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## **STATEMENT OF THE CASE**

Jesusita Yolanda Arellano is a single mother of five children and one grandchild whose cash assistance benefits and medical coverage benefits were revoked by the Gering Local Office of the Nebraska Department of Health and Human Services for the month of November, 2000 for non-cooperation and non-compliance with her self-sufficiency contract. Appellant appealed the imposition of the Employment First Initial Sanction to the Nebraska Department of Health and Human Services (hereinafter, NDHHS or the Department) and an Administrative Law hearing was held on December 6, 2000 before Audie Wise, Designated Hearing Officer, who affirmed the imposition of the sanction revoking the benefits. The sanctioning decision was founded upon the Nebraska Welfare Reform Act Article 17, Section 68 and the promulgated rules under the act 468 NAC 2-020.04 through 468 NAC 2-020.09.

## **DISPOSITION OF ISSUES TRIED BELOW**

Appellant appealed the adverse decision of the NDHHS Hearing Officer to the District Court of Scotts Bluff County. On the 10<sup>th</sup> day of July, 2001, in a twelve page opinion, Robert O. Hippe, District Judge, made many findings in favor of the Appellant but ultimately affirmed the agency action withholding Appellant's ADC and medical benefits and implementing an Employment First Initial sanction. The District Court further found that the Department failed to fulfill its obligations under the Self-Sufficiency contract, their own regulations and the Nebraska Welfare Reform Act. The District Court found that the legal consequence of such a failure would be an extension of Appellant's benefit period for another twenty-four months. But the District Court found that it was without subject matter jurisdiction to enforce the contract or the lack thereof and oblige the agency to extend services to Appellant for an additional twenty-four

months.

## **JURISDICTION**

This appeal is from the final order of the District Court of Scotts Bluff County, Nebraska dated July 10, 2001. Appellant filed her Notice of Appeal with the Nebraska Court of Appeals on August 7, 2001 and the appeal was docketed on August 9, 2001. Jurisdiction to hear this appeal is conferred upon this Court by Neb. Rev. Stat. §84-918(3) (Reissue of 1999) and by Neb. Rev. Stat. §25-1911 et. seq. (Reissue of 1995).

## **STANDARD OF REVIEW**

A final order rendered by a district court in a judicial review pursuant to the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. Neb. Rev. Stat. §84-918(3) (Reissue 1999); Wolgamott v. Abramson, 253 Neb. 350, 570 N.W.2d 818; Martin v. Nebraska Dept. Of Public Institutions, 7 Neb. App. 585, 584 N.W. 2d485 (1998).

When reviewing an order of a district court under the Administrative Procedure Act for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* When reviewing a questions of law, an appellate court reaches a conclusion independent of the lower court's ruling. J.C.Penney Co. v. Balka, 254 Neb. 521, 577 N.W.2d 283 (1998)

Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below. Central States Foundation v. Balka, 256 Neb. 369, 590 N.W.2d 832 (1999); Neb.Account. & Disc. v. Citizens for Resp. Judges, 256 Neb. 95, 588 N.W.2d 807 (1999).

"When a jurisdictional question does not involve a factual dispute, determination of a jurisdictional issue is a matter of law, which requires an appellate court to reach a conclusion independent from the trial court's conclusion on the jurisdictional issue." Becker v. Nebraska Acct. & Disclosure Comm., 249 Neb. 28, 29, 541 N.W.2d 36 (1995) (citations omitted).

### **ASSIGNMENTS OF ERROR**

- I. The District Court erred in holding that the Appellee was not on notice that the District Court proceeding involved issues of contract enforcement.
- II. The District Court erred in holding that it did not have subject matter jurisdiction to hear issues of contract enforcement.
- III. The District Court erred in sanctioning the Appellant when there was no valid self-sufficiency contract in place between the Appellant and the Appellee.

### **PROPOSITIONS OF LAW**

1. The Nebraska Legislature created the Welfare Reform Act (WRA) with the primary purpose of providing 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. Neb.Rev.Stat. §68-1709 (Reissue 1996).
2. A self-sufficiency contract is a legal binding document to be signed by the client and by the case manager representing the [Department of Health and Human Services]. 468 NAC 2-020.05 (effective Dec. 27, 1997).
3. Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the

terms of the self-sufficiency contract, or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. Neb.Rev.Stat. §68-1723 (Reissue 1996).

