

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 00-2771

Plaintiffs,

)**PLAINTIFFS' MOTION FOR SANCTIONS**
)**FOR SPOILIATION OF EVIDENCE**

v.)

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

Defendants.)

COME NOW the Plaintiffs, and through their counsel of record, respectfully move this Court for sanctions for the spoliation of evidence whose production was required by Nebraska Rule of Discovery 26, showing this Court as follows:

On May 11, 1999 plaintiffs' counsel sent an extensive pattern and practice letter to the defendants regarding their actions in the case of named plaintiff Aquarius Hopkins. (Pleadings, Exhibit X). In July, 1999, the plaintiffs requested materials for discovery prior to the Appeal Hearing of plaintiff Hopkins. The defendants moved to protect. A hearing was held before the hearing officer and an agreement was made regarding the production of documents. An appeal hearing was set for October 27, 1999. It was rescheduled due to the defendants' difficulty in gathering and producing certain information requested by the plaintiffs.

On March 21 and April 20, 2000, seven hours of hearing were conducted. Witnesses included Dan Cillessen, DHHS Director of Economic Assistance, Dennis Ellis, Assistant

Director, Kate Hansen, Case Supervisor, Barbara Onnen, Case Worker, and Aquarius Hopkins.

A Finding and Order, signed by defendant Ron Ross, was issued on June 27, 2000.

(Pleadings, Exhibit XX). This lawsuit was filed on July 31, 2000.

In January, 2001, the plaintiffs requested production of the transcripts of the appeal hearings of Aquarius Hopkins and Janice Montgomery. After a delay, a reminder, another delay, on April 3, 2001, defendants' counsel reported the Hopkins tapes had been erased.

The defendants have an affirmative duty to protect any materials that might reasonably be expected to be relevant to the case. (See brief attached The hearing officers who are the custodians of the audio tapes are all attorneys.

Very few appeals hearings have attorneys involved. Very few have lawsuits filed. This court is aware now of two cases where evidenced has been destroyed by the defendants.

The plaintiffs respectfully request this Court to impose sanctions appropriate to remedy the damage caused by the willful destruction of critical evidence, including but not limited to the following:

- (1) Order immediate reinstatement of benefits for each named plaintiff who is income and resource eligible;
- (2) Grant the plaintiffs leave to draft the stipulations which will form the basis of presenting briefs for Summary Judgment.
- (3) Award plaintiffs' attorneys' fees for the 2000 hearings and preparation time;
- (3) Award commercial court report's costs for depositions for Dan Cillessen, Dennis Ellis, Kate Hansen, Barb Onnen and Aquarius Hopkins if plaintiffs determine they are necessary to reconstruct evidence;

(4) Award plaintiffs attorneys' fees for preparation and conduct of those depositions.

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

By _____
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By _____
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