates on June 22, 2000, for one session but she never returned.

Kosmicki refused to return to Curtis and Associates because she wanted to go back to

school. Kosmicki met with the case worker in May of 2000. At this time, Kosmicki stated that she wanted to attend classes at the University of Nebraska in Lincoln (UNL) to pursue an art therapy degree. Kosmicki estimated that it would take between three and five years to complete her degree. McClure told Kosmicki that because she would not be able to finish her degree in the time remaining under her 24-month time limit for benefits, Kosmicki would not be able to attend UNL. McClure gave Kosmicki the option of attending Southeast Community College and finishing the degree she started at Western Nebraska Community College. Kosmicki refused to negotiate a new Employment First service plan unless she could attend UNL.

Because Kosmicki was unwilling to update her employment plan to include activities that would fulfill the requirements of Employment First, she received an Employment First sanction effective August 1, 2000. Kosmicki appealed the sanction to the Department of Health and Human Services. An informal hearing was held by telephone conference before a designated hearing officer on September 22, 2000. Ron Ross, Director of DHHS, upheld the sanction in an order dated October 17, 2000. Kosmicki appeals that decision.

### **STANDARD OF REVIEW**

Kosmicki brings this appeal pursuant to the Nebraska Administrative Procedure Act. Neb. Rev. Stat. § 84-901 through § 84-920 (Reissue 1999). Accordingly, review is conducted by the court, without a jury, de novo on the record of the Department of Health and Human Services. Neb. Rev. Stat. § 84-917(5)(a) (Reissue 1999).

### **DISCUSSION**

#### ***Regulatory Framework and Purpose of the Welfare Reform Act***

This case involves the implementation of the Welfare Reform Act by the Nebraska

Department of Health and Human Services (DHHS). As an introductory matter, it is important to understand the regulatory framework and purpose of the Welfare Reform Act.

Pursuant to the Welfare Reform Act, Neb. Rev. Stat. § 68-1708 through § 68-1737 (Reissue 1996), it is apparent that the intent of the Legislature was to assist individuals, as expeditiously as possible, into becoming self-sufficient and not reliant on welfare assistance. Neb. Rev. Stat. § 68-1709 (Reissue 1996) provides in part:

The Legislature finds and declares that the primary purpose of the welfare programs in this state is to provide temporary, transitional support for Nebraska families so that economic self-sufficiency is attained in as an expeditious manner as possible, with the goal of attaining self-sufficiency within two years of the initial receipt of public assistance.

To ensure constant measurable progress towards self-sufficiency, each applicant is required to develop an Employment First self-sufficiency contract. Neb. Rev. Stat. § 68-1719 (Reissue 1996). Under the self-sufficiency contract, “the principal wage earner . . . of the applicant family is required to participate in one or more of the following: [e]ducation, job skills training, work experience, job search, or employment.” Neb. Rev. Stat. § 68-1721(1) (Reissue 1996). As part of the self-sufficiency contract, each applicant is required to complete an Employment First service plan outlining what specific activities the applicant will participate in while working towards self-sufficiency. The service plan can be re-negotiated as is necessary so the applicant can stay on track with her self-sufficiency contract.

Cash assistance is limited to two years and is only available while the recipient is actively engaged in the activities outlined in her self-sufficiency contract. See, Neb. Rev. Stat. § 68-1723 (Reissue 1996) and Neb. Rev. Stat. § 68-1724 (Reissue 1996).

#### *Kosmicki's Argument*

Kosmicki argues that the Department of Health and Human Services (DHHS) violated her

rights under Nebraska statutes, administrative rules, and common law. Specifically, Kosmicki argues, the Employment First service plan she signed on May 12, 2000, is invalid because she signed it under duress, coercion, and intimidation. Further, Kosmicki argues that DHHS should not have penalized her for failing to perform pursuant to the terms of an invalid service plan. Kosmicki seeks to have the Employment First service plan she signed on May 12, 2000, be declared invalid. Kosmicki further seeks the opportunity to re-negotiate a new Employment First service plan agreeable to both parties.