4. Employment First Self-Sufficiency Program participants have the right to mediation and/or appeal-
  1. The determination by the Department that the client has not complied with the terms of the Self-Sufficiency Contract; or
  2. The client's contention that the Department has not complied with the terms of the Self-Sufficiency Contract.

468 NAC 2-020.08C (effective Dec. 27, 1997).

5. When a jurisdictional question does not involve a factual dispute, determination of a jurisdictional issue is a matter of law, which requires an appellate court to reach a conclusion independent from the trial court's conclusion on the jurisdictional issue. Becker v. Nebraska Acct. & Disclosure Comm., 249 Neb. 28,29, 541 N.W.2d 36 (1995) (citations omitted).
6. Subject matter jurisdiction is the power of a tribunal to hear and determine a case of general class or category to which the proceedings in question belong and to deal with the general subject matter involved. Honda Cars of Bellevue v. American Honda Motor Co., 261 Neb. 923 (2001).
7. Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Neb.Rev.Stat. §84-917(1).

8. On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of the section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction. Concordia Teachers College v. Neb. Dept. Of Labor, 252 Neb. 504, 563 N.W.2d 345 (1997). *See also* Neb.Rev.Stat. §84-917(2)(a).
9. Statutory interpretation is a matter of law in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the determination made by the court below. Central States Foundation v. Balka, 256 Neb. 369, 590 N.W. 2d 832 (1999); Neb Account. & Disc. V. Citizens for Resp. Judges, 256 Neb. 95, 588 N. W. 2d 807 (1999).
10. Based on the results of the comprehensive assets assessment under section 68-1718, the applicant and the 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. Neb.Rev.Stat. §68-1719 (Reissue 1996).
11. Agreement or mutual assent is essential to a contract. Each party must have the same understanding as to terms of agreement. If this assent is wanting on the part of one who signs a contract, his or her act has no more efficacy than if it had been done under duress or by a person of unsound mind. A mere consent in writing will not automatically make an agreement valid. CJS Contracts § 35.
12. The only way to lift a sanction is to engage in the activity to which s/he previously agreed



in the Self-Sufficiency Contract or in another activity agreed upon in the Contract for a period of one calendar week.” 468 NAC 2-020.08B2f(3) (effective July 10, 2000).

13. 2-020.08B2f(2) Length of Sanction: In the case where the caretaker relative is a parent, the sanctions will be as follows:

1. The first sanction lasts one month or until the family cooperates, whichever is longer.
2. The second sanction will last for three months or until the failure to cooperate ceases, whichever is longer.
3. The third sanction may not be imposed without a second-level supervisory review. This sanction will last for 12 months or the remainder of the 48 month period, whichever is shorter. 468 NAC 2-020.08B2f(2) (effective July 10, 2000).

14. When the Self-Sufficiency Contract is signed, the 24 month time limit on the receipt of cash assistance begins, effective the first of the month following the month of signature. 468 NAC 2-020.05 (effective Dec. 27, 1997).

### **STATEMENT OF FACTS**

Yolanda Jesusita Arellano, hereafter referred to as Appellant, is a thirty-eight year old resident of Scottsbluff. She is a single parent raising five (5) teenage children, 16,14,13,12,10 and 11-month-old grandson (E:59 21-22). Appellant’s driver’s license was suspended for 15 years in 1991 (Exhibit 14) for repeated convictions of Driving Under the Influence of alcohol (E:10 10-11). The Appellant has received Aid to Dependant Children (ADC) cash assistance on

and off since 1991.

In February of 1999, she was eligible for ADC cash assistance under the Nebraska Welfare Reform Act (WRA). As part of her participation in the ADC Employment First program, a program for individuals who are eligible to receive cash assistance and are capable of being employed, Appellant signed three documents. First, the Appellant filled out and signed the Employment First Participation Assessment. (Exhibit 16). This assessment is to be used by the caseworker to identify the applicant families strengths and barriers, and develop an individualized self-sufficiency contract. Neb.Rev.Stat. §68-1718 (Reissue 1996).

