

JURISDICTION AND VENUE

2. This action is authorized by 42 U.S.C. § 1983, as an action seeking redress of the deprivation of federal rights under the color of state law.
3. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts for civil actions arising under the Constitution, laws, or treaties of the United States.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Named Plaintiff Kelly Bowlin resides at 817 W. 6th, Ogallala, Nebraska with her 3-year-old daughter, Morgan and her 5-year-old son, Trisden.
6. Defendant Nancy Montanez is the Director of the Nebraska Department of Health and Human Services (NDHHS). She is responsible for the administration of the State's Medicaid program.

CLASS ALLEGATIONS

7. The named Plaintiff brings this action on her own behalf and, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of a class defined as follows:

All caretaker relatives in Nebraska with earned income: a) who have received Medicaid under the medically needy category without a spend down for at least three of the six months prior to having their Medicaid benefits terminated due to their earned income; b) who, but for their earned income would continue to receive Medicaid under the medically needy category without a spend down; and c) who have not been or will not be afforded the transitional Medicaid benefits provided for in 42 U.S.C. § 1396r-6.

8. The class is so numerous that joinder of all members is impracticable.
9. There are numerous questions of law and fact common to the class as a whole. Factually, each class member is a caretaker relative with earned income and each was found eligible for Medicaid under the medically needy category without a spend down before there was a change causing their earned income to exceed the income guidelines. The legal questions common to the entire class include whether they are included within the ambit of 42 U.S.C. § 1396u-1 and whether the Defendant can refuse to provide them with transitional Medicaid benefits under the circumstances of this case.
10. Declaratory and injunctive relief are appropriate with respect to the class as a whole because the Defendant has acted on grounds applicable to the entire class.
11. The named Plaintiff's claims are typical of the claims of the class.
12. The named Plaintiff will fairly and adequately protect the interests of the class. Because of her indigence, the named Plaintiff is represented by the Nebraska Appleseed Center for Law in the Public Interest, whose attorneys have litigated numerous class actions concerning issues similar to those before this Court, including Kai v. Ross, 336 F.3d 650 (2003), which is an almost identical case to this one. Plaintiff knows of no conflicts of interest among members of the class.
13. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that it will avoid the need for numerous separate actions by class members.

STATUTORY AND REGULATORY FRAMEWORK

The Medicaid Act

14. Medicaid is a jointly funded state and federal program that provides medical coverage to certain categories of low-income people pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 to 1396u.
15. State participation in the Medicaid program is optional. However, a state choosing to participate, and thereby receive federal matching funds for its Medicaid program, must comply with the requirements of the federal Medicaid Act and the rules and regulations governing state Medicaid programs promulgated by the U.S. Department of Health and Human Services (HHS). As a condition of participating in the federal Medicaid program, Nebraska must submit to HHS a Medicaid plan that fulfills the requirements of the Medicaid Act. 42 U.S.C. § 1396a.
16. Nebraska has chosen to participate in the Medicaid program and accepts federal matching funds for its program expenditures.
17. Under the Medicaid program, Nebraska is required to cover certain groups of people and has the option of covering others.
18. Nebraska is required to provide Medicaid to children and their parents who are receiving, or are treated as receiving, Aid to Families with Dependent Children (AFDC). 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I) and 1396u-1(b)(1)(A).
19. While the AFDC program no longer exists, the Medicaid Act requires that certain people continue to “be treated as receiving” AFDC for purposes of receiving Medicaid. 42 U.S.C. § 1396u-1(b)(1)(A).
20. Transitional Medical Assistance is available for up to one year to people who have been “treated as receiving” AFDC for three of the six months before they lose eligibility for AFDC because of hours of or income from employment. 42 U.S.C. § 1396r-6(a). In

order for a person to be “treated as receiving” AFDC in Nebraska, she or he must be a caretaker relative, as that term was defined in the AFDC program, and have countable income, as determined by the state, that falls below the AFDC income eligibility limit that Nebraska used in July 1996. 42 U.S.C. § 1396u-1(b).

21. Financial eligibility for Medicaid in Nebraska is determined not based on a person’s gross income, but rather by measuring his or her “countable income” against the income eligibility limit that the state has established for the category of Medicaid for which the person is applying.
22. Countable income is that portion of a person’s gross income that Nebraska chooses to consider when determining his or her eligibility for Medicaid.
23. The process that a state adopts to decide how much of a person’s gross income it will consider for purposes of determining Medicaid eligibility is called its “income methodology.” 42 U.S.C. § 13396u-1(b)(2)(C).
24. Nebraska has chosen, as it is permitted to do, to provide Medicaid to certain caretaker relatives whose gross income is too high for them to qualify for other categories of Medicaid that Nebraska provides. Nebraska covers people in this group pursuant to what it calls its “medically needy” category. 42 U.S.C. §§ 1396d(a)(ii) and 1396a(a)(10)(C).
25. At all times relevant to this case, Nebraska’s AFDC income eligibility limit was higher than the income limit for the medically needy Medicaid category. 468 NAC 2-009.01A (effective May 18, 2002), 468 NAC 4-010 (effective September 8, 1993), and Nebraska Administrative Code Appendix 468-000-204 (effective February 1, 2000).

