

Opinion No. 38.

Mothers' Pension—Residence

HELD: A mother, whose husband, a non-resident, dies outside the state is entitled to payment of mothers' pension, if she has acquired a residence as required by sub-section 5 of Section 10482.

February 8, 1937.

Mr. Aaron R. Shull
Deputy County Attorney
Lewistown, Montana

Dear Mr. Shull:

You have requested my opinion on the following:

"The question came up today at a mother's pension hearing where the evidence showed that the applicant's husband died outside of the state and was at the time a non-resident, whether she would be entitled to a mothers' pension since prior to her husband's death she acquired a bona fide residence in Fergus County, State of Montana. Section 10480 and Section 10482 seem to be in conflict."

You have not stated the facts regarding the acquisition of residence by the mother in Fergus County but assuming that she acquired a bona fide residence in Fergus County before her husband's death, then it would appear that the only question to be determined is whether she had been a resident of Fergus County for the period of one year prior to the making of her application for allowance, for Section 10482, sub-division 5, R. C. M., 1935, provides:

" * * * (5) No person shall receive the benefit of this act who is not a citizen of the United States, or who has not declared her intention to become a resident of the county in which said application is made for at least one year prior to the making of such application for such allowance; * * * ."

While the allowance is made for the children, the payment thereof is made to the mother for their benefit. (Section 10481 R. C. M., 1935.)