

COPY

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. CI 00-3389

Plaintiffs,)

v.)

DEFENDANTS' BRIEF

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

Defendants.)

INTRODUCTION

The Plaintiffs filed a Petition for Declaratory and Injunctive Relief in behalf of four minor children whose mothers are eligible for Aid to Dependent Children ("ADC") or are disabled and subject to the "Family Cap" in the Welfare Reform Act (Neb. Rev. Stat. §§ 68-1724(2)(b)), which provides that any child born into the recipient family after the initial "ten months of participation in the" program shall not increase the case payment. The Plaintiffs allege that the application regulation (468 NAC 2-020.01(3)b)), is invalid in that it fails to include the exception that the Family Cap exclusion applies only to participants in the Employment First Program. The Court has certified a class action consisting of all families eligible for ADC and receiving case assistance at any time since the implementation of the Welfare Reform Act where: (1) Adults in the family do not have the capacity to work as determined by comprehensive assists assessment, [who] shall

participate in the self-sufficiency contract as a condition of receiving case assistance, § 68-723(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.

ARGUMENT I

DHHS REGULATION 468 NAC 2-007.01, EFFECTIVE 7/10/2000, IS CONSISTENT WITH THE INTENT AND PURPOSE OF THE CORRESPONDING STATUTE, NEB. REV. STAT. § 68-1724(2)(b) (Reissue 1996.)

Neb. Rev. Stat. § 68-1724(2)(b), which is part of the Welfare Reform Act, that in part discusses an extension of the two-year time limit for some ADC recipients, states that:

(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.

The corresponding regulation is 468 NAC 2-007.01, effective 7/10/2000, which states:

The family *Self-Sufficiency Contract or Non-Time Limited Agreement* is based on the number of members in the family unit at the time of application. The

contract will be revised to include children already conceived at the time of the ADC application but born after the contract is signed. The contract will not be revised and no additional ADC cash benefit will be issued to 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 (this may be a phone or face-to-face interview). (emphasis added)

The statute only references to cash assistance according to the Welfare Reform Act in general, not specifically to the Self-Sufficiency Program. The regulation references to both the Self-Sufficiency Contract and the Non-Time Limited Agreement, which are the two ways that a person can receive ADC benefits according to DHHS regulations. This is consistent with the Legislature's goals in creating the Welfare Reform Act, which are stated in Neb. Rev. Stat. § 68-1709 (Reissue 1996); the relevant portion of which is stated below:

The Legislature further finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support, stabilize, and enhance individual and family life in Nebraska by:

(9) providing continuing assistance and support for persons sixty-five years of age or over and for individuals and families with physical, mental, or intellectual limitations preventing total economic self-sufficiency;

With this being one of the goals of the Legislature in creating the Welfare Reform Act, it is inconsistent to say that the rest of the Act applies only to those "participating" in the Self-Sufficiency Contract program. The Act focuses primarily on those obtaining self-

sufficiency, but also is concentrated on those who cannot become self-sufficient, and require ADC benefits for an extended period of time.

DHHS has furthered this goal of the Legislature by creating the Non-Time Limited Assistance Program, in addition to the Self-Sufficiency Contract program. The Non-Time Limited Assistance Program is covered in 468 NAC 2-020.09A:

Non-time-limited assistance is intended for families for whom self sufficiency is not possible because of the mental, emotional, or physical conditions of the adult family member(s) who is included in the unit, and for families where the only adult(s) in the recipient family does not have parental responsibility and assistance is requested for the child/children only. These families are not subject to the time limits but are subject to other EF provisions, i.e., cooperation with child support, TPL, school attendance requirement, cooperation in obtaining health insurance, and application for potential income. (emphasis added).

ARGUMENT II

AS SUCH, THE PLAINTIFFS IN THIS CASE ARE SUBJECT TO THE "FAMILY CAP" PROVISION, 468 NAC 2-007.01, EFFECTIVE 7/10/2000, AS THEY ARE CONSIDERED "PARTICIPANTS" WITHIN THE MEANING OF THE REGULATION.

This is in fact what kind of "participants" the plaintiffs in this case fall under. They are not required to complete a Self-Sufficiency Contract, as they have mental, emotional, or physical conditions preventing them from becoming self-sufficient. However, they are

“participants” in the Non-Time Limited Assistance Program, and are still subject to those regulations that reference to this program.

