

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

TYLESHA L. MASON and FERNANDEZ )  
MASON , BY AND THROUGH )  
LISA CANNON, AS THEIR )  
NEXT FRIEND; HANNAHA WHITE, BY )  
AND THROUGH CRYSTAL D. WHITE, )  
AS HER NEXT FRIEND; SIMEYON )  
EVANS, BY AND THROUGH ANDREA )  
EVANS, AS HIS NEXT FRIEND, )

Case No.CI00-3389

Plaintiffs, )

v, )

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

Defendants. )

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

**(EQUITY)**

**CLASS ACTION**

**COMES NOW** the Plaintiffs, by and through their attorneys, and for their cause of action alleges as follows:

**PARTIES**

1. The Plaintiffs Tylesha Mason and Fernandez L. M. Mason, are minor children, born on May 25, 1999, and July 24, 2000, respectively, who live with their mother, Lisa Cannon and are residents of Douglas County, Nebraska.

2. Hannahha Peyton Elizabeth White is a minor child, born on January 1, 2000, who lives with her mother, Crystal D. White, and is a resident of Douglas County, Nebraska.

3. Simeyon Evans, is a minor child born May 11, 1998, who lives with his mother Andrea Evans, and is a resident of Lancaster County, Nebraska.

4. The Defendants are a state of the United States; the administrative agency

charged with implementing the social security laws and the public assistance programs of Nebraska, and Ron Ross, Director of Services and administrator of public assistance programs for said agency.

### **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 Aid to Dependent Children (hereinafter ADC) and receiving ADC cash assistance at any time since the implementation of the Welfare Reform Act (hereinafter WRA), where: (1) the adult(s) in the family who do not have the "capacity to work, as determined by the comprehensive assets assessment, [who] shall participate in the self-sufficiency contract as a condition of receiving cash assistance." NEB. REV. STAT. § 68-1723(2); and (2) the family includes children born to such families ten months or more after the family applied for public assistance, and were subsequently denied their ADC grant.

### **JURISDICTION AND VENUE**

6. Jurisdiction and venue in Lancaster County District Court is proper because this is a petition to interpret the laws of Nebraska, pursuant to NEB. REV. STAT. § 84-901 *et seq.*.

7. The plaintiffs brings this action for declaratory and injunctive relief as allowed by NEB. REV. STAT. § 84-901, *et seq.*, and NEB. REV. STAT. §§ 25 1062-1080. Their cause of action arises under NEB. REV. STAT. §§ 43 501-526, § 68-1709 *et seq.* and Nebraska

Department of Health and Human Services Rules, in particular 468 NAC 2.020.01(3)(b) and 2-.007.01A (Exhibit A, p. 5, pp.3-4 attached).

### **FACTS**

8. The plaintiff Tylesha Mason is the third child of her mother, Lisa Cannon. The plaintiff Fernandez Martinez Lee Mason is the fourth child of his mother, Lisa Cannon. Neither of them receives an ADC grant. They have older siblings who do receive an ADC grant.

9. Lisa Cannon is a woman with a disability who receives federal Supplemental Security Income (hereinafter SSI) for herself under the federal social security statutes. Her mobility is limited by her disability and several times a year she has spasms that render her completely bedridden for one or two days at a time. Her disability, the result of undiagnosed scoliosis, has gotten progressively worse since her mid-teens. At one time she was employed, but her capacity to work is now diminished by her disability and by the need for her to use what energy and mobility she has to care for her young children. She is not, and cannot be a “participant” in the welfare reform program under the statute and the rules.

10. Hannah White is the second child of her mother, Crystal D. White. She does not receive an ADC grant and her ability to receive even the barest necessities of life is more severely limited by the defendants’ actions because no one in her household is able to work to earn more money.

11. Hannah White’s mother Crystal D. White, has worked as a computer technician and would very happily be part of the welfare reform program were it not for her severe anxiety disorder, which keeps her in her home except under extraordinary circumstances. She experiences seizure-like symptoms which can physically paralyze her, which is why she receives

SSI and is fully disabled. Although she expects and hopes to improve within a few years and be able to work again, at this point she is incapacitated and cannot work. She is not, and cannot be, a participant of the welfare reform program under the statute or the rules.