On February 1, 1999 Appellant signed an Employment First Self-Sufficiency Contract, which is a standard form contract detailing the obligations of both the Employment First participant family and the Nebraska Department of Health and Human Services (NDHHS). (Exhibit 15). Finally, on August 6, 1999 the Appellant signed an Employment First Service Plan. (Exhibit 3). This Service Plan is to be used by the caseworker and the family to set up an individualized process that will lead the family on a path to self-sufficiency. The Appellant's Service Plan was "scantily completed by the Case Manager." *District Court Opinion*, p. 9. The Appellee did not set a short-term goal for the Appellant and the information listed under "Tasks" was vague and inconclusive." *District Court Opinion*, p. 9.

The Appellant's Service Plan (Exhibit 3) listed four items under the "Tasks/Planned Hours/Services Required" section. The Appellant was to "check on license, computer classes, JTPA, and Doctors note excusing from work." (Exhibit 3). There is nothing in the Plan that says "[Appellant] needs to meet with anyone at Goodwill Industries or Workforce Development." *District Court Opinion*, p. 10. The Appellant received the application for reinstatement of

Driver's License, and had begun to gather the necessary materials to complete the application, the computer training classes were completed by the time the Administrative Hearing was held, and the JTPA was fulfilled. *District Court Opinion*, p. 2. "...the Contract did not stipulate that the [reinstatement] forms were to be completed certainly not by a certain date." District Court Opinion, p. 10. The Doctor's note was not turned in, but a prescription for rehabilitation three times a week for a knee injury was received. (Exhibit 13). The Appellant suffers from radiculopathy, which prevents Appellant from walking great distances. *District Court Opinion*, p. 2.

The Appellant's lack of adequate transportation was noted numerous times by the Appellant's case worker. (Exhibit 2). "Due to a lack of transportation, Appellant has missed scheduled appointments with Karen Evens (Workforce Development) and Tanya Cherry (Goodwill Industries)." *District Court Opinion*, p. 2. The Appellant, prior to the sanction being imposed, received two WP-5 warnings (Employment First Notice of Failure to Cooperate). Conciliation meetings were held, and sanctions were not imposed. (Exhibit 4; Exhibit 5).

Appellant searched for employment opportunities on her own while participating in the Employment First Program. *District Court Opinion*, p. 4. The Appellant was employed by Safeway for a full time position. "In terms of reliance on Ms. Cherry for employment opportunities, Appellant was informed Ms. Cherry would look into jobs within walking distance of the Appellant, however, the Appellant had not heard from her since that conversation." *District Court Opinion*, p. 4.

"Appellant has followed her portion of the Self-Sufficiency Contract. She encourages her children to attend school, is receiving health benefits under the Act, and is receiving child

support which is being turned over to the state in order for her to receive the ADC grant. These were Appellant's obligations under the Contract." *District Court Opinion*, p. 9.

A Notice of Action was sent to the Appellant dated October 20, 2000. (Exhibit 9). The Appeal to Sanction Notice was filed on October 25, 2000. The Administrative Hearing was held on December 6, 2000 and the adverse Administrative decision was issued on December 21, 2000. The Appeal from the Administrative Hearing was filed with the District Court of Scotts Bluff County on January 19, 2001, pursuant to the Administrative Procedures Act (APA), Neb.Rev.Stat §84-917 (Reissue 1996), and oral arguments were heard on June 19, 2001. The Scotts Bluff County District Court found that, while there was no valid self-sufficiency contract between the Appellant and the Appellee, the Appellee was not on notice that the proceedings would involve issues of contract enforcement, and that it did not have subject matter jurisdiction to decide issues of contract enforcement. *District Court Order*, p.12. Moreover, the District Court upheld the sanction against the Appellant. *Id.*

## **ARGUMENT**

### **I. THE DISTRICT COURT ERRED IN HOLDING THAT IT DID NOT HAVE SUBJECT MATTER JURISDICTION TO DECIDE ISSUES OF CONTRACT ENFORCEMENT.**

