

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

KELLY JONES, JANICE MONTGOMERY)
AQUARIUS HOPKINS, SARAH)
ENGELHART, and LYNN HOUSEMAN,)
INDIVIDUALLY AND ON BEHALF OF)
ALL OTHERS SIMILARLY SITUATED,)

Case No. CI 00-_____

Plaintiffs,)

v.)

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

**PETITION FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
PRAECIPE**

Defendants.)

CLASS ACTION

COME NOW, the Plaintiffs, by and through their attorneys of record, and for their causes of action allege as follows:

PRELIMINARY STATEMENT

1. In the mid-1990's, the Nebraska Legislature passed the Welfare Reform Act, which among other things limits eligibility for cash assistance for low-income families (Aid to Dependent Children) to a two year time period. This time limited period was intended by the Nebraska Legislature to apply only to families that have created and signed an enforceable "self-sufficiency contract." The two year time limited period starts when an individualized "self-sufficiency contract" is signed by both the low-income family and the state. This lawsuit challenges the State of Nebraska's promulgation and implementation of unlawful rules in direct conflict with the Welfare Reform Act. These rules shorten the two year time limit by beginning the calculation of the time limited period prior to the signing of a "self-sufficiency

contract” or the completion of the process mandated by the Welfare Reform Act leading to a “self-sufficiency contract”. This has caused low-income families across Nebraska to lose months of eligibility for ADC cash assistance and related services and opportunities for economic self-sufficiency. The Defendants’ actions have caused injury to the Plaintiffs’ and the class’ health and well-being in the present and into the future. The Plaintiffs seek a certification of the class, a declaration that the rules are null and void, an injunction requiring the Defendants to follow the Welfare Reform Act, an order that the affected class is entitled to a correct determination of their actual months of eligibility for ADC, notice of such determination and the right to individualized fair hearings, and the reinstatement of any eligibility for any ADC cash assistance benefits lost as a result of the application of the unlawful rules.

PARTIES

2. The Plaintiffs are low-income parents of small children. Each of their families are eligible for public assistance, including aid to dependent children (ADC) cash assistance. Each family has unlawfully lost months of eligibility for ADC, and therefore benefits, services and opportunities for economic self-sufficiency mandated by the Nebraska Welfare Reform Act, Neb.Rev.Stat. ' 68-1708 *et seq.* (Reissue 1996), due to the unlawful actions of the Defendants.
3. The named Plaintiffs are residents of the State of Nebraska. Their residences are: Mr. Kelly Jones, Lincoln, Lancaster County; Ms. Janice Montgomery, Omaha, Douglas County; Ms. Aquarius Hopkins, Lincoln, Lancaster County; Ms. Sarah Engelhart, Lincoln, Lancaster County; and Ms. Lynn Houseman, Kearney, Buffalo County.

4. The Defendants are the State of Nebraska, the Nebraska Department of Health and Human Services (hereinafter NDHHS), the state administrative agency charged with implementing the WRA, and Ron Ross, Director of Health and Human Services, who is responsible for the administration and supervision of the public assistance programs in Nebraska, individually and in his official capacity.

CLASS ACTION ALLEGATIONS

5. The named Plaintiffs bring this action on behalf of themselves and all persons similarly situated, pursuant to Neb.Rev.Stat. ' 25-319 (Reissue 1996), as they raise questions of common interest to a group of Nebraskans too numerous to bring them all to this court. The approximate number of persons in the class can be determined only from information in the exclusive possession and control of the Defendants. The members of the class are all families eligible for ADC and receiving ADC cash assistance at any time since December 27, 1997, and who have had the beginning of their two year limit on the receipt of ADC cash assistance calculated according to 468 NAC 2-020.09B1 and/or 468 NAC 2-020.05.

JURISDICTION AND VENUE

6. Jurisdiction in Lancaster County District Court is proper because this is a petition to interpret the validity of rules and regulations promulgated by the Nebraska Department of Health and Human Services, pursuant to the Administrative Procedures Act, Neb.Rev.Stat.. ' 84-901 *et seq.* (Reissue 1996).
7. Declaratory and injunctive relief is authorized by Neb.Rev.Stat. ' 84-901 *et seq.*, and Neb.Rev.Stat. ' ' 25-1060 to-1080 (Reissue 1996).
8. Declaratory and injunctive relief is also authorized by 42 U.S.C. ' 1983 and state law, as

Plaintiffs allege a violation of their rights to due process of law guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of Nebraska, Article I, Section 3.