Nebraska’s Medically Needy Category

26. All of the Plaintiffs in this case were determined eligible for Medicaid under Nebraska's medically needy category.
27. When NDHHS is reviewing an application for Medicaid under the medically needy category, they first determine the parent's gross income.
28. Next NDHHS uses the income methodologies selected by the state to calculate countable income. Nebraska has chosen to use several income methodologies in determining countable income under the medically needy category. Nebraska uses an earned income disregard, a child care disregard, health insurance disregard and a child support disregard. 468 NAC 4-007 (effective October 15, 2002) and Nebraska Administrative Code Appendix 468-000-303 (effective March 1, 2004).
29. Once all the disregards are applied, the remaining amount of income is the countable income for the purposes of determining the parent's eligibility for Medicaid under the medically needy category.
30. At the end of this budgeting process, in order for the parent to qualify for Medicaid, they must have countable income below the medically needy income limit for his or her household size.
31. Despite the fact that all of the Plaintiffs in this case were determined by the Defendant to have countable income below the AFDC income limit, the Defendant refused to provide Transitional Medical Assistance to the Plaintiffs and the class they seek to represent.
32. The Defendant is able to tell from her computer files, on an ex parte basis, which of the caretaker relatives that have been terminated have earned income and have received Medicaid for at least three months in the six months before they were terminated.

The Named Plaintiff

33. Kelly Bowlin lives with and is the primary support for her two children, Trisden age 5 and Morgan age 3.
34. Ms. Bowlin's primary source of support is the approximately \$16,380.00 in gross annual income that she earns as a Detailer at Bill Summers Ford of Ogallala.
35. Ms. Bowlin suffers from abnormal menstrual bleeding that to date, her doctors have been unable to diagnose.
36. To treat this condition, Ms. Bowlin has undergone hormone therapy and surgery but they have not corrected the problem.
37. Ms. Bowlin's doctors would like to do additional tests, such as a Dilatation and Curettage (D and C), which is a procedure to scrape and collect tissue from inside the uterus, or a laparoscopy, to try and find out what is causing the bleeding. Ms. Bowlin has no savings and no means of paying for the required tests on her own.
38. Ms. Bowlin received Medicaid under the medically needy category from August 2002 to December 2003.
39. In September of 2003, Ms. Bowlin went through a recertification process to determine if she would continue to be eligible for Medicaid for the next three months. In the September budget prepared by her caseworker, Ms. Bowlin was deemed to have countable income of \$270.55 a month, well below the \$673.00 income limit for a household of three under Nebraska's AFDC program.
40. The income guideline for the medically needy category for a household of three is \$492.00, so Ms. Bowlin was found eligible for Medicaid under the medically needy category through December 2003.
41. In mid September of 2003, Ms. Bowlin received a \$0.50 raise from her employer.

42. In December of 2003, Ms. Bowlin again went through the recertification process and was found to have countable income of \$569.22, \$77.22 over the medically needy income limit.

43. In December of 2003, Ms. Bowlin received a notice that her Medicaid was ending effective January 1, 2004 because she was over the income guidelines for the program.

44. Ms. Bowlin fears that without access to her doctors and the additional tests she requires her condition will become life threatening and make it impossible for her to continue working.

IRREPARABLE INJURY AND NO ADEQUATE REMEDY AT LAW

45. Defendant's refusal to provide the Plaintiffs with Transitional Medical Assistance causes irreparable injury to Plaintiffs' physical, emotional, and financial well-being.

46. Plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

47. Defendant's refusal to provide transitional medical assistance to Plaintiffs violates 42 U.S.C. § 1396r-6(a)(1).

SECOND CLAIM FOR RELIEF

48. Defendant's failure to notify Plaintiffs of their right to TMA and of the circumstances under which those benefits may be terminated violates 42 U.S.C. § 1396r-6(a)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class as defined in ¶ 7;

- B. Enter a declaration pursuant to 28 U.S.C. § 2202 that Defendant's refusal to provide Transitional Medical Assistance benefits to caretaker relatives with earnings who were receiving Medicaid benefits under Defendant's medically needy category without a spend down in at least three of the six months immediately preceding the month of their termination, and who lost their eligibility for Medicaid due to their hours of or income from employment violates 42 U.S.C. 1396r-6(a)(1).
- C. Preliminarily and then permanently enjoin Defendant from discontinuing the Medicaid benefits of caretaker relatives with earned income receiving Medicaid under the medically needy program without a spend down, unless and until Defendant has determined, in accordance with the declaration of this Court, that such individuals or families are not eligible for an alternative category of Medicaid assistance, including Transitional Medical Assistance;
- D. Preliminarily and then permanently enjoin Defendant from refusing to provide Transitional Medical Assistance benefits to all caretaker relatives with earned income who were receiving Medicaid benefits under Defendant's medically needy category without a spend down in at least three of the six months immediately preceding the month of their termination and who, but for their earned income would continue to be eligible to receive Medicaid without a spend down;
- E. Preliminarily and then permanently enjoin Defendant from refusing to notify each caretaker relative with earned income that was receiving Medicaid without a spend down under Defendant's medically needy category in at least three of the six months immediately preceding the month of their termination, of their right to receive

Transitional Medical Assistance without filing a new application and of the circumstances under which that assistance may be terminated.

F. Award Plaintiffs their costs and reasonable attorneys' fees as provided for by 42 U.S.C. § 1988; and

G. Grant such other and further relief as the Court may deem just and proper.

DATED: June 16, 2004.

KELLY BOWLIN, on behalf of
herself and all others similarly
situated, Plaintiffs

By: /s/ Rebecca L. Gould
REBECCA L. GOULD, No. 22246
PATRICIA KNAPP, No. 17718
NEBRASKA APPLESEED CENTER
FOR LAW IN THE PUBLIC INTEREST
941 O Street, Suite 105
Lincoln, NE 68508
(402) 438-8853

Attorney for Plaintiffs