

No. 128

PUBLIC WELFARE—SILICOSIS—MEDICAL EXAMINATION, expense of, how paid—CERTIFICATE OF MEDICAL EXAMINATION, wording of

Held: The cost of medical examination under Chapter 5, Laws of 1941, is to be paid by the State Department of Public Welfare from the appropriation made to the Department under House Bill 354, Laws of 1941.

Wording of Certificate of Examination suggested.

May 27, 1941.

Mr. I. M. Brandjord, Administrator
State Department of Public Welfare
Helena, Montana

Dear Mr. Brandjord:

You have requested my opinion on the following questions:

- (1) Under Chapter 5, Laws of 1941, providing for payments to persons who have silicosis, and requiring medical examinations by a board of physicians designated by the State Department from the staff of physicians of the Montana State Tuberculosis Sanitarium, may the cost of such examination be made a charge by the examining board, and if so, are such costs to be paid by the State Department (if so, from what fund?) or by the applicant?
- (2) What should be the wording of the certificate of the examining board in certifying as to its findings on the examination?

Chapter 5, Laws of 1941, provides, among other things, the State Department shall designate the procedure to be followed in securing a competent medical examination for the purpose of determining silicosis in each individual applicant (sub-section (i), Section 2), and shall designate suitable physicians from the staff of the State Tuberculosis Sanitarium as the board of examiners (sub-section (j), Section 2). It also provides the State Department shall pay the transportation expenses of applicants taking the medical examination, if such applicants are determined to be suffering with silicosis (sub-section (k), Section 2). It does not, however, provide for payment of cost of examination.

House Bill 354, of the Legislative Assembly of 1941, being the appropriation measure providing funds for the administration of the Act, in setting forth the purposes for which the appropriation is made, provides:

“For payment to persons having silicosis and for administrative expenses, **medical examinations** and other expenses in connection with determination of recipients and making of such payments, forty thousand dollars.” (Underscoring ours.)

Therefore, while the Act itself (Chapter 5) does not specifically provide for payment of cost of examination, but does require such examination to determine eligibility to receive payment, the fact the legislature specifically provided the appropriation made shall be used for “expenses of medical examination” clearly shows the legislature contemplated such expense and intended it should be paid by the State Department out of the appropriation made under House Bill 354.

As to your second question, Section 6 of Chapter 5, Laws of 1941, provides for an investigation of applications to be conducted by the staff workers of the county departments, and further provides the physicians designated as the examining board shall attach a certified report of such examination to the investigation report.

It is apparent, from a reading of the Act, the determining factor as to the eligibility of an applicant to receive payment is that he is suffering from silicosis as defined in the Act. The Act defines silicosis, as follows:

“‘Silicosis’ means a fibrotic condition of the lungs due to the inhalation of silica dust which results in total disability to do manual labor.”

As, under the Act, the determining of whether or not the applicant has silicosis is the principal basis upon which his right is predicated, it follows the certificate of the examining physicians must show the result of the examination has determined the applicant has or has not silicosis, as that term is defined in the Act.

The wording of the certificate showing this fact should follow the words of the statute, so that the State Department can be satisfied from the certificate the result of the examination has determined the applicant has or has not silicosis, as that term is defined in the Act. I would therefore suggest the following wording:

“Examination discloses that the applicant has (or has not) a fibrotic condition of the lungs, due to the inhalation of silica dust which results in total disability of applicant to do manual labor.”

Sincerely yours,

JOHN W. BONNER
Attorney General