9. Venue is proper pursuant to the Administrative Procedures Act, Neb.Rev.Stat. ' ' 84-901 *et seq.*

STATUTORY AND REGULATORY FRAMEWORK

10. The Nebraska Legislature, in keeping with Nebraska's constitutional framework, has enunciated and reformed welfare public policy for Nebraska. Nebraska Welfare Reform Act, Neb.Rev.Stat. §§68-1708 to -1734 (Reissue 1996 & Cumm.Supp.1998)(hereinafter WRA).
11. Through the WRA, the Nebraska Legislature stated the primary purpose of the welfare programs [in Nebraska] 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 such self-sufficiency within two years of the initial receipt of public assistance. [T]his goal is to be accomplished through individualized assessments of the personal and economic resources of each applicant for public assistance and through the use of individualized self-sufficiency contracts. Neb.Rev.Stat. ' ' 68-1709 (Reissue 1996)(emphasis added).
12. The Nebraska Legislature further mandated, among other things, that the reform of the welfare system includes providing individuals and families the support needed to move from public assistance to economic self-sufficiency,[@] and changing public assistance from entitlements to temporary, contract-based support.[@] Id.
13. The WRA therefore sought to accomplish these public policy purposes through a wide variety

of welfare system reforms. These reforms included a two year limit on receipt of cash assistance, with limited exceptions, followed by two years of ineligibility; such limits to be imposed following the preparation and signing of enforceable “self-sufficiency contract”; a reciprocal relationship between the welfare recipient family and State of Nebraska; and increased sanctions for any “failure to cooperate” with the self-sufficiency contract, including the loss of all cash assistance for the entire family and Medicaid health insurance for the parent(s). Neb.Rev.Stat. §68-1708 et seq.

14. These reforms also included a commitment to providing families the intensive support needed to move from public assistance to economic self-sufficiency. To effectuate this public policy purpose, the Nebraska Legislature through the WRA specifically mandated among other things a broad definition of allowed “work activities” within a self-sufficiency contract to include education and job training. In addition, this broadened approach to eligibility for ongoing cash assistance brought with it ongoing child care, health care, transportation assistance, and case management assistance. Id.
15. Specific to this suit, the WRA limited eligibility for the receipt of cash assistance to a total of two years: A(1) Cash assistance shall be provided for a period or periods of time not to exceed a total of two years for recipient families with childrenY@ Neb.Rev.Stat.' 68-1724(1). The WRA further mandated this two year period of eligibility for and receipt of cash assistance shall be followed by a two year period of ineligibility for cash assistance. Neb.Rev.Stat. ' 68-1724(1)(d).
16. The WRA also mandated a highly specific time as to when to begin the calculation of the two year period of eligibility for cash assistance: AThe two year time period for cash assistance

shall begin when the self-sufficiency contract is signed or when any children born into the recipient family prior to the initial ten months of assistance reach the age of six months, whichever is later.@ Neb.Rev.Stat. ' 68-1724(1)(b)(emphasis added).

17. The WRA also mandated a specific process to be followed when creating and signing each self-sufficiency contract:

- (1) The A[e]ligibility determination shall begin with a comprehensive assets assessment, in which the applicant and case manager collaborate to identify the economic and personal resources available to the applicant.@ Neb.Rev.Stat. ' 68-1718(1)(emphasis added)
- (2) Further, A[e]ach applicant=s personal resources shall be assessed in the comprehensive assets assessment,@ defined as Aeducation, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community,@ Neb.Rev.Stat. ' 68-1718(2), and there shall be an assessment of Aan applicant=s goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.@ Id. (emphasis added)
- (3) This comprehensive assets assessment Ashall be usedY to develop a self-sufficiency contract under section 68-1719 and promote services which specifically lead to self-sufficiency.@ Neb.Rev.Stat. ' 68-1718(3)(a)(emphasis added)
- (4) ABased on the comprehensive assets assessment, each individual and family receiving assistance under the Welfare Reform Act shall reach for his or her highest level of economic self-sufficiency or the family=s highest level of economic self-sufficiency.@ Neb.Rev.Stat. ' 68-1726
- (5) ABased on the results of the comprehensive assets assessment under section 68-1718, the applicant and the [State of Nebraska] case manager shall develop a self-sufficiency contract. The contract shall be built upon the premise of urgent action. To ensure that the applicant can make constant, measurable progress toward self-sufficiency, goals shall be set with timelines and benchmarks that facilitate forward momentum. In the case of an entire family applying for assistance, each family member shall have responsibilities within the self-sufficiency contract.@ Neb.Rev.Stat. ' 68-1719 (emphasis added)
- (6) AThe responsibilities, roles, and expectations of the applicant family, the case manager, and all other service providers shall be detailed in the self-sufficiency contract developed under section 68-1719. The contract shall be signed by the applicant and by the case manager representing the state. The state and the applicant shall fulfill their respective terms of the contract.@ Neb.Rev.Stat. ' 68-1720 (emphasis added)