12. Simeyon Evans is the fourth child of his mother Andrea Evans. He does not receive ADC and his ability to receive even the barest necessities of life is more severely limited by the defendants' actions because no one in his household is able to work to earn more money.

13. Simeyon's mother Andrea Evans also has not been able to work since 1995. She began receiving SSI in the fall of 1998 for a severe anxiety disorder, and is fully disabled. She is not, and cannot be, a participant of the welfare reform program under the statute or the rules.

14. The plaintiffs are dependent children, under NEB. REV. STAT. § 43-501 *et seq.*, which applicable language says:

§ 43-504 (1) The term dependent child shall mean a child under the age of nineteen years who is living with a relative in a place of residence maintained by such relative as her own home. (2) Except as provided in subdivision (2)(b) of § 68-1724, in awarding aid to dependent children payments, the term shall include an unborn child but only during the last three months of pregnancy. (See also 468 NAC 1-004, pp. 2-3, the rule promulgated by the Department of Health and Human services which defines a dependent child. [Exhibit A, p. 1, attached.]

15. A dependent child as defined under § 43-504 is eligible for ADC financial assistance if the child's family is income and resource eligible under NEB. REV. STAT. § 43-512. Each of the plaintiffs meet the income and resource eligibility requirements for ADC as required by NEB. REV. STAT. § 43-512.

16. Nevertheless, the defendants have denied each of the plaintiffs their basic subsistence

ADC benefits, on the pretext that the children were not eligible for such payment because of the so-called “Family Cap” in the WRA, NEB. REV. STAT. § 68-1724(2)(b), which provides:

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows: . . .

(b) The payment standard shall be based upon family size. Any child born into the recipient family *after the initial ten months of participation in the program* shall not increase the cash assistance payment, except that child support or other income received on behalf of such child or children shall not be considered as countable income to the recipient family in determining the amount of their cash assistance payment; (Emphasis added)

17. The corresponding administrative Rule promulgated by the defendants, implementing this section of the statute is set forth in 468 NAC 2-007.01A, effective 12-27-97, as follows:

“The [Self-Sufficiency Contract or Non-Time Limited Agreement] will not be revised and no additional ADC (Aid to Dependent Children) cash benefit will be issued to (1) A new ADC case due to the birth or anticipated birth of a child when the birth occurs or is expected to occur more than ten calendar months after the date of the interview . . . or (2) An existing ADC case when the birth is expected to occur more than ten calendar months after the date of the eligibility interview. The only exceptions in the rule are: (1) a child born before the ten month period, but out of the home until after the period is past; (2) a child conceived as a result of incest or sexual assault as verified by a physician’s statement or police records, (3) children who are the first born of minors included in an ADC grant who became first-time minor parents.”

18. This rule explicitly fails to include the exception stated in the statute (and also in 468 NAC 2-020.01(3)(b), see below) that the “Family Cap” exclusion only applies to “participants” in the welfare reform program, and does not apply to non-participants.

19. The statute mandates a comprehensive assets assessment as the first activity after income eligibility is determined. NEB. REV. STAT. § 68-1718. Section 2 says:

“Each applicant’s personal resources shall be assessed in the comprehensive assets assessment. For purposes of this section,

personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.”

20. The assets assessment is to be used to develop a “self-sufficiency contract,” and the participant is to “make constant, measurable progress toward self-sufficiency, goals shall be set with time lines and benchmarks that facilitate forward momentum.” § 68-1719. Participation in the program, and thus, a contract is only possible if there is at least one adult in the household with the capacity to work. § 68-1723(2).

21. The participants in the welfare reform program and the state are to perform under the contract, with the goal for the family to achieve economic self-sufficiency within a period of twenty-four months of ADC eligibility. § 68-1722.22. The WRA also states that “under the self-sufficiency contract developed under section 68-1719, the principle 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). Under the statute and the rules, to “participate” in the welfare reform program means an affirmative requirement by an adult family member who has the capacity to work to engage in one of the named activities as a condition of receiving ADC. Mere receipt of ADC because of income eligibility is not “participation” in the program which can trigger the so-called “Family Cap.”

