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Marilyn Bauer, )  
 )  
Appellant, )  
 )  
v. )  
 )  
Jessie K. Rasmussen, Nebraska )  
Department of Health and )  
Human Services, )  
 )  
Appellee. )

No. S-99-714.

JAN 04 2001

CLERK  
NEBRASKA SUPREME COURT  
COURT OF APPEALS

MEMORANDUM OPINION

— — — — — W E — — — — —  
JUDGMENT ON APPEAL

RECEIVED

HENDRY, C.J., WRIGHT! CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-

LERMAN, JJ.

JUN 12 2001

HENDRY, C.J.

NEBRASKA SUPREME COURT  
ON POVERTY LAW

INTRODUCTION

Bauer appeals from the district court's decision affirming the determination of the Department of Health and Human Services (DHHS). DHHS concluded that under **Neb.** Rev Stat. § 68-1726 (Cum. Supp. 2000) of Nebraska's Welfare Reform Act, **Bauer's AmeriCorps U.S.A.** stipend should be included as income in determining her family's level of cash benefits. This determination reduced her monthly benefit by \$71.

FACTUAL BACKGROUND

At the time this litigation arose, the plaintiff, Marilyn Bauer, was an unemployed full-time college student pursuing a bachelor's degree in human relations. Bauer also had custody of her three grandchildren. In February 1997, **Bauer** applied for and received various benefits from the State on behalf of the

grandchildren, including cash benefits. Her initial benefit was \$364 monthly.,

In the summer of 1997, Bauer had the opportunity to enlist in a 1-year service contract with AmeriCorps U.S.A., a federal program designed to **provide** public service work experience for students while they are pursuing higher education. Bauer was offered a position as an AmeriCorps crisis intervention worker with the housing support team **at the** Lincoln Action Program. In exchange for her services, Bauer was to receive a yearly stipend of \$7,495 and, after the successful completion of her 1-year commitment, Bauer would also receive an educational grant of \$4,725 to be applied to either current tuition payments or outstanding student loans. Bauer consulted her caseworker, Karen Parde, who informed Bauer that the AmeriCorps stipend, roughly \$620 per month, would not be considered as income in determining her level of benefits. Bauer then signed the 1-year contract with AmeriCorps U.S.A.

At the same time Bauer also signed an Employment First **self-sufficiency** contract with the State. As a result, the amount of **Bauer's** state benefit was increased to \$435 per month and she qualified for medical insurance. **Bauer's obligations** under her self-sufficiency contract were to fulfill the terms of her AmeriCorps U.S.A. contract, which required Bauer to carry medical insurance coverage on herself.

In August 1997, Parde contacted Bill Davenport, a welfare 'benefits specialist, regarding some questions on an unrelated

matter in **Bauer's** case. During this conversation Davenport informed Parde that **Bauer's** AmeriCorps U.S.A. stipend must be included as income in calculating the family's level of cash benefits. After this discussion Parde recalculated the family's monthly benefit, which reduced the monthly benefit back to \$364, and disqualified Bauer from health insurance coverage.

Bauer timely appealed this determination and a hearing was held before DHHS on September 17, 1997. At the hearing, Parde testified that AmeriCorps **"is** a way for people to get work experience. While they're getting that work experience to also have their,, [sic] get help with their living expenses and student **loans."** Parde further testified that when Bauer initially asked her about becoming a AmeriCorps U.S.A. volunteer, Parde looked in the DHHS regulations and found that the regulations did not specifically discuss how to treat the AmeriCorps U.S.A. stipend. Parde then discussed the issue with a more experienced caseworker, who told her that AmeriCorps stipends were not counted as income. **Parde's** understanding changed in August 1997, however, after Davenport referred Parde to a DHHS internal memorandum discussing AmeriCorps U.S.A. stipends.

