

goals. In this meeting Keith requested that she be able to continue to her studies in the Pre-Respiratory Care Program as her work activity. Slieter told Keith that she could not use these classes as work activity because she could not complete her degree before she reached the end of her ADC time limit. As a result, Keith agreed to a job search requirement after she was told she could renegotiate her contract.

On November, 24, 2003, Keith met with Slieter to renegotiate her self-sufficiency contract to include the classes she was taking in the Pre-Respiratory Care Program. Keith presented Slieter with a plan outlining how she could be self-sufficient within her ADC time limit by continuing her program of study. Keith's plan illustrated that Keith could be employed as a Respiratory Care Assistant before receiving her degree, but she was refused. Keith fell behind in turning in her time sheets for the job search requirement. As a result, Keith was placed under an ADC sanction on January 7, 2004. On January 13, 2004, Keith filed an appeal with the Nebraska Department of Health and Human Services.

STANDARD OF REVIEW

“Persons aggrieved by a final decision of an agency in a contested case are entitled to judicial review in the district court under § 84-917.” *Payne v. Nebraska Dept. of Correctional Services*, 3 Neb. App. 969, 971-72, 536 N.W.2d 656, 658 (1995). Accordingly, the review is conducted by the court, without a jury, on the record of the agency. Neb. Rev. Stat. § 84-917. When construing a statute that seeks to achieve a beneficent purpose, such as the Welfare Reform Act, it should be liberally construed in favor of those the statute is designed to benefit. *Mason v. State*, 267 Neb. 44, 52, 672 N.W.2d 28, 34-35 (2003).

ANALYSIS

At issue in this case is (1) whether Keith, in her administrative appeal, appealed to the Nebraska Department of Health and Human Services (NDHHS) to renegotiate her self-sufficiency contract and include her education in her contract and (2) if Keith did so appeal, whether the court should strike down the NDHHS policy requiring degree completion and allow Keith to continue her education and receive State assistance.

Respondent claims that in her appeal, Keith was only appealing the sanction that was levied and not to renegotiate her contract or to include her education in her contract. In their brief, respondents admit that Keith was appealing her Employment First #1 Sanction and cites the exhibit. In the same exhibit Keith clearly also appeals “1. Failure to allow me to renegotiate my contract; 2. Failure to allow me to include education in my contract.” (E1, p.1). Keith was obviously appealing these issues.

Respondent argues that Neb. Rev. Stat. § 68-1723 (3) does not explicitly allow a petitioner to appeal the issues at hand, but only whether or not the respondent “has not complied with the terms of the self-sufficiency contract.” Neb. Rev. Stat. § 68-1723 (3). However, in the Nebraska Department of Social Services Manual, it clearly states “Every applicant for or recipient of assistance has the right to appeal any action, inaction, or failure to act with reasonable promptness with regard to the assistance or services.” 465 NAC 2-001.02 (effective August 21, 1995). To say that a petitioner cannot appeal a rule because it is a rule would not serve the people whom the assistance is meant to help. Therefore, Keith properly appealed the respondent’s decision not to include her education in the self-sufficiency contract.

Respondent also claims that because Keith could not complete her degree within the two-year assistance limitation period, Keith could not include her education in her self-sufficiency contract. Under Neb. Rev. Stat. § 68-1718(3)(a) a person seeking public assistance must “develop a self-sufficiency contract ... and promote services which specifically lead to self-sufficiency.” Neb. Rev. Stat. § 68-1718(3)(a). Neb. Rev. Stat. § 68-1721(1) reads: “Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following: Education, job skills training, work experience, job search, or employment. Neb. Rev. Stat. § 68-1721(1). In promulgating the requirements for education, Neb. Rev. Stat. § 68-1721(2) states: “Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.” Neb. Rev. Stat. § 68-1721(2). Nowhere in the statutory language does the legislature require that the education component must result in a degree within the two-year assistance period to qualify for inclusion in the self-sufficiency contract. The Nebraska Welfare Reform Act was enacted with the purpose of providing temporary, transitional support for families so they can achieve economic self-sufficiency, “with the goal of attaining such self-sufficiency within two years of the initial receipt of public assistance.” Neb. Rev. Stat. § 68-1709. The stated goal of this statute is not on completion of a degree, but on self-sufficiency.

