

No. 240

SILICOSIS—STATE TUBERCULOSIS SANITARIUM

Held: One qualified to payment under Chapter 5, Laws of 1941, who is an inmate of the state tuberculosis sanitarium, but who has no wife or children, is entitled to receive such payment—and this regardless of whether or not the County pays for his maintenance at such institution.

September 12, 1941.

State Department of Public Welfare
Helena, Montana

Gentlemen:

You have requested my opinion on the following question:

“Is a silicosis inmate of the Montana State Tuberculosis Sanitarium who has no wife and no children entitled to silicosis payments?”

Provision for payments to persons having silicosis was made by the Twenty-Seventh Legislative Assembly of 1941 in Chapter 5, Laws of 1941, by an amendment to the Public Welfare Act (Chapter 82, Laws of 1937), adding thereto a new part to be known as “Part IX.” The title of this part reads as follows, “To Provide for Payments to Persons Having Silicosis as Herein Defined.”

The act provides for the administration by the State Department of Public Welfare and the County Departments of Public Welfare, and defines certain terms used in the act. Section 3 of the act provides the eligibility requirements for aid to persons having silicosis as in the act defined, as follows:

“Payments shall be made under this part to any person who

“(a) Has silicosis, as defined in this Part, which results in his total disability to do manual labor.

“(b) Has resided in and been an inhabitant of the State of Montana for ten (10) years, or more, immediately preceding the date of the application.

“(c) Is not at the time of receiving a payment under this Part an inmate of any public institution, except Montana state tuberculosis sanitarium. If the person to whom payment has been ordered to be paid is an inmate of the Montana state tuberculosis sanitarium then and in that case the payment herein provided for shall be made to his wife and children if any.

“(d) Is not receiving, with respect to any month for which he would receive a payment under this Part, compensation under the workmen’s compensation act of the State of Montana, old age assistance from the State of Montana or the government of the United States, which will equal the thirty dollars (\$30.00) payment allowed hereunder. If he is receiving payments from either or both of these plans which is less in the aggregate than thirty dollars (\$30.00) per month, then if he is entitled to a payment under this Part that payment shall be the difference between the amount which he is receiving under these plans and thirty dollars (\$30.00) per month.”

When we consider the cause and effect of this disease or malady technically called “silicosis” but more commonly known as “miner’s con” and the history of events leading up to the final adoption of Chapter 5, bearing in mind that although silicosis is a disability resulting from certain industrial occupations such as mining, milling, smelting, etc., but not classified by our laws as a disability coming within the Workmen’s Compensation Act and therefore not compensable thereunder, it is quite evident—from the provisions of the act—the legislature intended such persons should receive aid from public funds in a specific minimum sum.

It is likewise evident it was the intention of the legislature every person having silicosis, as defined in the act, who meets the residence qualifications set forth therein, shall receive from public funds a minimum monthly income of not less than thirty dollars. There are only two classes of persons excepted from the act: (a) an inmate of any public institution, except the Montana Tuberculosis Sanitarium; and (b) one who is receiving thirty dollars or more under the Montana Workmen’s Compensation Act and/or old age assistance from the State of Montana or the government of the United States. (Sub-sections c and d, supra.)

That the legislature intended each qualified person having silicosis should receive not less than thirty dollars per month is shown from the provisions of Section 4 of the Act, where it is provided:

“Any person who has silicosis, as defined in this Part, and who has, subject to the regulations and standards of the state and county departments, been determined by the state department to be entitled to a payment under this Part for silicosis, shall be granted a payment by the said state department of thirty dollars (\$30.00) per month, subject to such appropriations as may from time to time be made.” (Emphasis mine.)

As if to emphasize this, the legislature in sub-section (d) of Section 3, supra, after providing the exception of persons receiving thirty dollars from Workmen’s Compensation or old age assistance, provides as follows:

“... If he is receiving payments from either or both of these plans which is less in the aggregate than thirty dollars (\$30.00) per month, then if he is entitled to a payment under this Part that payment shall be the difference between the amount which he is receiving under these plans and thirty dollars (\$30.00) per month.”

In other words, if one entitled to payment under the act as having silicosis, is receiving a payment from Workmen’s Compensation or old age assistance (either or both) which is less than thirty dollars per month, he is entitled to a payment under this act in a sum equal to the difference of these payments and thirty dollars. The legislature has thus assured him an income of thirty dollars per month from public funds. The income thus assured is not based upon need, but was manifestly intended by the legislature to compensate partially for his physical disability on the theory upon which Workmen’s Compensation is based.

With the above observations, we now come to your question, “Is a silicosis inmate of the Montana State Tuberculosis Sanitarium who has no wife and no children entitled to silicosis payments?”

As pointed out above, the act makes only two exceptions. As to the question in point, we must look to sub-section (c), *supra*, which provides one of the exceptions in the following words:

“(c) Is not at the time of receiving a payment under this Part an inmate of any public institution, **except Montana state tuberculosis sanitarium**. If the person to whom payment has been ordered to be paid is an inmate of the Montana state tuberculosis sanitarium then and in that case the payment herein provided for shall be made to his wife and children if any.’”

Reading this provision with the other provisions of the act, the legislature has said any person, who is not, at the time of receiving a payment under the act, an inmate of any public institution, except the state tuberculosis sanitarium, or receiving workmen's compensation or old age assistance in the sum of \$30.00 a month, is entitled, if qualified as to residence, to thirty dollars per month. The legislature has not said in this section, nor anywhere in the act, that one qualified to receive payment but who is an inmate if the tuberculosis sanitarium may not receive such payment unless he has a wife and children. It only provides that, if he does have a wife and children and is such inmate, the payment must be made to such wife and children. If we hold an inmate at the sanitarium who had no wife or children could not receive a payment under the act, we must read into the act something that is not therein contained. This we may not do.

“Court will not read into statute words necessary to make it conform to supposed intention of legislature.”

Mills v. State Board of Equalization, 97 Mont. 13, 33 Pac. (2nd) 563.

Section 10519, Revised Codes of Montana, 1935.

“In construing a statute the court may not insert what has been omitted or omit what has been inserted.”

State v. Certain Intoxicating Liquor, 71 Mont. 79, 227 Pac. 472. Section 10519, *supra*.

Paraphrased, subsection (c), *supra*, merely means a person qualified to receive a payment under the act, but who is an inmate of the tuberculosis sanitarium, may receive such payment. It further provides if such inmate has a wife and children, such payment is to be made to them. Conversely, then, if there is no wife and children, the payment is made to the inmate personally.

It is therefore my opinion a person who has no wife or children, but who is an inmate at the state tuberculosis sanitarium and is qualified to receive payment under the act, is entitled to such payment—and this regardless of whether or not the county pays for his maintenance at such institution.

Sincerely yours,

JOHN W. BONNER
Attorney General