22. “Participation” in the WRA is defined in several places. Section 68-1723(2) says, “Recipient 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.*” (Emphasis added.) Participation is clearly identified by the statute as being in compliance with the self-sufficiency contract leading to a goal of self-sufficiency. § 68-1723 (2)(a) “Adult members of recipient families whose youngest child is between the ages of twelve weeks and six months shall *engage* in an individually determined number of *part-time hours* . . . (2)(b) “Participation in *activities outlined in the self-sufficiency contract* shall not be required for one parent of a recipient family whose youngest child is under the age of twelve weeks.” (2)(d) “*Full participation in the activities outlined in the self-sufficiency contract shall be required* for adult members of a recipient family whose youngest child is over the age of six months.” (2)(e) “*Full participation in the activities outlined in the self-sufficiency contract* . . . [for parents who are minors themselves]; (2)(f) . . . the *family shall participate in the activities outlined in the self-sufficiency contract as a condition of receiving cash assistance.*”

23. The plaintiffs’ mothers are each handicapped beyond the extent that they can “participate” in the welfare reform program. They do not have the capacity to work. They cannot have a “self-sufficiency” contract because they cannot become self-sufficient due to their incapacitation. They are not required to participate in *any* activities in the welfare reform program as a condition of receiving ADC for their children.

24. The plaintiffs’ mothers, the only adults in the plaintiffs’ households are not eligible or able to participate in regular education, training, or work activities, that is, from being a “participant” in the program governed by the Welfare Reform Act due to their disabilities.

Administrative Rule 468 NAC 2-020.01(3)(b) exempts persons from participation who are “incapacitated with a medically determinable physical or mental impairment which, by itself or in conjunction with age, prevents the individual from engaging in employment or training and which is expected to exist for a continuous periods of at least three months. . . . The incapacity must be evaluated in the context of training or education available under EF.”

25. The plaintiffs are income eligible for an ADC grant. They have been eligible since the beginning of the third trimester of the pregnancy of their mothers before they were born. NEB. REV. STAT. Section 43-504(2) mandates such payments to begin in the third trimester of pregnancy. No one in the plaintiffs’ households is, or can be, a participant in the welfare reform program. The plaintiffs and their siblings are younger than fifteen years of age, and their mothers have a permanent, long-term disability. The plaintiffs are entitled by operation of law to receive their financial assistance grants.

26. The plaintiffs’ mothers made timely application for the increase in ADC payments (pursuant to NEB. REV. STAT. § 43-512(1)), which the defendants turned down.

27. Plaintiff Tylesha Cannon’s counsel made a pattern and practices inquiry into why a family not required to participate in a self-sufficiency contract was covered by the family cap. (Attached) The defendants relied strictly on a broad-brush interpretation of the WRA and their rule 468 NAC 2-007.01, addressed above, to maintain this rule application to the plaintiffs and the class they represent.

28. Plaintiff White’s mother filed an appeal on this issue. The department’s Finding and Order reiterates the department’s response in the Cannon case. (Exhibit C, attached)

29. The legislature intended the WRA to support and encourage able-bodied low-income

parents to prepare for paid work and develop their skills as fully as possible to reach their highest level of self-sufficiency. NEB. REV. STAT. §68-1709, 1726. The legislature did not envision the state punishing the children of poor and disabled parents to live in sub-standard, straightened circumstances because their parents lack the capacity to work, by denying those children ADC assistance. Such an interpretation of statute and rules is an impermissible modification, alteration, or enlargement of the law by the defendants.

### **FIRST CAUSE OF ACTION**

(Violation of Delegated Authority, Identifying “Participant Households”)

30. The plaintiffs incorporates herein as if fully set forth the allegations contained in paragraphs 1 to 29.

31. The defendants lack the authority to apply a statutory condition of receiving assistance (the family cap, § 68-1724(2)(b)) for households which are participants in the welfare reform program to households which are implicitly excluded, that is, households which are **not** participants in the welfare reform program. (NEB. REV. STAT. § 68-1723, “participation” definitions.)