At issue is the validity of a de facto rule that a recipient of state benefits must be able to complete a degree within two years in order for postsecondary education to be included in their self-sufficiency contract. This rule does not come from the State Legislature, but from the Nebraska Health and Human Resources Manual. In their brief, respondents cited the rule, 468 NAC 2-

020.06D, which concerns the Job Skills Training component, not the education component. The rule concerning post-secondary education is 468 NAC 2-020.06C which , in part, reads: “In order to be eligible for this component, the client must be able to complete the program within his/her time limit.” As stated previously, this rule is from NDHHS and not from the State Legislature. Therefore it does not overrule state legislation, but must comport with it. Even assuming this rule could overrule state law, one could easily read this rule as allowing Keith to claim her education on her self-sufficiency contract. It does not read that one must complete their degree. It reads that the client must be able to complete “the program”. This program, as this court reads it, is self-sufficiency.

The Supreme Court of Nebraska in *Kosmicki*, opens the door. In that case the court stated, “It may be possible for a recipient of benefits to demonstrate that even without obtaining a degree, his or her course of postsecondary education will lead to self-sufficiency within the cash assistance period.” *Kosmicki v. State*, 264, Neb. 887, 896, 652 N.W.2d 883, 892 (2002). The court declined to explore this issue because the record indicated that Ms. Kosmicki’s education was not intended to make her self-sufficient within the cash assistance limitation period, and the issue was therefore not before the court. *Id.*

In the present case, Keith has presented evidence that she would be able to gain employment and become self-sufficient before the end of the assistance period. She provided a plan to her caseworker illustrating that by the last quarter of her program she would be qualified to be employed as a Respiratory Care Aide (RCA). This is a position she could work while she finished her degree. (E3, 52-53; E2, 6). Keith also demonstrated that this position would pay approximately \$9.38 per hour, enough money to take her off assistance and make her self-sufficient. *Id.* Finally, Keith

established in the record that there was a high demand for both RCA's and Respiratory Therapists in the Lincoln area. *Id.*

Respondents argued that this plan was too speculative. All employment after an education is speculative. There is never a guarantee that one will be able to immediately find a job upon completion of a degree. Here Keith has shown that she would, as a result of her education, be eligible for a position that would pay enough to make her self-sufficient and this position was in high demand in her area. This plan seems no more speculative than a plan centering around an education that would be completed within an assistance period.

It should also be considered significant that Keith was already seeking this degree and the date her degree would be complete is just beyond the two-year assistance period. Keith was enrolled in this program before she sought assistance. This education was not an excuse to avoid work or looking for work, but rather a path to self-sufficiency. This is the very spirit of the legislation. If she were to give up her education, like the Respondents are asking, she would surrender this self-sufficiency for a low paying job. This would increase the likelihood that she would need public assistance again in the future. It would frustrate legislative intent to deny Keith an opportunity to support herself and her family merely because her diploma would be earned three months late.

The purpose of the two-limit on education is obvious. NDHHS does not want to support a citizen that will not be in a better position to support themselves at the end of the cash assistance period. As applied, however, the rigid rule that a degree must be completed within two years is too narrow and can disqualify individuals who would greatly benefit and are the citizens the statute is meant to help. To allow this statute to operate so mechanically and so rigidly would be to frustrate

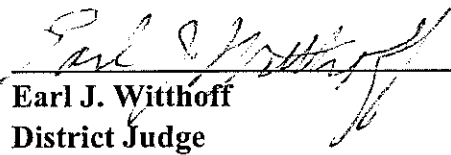
the very purpose of this statute. The focus should be on self-sufficiency, not the ancillary attainment of a degree.

CONCLUSION

IT IS ORDERED that Keith be allowed to continue her Respiratory Therapy course work and include this education in her self-sufficiency contract.

Dated this 18th day of April, 2005.

BY THE COURT:



Earl J. Witthoff
District Judge

cc: **Rebecca L. Gould**, Attorney for Petitioner
Douglas D. Dexter, Attorney for Respondent