

No. 244

**PUBLIC WELFARE—OLD AGE ASSISTANCE—
SILICOSIS**

Held: Payments made under Silicosis Act (Chapter 5, Laws of 1941) must be considered in determining amount of old age assistance grants.

September 17, 1941.

State Department of Public Welfare
Helena, Montana

Gentlemen:

You have requested my opinion on the following question:

“Should silicosis payments under Chapter 5 of the 1941 Session Laws be taken into account in determining the amount to be paid as Old Age Assistance?”

And you have called my attention to Section 2 (a)—(7) of Section 101 of the Federal Social Security Act. (42 U. S. C. A. 301, 49 Stat. 620.) Section 2 (a)—(7) provides:

“Effective July 1, 1941 provide that the State Agency shall, in determining need, take into consideration any other income and resources of an individual claiming old age assistance;”

You further call my attention to sub-section (d) of Section 3, Chapter 5, Laws of 1941, which provides if any person entitled to a silicosis payment under said Chapter 5 is receiving workmen's compensation or old age assistance payments in an amount equal to the thirty dollars payment provided under said Chapter, he shall not receive payment for silicosis. And it further provides if such payments are less than the thirty dollars, then he shall receive a silicosis payment in a sum equal to the difference.

Old Age assistance is granted under the provisions of Chapter 82, Laws of 1937, and payments are made on the basis of need.

Section III, Part III, Chapter 82, Laws of 1937 provides as follows:

“Amount of assistance. The amount of old age assistance granted any person shall, subject to the regulations and standards of the state department, be determined by the county department with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case and shall be sufficient, **when added to all other income and support** of the recipient, to provide such person with a reasonable subsistence compatible with decency and health.” (Emphasis mine.)

In order to obtain federal grants, the State Welfare Act must comply with the provisions of the Federal Social Security Act and with the rules and regulations of the Federal Social Security Board. In this respect, Chapter 82, supra, does comply with the provisions of Section 2 (a), supra, of the Federal Social Security Act. It is therefore required by these provisions “any other income and resources” of the applicant must be taken into consideration in determining the amount of the grant. Payments under Chapter 5, Laws of 1941, must be considered as income of the individual.

It is therefore my opinion silicosis payments received under the provisions of Chapter 5, Laws of 1941, must be considered in determining the amount of an old age assistance grant made under the provisions of Chapter 82, Laws of 1937.

Sincerely yours,

JOHN W. BONNER
Attorney General