A “participant” in the Welfare Reform Act is someone who is receiving ADC benefits. A person cannot simply receive benefits and not be considered a “participant” in a welfare program. The meaning of “participant” in Neb. Rev. Stat. § 68-1724(2)(b) is someone who is receiving ADC benefits in any capacity, not just those who receive benefits under the Self-Sufficiency Contract. This is consistent with the goals of the Legislature in creating the Welfare Reform Act.

DHHS refers to both participants in the Self-Sufficiency Contract and participants in the Non-Time Limited Assistance Program in the family cap provision. Therefore, although the plaintiffs are not a part of the Self-Sufficiency program, they are “participants” in the Non-Time Limited Agreement, and are bound by the regulations and statutes that are promulgated in the family cap provision.

ARGUMENT III

IF PARTICIPANTS IN THE NON-TIME LIMITED AGREEMENT ARE ALLOWED TO CONTINUE HAVING CHILDREN, WHILE THOSE PARTICIPANTS IN THE SELF-SUFFICIENCY PROGRAM ARE NOT ALLOWED TO HAVE CHILDREN, THERE WILL BE AN EQUAL PROTECTION ARGUMENT THAT COULD NOT BE OVERCOME; THEREFORE, THE RULE MUST BE APPLIED UNIFORMLY AND EQUALLY TO ALL PARTICIPANTS IN THE WELFARE REFORM ACT PROGRAMS.

The United States Supreme Court has held that:

So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and the needy are not subject to a constitutional straightjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them.

Jefferson v. Hackney, 406 U.S. 535, 546-47, 92 S. Ct. 1724, 1731-32, 32 L.Ed. 2d 285 (1972).

In addition, the Supreme Court has also said that when the AFDC program was originally created, it was only to support those children already in existence, and not those yet to be born. *Burns v. Alcala*, 420 U.S. 575, 95 S. Ct. 1180, 43 L.Ed.2d 469 (1975). Therefore, it has been held on occasions that the states only need to have a rational reason for creating laws to effect the welfare of the needy, and are not required to protect children that are yet to be born.

The main goals of the Welfare Reform Act are clear: to limit welfare dependency, to encourage individual responsibility, and to encourage responsible family rearing. These goals are articulated in *N.B. v. Sybinski*, 724 N.E.2d 1103, 1109 (Ind. Ct. App. 2000). In this case, the court held that the family cap provision, if applied uniformly, did not violate the equal protection clause, as there is a legitimate interest by the State that is rationally related to the statute.

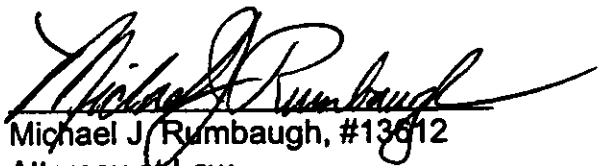
This case can be applied to the instant case. If the family cap provision is applied uniformly to each welfare recipient, then it does not violate the equal protection clause of the 14th Amendment. However, if DHHS would decide to only apply the family cap provision to those who are able to work and fulfill their Self-Sufficiency Contract, it would be unequal application to certain recipients, and would have to fail. The only way for the family cap provision to further the goals of the Welfare Reform Act and to be within the boundaries of the equal protection clause is to uniformly be applied to all participants in the ADC program, in any capacity.

The Defendants respectfully request that this Court determine that the Plaintiffs are participants in the purpose of the Welfare Reform Act, that Defendants administrative rules are in compliance with the Welfare Reform statutes and do not violate the statutory powers of the Legislature and the Welfare Reform Act. Further, that Plaintiffs' request for the restoration of benefits be denied and the Petition dismissed.

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

BY: DON STENBERG, #14023
Attorney General

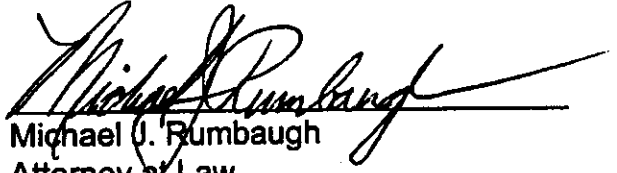
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendants' Brief was served on the Plaintiffs, herein by placing a copy of the same in the United States Mail, first class postage prepaid, addressed to Plaintiffs' attorney of record: Sue Ellen Wall, the Nebraska Appleseed Center for Law in the Public Interest, 941 "O" Street, Suite 105, Lincoln, NE 68508.

DATED this 20th day of April, 2001.


Michael J. Rumbaugh
Attorney at Law

15-309-11