The Nebraska Legislature created the Welfare Reform Act (WRA) with the primary purpose of providing "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." Neb.Rev.Stat. §68-1709 (Reissue 1996). This goal is to be achieved through the use of individualized assessments and individualized self-sufficiency contracts. *Id.*

The self-sufficiency contract is the cornerstone of the entire Aid to Dependent Children (ADC) cash assistance program. Here, nevertheless, the District Court held that the “[Appellee] had no notice that [contract enforcement] was the object of this court proceeding, and the court concludes that it is without subject matter jurisdiction to enforce an agency obligation to provide services to Appellant for an additional twenty-four months.” *District Court Opinion*, p. 12. Because the WRA and the ADC program revolve around the establishment, evaluation, and revision of the self-sufficiency contract, the Appellee was clearly on notice that contract enforcement issues would be part of the District Court proceedings. In addition, because contract enforcement issues were a part of the record from the beginning, the District Court clearly had subject matter jurisdiction to hold that the contract was invalid and that the Appellee had not fulfilled their obligations under the contract, their regulations, and the WRA.

**A. THE APPELLEE WAS ON NOTICE THAT ISSUES OF CONTRACT ENFORCEMENT WERE THE OBJECT OF THE DISTRICT COURT PROCEEDING.**

The Employment First program revolves around the development and enforcement of a recipient family’s self-sufficiency contract. As the Appellee’s regulations point out, a self-sufficiency contract is a “...legal binding document to be signed by the client and by the case manager representing the [Department of Health and Human Services]...” 468 NAC 2-020.05 (effective Dec. 27, 1997). Because of the legally binding nature of these self-sufficiency contracts, all administrative appeal hearings involving self-sufficiency contracts involve basic contract issues.

For example, a recipient family can only be “sanctioned” (penalized according to a certain regulatory structure) if there is a valid self-sufficiency contract in place. *See*

Neb.Rev.Stat. §68-1723 (Reissue 1996); Jones v. Department of Health and Human Serv., State of Nebraska, CI 00-2511 (Lancaster County Dist. Ct., J. Merritt, March 1, 2001); 468 NAC 2-005.08; 468 NAC 2-005.01B. Therefore all appeals of a sanction require the hearing office to first determine that a valid and binding self-sufficiency contract exists between the recipient family and the Department.

Further, the WRA specifically grants recipient families the right to an administrative appeal on contract enforcement issues:

Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract, or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. Neb.Rev.Stat. §68-1723 (Reissue 1996).

The Appellee's regulations also recognize that the only grounds on which an ADC recipient sanctioned under a self-sufficiency contract for non-participation can appeal is on contract enforcement grounds:

Employment First Self-Sufficiency Program participants have the right to mediation and/or appeal-

1. The determination by the Department that the client has not complied with the terms of the Self-Sufficiency Contract; or
2. The client's contention that the Department has not complied with the terms of the Self-Sufficiency Contract.

468 NAC 2-020.08C (effective Dec. 27, 1997).

Moreover, the Appellant's self-sufficiency contract is part of the record and the testimony at the administrative hearing revolved around contract issues. (Exhibit 15; Exhibit 3). The hearing testimony specifically addressed the sufficiency of the terms of the contract and whether the appellant had met her obligations under the contract. (E:38-45). Also, the hearing testimony focused on whether the Appellee had followed the proper procedures for contract development. (E:52 8-15). In addition, whether the Appellee had provided the services required under a self-sufficiency contract, was covered by the testimony. (E:26-28).

The WRA and the Appellee's regulations make the self-sufficiency contract the focal point of the ADC program. The only appeals authorized by the WRA and the Appellee's regulations for a recipient family sanctioned under a self-sufficiency contract for non-participation are appeals on issues of contract enforcement. The Appellant appealed issues related to self-sufficiency contract enforcement. Finally, the record from the administrative hearing centered around issues of contract enforcement. For all these reasons, the Appellee was clearly on notice from the beginning that this case, and the appeal to the District Court, centered around issues of contract sufficiency and enforcement.