- (7) AUnder 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)
- (8) Under the self-sufficiency contract developed under section 68-1719, Athe state has responsibilities to help ensure the success of the self-sufficiency contract for each recipient. The Department of Health and Human Services shall employ case management practices and supportive services to the extent necessary to facilitate movement toward self-sufficiency within the two-year limit on participation as provided in section 68-1724.@ Neb.Rev.Stat. ' 68-1722. These supportive services Ashall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting and relocation to provide for specific needs critical to the recipient-s or the recipient family-s self-sufficiency contract.@ Id.
- (9) ACash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract developed under section 68-1719. If the recipients are not actively engaged in these activities, no cash assistance shall be paid.@ Neb.Rev.Stat. ' 68-1723(1). ARecipient families with at least one adult with the capacity to work, as determined by the comprehensive assets assessment, shall participate in the self-sufficiency contract as a condition of receiving cash assistance. If any such adult fails to cooperate in carrying out the terms of the [self-sufficiency] contract, the family shall be ineligible for cash assistance.@ Neb.Rev.Stat. ' 68-1723(2).
- (10) AIf the state fails to meet the specific terms of the self-sufficiency contract, the two-year limit on cash assistance under section 68-1724 shall be extended for an additional period of not more than two years.@ Neb.Rev.Stat. ' 68-1722.
- (11) The WRA provides specific exemptions for participation in the self-sufficiency contract (other than for those without the Acapacity to work@ as identified by the comprehensive assets assessment) for minor parents or the parent of a child less than twelve weeks old. Neb.Rev.Stat. ' ' 68-1723(2)(a) and (e).
18. The WRA went into effect across the State of Nebraska on October 1, 1997.
19. The WRA delegated to the Defendants the authority to make rules and regulations to carry out the WRA. Neb.Rev.Stat. ' 68-1715
20. Subsequently, the Defendants promulgated a regulation that provides the two-year limit on

cash assistance required by the WRA is to begin not only with the signing of a self-sufficiency contract, but with a date arbitrarily set by the Defendants:

“The 24 months begin with the earlier of the following: 1. The month following the month the Self-Sufficiency Contract is signed; or 2. 90 days after the date the signed application for assistance is received in the local office.” 468 NAC 2-020.09B1 (effective December 27, 1997)(emphasis added).

21. The Defendants also promulgated a regulation that provides an arbitrary additional requirement as to when a self-sufficiency contract is to be signed:

“When the Self-Sufficiency Contract is signed, the 24 month limit on the receipt of cash assistance begins, effective the first of the month following the month of signature. The Contract must be signed 90 days after the date the signed application is received in the local office.” 468 NAC 2-020.05 (effective December 15, 1997)(emphasis added).

FACTS

22. In January, 1998, the month following the effective date of the above state regulations, there were 13,250 families receiving ADC. In June of 2000, there were 10,088 families receiving ADC. Over ninety percent of these families are single-parent households. Approximately 70% of these families are considered to be “participants” in the ADC welfare reform program, called “Employment First” by the Defendants.
23. The time-limited receipt of ADC cash assistance by approximately 7,000 to 11,000 low-income Nebraska families therefore has been governed, since at least December 27, 1997, not by the requirements of state statute, but also by the terms of 468 NAC 2-020.09B1 and 468 NAC 2-020.05.
24. Plaintiff Kelly Jones is the single father of three children. In August, 1998, Plaintiff Jones applied for ADC cash assistance. His family was found eligible, and Plaintiff Jones began receiving ADC cash assistance grants for his three children and himself. Subsequently,

Plaintiff Jones suffered from medical conditions that prevented him from working. Further, Plaintiff Jones has a child with very serious behavioral disorders which require his father's presence at school and child care. These circumstances make it very difficult for Plaintiff Jones to have consistent, full-time employment. Plaintiff Jones and his family have not had a comprehensive assets assessment or negotiated a self-sufficiency contract with his caseworker, and have never signed any self-sufficiency contract. Nevertheless, Plaintiff Jones has cooperated at all times with the requirements of the ADC cash assistance program.