First, there is no proof of duress, coercion, and intimidation on the part of DHHS in the record. Kosmicki signed an Employment First self-sufficiency contract on November 9, 1998, whereby she agreed to cooperate with her Employment First Service Plan. At this time, Kosmicki's Employment First service plan stated that she would attend classes at Western Nebraska Community College. When Kosmicki moved to Lincoln, she met with McClure and the two of them created a new Employment First service plan. Under the terms of the new plan, Kosmicki was to find employment on her own or attend Curtis and Associates. Kosmicki became unhappy with this arrangement and decided that she wanted to attend UNL. McClure told Kosmicki that she could not attend UNL because she would not complete her degree within her two year benefits period. McClure suggested that if Kosmicki was interested in going to school, she should attend Southeast Community College. Kosmicki refused. She would only agree to sign a new service plan if she could attend UNL. At this point, because Kosmicki refused to negotiate a new Employment First service plan and because she refused to act under the terms of her existing service plan, Kosmicki received an Employment First sanction. According to the record, McClure never coerced or pressed Kosmicki into signing an Employment First service plan nor did he intimidate her. Therefore, the

court is unwilling to say the Employment First service plan Kosmicki signed on May 12, 2000, is invalid and unenforceable.

Next, because Kosmicki refused to act according to the Employment First service plan she signed on May 12, 2000, DHHS determined that she is not entitled to cash benefits. Neb. Rev. Stat. § 68-1723 (Reissue 1996) provides in part:

Cash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract . . . . If the recipients are not actively engaged in these activities, no cash assistance shall be paid.

Kosmicki refused to sign a new Employment First service plan because she felt she was entitled to attend UNL. Kosmicki believes that she should be allowed to attend UNL because Neb. Rev. Stat. § 68-1721 (Reissue 1996) includes post-secondary education as a permissible activity for the purposes of a self-sufficiency contract. It is clear that post-secondary education is a permissible work activity for the purposes of her self-sufficiency contract. However, what is not as clear is whether a four-year college program, which cannot be completed within the two-year benefits period, was contemplated by the Legislature as a permissible activity.

Neb. Rev. Stat. § 68-1721(2) (Reissue 1996) includes post-secondary education as an acceptable activity for the purposes of a self-sufficiency contract. It is clear that the Legislature did not directly limit post-secondary education to programs that could be “completed” in two years. However, the Legislature left it to the discretion of DHHS to adopt and promulgate the rules and regulations to carry out the Welfare Reform Act. See, Neb. Rev. Stat. § 68-1715 (Reissue 1996). Consistent with the Legislature’s goal of attaining self-sufficiency within two years, DHHS adopted Rule 468 NAC 2-020.6B1 which provides in part:

Post-secondary education is limited to that which is directly related to the fulfillment of an individual’s vocational goal. The participant can participate in post-secondary education for

up to 24 months. The case manager should encourage the client to begin a job search during the last months of his/her educational program. Post-graduate programs may not be approved in the Self-Sufficiency Contract. A Post-secondary education program cannot be included in the Self-Sufficiency Contract if the client has a skill that can be marketed and can be reasonably expected to provide a wage leading to economic self-sufficiency in the current, area-specific labor market and the client is physically, mentally and emotionally able to utilize those skills through employment. A post-secondary education program that can be included in the Self-Sufficiency Contract should be for occupations that facilitate economic self-sufficiency. In order for post-secondary education to be included in the Contract, the client should demonstrate that the education program will lead to economic self-sufficiency. The client and case manager must have substantiating labor market information. The case manager may need to assist the client in this process. If post-secondary education is the only component in the Self-Sufficiency Contract, the client should be enrolled full-time in his/her course of study. Full-time enrollment is defined by the educational institution and/or program of study.

Pursuant to this rule, a client can participate in post secondary education for up to 24 months. The rule requires that the educational program be for occupations that facilitate self sufficiency, and the client must show that the program will lead to economic self sufficiency. Nowhere in the statutes or in the above rule does it state that the post secondary education program must lead to a diploma or a degree. However, in the instant case it appears that DHHS has determined that if a degree can not be completed within two years, then the educational program can not be considered pursuant to this rule. It appears that the DHHS has erroneously equated a degree or diploma with economic self sufficiency. There certainly are numerous occupations that require a degree. Many occupations that are regulated or licensed by the State require minimum educational requirements including a degree, i.e. nursing. However, there are numerous examples of occupations where employers, while not requiring a degree, do require some level of education or experience. By attending UNL business college for two years and taking a number of accounting classes, an individual may make themselves marketable to a company that is looking to hire a bookkeeper or accountant and does not require the person to be a CPA or to have a bachelor's degree. The company is looking for an individual that

