

IN THE DISTRICT COURT FOR LANCASTER COUNTY, NEBRASKA

MARILYN BAUER,]
]
 Plaintiff,]
]
 v.]
]
 JESSIE K. RASMUSSEN,]
 Director of the]
 Department of Health and Human]
 Services, and the]
 NEBRASKA DEPARTMENT OF]
 HEALTH AND HUMAN SERVICES,]
]
 Defendants.]

Dkt Page
 CASE NO. 569-116
 PETITION FOR
 JUDICIAL REVIEW

COMES NOW the Plaintiff, and for her cause of action against the Defendants she alleges and states as follows:

1. The Plaintiff and her grandchildren are low-income residents of Nebraska who at all times relevant hereto resided in the City of Lincoln, Lancaster County, Nebraska. The Plaintiff and her grandchildren receive public assistance, and the Plaintiff participates in the "Employment First" welfare reform program.
2. This petition for judicial review is based upon the unlawful inclusion of financial assistance paid to the Plaintiff for service in the "AmeriCorps" program as income by the Defendants when they determined the Plaintiff's eligibility for cash assistance and related assistance under the "Employment First" welfare reform program. This action lowered the amount of cash assistance paid to the Plaintiffs, and put the subsistence needs of the Plaintiff and her family at risk.
3. Defendant Jessie K. Rassmussen is the Director of the Nebraska Department of Health and Human Services and is overseer of the poor, and as such, has the responsibility of determining the general principles and operation of public assistance programs in the State of Nebraska, including the "Employment First" program.
4. Defendant Nebraska Department of Health and Human Services

(NHHS) is an administrative agency of the State of Nebraska, its central offices located in Lincoln, Lancaster County, Nebraska, and administers the public assistance programs in the state of Nebraska, including but not limited to the " Employment First" program.

5. This court has jurisdiction to hear this matter pursuant to Neb. Rev. Stat. §84-917 (1992 Cumulative Supplement). Venue is proper in the District Court for Lancaster County, as the original action was taken and the administrative hearing was held in the Local Administrative Office of the NHHS, located in Lancaster County, Nebraska.
6. The " Employment First" program was created by the Welfare Reform Act, Neb. Rev. Stat. §§ 68-1708 to 68-1734 (1996 Cumulative Supplement). Among other purposes of the Welfare Reform Act, " the Legislature further finds and declares that [the goal of attaining economic self-sufficiency for welfare recipients] 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." Id. at Section 1709.
7. " Employment First" is the name chosen by the Defendants for the welfare reform program authorized by the Welfare Reform Act.
8. Eligibility for public assistance under the Welfare Reform Act, and the amount of assistance, is determined through an assessment of the income and resources available to the applicant family. The eligibility factors are outlined in the Welfare Reform Act, and include the following regarding income calculations: " Income earned by an individual or a family by working shall be treated differently than unearned income in determining the amount of cash assistance as follows... (c) Financial assistance or those portions of it intended for books, tuition, or other self-sufficiency-

related expenses shall not be counted in determining financial resources. Such assistance shall include, but not be limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, and education-related loans or other loans that are expected to be repaid." Id. at Section 68-1726(3)(C). This section took effect on July 19, 1996.

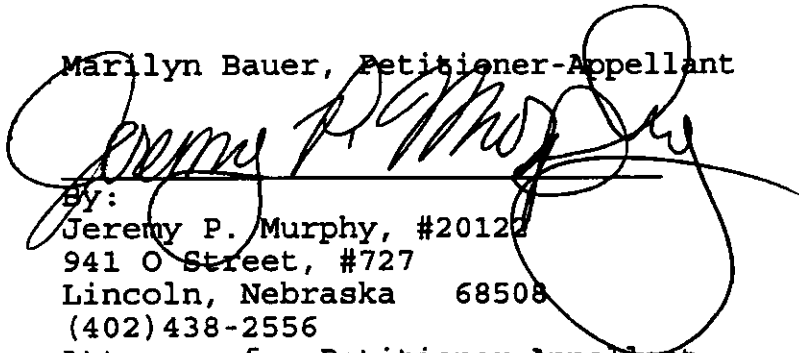
9. The federal Social Security Act provisions previously governing the use of federal funds for cash assistance programs were repealed in August, 1996, in the "Personal Responsibility and Work Opportunity Act of 1996," Pub.L.No. 104-193, 110 Stat. 2105 (1996). This repeal ended the federal government's direct oversight and involvement in the determination of eligibility for the state's cash assistance welfare program, including those governed by the Welfare Reform Act. The responsibility for determining eligibility factors was transferred to the State of Nebraska as part of Pub.L.No. 104-193, 110 Stat. 2105. This repeal of federal oversight and change in federal law took effect on August 22, 1996.
10. The Plaintiff is a student completing her post-secondary education pursuant to her responsibilities in the "Employment First" welfare reform program. While doing so, the Plaintiff has been providing community service, since June, 1997, through the "AmeriCorps-USA" program, pursuant to the National and Community Service Trust Act of 1993, Pub. L. No. 103-82. As such, she receives a stipend for her service, which is directly related to her educational program. At the close of her one-year of volunteer service, the Plaintiff will receive an additional educational award to apply towards student loans or tuition.
11. The "AmeriCorps" program promotes the participation of people who are economically disadvantaged, including those receiving public assistance.

12. In August, 1997, Plaintiff was informed that, despite previous assurances that her "AmeriCorps" stipend was not to be counted as earned income, the NDHHS was going to now count this stipend as earned income due to 1994 federal interpretations of treatment of the "AmeriCorps" stipend under the Social Security Act.
13. These interpretations by federal agency officials adopted by state officials were based upon federal law in existence in 1994, not on federal law as it existed after August 22, 1996.
14. There are no Nebraska state regulations addressing the "AmeriCorps" stipend and its treatment as "income" under the "Employment First" program.
15. This use of federal interpretations of law as it existed in 1994 caused a lowering of the amount of cash assistance available to assist the Plaintiff and her grandchildren.
16. The Plaintiff subsequently filed a timely appeal, and an administrative hearing was held on September 17, 1997.
17. On October 29, 1997, the Department issued a Finding and Order in this administrative appeal and affirmed the ruling of the local office as to the Plaintiff's calculation of income and inclusion of the "AmeriCorps" stipend as income in the determination of eligibility for "Employment First" cash assistance. Said Finding and Order is attached hereto and incorporated herein by this reference (Attachment A).
18. The rights of the Plaintiff and her household have been substantially prejudiced by the actions and inactions of the Defendants and the Defendant's Finding and Order.
19. The Finding and Order issued by Defendant Rasmussen violated state law as found in the Welfare Reform Act, Neb.Rev.Stat. Sections 68-1709 through 68-1734.

WHEREFORE, Plaintiff prays for the following relief:

- A. Review and reversal of the Defendants' decision contained in said Finding and Order;
- C. Award the Plaintiff her attorney's fees and court costs pursuant to Neb. Rev. Stat. §25-1802 (Reissue 1990); and,
- D. and any other relief that would be just and equitable.

Marilyn Bauer, Petitioner-Appellant



By:

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PRAECIPE

TO THE CLERK OF THE DISTRICT COURT:

Please issue Summons in this matter and deliver the same to the undersigned attorney for service via certified mail according to the law upon the Attorney General, P.O. Box 98920, Lincoln, Nebraska 68509-8920.

Marilyn Bauer, Petitioner-Appellant


By:

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