Now, Plaintiff Jones is being required by his caseworker to sign a self-sufficiency contract that does not include consideration for his family's individualized barriers to economic self-sufficiency. His case worker has told him he must sign a contract that is not the result of an individualized comprehensive assets assessment due to Nebraska rules that require the signing of a contract at 90 days after application. Further, the self-sufficiency contract would be back-dated to November, 1998. Plaintiff Jones has refused to sign this contract, and the caseworker has sanctioned his family for this refusal by taking away all his family's cash assistance and his Medicaid health insurance. Plaintiff Jones has been told the only way he can get his family's benefits back is to sign the contract that does not take his family's circumstances into consideration. His case worker has also told him his family has "used up" at least seven months of time limited ADC cash assistance eligibility due to Nebraska rules that start the calculation 90 days after application for assistance. At no time had Mr. Jones received any notice from the State of Nebraska that it was taking away months of eligibility under these Nebraska rules. Due to the unlawful application of these rules, Mr. Jones' family has lost at least seven months of time limited eligibility for ADC cash assistance and the

benefits, services and opportunities for economic self-sufficiency resulting from an individualized self-sufficiency contract.

25. Plaintiff Janice Montgomery is the single mother of eight children, five of whom are still in her ADC household. Plaintiff Montgomery has received ADC cash assistance benefits for her children and herself for many years. During this time, she has cooperated at all times with the requirements of the ADC cash assistance program. Plaintiff Montgomery has worked as a school bus driver and she is currently taking computer classes to enhance her job skills. Nevertheless, since 1998, Plaintiff Montgomery has at no time negotiated, been offered, or signed a self-sufficiency contract, or been engaged in an individualized comprehensive assets assessment process. However, in June, 2000, her case worker demanded she sign a self-sufficiency contract back-dated to May 1, 1998, and threatened to sanction her (take away her family's cash assistance and her Medicaid health insurance) if she did not sign the contract. In addition, her caseworker told her that the two year time limit on her family's receipt of ADC cash assistance benefits was almost expired due to the application of Nebraska rules on when to begin the calculation of the time limit. At no time prior to this had Ms. Montgomery received any notice from the State of Nebraska that it was taking away months of eligibility under these Nebraska rules. The central office in Lincoln reviewed her case and notified her caseworker that, under Nebraska rules, she was considered a time-limited welfare reform program participant even if she did not sign the back-dated contract, and that September, 2000 would be her twenty-fourth month of ADC for time limit purposes. Due to the unlawful application of these rules, Ms. Montgomery's family faces the loss of ADC cash assistance and related services and benefits in September, 2000. Due

to the unlawful application of these rules, Ms. Montgomery's family has lost twenty-four months of ADC cash assistance eligibility and opportunities for economic self-sufficiency resulting from an individualized comprehensive assets assessment and a self-sufficiency contract based on this assessment.

26. Plaintiff Aquarius Hopkins is the single mother of one child. She first applied for ADC in December 1995, was found eligible, and began to receive ADC cash assistance benefits on behalf of her daughter and herself. Since this time, she has cooperated at all times with the requirements of the ADC cash assistance program. During these years she graduated from high school, and subsequently became a full time student at the University of Nebraska-Lincoln, in the Teachers College. Plaintiff Hopkins also has had regular part-time employment, and regularly works during school breaks. On the Dean's List every semester, she is now a Senior scheduled for graduation in December, 2000. In late 1997 and early 1998, Plaintiff Hopkins sought to negotiate a self-sufficiency contract that includes her educational and work program. In February, 1998, she presented and signed a proposed self-sufficiency contract to her case worker which would allow her to continue full-time studies for her teaching degree at UN-L and part-time work during her two year time limited period of eligibility. Ms. Hopkins knew postsecondary education was an allowable work activity for self-sufficiency contracts under the Nebraska Welfare Reform Act. Her case worker told her she could not approve and sign a self-sufficiency contract that included the pursuit of a four year college degree, but would send it to higher level administrators for review and a counter-proposal. Ms. Hopkins continued her educational and work activities, cooperated with all ADC cash assistance requirements, and regularly asked her case worker often for a

