

No. 289

**SILICOSIS—PAYMENTS, from what date—
WIDOW OF SILICOTIC**

Held: An applicant for silicosis payments, when determined eligible, is entitled to payment from the date of the application; and, in the event of his death between date of application and determination of eligibility, his widow or dependent is entitled to payment for such period.

November 10, 1941.

State Department of Public Welfare
Helena, Montana

Gentlemen:

You have requested my opinion on the following questions:

“1. Shall silicosis payments be made payable from the date the application is made rather than from the date the application is approved as to completed documents, all documents, investigation and medical examination completed?”

“2. If an applicant dies between the date of application and the time the investigation is completed, should the widow receive benefits from the time of the application to the time of death of the applicant?”

Payments from public funds to persons having silicosis were provided by the Twenty-seventh Legislative Assembly, 1941, by Chapter 5, Laws of 1941, and made a part of the Public Welfare Act (Chapter 82, Laws of 1937). This is designated as Part IX of Chapter 82, and entitled, "To provide for payments to persons having silicosis as herein defined." Although made a part of the Public Welfare Act, its general purpose differs from that of the Welfare Act, in that silicosis payments are not based on need. It is obvious the only reason for making it a part of that act was for administrative purposes.

Prior to the enactment of Chapter 5, there was no right in one who had silicosis to receive payment from public funds. Such right came into existence upon the enactment and approval of the act. This right is subject only to the administrative requirements, such as application, investigation and examination.

In determining the questions here presented it is necessary to ascertain the intention of the legislature, and such intention must be gathered from the language used, the purpose and intent and the object to be accomplished. (*Swords v. Simineo*, 216 Pac. 806, 68 Mont. 164.) The policy of the law is persuasive in determining the meaning of statutory provisions. (*State v. Sedgwick*, 127 Pac. 94, 46 Mont. 187.) The object of such legislation is expressed by the Supreme Court of Maine in the *Hustes* case, 123 Me. 428, 123 A. 514, "to make amends for a disability attributable to the employment."

A reading of the provisions of the act discloses that, in order to be eligible to receive payment thereunder, one must make application to the county department of public welfare (Sec. 5) and an investigation must be made "to ascertain whether or not the applicant is entitled to a payment" (Sec. 6). The act further provides that to be eligible one must have been a resident of the state for ten years immediately preceding filing of application (Sec. 3-b) and must not, at the time of application, be an inmate of any public institution, except the tuberculosis sanitarium (Sec. 3-c), and must not be receiving workmen's compensation or old age assistance in an amount equal to thirty dollars per month (Sec. 3-d). An applicant meeting these requirements, and who has been determined from a medical examination to have silicosis as defined in the act, is entitled to receive payment of thirty dollars per month. Section 4 provides:

"Any person who has silicosis, as defined in this Part, and who has, subject to the regulations and standards of the state and county department, 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."

It is clear, then, that "Any person who has silicosis," and who meets the requirements of the act, is entitled to a payment of thirty dollars per month. The only act required of the applicant is the filing of an application. The determination of his eligibility is placed upon the state and county departments of public welfare through their administrative staffs, including the medical examining board as set up under the act.

It is significant to note that no provisions are made in the act as to when payment shall commence. The only provision regarding payment is found in Section 7, which provides:

"Making Payment. Upon the completion of such investigation the county department shall forward the investigation report, together with the certified report from the examining board of physicians to the state department, and the state department shall determine whether or not the applicant is entitled to a payment under this Part. The state department shall then notify the county department and the applicant of its decision."

In view of the fact the right to receive payment under the act, insofar as the applicant is concerned, depends only upon his filing application and

subject to administrative determination of his eligibility, such payment should be made from the date of the application.

If the applicant is entitled to payment from the date of his application, it follows that, in the event of his death between the date of application and determination of his eligibility, such payment for that period should be made to this widow or dependents.

It is therefore my opinion an applicant for silicosis payments, when determined eligible, is entitled to payments from the date of the application, and in the event of his death between the date of application and determination of eligibility, his widow or dependent is entitled to payment for such period.

Sincerely yours,

JOHN W. BONNER
Attorney General