**B. THE DISTRICT COURT DID HAVE SUBJECT MATTER JURISDICTION TO DECIDE ISSUES OF CONTRACT ENFORCEMENT.**

There is ample evidence on the record and in the exhibits to support the findings of fact of the District Court that the self-sufficiency contract was not valid. What is argued here is that the District Court erred in matters of law. The District Court erred in ultimately ruling that, despite its conclusions as to the self-sufficiency contract, it did not have subject matter jurisdiction to decide matters of contract enforcement. In this case the Court erred in ruling that

it did not have subject matter jurisdiction to declare the contract between the Appellant and the Appellee to be invalid. “When a jurisdictional question does not involve a factual dispute, determination of a jurisdictional issue is a matter of law, which requires an appellate court to reach a conclusion independent from the trial court’s conclusion on the jurisdictional issue.” Becker v. Nebraska Acct. & Disclosure Comm., 249 Neb. 28,29, 541 N.W.2d 36 (1995) (citations omitted).

Because issues of contract enforcement are implicit in a discussion about the imposition of a sanction, it is clear that the administrative hearing officer had subject matter jurisdiction to rule whether there was a valid self-sufficiency contract and whether a sanction for non-compliance should be imposed. “Subject matter jurisdiction is the power of a tribunal to hear and determine a case of general class or category to which the proceedings in question belong and to deal with the general subject matter involved.” Honda Cars of Bellevue v. American Honda Motor Co., 261 Neb. 923 (2001).

The record of the administrative hearing is replete with testimony and exhibits regarding the self-sufficiency contract and whether or not the recipient had performed her obligations under that contract. The record of the agency consists of “transcripts and bill of exceptions of the proceedings before the agency and facts capable of being judicially noticed pursuant to Neb. Evid. R. 201.” Slack Nursing Home v. Department of Social Servs., 247 Neb. 452, 462, 528 N.W.2d 285, (1995) (citing Dairyland Power Co-op v. State Bd. Of Equal 238 Neb. 696 (1991)).

In this case, the testimony during the hearing addressed the contents of the contract, whether the appellant had met her obligations under the contract, and whether the state had met its obligations under the contract. The contract, the service plan, and the assessment were



exhibits offered and accepted during the hearing. Neb.Rev.Stat. §68-1723 grants the Department of Health and Human Services administrative hearing officer subject matter jurisdiction to hear issues of contract enforcement. Section 68-1723 (3) states:

“Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. It is the intent of the Legislature that an independent mediation appeal process be developed as an option to be considered.

Neb.Rev.Stat. §68-1723(3) (Reissue 1996). This statute was implemented by the adoption of a regulation, 468 NAC 2-020.08C which essentially repeats the statute:

468 NAC 2-020.08C Right to Appeal: Employment First Self-Sufficiency Program participants have the right to mediation and/or appeal the determination by the Department that the client has not complied with the terms of the Self-Sufficiency Contract; or the client’s contention that the Department has not complied with the terms of the Self-Sufficiency Contract. (Effective 12/27/97).

The administrative agency clearly had subject matter jurisdiction over this appeal. It had proper notice of the appeal, a date was scheduled to hear the appeal by telephone, an administrative hearing officer was appointed, all proper parties appeared at the hearing and testified, the testimony was taken relative to the issues on appeal, documents were marked and received, and an administrative decision was made.

If the agency had subject matter jurisdiction then all that is necessary to confer subject

matter jurisdiction to the District Court is to conform to section 84-917 of the Administrative Procedure Act. Neb.Rev.Stat. §84-917. Section 84- 917 sets out the requirements for a district court to have subject matter jurisdiction over an appeal from an administrative hearing: “any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act.” Neb.Rev.Stat. §84-917(1).

“On an appeal from an adverse decision of an administrative agency, subsection (2)(a) of the section requires that a summons be served within 30 days of the filing of a petition for review as a prerequisite to the exercise by the district court of its subject matter jurisdiction.” Concordia Teachers College v. Neb. Dept. Of Labor, 252 Neb. 504, 563 N.W.2d 345 (1997). *See also* Neb.Rev.Stat. §84-917(2)(a). Appellant properly conformed to the requirements of this section.