progress report on her proposed self-sufficiency contract. Over one year later, in March, 1999, a new caseworker informed Ms. Hopkins the contract she presented the year before could not be approved and that she would have to sign a self-sufficiency contract requiring full-time work. Her new caseworker told her that if she did not sign this contract with terms dictated by the state, her family would be sanctioned (lose all ADC cash assistance and her Medicaid health insurance). Ms. Hopkins knew her proposed self-sufficiency contract activities were allowable under Nebraska law and she wanted to continue and finish her education. Ms. Hopkins refused to sign the contract forced on her by her caseworker. Subsequently, the Defendants sanctioned her family for “failing to cooperate” due to her insistence on continuing and completing her postsecondary education. In addition, her new caseworker told her at this time that, under Nebraska rules, even though there had never been a signed self-sufficiency contract between Ms. Hopkins and the Defendants, Ms. Hopkins had “used up” at least twelve months of her two year time limit for ADC cash assistance.

At no time prior to March, 1999 had Ms. Hopkins received any notice from the State of Nebraska that it was taking away months of eligibility under these Nebraska rules. Ms. Hopkins timely filed an administrative appeal on these issues, and a fair hearing was held on March 21 and April 20, 2000. On June 28, 2000, she received the Defendants’ Finding and Order, denying her appeal. (Finding and Order, attached.) Defendant Ron Ross ignored Ms. Hopkins’ appeal of the legality of 468 NAC 2-020.09B1 and 468 NAC 2-020.05, and found that, due to these rules, a sanction was appropriate and Ms. Hopkins’ “24 months of eligibility ended in April, 2000. As Aquarius Hopkins has received 24 months of ADC eligibility, she is no longer eligible for ADC and her ADC case will need to be closed.”

Finding and Order, at 29. Ms. Hopkins was subsequently notified by the Defendants they will now impose the sanction on her family, and close her family's case, as of August, 2000. Ms. Hopkins joins this suit challenging the unlawful Nebraska rules beginning the calculation of months of time limited ADC eligibility prior to having a signed contract rather than file an appeal to the Lancaster County District Court under the Administrative Procedures Act, Neb.Rev.Stat. §84-917, as she seeks complete relief for both her and members of the class. Due to the unlawful application of these rules, Ms. Hopkins' family faces the loss of ADC cash assistance and related services and benefits in August, 2000. Due to the unlawful application of these rules, Ms. Hopkins' family has also lost twenty-four months of ADC cash assistance eligibility and continued opportunities for economic self-sufficiency resulting from an individualized self-sufficiency contract.

27. Plaintiff Sarah Engelhart is a single mother of two children. She is severely dyslexic and cannot read. Ms Engelhart has worked primarily as a hotel maid. Her present earning capacity and ability to attain economic self-sufficiency are limited by her learning disability. Ms. Engelhart has learned to compensate for her inability to read by remembering things well. In the summer of 1999, she applied for and received ADC cash assistance for her and her two children. During initial meetings with her caseworker, she asked for services to help her lessen the effects of her dyslexia. Nonetheless, her caseworker has made no effort to assess Ms. Engelhart's learning disability, or complete other aspects of the required comprehensive assets assessment. Ms. Engelhart has not been referred to any remedial services. Ms. Engelhart has been referred to vocational rehabilitation, but only for assistance with job search activities. Ms. Engelhart has no knowledge of signing a self-sufficiency

contract. Nevertheless, Ms. Engelhart's case worker has informed Ms. Engelhart that she signed a contract in the fall, 1999, and the Defendants were now counting her months of receipt of cash assistance against her time limited period. This alleged contract was not based upon the results of a comprehensive assets assessment; rather, according to her caseworker, due to Nebraska rules regarding requiring a signed contract ninety days after applying for assistance. Ms. Engelhart was not given a copy of any such contract. Further, Ms. Engelhart has been told by her caseworker that any "failure to cooperate" would also cause the time limit to begin. The Defendants have subsequently refused to allow the Plaintiff to see her case file with counsel, to see the alleged self-sufficiency contract or to note the documentation of referrals, if any, to remedial services. In May, 2000, Ms. Engelhart sought to appeal the alleged signing of her self-sufficiency contract and the counting of her months of receipt of ADC against her time limit, but the Defendants refused to provide her the opportunity for a fair hearing. The Defendants contend the loss of months of eligibility for ADC cash assistance under the two year time period is not adverse to the Plaintiff. Due to the unlawful application of these rules, Ms. Engelhart's family has lost at least seven months of time limited eligibility for ADC cash assistance and the benefits, services and opportunities for economic self-sufficiency resulting from an individualized self-sufficiency contract such eligibility provides.

