

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1310

S. P. 424

In Senate, March 19, 1979

Referred to the Committee on Legal Affairs. Sent down for concurrence and ordered printed.

Presented by Senator O'Leary of Oxford.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

RESOLVE, Authorizing Aiden Redding, Victorian Villa, Maplewood Lodge, Mildren DeCoster, the Personal Care Boarding Home Association, Inc., et al, to Bring Civil Action Against the State of Maine.

Aiden Redding, Victorian Villa, Maplewood Lodge, Mildred DeCoster, the Personal Care Boarding Home Association, Inc., et al; authorized to sue the State of Maine. Resolved:

1. That, Aiden Redding of Canton in the County of Oxford, Mildred DeCoster, an individual receiving the State Supplement to Supplemental Security Income, residing at Victorian Villa, in Canton, in the County of Oxford, the Personal Care Boarding Home Association, Inc., a corporation with its registered office in Augusta, in the County of Kennebec, other licensed boarding care facilities represented by that association, and other recipients of the State Supplement to the Supplemental Security Income to support boarding home care at each facility directly affected and aggrieved by the allegedly illegal reimbursement policies of the Commissioner of Human Services with respect to personal care boarding homes are authorized to bring a civil action against the State of Maine to determine the validity of the allegations and claims delineated in paragraph 2 subject to the provisions of paragraph 3.

2. The persons designated in paragraph 1 may have suffered economic damages as a result of the allegedly illegal reimbursement policies of the Commissioner of Human Services with respect to personal care boarding homes, as follows:

A. The commissioner's July 25, 1977, decision established a maximum benefit rate to be paid as the State Supplement to Supplemental Security Income recipients to support boarding home care. This order took effect on August 1, 1977, and imposed a ceiling allegedly not based on, and less than, actual reimbursable costs. This course of action allegedly exceeds the statutory authority of the commissioner under the Revised Statutes, Title 22, section 3273, subsection 1, paragraph B, is arbitrary and capricious, or is an improper delegation of authority;

B. Prior to that July 25, 1977, decision, boarding homes designated in paragraph 1 had entered into contracts with the commissioner defining the conditions and circumstances by which the facilities agreed to accept, in return for reasonable costs, residents who receive benefits from the State Supplement to Supplemental Security Income program. The commissioner's maximum reimbursement ceilings allegedly violated these contracts; and

C. The maximum ceiling set by the commissioner is allegedly less than the rates established by the commissioner in Principles of Reimbursement, and allegedly in violation of statutory provisions entitling recipients to the State Supplement to the Supplemental Security Income program, which stipulate "an amount sufficient to meet the monthly per resident payment rate as established by the department" under the Revised Statutes, Title 22, section 3273, subsection 1, paragraph B.

3. Persons designated in paragraph 1, to determine the validity of the allegations and claims delineated in paragraph 2, are authorized to bring an action in the Superior Court for the County of Kennebec, within one year from the effective date of this resolve, against the State of Maine for damages, if any, and the complaint issuing out of the Superior Court under the authority of this resolve shall be served on the Secretary of the State by attested copy 30 days from the date of filing the complaint by the sheriff or either of his deputies in any county of the State of Maine; and the conduct of this action shall be according to the practice of action or proceedings between parties in the Superior Court, and the liabilities of the parties and elements of damage, if any, shall be the same as the liabilities and elements of damage between individuals; and the Attorney General is authorized and designated to appear, answer and defend this action. Any judgment that may be recovered in this civil action shall be payable from the State Treasury on final process issued by the Superior Court or, if appealed, the Supreme Judicial Court, and costs may be taxed for if they recover in any action. Any recovery with respect to a particular personal care boarding facility in this action shall not be in excess of \$75,000 including costs. Hearing thereon shall be before a justice, with or without jury; the justice to be the regularly scheduled justice presiding in the Kennebec County Superior Court when this matter is scheduled for trial.

STATEMENT OF FACT

All large boarding care facilities and small boarding care facilities for developmentally disabled residents are currently on a cost reimbursement system with the Department of Human Services. The department allegedly set a ceiling on payments in past years contrary to existing contracts and Principles of Reimbursement. In 1978, the department included in its Principles of Reimbursement a provision by which a ceiling on reimbursement may be set by the department allegedly in an arbitrary manner contrary to statutory authority. A number of licensed boarding home operators may have been unjustly deprived of fair compensation from the State as a result of these alleged breaches of contracts and allegedly illegal Principles of Reimbursement.

This resolve would authorize directly affected boarding care facilities and Supplemental Security Income recipients to sue the State of Maine to determine the validity of these allegations and claims. In addition to Aiden Redding, Victorian Villa, Maplewood Lodge, Mildred DeCoster and Personal Care Boarding Homes Association, Inc., additional plaintiffs are authorized consistent with the requirements imposed by *Nadeau v. State, Me.*, 395 A. 2d 107.

In the absence of enactment of this resolve, those affected may be denied the opportunity to have their rights determined in court by application of the doctrine of sovereign immunity.

Such a result would be untenable, both from the perspective of the State and all who enter into contracts with it. Private citizens who believe they have just claims against the State arising out of contractual relations must be given an opportunity to have the merits of those claims judged, lest all future dealings be adversely affected and legitimate state services be impeded.