This internal memorandum, dated September 24, 1994, is titled "Treatment of Allowances and Other Benefits Under the National and Community Service Trust Act of **1993.**" The National Community and Service Trust Act was a federal law reenacting and expanding the AmeriCorps U.S.A. and AmeriCorps VISTA programs. This memorandum

was issued **before** the Welfare Reform Act (**WRA**) had been implemented in Nebraska by **DHHS**.

The September **1994** typed memorandum contains a handwritten notation stating that stipends from AmeriCorps VISTA are not counted as income in determining ADC benefits, while stipends from AmeriCorps U.S.A. are counted **as** income. An internal office communication titled "Questions for the **Day,**" dated April 4, 1996, reiterates that AmeriCorps VISTA stipends are not counted as income, while AmeriCorps U.S.A. stipends are counted as income. The 1996 communication bases its information specifically on the September 1994 memorandum.

Parde testified that the decision to count the AmeriCorps U.S.A. stipend as income was based on the September 1994 memorandum because the **WRA** regulations adopted by **DHHS** did not specifically discuss how AmeriCorps U.S.A. stipends were to be treated.

The controlling law used to determine what constituted income for purposes of calculating **Bauer's** cash benefits in August 1997 was Neb. Rev. Stat. **§** 68-1726 (Cum. Supp. 2000). Therefore, the issue before this court is the interpretation of **§** 68-1726, which states in relevant part:

(3) Income received by family members, except income earned by children attending school, shall be considered in determining total family income. 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:

(a) Earned income shall be counted in determining the level of cash assistance after disregarding an amount of earned income equal to twenty percent-of earned income or other incentives to work;

(b) Financial assistance provided by other programs that support the transition to economic self-sufficiency shall **be** considered to the extent the payments are intended to provide for life's necessities; and

(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.

To aid in interpreting § 68-1726, **DHHS** adopted regulations concerning **WRA** income determination, which at the time this issue arose were found at 468 NAC 7-019.09 A and 468 **NAC 7-019.09 M**. Regulation 468 NAC 7-019.09 A states in part, "[t]he following types of income are disregarded . . . . 13. Any student financial assistance intended for books, tuition, or other self-sufficiency related use for a student."

DHHS sets out "a listing of some income types and treatment," found in 468 NAC 7-019.09 M, which discusses how to compute the family budget. various types of monetary sources are listed, with an explanation stating whether the money is counted as income or **disregarded**. **AmeriCorps** U.S.A. stipends are not discussed. However, . for example, the regulation does state the following:

- |                                      |   |
|--------------------------------------|---|
| 11. Rental income from real property | <b>11. Consider</b> as earned income. . . . |
| . . . .                              |   |
| 21. Any student financial assistance | 21. Disregard                               |
| . . . .                              |   |
| 31. Payments to VISTA volunteers     | 31. Disregard                               |

At the hearing before **DHHS**, Bauer argued that under **§ 68-172613) (c)**, her **AmeriCorps** stipend was "**financial** assistance or those portions **of** it intended for books, tuition, or other self-sufficiency-related. expenses." **DHHS** disagreed. In its order dated October 29, 1997, **DHHS** stated:

Marilyn Bauer is in the **AmeriCorps** USA Program whereby as of September 27, 1994, the income from that Program was counted as earned income for ADC purposes with the appropriate earned income disregards (Exhibit 7). . . .

. . . .  
 The argument was made that **Neb. Rev. Stat. §68-1726 (3) (c)** (Reissue 1996) does not count financial assistance intended for books or tuition in determining family resources and therefore, Marilyn **Bauer's** income from **AmeriCorps** should not be counted. That argument is not persuasive . . . .

The order from **DHHS** does not rely on, discuss, or cite to 468 NAC 7-019.09 A or M, but instead relies solely on the September 1994 memorandum in concluding that the stipend should be counted as income.