28. Plaintiff Lynn Houseman is a single mother of one daughter. She is presently a sophomore at the University of Nebraska at Kearney majoring in marketing in the College of Business. She started her educational program in January, 1999 and worked part-time for a telemarketing company. After nine months, she applied for ADC cash assistance for her

daughter and herself, and received her first assistance check in November, 1999. During an initial assessment with her caseworker, on November 19, 1999 she told her case worker she wanted to continue and complete her educational program and receive a college degree. As with Ms. Hopkins, she knew postsecondary education is an allowable work activity for self-sufficiency contract under the Nebraska Welfare Reform Act. Her case worker refused such a proposal and cut off negotiations when Ms. Houseman refused to change to another self-sufficiency contract activity. Ms. Houseman continued to cooperate with all requirements of the ADC cash assistance program. Nonetheless, there was no further activity to complete a comprehensive assets assessment and prepare a self-sufficiency contract based on that assessment. On December 14, 1999 the case worker issued a notice to Ms. Houseman imposing a sanction (loss of her family's ADC cash assistance and her Medicaid health insurance) claiming Ms. Houseman had "failed to cooperate" when she insisted upon continuing and completing her postsecondary education. Further, her caseworker informed Ms. Houseman that, even though there was no signed contract, the Defendants would, due to Nebraska rules, begin counting months of eligibility against Ms. Houseman's time limit. Ms. Houseman filed a timely administrative appeal, and a fair hearing was held. Defendant Ron Ross ruled against Ms. Houseman in his Finding and Order, finding that a postsecondary education at a four-year college was not an allowable work activity for a self-sufficiency contract. Ms. Houseman appealed that decision to Lancaster County District Court (CI 00-1971), and now joins this suit challenging the unlawful Nebraska rules beginning the calculation of months of time limited ADC eligibility prior to having a signed contract. Due to the unlawful application of these rules, Ms. Houseman's family is losing months of ADC

cash assistance eligibility and continued opportunities for economic self-sufficiency resulting from an individualized self-sufficiency contract.

29. Each of the named Plaintiffs is a person who cooperates with the Defendants, and is eager to receive the benefits the WRA promises them to improve their ability to support their families. Due to the application of unlawful rules by the Defendants, however, the intent of the Nebraska Legislature to help these low-income Nebraskans attain economic self-sufficiency through the reformed welfare system has been thwarted.
30. This application of unlawful rules has caused great harm for the Plaintiffs and members of the class by causing, among other things, a denial of needed subsistence benefits and services, a denial of the opportunity for a comprehensive assets assessment process as defined by the WRA, a denial of self-sufficiency contract based on the results of such comprehensive assets assessments, a denial of job training and educational opportunity as allowable activities within self-sufficiency contract, and a denial of supportive services designed to help remove barriers to economic self-sufficiency.
31. Defendants are prohibited from using their rulemaking authority to modify, alter, or enlarge the provisions of the WRA.
32. There is no provision within the WRA authorizing the Defendants to modify, alter, or enlarge Neb.Rev.Stat. ' 68-1724(1)(b) regarding when the two year limit on the receipt of cash assistance is to begin.
33. There is no provision within the WRA authorizing the Defendants to modify, alter, or enlarge Neb.Rev.Stat. §' 68-1718 through 68-1720 regarding the requirements for when a Self-Sufficiency Contract is to be signed.

34. The above regulations, however, unlawfully modify, alter, and enlarge specific requirements of the WRA by, at least, 1) changing when the two-year limit on the receipt of cash assistance is to begin (468 NAC 2-020.09B1); and, 2) adding a requirement as to when the Self-Sufficiency Contract is to be signed (468 NAC 2-020.05).
35. These rules are in direct conflict with the clear language of the Nebraska Welfare Reform Act, which imposes the time limit only on those families who have completed a comprehensive assets assessment and signed a self-sufficiency contract based on this assessment.
36. Upon information and belief, the Defendants have applied these unlawful regulations to each family receiving cash assistance in Nebraska, including the Plaintiffs and members of the class, since the regulations=effective date of December 27, 1997.
37. Upon information and belief, the actions of the Defendants to begin the calculation of the two year time limit prior to the signing of a self-sufficiency contract based on the results of a comprehensive assets assessment is representative of the Defendants' general policy and practices.
38. The effect of the use of these unlawful regulations by the Defendants has been to arbitrarily begin a recipient family=s two year limit on cash assistance eligibility at or before 90 days from application for assistance. This directly conflicts with the Nebraska Legislature=s specific requirement in the WRA that the two year limit on cash assistance eligibility was to begin at the signing of Aindividualized self-sufficiency contract@ Abased on the results of the [statutorily defined] comprehensive assets assessment.@
39. Further, at no time were any of the Plaintiffs provided notice and an opportunity for fair