### **SECOND CAUSE OF ACTION**

(Violation of Delegated Authority–Denial of child benefits)

32. The plaintiff incorporates herein as if fully set forth the allegations contained in paragraphs 1 to 31.

33. The defendants lack the statutory authority to deny benefits to the class who are otherwise income and resource eligible under NEB. REV. STAT. § 43-504, 512.

WHEREFORE, the plaintiffs pray that this Court:

34. Certify this action as a class action. The members of the class are all families eligible for Aid to Dependent Children and receiving ADC cash assistance at any time since the implementation of the Welfare Reform Act where: (1) the adult(s) in the family do not have "the capacity to work, as determined by the comprehensive assets assessment, [who] shall participate in the self-sufficiency contract as a condition of receiving cash assistance." NEB. REV. STAT. § 68-1723(2); and (2) the family includes children born to such families ten months or more after the family applied for public assistance, and were subsequently denied their ADC grant.

35. Declare that adults in families eligible for ADC who lack the capacity to work are not "participants" in the welfare reform program as the statute says, and that the administrative rules promulgated and applied by the defendants must be in compliance with statute.

36. Order the defendants be temporarily and permanently enjoined from treating families where the adults(s) lack the capacity to work as "participants" in the welfare reform program, and to promulgate and apply all administrative rules in compliance with that statement of the statute.

37. Declare any children born to parents who receive ADC, and who cannot engage in welfare reform activities because they lack the capacity to work are "participants" because they cannot be required to do any activities in the welfare reform program, and therefore such children are not subject to the so-called "family cap."

38. Order the defendants be temporarily and permanently enjoined from applying the family cap to the children born to parents who receive ADC, and who cannot participate in welfare reform activities because they lack the capacity to work and are not "participants" because they cannot be required to do any activities in the welfare reform program.

39. Declare that the defendants' actions of interpreting the law and their rules in such a manner that modifies, enlarges, and alters the statutes, and works such a draconian result, violate the statutory powers delegated to the defendants by the Nebraska Legislature, and violate relevant portions of the Social security statutes and the WRA.

40. Order the defendants to restore to each named plaintiff, the proper level of benefits as if the defendants had not improperly denied such benefits to them, starting at the beginning of the seventh month of gestation for each named plaintiff and each member of the class, and continue the payment of such benefits as long as the parent is incapacitated and the family is income eligible for ADC.

41. Order the defendants to identify each member of the class, and to give them notice of the adverse action taken by denying their children their ADC allowance, and restore their benefits so that each child in the class receives an ADC grant.

42. Grant such other and further relief as may be just;

43. Order that costs and attorneys' fees be taxed to the defendants.

**Tyleesha Mason and Fernandez Mason, by and through Lisa Cannon as their next friend, Hannaha White, by and through Crystal D. White as her next friend, and Simeyon Evans, by and through Andrea Evans as his next friend, and all others similarly situated, Plaintiffs.**

By \_\_\_\_\_  
D. Milo Mumgaard #19919

By \_\_\_\_\_  
Sue Ellen Wall #21552  
Nebraska Appleseed Center  
for Law in the Public Interest  
941 O Street Suite 105  
Lincoln NE 68508  
(402) 438-8853

By \_\_\_\_\_  
Susan A. Koenig #16540  
1266 South 13<sup>th</sup> Street  
Omaha NE 68108-3502  
(402) 346-1132

**PRAECIPE**

TO THE CLERK OF THE DISTRICT COURT OF LANCASTER COUNTY:

Please prepare a Summons for personal service returnable according to law and together with a copy of the Petition hereby, deliver to the Sheriff of Lancaster County for service upon Donald Stenberg, Attorney General, who may be found at 2115 State Capitol, Lincoln, NE 68509, on behalf of the Nebraska Department of Health and Human Services, 301 Centennial Mall South, Lincoln, Nebraska, 68509.

**Tyleesha Mason and Fernandez Mason, by and through Lisa Cannon as their next friend, Hannah White, by and through Crystal D. White as her next friend, and Simeyon Evans, by and through Andrea Evans as his next friend, and all others similarly situated, Plaintiffs**

By \_\_\_\_\_  
Sue Ellen Wall, #21552

This action was filed in forma pauperis.