The District Court conducted a full de novo review of the record and made findings independent of the findings of the administrative hearing officer as is proper under Slack Nursing Home v. Department of Social Servs., 247 Neb. 452, 528 N.W. 2d 285 (1995). Clearly the District Court had subject matter jurisdiction to hear the contract issues and the issues were sufficiently raised at the administrative hearing for the District Court to consider them under a true de novo on the record review. To conclude, the record is clear that the District Court did in fact have jurisdiction to hear and decide the validity of the Appellant’s self-sufficiency contract.

**II. THE DISTRICT COURT ERRED IN SANCTIONING THE APPELLANT WHEN THERE WAS NO VALID SELF-SUFFICIENCY CONTRACT UNDER THE WELFARE REFORM ACT.**

Statutory interpretation is a matter of law in connection with which an appellate court has

an obligation to reach an independent conclusion irrespective of the determination made by the court below. Central States Foundation v. Balka, 256 Neb. 369, 590 N.W. 2d 832 (1999); Neb Account. & Disc. V. Citizens for Resp. Judges, 256 Neb. 95, 588 N. W. 2d 807 (1999). The District Court erred in its interpretation that the WRA allowed the Appellant to be sanctioned when there was no valid self-sufficiency contract in place between the Appellant and the Appellee.

**A. THE DISTRICT COURT WAS CORRECT IN HOLDING THAT THE APPELLANT DID NOT HAVE A VALID SELF-SUFFICIENCY CONTRACT.**

The District Court was correct in its determination that the Appellant's self-sufficiency contract was invalid. The WRA sets out a specific contract formation process that, if followed, will lead to an individualized plan for helping a needy family get up and out of poverty and on a path to true self-sufficiency.

“Based on the results of the comprehensive assets assessment under section 68-1718, the applicant and the 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....”

Neb.Rev.Stat. §68-1719 (Reissue 1996). In this case, the Appellee failed to follow this process.

The recipient family's responsibility in the contract formation process is to complete a comprehensive assessment form, which the Appellant did. (Exhibit 16). The caseworker's responsibilities are to work with the family to set short term goals and create an Employment First Service Plan, which is incorporated into the self-sufficiency contract by reference, and

details what the recipient family needs to do to reach the short term goal. (Exhibit 3). In addition, the caseworker is to chart the status/progress of the recipient family as they work to achieve their goals. If the families circumstances change the Service Plan can be revised or updated at any time. *See* 468 NAC 2-020.05 (effective Dec. 27, 1997). This process of goal setting and evaluation is to continue as long as the family participates in the ADC program.

The Appellee failed to set a short-term goal for the Appellant. (Exhibit 3). The information contained in the Service Plan was vague and inconclusive and was never updated to reflect steps the Appellant had taken, or revised to include new responsibilities. (E:38-41). The “Objective/Expected Results” section was left blank, as was the “Status/Progress” section. (Exhibit 3). The minimal efforts made by the Appellee to individualize the contract through an Employment First Service Plan were ineffective at best. Most of the sections of the form were left blank by the caseworker, the terms included were vague, and there is no evidence that the plan was ever updated to reflect the progress of the Appellant. (Exhibit 3). As the District Court found:

*In sum, an effective Self-Sufficiency Contract was never developed.* Development of the Contract was to take the efforts of both parties. The Appellant completed a participation Assessment. This was one of the tools the case manager was to utilize in developing an **individualized** plan for the Appellant. Instead, a **form** contract was completed and an addendum page was added six months later that was slightly more individualized although not complete or detailed. As a result, if the Court attempts to enforce this Contract, it would leave both the Appellant and Appellee in the same predicament they started partially compliant with an ineffective contract.

*District Court Opinion*, p. 12 (emphasis added).

Essentially there was no mutual assent to the terms of the contract.

“Agreement or mutual assent is essential to a contract. Each party must have the same understanding as to terms of agreement. If this assent is wanting on the part of one who signs a contract, his or her act has no more efficacy than if it had been done under duress or by a person of unsound mind. A mere consent in writing will not automatically make an agreement valid.” CJS Contracts § 35.