hearing by the Defendants as to how many months of eligibility the Defendants contended were left to the Plaintiffs under the two year time limit for ADC cash assistance.

40. At no time were any of the Plaintiffs provided notice and an opportunity for fair hearing by the Defendants that the Defendants were defining the beginning of their two year limit on the receipt of ADC cash assistance calculated according to 468 NAC 2-020.09B1 and/or 468 NAC 2-020.05, and that such a decision by the Defendants was causing the loss of months of eligibility for the benefits, services, and opportunities for economic self-sufficiency provided by the Nebraska Welfare Reform Act.
41. Upon information and belief, the actions of the Defendants in failing to provide notice and an opportunity for a fair hearing to the Plaintiffs regarding the above is representative of the Defendants' general policy and practices.
42. Plaintiffs have no plain, adequate, or speedy remedy at law, and this suit for declaratory and injunctive relief is their only means of securing such relief.

FIRST CAUSE OF ACTION
(Violation of Delegated Authority)

43. The Plaintiffs incorporate herein as if fully set forth the allegations contained in paragraphs 1 to 42.
44. The Defendants lack the authority to change when the two-year limit on the receipt of ADC cash assistance is to begin, as specifically set forth in the Nebraska Welfare Reform Act, Neb.Rev.Stat. ' 68-1724(1)(b)(Reissue 1996).
45. Such actions by the Defendants through 468 NAC 2-020.09B1 unlawfully modified, altered, and enlarged a specific requirement of the Nebraska Welfare Reform Act.

SECOND CAUSE OF ACTION
(Violation of Delegated Authority)

46. The Plaintiffs incorporate herein as if fully set forth the allegations contained in paragraphs 1 to 45.
47. The Defendants lack the authority to change the requirement as to when the Self-Sufficiency Contract is to be signed, as specifically set forth in the Nebraska Welfare Reform Act, Neb.Rev.Stat. §§68-1718 through 68-1720 (Reissue 1996).
48. Such actions by the Defendants through 468 NAC 2-020.05 unlawfully modified, altered, and enlarged specific requirements of the Nebraska Welfare Reform Act.

SECOND CAUSE OF ACTION
(Violation of Delegated Authority)

49. The Plaintiff incorporates herein as if fully set forth the allegations contained in paragraphs 1 to 48.
50. By virtue of the foregoing, the actions of the Defendants violated the Plaintiffs' constitutional rights in that:
 - (1) When the Defendants count months against the Plaintiffs' two year time limited period before all the statutory requirements of the Nebraska Welfare Reform Act are met, it constitutes an unlawful taking of property without due process of law and is a violation of the Plaintiffs' rights to due process of law guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of Nebraska, Article I, Section 3.
 - (2) When the Defendants count months of eligibility for ADC cash assistance without notice and the opportunity for a fair hearing, it constitutes a violation of the Plaintiffs'

rights to due process of law guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Constitution of Nebraska, Article I, Section 3.

WHEREFORE, the Plaintiffs pray that this Court:

1. Certify this action as a class action, said class defined as: All families eligible for ADC and receiving ADC cash assistance at any time since December 27, 1997, and who have had the beginning of their two year limit on the receipt of ADC cash assistance calculated according to 468 NAC 2-020.09B1 and/or 468 NAC 2-020.05.
2. Declare that the beginning of the calculation of the two year limit on the receipt of ADC cash assistance shall be either when a self-sufficiency contract is signed by both the ADC recipient family and an agent of the State of Nebraska, or when any children born into an ADC recipient family prior to the initial ten months of assistance reaches the age of six months, whichever is later, pursuant to the Nebraska Welfare Reform Act, Neb.Rev.Stat. ' 68-1724(1)(b).
3. Order the Defendants be temporarily and permanently enjoined to calculate the beginning of the two year limit on the receipt of ADC cash assistance as follows: either when a self-sufficiency contract is signed by both the ADC recipient family and an agent of the State of Nebraska, or when any children born into an ADC recipient family prior to the initial ten months of assistance reaches the age of six months, whichever is later.
4. Declare that a self-sufficiency contract is to be signed only upon the completion of a comprehensive assets assessment process, pursuant to the Nebraska Welfare Reform Act, Neb.Rev.Stat. §§68-1718 through 68-1720.