Bauer appealed this decision to the Lancaster County District Court, which affirmed on April 13, 1999. The district **court** noted that the stipend was similar to the "**school** grants, scholarships, vocational rehabilitation payments, [and] Job Training Partnership Act payments" discussed in § 68-1726(3)(c). However, the court went on to determine that the stipend more closely resembled income "**in** that it primarily supports **life** necessities rather than educational expenses." The court **gave** deference to the 1994 and 1996 internal memoranda from **DHHS** in reaching this decision, as well as to 468 NAC 7-019.09 M, noting that the regulation "**does** not permit" AmeriCorps U.S.A. stipends' to be disregarded. The district court held that because AmeriCorps U.S.A. stipends more closely resembled income rather than student financial assistance under § 68-1726, and because of the deference due to **DHHS's** interpretation of its regulations, the decision **of DHHS** was affirmed.

Bauer appealed, and we removed the case to our court pursuant to our authority to regulate the caseloads of this court and the Nebraska Court of Appeals. Neb. Rev. Stat. § 24-1106(3) (Reissue 1995).

#### ASSIGNMENTS OF ERROR

Bauer asserts, rephrased, renumbered, and summarized, that the district court erred in **1)** affirming **DHHS'** determination that AmeriCorps U.S.A. stipends are included as income in calculating a family's cash benefit amount; **2)** deferring to **DHHS'** reliance upon memoranda interpreting former federal welfare law; **3)** deferring to

**DHHS'** refusal to apply its own rules and regulations **properly** promulgated pursuant to the WRA; 4) failing to construe **§ 68-1726** in a **manner** which reflects the intended purposes of the **WRA**, gives effect to the entire language of the **WRA**, or reconciles different provisions of the WRA in a way that is consistent, harmonious, and sensible, and 5) deferring to **DHHS'** determination of **Bauer's** appeal when DHHS regulations are inconsistent in their treatment **of** various types of income for eligibility purposes under the WRA.

#### **STANDARD OF REVIEW**

To the extent an appeal calls for statutory interpretation or presents questions of law, an appellate court must reach an independent conclusion irrespective of the determination made by the court below. *Bssen v. Gilmore*, 259 Neb. 55, 607 **N.W.2d** 829 (2000); *Ameritas Life Ins. v. Balka*, 257 Neb. 878, 601 **N.W.2d** 508 (1999).

#### **ANALYSIS**

The issue presented by this case is whether an **AmeriCorps** U.S.A. living stipend falls into the category of "**other self-sufficiency-related expenses**" contained in **§ 68-1726(3)(c)**. Bauer argues that financial assistance intended for a student's living expenses is a type of self-sufficiency-related expense under subsection (3) **(c)**. DHXS asserts that any assistance intended for living **expenses** falls into the category of assistance for "**life's necessities**" under subsection **(3) (b)**.

"In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate-court will not resort to interpretation to ascertain the meaning of statutory words which **are** plain, direct, and **unambiguous.**" *Sack v. State*, 259 Neb. 463, 467, 610 **N.W.2d** 305, 389 (2000) (citations omitted). A statute is open for interpretation to determine its meaning only **when** the language used may reasonably be considered ambiguous, 'for example, when the plain meaning **of** a particular term used in the statute is unclear, or when the plain meaning of the statute **is open** to varying definitions, all of which may be reasonable. See *Affiliated Foods Co-op. v. State*, 259 Neb. 549, 611 **N.W.2d** 105 (2000); *State ex rel. Stenberg v. Moore*, 258 Neb. 199, 602 **N.W.2d** 465 (1999). A statute may also be ambiguous when the plain meaning of the statute would lead to an absurd result, or when it conflicts with statutory language contained elsewhere. See *Coleman v. Chadron State College*, 237 Neb. 491, 466 **N.W.2d** 526 (1991).

After carefully examining the language of § 68-1726(3)(b) and (3)(c), we determine it to be ambiguous. Section 68-1726(3)(c) states that financial assistance intended to pay for "tuition, books, and other self-sufficiency-related expenses" should not be included as income, but fails to define what "other self-sufficiency-related expenses" include. Further, this provision seems to conflict with § 68-1726(3)(b), which states that financial

assistance "intended to pay **for** life's **necessities**" must be included as income.