In this case, the terms of the contract were vague and unclear and the Appellee continually placed requirements on the Appellant that were not contained in the self-sufficiency contract. It is clear that the Appellee and the Appellant had a different understanding of what was required by the term “Check on License.” This lack of mutual assent is grounds for rescission. In addition, the contract process created by the WRA was not followed. Forms were left incomplete and the Appellant never received proper case management services. *See* Neb.Rev.Stat. §68-1722 (Reissue 1996).

The District Court was correct that the Appellant never had a valid contract under the WRA and the Appellee’s regulations. The clear intent of the legislature was that the self-sufficiency contracts not be a generic standard form, but rather that they would be individualized to meet the unique needs of each family. *See* Neb.Rev.Stat. §68-1709 (Reissue 1995). In this case, the Appellant’s self-sufficiency contract was nothing more than a standard form contract that was never individualized to address the Appellant’s specific barriers to self-sufficiency. (Exhibit 15).

**B. WHEN THERE IS NO VALID CONTRACT, THE PROPER PENALTY**

## **FOR NON-PARTICIPATION IS TO CLOSE THE CASE FILE.**

While the District Court correctly found that the contract was invalid, the District Court did not impose the proper penalty for non-participation. 468 NAC 2-020.08 (effective Dec. 27, 1997), provides that “Some examples of failing to participate include, but are not limited to- ...failing to keep appointments with the case manager or with another agency providing service to the client....” If a family acting under a self-sufficiency contract fails to participate, under 468 NAC 2-020.02A, they are allowed the opportunity to show good cause as to why they did not participate. If good cause is not shown, a sanction can be imposed under 468 NAC 2-020.02B1.

When there is no valid contract, as in this case, the proper remedy is that the family is no longer eligible for ADC cash assistance and their case file should be closed. This is illustrated by a regulating note found at the end of 468 NAC 2-020.08: “If the client has not yet signed a Self-Sufficiency Contract, see 468 NAC 2-005.01B.” The point of this note is that if the family does not have a valid self-sufficiency contract, they cannot be sanctioned for non-participation. 468 NAC 2-005.01B makes this clear:

If the parent in an ongoing ADC case has not yet signed an EF [Employment First] self-sufficiency contract and terminates employment or refuses a bona fide offer of employment without good cause, the unit *is ineligible* for a calendar month, taking into account adequate and timely notice. *Once an EF self-sufficiency contract is signed, EF sanctions are imposed* (see 468 NAC 2-020.08).

468 NAC 2-005.01B (effective Oct. 7, 1998) (emphasis added).

While 468 NAC 2-005.01B only specifically references quitting employment without cause, the implication is that participants in the EF program should not be sanctioned if they are

not operating under a valid self-sufficiency contract. Additionally, the only way to lift a sanction is to “engage in the activity to which s/he previously agreed in the *Self-Sufficiency Contract* or in another activity agreed upon in the *Contract* for a period of one calendar week.” 468 NAC 2-020.08B2f(3) (effective July 10, 2000) (emphasis added). If the family does not have a valid self-sufficiency contract, there is no way for them to lift the sanction. Being sanctioned in this fashion effectively puts the offending family into a welfare eligibility catch 22: to gain benefits you must cooperate with a self-sufficiency contract that does not exist. This clearly indicates that a sanction, of the type anticipated in 468 NAC 2-020.08, was never intended to be imposed upon clients who do not have a valid self-sufficiency contract.

In this case, the Appellant does not have a valid contract. The proper remedy in this situation is to treat the Appellant as if she had never signed a self-sufficiency contract. There are several stages of participation in EF that take place before a self-sufficiency contract is signed. The application, assessment, and contract negotiations all take place prior to the signing of a self-sufficiency contract. During these early stages, families are considered participants in the EF program, but are not bound to a contract. They are bound, however, to the eligibility requirements:

CHAPTER 2-000 ELIGIBILITY REQUIREMENTS: For families with individuals who are determined to be employable, there is no time limit. The following elements of eligibility must be met:

1. Face to face interview (see 468 NAC 2-001);
2. U.S. citizenship or alien status (see 468 NAC 2-002 ff.);
3. Nebraska residence (see 468 NAC 2-003 ff.);