has the accounting knowledge, either through education or experience, to be the bookkeeper. Had the individual not gone to the University for two years that person would not have the knowledge to do the job and would not be employable in that occupation. Likewise, an individual who takes two years of college courses at UNL in the area of Computer Science may be able to find excellent employment and become self sufficient without ever having obtained a bachelor's degree.

One need look no further than the instant case to find perhaps the best example of this. Initially, DHHS approved an educational program for Kosmicki that consisted of a two year Associate of Arts Psychology program at Western Nebraska Community College. DHHS has indicated a willingness to allow Kosmicki to attend Southeast Community College (SEC) to obtain a similar degree. Apparently DHHS believes that a two year program will lead to Kosmicki becoming economically self sufficient, possibly in the area of computer graphics. There is nothing in the record to suggest that a two year "Associate of Arts Psychology" Degree is required to be employed in these areas. Furthermore, there is nothing in the record that would suggest that the classes offered at Western Nebraska Community College or Southeast Community College which would lead to economic self sufficiency are not offered at the University of Nebraska. In fact, it would appear that more classes are offered at the University that could lead to economic self sufficiency. The only pertinent distinction between the community colleges and the University appears to be the awarding of a two year "associates degree" from the community colleges.

Limiting participation in four year colleges to those who can finish their degrees in less than two years is not consistent with the policies of the Welfare Reform Act or the rules promulgated by DHHS. As discussed above, the purpose of the Welfare Reform Act is to provide temporary support for Nebraska families so that economic self-sufficiency is attained as quickly as possible, with the



goal of attaining self-sufficiency within two years of the initial receipt of assistance. Neb. Rev. Stat. § 68-1709 (Reissue 1996). The Nebraska Legislature made a policy determination to limit cash welfare benefits with the goal of recipients being self-sufficient within two years. §68-709. Accordingly, it would be inconsistent with the purposes and goals of the Nebraska Legislature in adopting the Welfare Reform Act to refuse to allow Kosmicki to attend UNL if she can become self sufficient within the two year cash benefit period. There is no evidence before this Court from which it can conclude that Kosmicki can not become self-sufficient after attending two years at UNL. As noted previously, DHHS believed that she could become self sufficient after attending two years at a community college.

It is the goal of the Welfare Reform Act that Kosmicki become self sufficient at the end of two years. The Court recognizes the fact that at the end of this two year period there is nothing that would appear to prevent Kosmicki from pursuing her four year college degree rather than obtaining gainful employment if she so chooses. Although her cash benefits will have ended, it appears that she will be entitled to other welfare benefits, including child care. Regardless of whether she attends SEC or UNL, her cash benefits will end at the end of 24 months and she will have to locate other means of support if she chooses to complete her four year degree(i.e. student loans, etc.)


In light of the foregoing, it is the conclusion of the Court that the Department of Health and Human Services erroneously concluded that Kosmicki was not entitled to attend the University of Nebraska because she could not complete her degree within the two year benefit period. Pursuant to the Nebraska Welfare Reform Act and the rules of DHHS, the determining factor in the approval of an "education program" is not whether a degree can be obtained. The determining factor is whether the "education program" will lead to self sufficiency at the end of the two year cash benefit

period.

**IT IS THEREFORE HEREBY ORDERED**, for the reasons set forth above, that this case is remanded to the Department of Health and Human Services. The Department of Health and Human Services should allow Kosmicki the opportunity to negotiate a new Self-Sufficiency Contract consistent with this order.

DATED this 27<sup>th</sup> day of March, 2001.

**BY THE COURT:**

  
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**John A. Colborn**  
**District Court Judge**

cc **Sue Ellen Wall and Milo Mumgaard**, Attorneys for the Appellant.  
**Royce N. Harper**, Senior Assistant Attorney General, Attorney for the Appellees.  
**Mike Rumbaugh**, Attorney, Department of Health and Human Services.