The interpretation of an ambiguous statute requires the court to determine and give **effect** to the purpose and intent of the Legislature as ascertained from the language of the statute and the legislative **history** of the act in question. State **ex rel. Stenberg v. Moore, supra**. In interpreting a statute, a court must look to the statute's purpose **and** provide a reasonable construction which best achieves that purpose, rather than a construction which would defeat it. **Thompson v. Kiewit Constr. Co.**, 258 Neb. 323, 603 **N.W.2d** 368 (1999). No sentence, clause, or word contained in the statute should be rejected as meaningless or superfluous if it can be avoided. **A & D Tech. Supply Co. v. Nebraska Dept. of Revenue**, 259 Neb. 24, 607 **N.W.2d** 857 (2000). In addition, statutes relating to the same subject matter should be construed together to maintain a consistent and harmonious statutory scheme. **Chrysler Corp. v. Lee Janssen Motor Co.**, 248 Neb. 281, 534 **N.W.2d** 568 (1995).

Section **68-1726(3)** sets out three types of monetary sources a welfare recipient could receive. The statute then describes how each of the three categories should be treated when determining a family's level of benefits. The first category, **§ 68-1726(3)(a)**, is earned income, which should be counted after disregarding 20 percent. Neither party suggests that the **AmeriCorps** stipend **is** earned income, and neither **DHHS** nor the district court based its decision on such a finding.

The second category is 8 **68-1726(3)(b)**, "financial assistance provided by other programs that support the transition to economic self-sufficiency," which is also counted as income insofar as the assistance is "intended to provide for **life's** necessities." The district court **found** that **Bauer's** stipend fell under this category.

The third category, **§ 68-1726(3)(c)**, deals with the only type of assistance that is not to be counted as income, "**[f]inancial** assistance or those portions of it intended for books, tuition, or other self-sufficiency-related expenses." Bauer argues that her stipend properly falls **under** this third category.

One significant difference between **§ 68-1726(3)(b)** and **(c)** is how the source of the financial assistance is defined. The assistance discussed in **§ 68-1726(3)(b)** comes from "other programs that support the transition to economic **self-sufficiency**," while under **§ 68-1726(3)(c)**, the assistance can come from a variety of sources, regardless of the type of program, "including, but not limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, and education-related loans."

The district court correctly pointed out, and neither side disputes, the fact that the **AmeriCorps** stipend is intended to pay the kinds of expenses which would fit within the plain meaning of the phrase '**life's** necessities,' for example food, clothing, and shelter, found in **§ 68-1726(3)(b)**. However, "**in** applying the rules of statutory construction, we must give effect, if possible, to all

the several parts of a statute. No sentence, clause, or word should be re **jected** as **meaningless** or superfluous if it can be avoided. " **In re Estate of Emery**, 258 Neb. 789, 606 **N.W.2d** 750 (2000) .

**Section** 68-1726(3)(b) sets out two requirements. First, the money must come from 'programs which support the transition to economic self-sufficiency.' Second, ' the money must be intended to pay **for "life's** necessities. " **Any** assistance which **meets** both of these conditions is counted as income. Thus, the fact that **Bauer's** stipend is only intended for living expenses satisfies one of the two conditions imposed under subsection 3(b).

In contrast, **§ 68-1726(3)** (c) sets a out a different type of financial assistance, which is not to be counted as income. This is financial assistance intended for "**books**, tuition, and other **self-sufficiency-related** expenses." Admittedly, "**other self-sufficiency-related** expenses" under **§ 68-1726(3)** (c) might include the same types of things that could be considered "**life's** necessities" under **§ 68-1726(3)(b)**, for example, the student's food and shelter. However, in construing this statutory scheme we find that **§ 68-1726(3)(b)** and (c) address financial assistance which originates from different sources.

