

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BILL M., by and through his father	)	4:03CV3189
and natural guardian, William M., et al.	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
NEBRASKA DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES	)	
FINANCE AND SUPPORT;	)	
NEBRASKA DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES;	)	
STEPHEN B. CURTISS, in his official	)	
capacity as the Director of Nebraska	)	
Department of Health & Human	)	
Services Finance and Support; and	)	
RON ROSS, in his official capacity as	)	
the Director of Nebraska Department	)	
of Health and Human Services,	)	
	)	
Defendants.	)	

This is a complex case involving mentally disabled people who receive financial support from Nebraska. Among other things, the plaintiffs allege that the funding (services) they receive from Nebraska is insufficient and thus "discriminatory." It is "discriminatory" because the lack of funds has caused or threatens to cause their institutionalization. See Olmstead v. L.C., 527 U.S. 581 (1999) ("discrimination" under the ADA results from "undue" institutionalization and may result from a lack of funding). The plaintiffs seek only injunctive and declaratory relief.

The defendants have moved to dismiss this case asserting, among other things, Eleventh Amendment immunity. Having carefully reviewed the arguments of the defendants, at this stage of the proceeding dismissal would be inappropriate.

Therefore,

IT IS ORDERED that the motion to dismiss (filing 30) is denied.

DATED this 6<sup>th</sup> day of August, 2004.

BY THE COURT:

s/ Richard G. Kopf  
United States District Judge