5. Order the Defendants be temporarily and permanently enjoined from requiring the signing of a self-sufficiency contract before the completion of a comprehensive assets assessment process as defined by the Nebraska Welfare Reform Act, Neb.Rev.Stat. §§68-1718 through 68-1720.
6. Declare that 468 NAC 2-020.09B1 of the Nebraska Administrative Code is null and void and of no effect insofar as it modifies, alters, or enlarges when the two-year limit on the receipt of ADC cash assistance is to begin, as specifically set forth in the Nebraska Welfare Reform Act, Neb.Rev.Stat. ' 68-1724(1)(b), by requiring the calculation to begin 90 days after a signed application for assistance is received.
7. Order the Defendants be temporarily and permanently enjoined from implementing and applying 468 NAC 2-020.09B1 to Plaintiffs and members of the class insofar as it modifies, alters, or enlarges when the two-year limit on the receipt of ADC cash assistance is to begin by requiring the calculation to begin 90 days after a signed application for assistance is received.
8. Declare that 468 NAC 2-020.05 of the Nebraska Administrative Code is null and void and of no effect insofar as it modifies, alters, or enlarges the requirement as to when the Self-Sufficiency Contract is to be signed, as specifically set forth in the Nebraska Welfare Reform Act, Neb.Rev.Stat. §68-1718 through 68-1720, by requiring the signing of a self-sufficiency contract 90 days after a signed application for assistance is received.
9. Order the Defendants be temporarily and permanently enjoined from implementing and applying 468 NAC 2-020.05 to Plaintiffs and members of the class insofar as it modifies, alters, or enlarges the requirement as to when the self-sufficiency contract is to be signed by

requiring the signing of a self-sufficiency contract 90 days after a signed application for assistance is received.

10. Order the Defendants be temporarily and permanently enjoined to: a) apply the above order to all members of the class; b) recalculate the number of months remaining of eligibility for ADC cash assistance to each member of the class; and, c) notify each member of the class of: i) the results of this recalculation, ii) the basis for this recalculation, iii) the number of months remaining to each of ADC cash assistance eligibility under the two year time limit for eligibility, and iv) the right to appeal this recalculation and be provided a fair hearing.
11. Order the Defendants be temporarily and permanently enjoined to provide retroactive ADC cash assistance benefit eligibility to any class member who has had 468 NAC 2-020.09B1 and/or 468 NAC 2-020.05 unlawfully applied to her time limit calculation, subsequently were determined by the Defendants to have reached the two year limit on eligibility for ADC cash assistance, and due to this determination had her ADC case closed.
12. Order the Defendants be permanently enjoined to inform each ADC cash assistance recipients at regular intervals the number of months remaining of eligibility for ADC cash assistance under the two year time limit for eligibility, the method of this calculation, and the right to appeal this calculation and be provided a fair hearing.
13. Order that costs and attorneys' fees be taxed to the Defendants.

14. Grant such other and further relief as may be just.

Dated _____

**Kelly Jones, Janice Montgomery, Aquarius Hopkins,
Sarah Engelhart, and Lynn Houseman, Individually
and on behalf of all others similarly situated, Plaintiffs.**

By _____
D. Milo Mumgaard #19919

By _____
Sue Ellen Wall #21552

Nebraska Appleseed Center
for Law in the Public Interest
Welfare Due Process Project
941 O Street Suite 105
Lincoln NE 68508-3626
(402) 438-8853 Fax (402) 438-0263
Counsel for the Plaintiffs and Class

This case was filed in forma pauperis.

PRAECIPE

TO THE CLERK OF THE LANCASTER DISTRICT COURT: Please issue a summons in the above captioned matter to be served along with a copy of the petition upon the respondent, Attorney General, Room 2115, Lincoln NE 68508, on behalf of the Nebraska Department of Health and Human Services, and Ron Ross, Director, 301 Centennial Mall South, Lincoln NE 68509.

By _____
Sue Ellen Wall #21552
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