Under **§ 68-1726(3)** (c), financial assistance **must** be in the form of 'school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, and education-related loans" or other similar sources. Because **§ 68-1726(3)** (c) notes that the category is "**not limited to**" the examples

listed, other financial assistance received in connection with further education or job training would also be included, even though not specifically listed in the statute. This meaning is clear given the illustrative list provided in § 68-1726(3)(c). Accordingly, we determine subsection (3)(c) covers financial assistance provided in connection 'with further education **or** job training, which would include the **AmeriCorps** U.S.A. stipend. Subsection (3)(b), in contrast, covers financial assistance from "**other** programs" that support the transition to economic **self-sufficiency**, which are not connected with education or job training.

This interpretation is supported by DHHS Regulation 468 NAC 7-019.09 A.13, which provides, "any student financial assistance intended for books, tuition, or other self-sufficiency related use for a student," is not to be counted as income (emphasis supplied). Agency regulations, properly adopted and filed with the Secretary of State for Nebraska, have the effect of statutory law. **Lackawanna Leather Co. v. Nebraska Dept. of Rev.**, 259 Neb. 100, 608 **N.W.2d** 177 (2000).

It is true, as the district court noted, that 468 NAC 7-019.09 M does not specifically discuss **AmeriCorps** U.S.A. stipends. However, because the list provided in 468 NAC 7-019.09 M is an illustrative list discussing "some income **types**" and is not intended to be exhaustive, the omission is not determinative.

Although the construction of a statute by a department charged with enforcing it is not controlling, considerable **weight will be given** to any such construction. *Cox Cable of Omaha V. Nebraska Dept. of Revenue*, 254 Neb. 598, 578 **N.W.2d** 423 (1998) ... **recognize** that our interpretation of **§ 68-1726** conflicts with the 1994 memorandum issued by **DHHS**, as **well as** with the October 1997 order from **DHHS**. **DHHS'** decision **regarding Bauer's** stipend was based, however, on a September 1994 agency memorandum interpreting **then-existing** federal welfare law. This memorandum does not interpret **§ 68-1726**, and was **actually** prepared before **§ 68-1726** went into effect. Based on these facts, the September 1994 memorandum is entitled to little, if any, weight. We also note that **DHHS** did not apply or consider 468 NAC 7-019.09 A or 468 NAC 7-019.09 M in its October 1997 order, choosing instead to rely on the 1994 memorandum. Accordingly, we conclude that **DHHS'** interpretation of **§ 68-1726(3)(c)** in its October 1997 order is not persuasive.

This **court's** interpretation of **§ 68-1726(3) (c)** to exempt **AmeriCorps U.S.A.** stipends is consistent with the purpose of the WRA in "removing disincentives to work and promoting economic **self-sufficiency.**" Neb. Rev. Stat. **§ 68-1709** (Reissue 1996). As noted by **one** legislator, "**[W]hat** we're doing is rewarding [welfare recipients] by insisting that in **fact** that they do go out and enhance themselves as far as education, as far as their ability to get better -jobs and to become a part of society." Floor Debate, 93rd Leg., 2d Sess. 12959 (April 11, 1994) (Senator Vrtiska). The

WRA is intended to support further **education as** a way of **achieving** economic self-sufficiency. Our interpretation is consistent **with that** purpose.

Having concluded that **Bauer's AmeriCorps** U.S.A. stipend is not counted as income pursuant to **§ 68-1726 (3)(c)**, it is **unnecessary** to reach **Bauer's** remaining **assignment of** errors.

**CONCLUSION**

The order of the district court is reversed, The cause is remanded to **the district** court with orders to remand to **DHHS** for further proceedings consistent with this opinion.

**REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

THE STATE OF NEBRASKA, SS.

I hereby certify that I have compared the foregoing copy of an opinion filed by this Court with the original on file in my office and that the same is a correct copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln.



  
Clerk/Deputy Clerk

SUPREME COURT NO.	s-99-714
TRIAL TRIBUNAL NO.	564-116
DATE OPINION FILED	January 4, 2001
DATE OPINION CERTIFIED	January 4, 2001