4. Social Security number (see 468 NAC 2-004 ff.);
5. Cause of unemployment (see 468 NAC 2-005 ff.);
6. Relative responsibility (see 468 NAC 2-006 ff.);
7. Age requirement for a dependent child (see 468 NAC 2-007 ff.);
8. Resources (see 468 NAC 2-008 ff.);
9. Income (see 468 NAC 2-009 ff.);
10. Cooperation with the Child support enforcement office (see 468 NAC 2-019 ff.);
11. *Cooperation with Employment First requirements* (see 468 NAC 2-020 ff.);
12. Cooperation in obtaining third party medical payments (see 468 NAC 2-021);
13. Other related requirements (see 468 NAC 2-022 ff.).

468 NAC 2-000 (effective Oct. 7, 1998) (emphasis added).

In this case, the Appellant missed several appointments and was found by the District Court to be in violation of 468 NAC 2-020.08. *District Court Opinion*, p. 11. However, because the Appellant did not have a valid and binding self-sufficiency contract in place, the proper remedy should have been to find the Appellant ineligible for assistance and her case file closed.

While it is true that closing the case file has the effect of cutting off benefits to the family, the sanction is a much more punitive penalty. When a family's case is closed, they lose their benefits, but have the right to reapply for assistance at any time. *See* 468 NAC 1-007 (effective Sept. 8, 1993). Conversely, when a family is sanctioned, they not only lose benefits, but they



lose them for the entire sanction period no matter when actions are taken by the family to lift the sanction. As the District Court noted:

Sometimes punishment can be used as a motivational factor to ensure recipients comply with the requirements of their contracts. However, removing the financial assistance needed by the recipient without allowing for resumption of assistance in less time than is stipulated in the sanction removes the much needed income from the family as a whole and punishes the entire family unit.

*District Court Opinion*, p. 11-12. In addition, the sanction penalties increase each time a sanction is issued:

2-020.08B2f(2) Length of Sanction: In the case where the caretaker relative is a parent, the sanctions will be as follows:

1. The first sanction lasts one month or until the family cooperates, *whichever is longer*.
2. The second sanction will last for three months or until the failure to cooperate ceases, *whichever is longer*.
3. The third sanction may not be imposed without a second-level supervisory review. This sanction will last for 12 months or the remainder of the 48 month period, whichever is shorter.

468 NAC 2-020.08B2f(2) (effective July 10, 2000)(emphasis added). When the Appellee fails to execute an individualized and valid self-sufficiency contract, the appropriate penalty for a family that is not participating is to find them ineligible and close the case.

The District Court held that:

[t]he record does show a failure of the Department of Health and Human Services to fulfill its obligations under the contract, their regulations and the Nebraska Welfare Reform Act. The contract and the Nebraska Welfare Reform Act do say that a consequence of that failure is an extension of Appellant's benefit period for another twenty-four months." *District Court Opinion*, p. 11.

This would be the appropriate remedy had the contract been valid and the Appellee breached the contract. However, in this case there was never a valid contract.

Moreover, because the Appellant was never operating under a valid contract, her time clock never started on her twenty-four months of eligibility to receive ADC cash assistance. According to the Appellee's regulations, "When the Self-Sufficiency Contract is signed, the 24 month time limit on the receipt of cash assistance begins, effective the first of the month following the month of signature." 468 NAC 2-020.05 (effective Dec. 27, 1997). Therefore, under the WRA and the implementing regulations, the Appellant still retains twenty-four months of eligibility for ADC cash assistance to begin once an effective self-sufficiency contract is developed.

### **CONCLUSION**

For all the above reasons, the Appellant asks that the decisions of the District Court that the Appellee was not on notice that issues of contract were part of the proceeding, that the Court lacked subject matter jurisdiction to hear issues of contract enforcement, and that the Appellant could be sanctioned without a valid contract be reversed.

Date: \_\_\_\_\_

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### **CERTIFICATE OF SERVICE**

This is to certify that two copies of this Appellant Brief were served on counsel for the Nebraska Department of Health and Human Services, Royce Harper, Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509, via regular first class mail on \_\_\_\_\_.

By: \_\_\_\_\_  
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