

No. 347

**TUBERCULOSIS SANITARIUM, State—SILICOSIS—
COUNTY COMMISSIONERS—PAYMENT FOR CARE,
TREATMENT AND MAINTENANCE—DISCRETION**

Held: It was not the intention of the legislature that inmates of the Montana State tuberculosis sanitarium, receiving benefits under the silicosis act, should be required to pay for their care and treatment therein.

January 23, 1942.

Mr. J. B. Convery
Administrator
Department of Public Welfare
State of Montana
Helena, Montana

Dear Mr. Convery:

You have advised me of a communication from Dr. F. I. Terrill, Superintendent of the Montana Tuberculosis Sanitarium, which is as follows:

"Some of the Counties have insisted that patients receiving silicotic benefits reimburse the County for their care here. As you probably know, the institution charges the County \$1.00 for each patient day. You can readily see that these individuals would have to send their entire check to the Counties. Many of the men here are worried about this condition and I believe it would be well for you to define whether or not this can be done. It might be possible that part of this amount could be paid to the County, which would allow them some money for their personal care.

"One county has gone so far as to state that unless the individual returns the entire amount to them it will be necessary for us to discharge him from the institution. It so happens that this man is in a very advanced condition and of course it would be criminal if it were necessary to discharge him."

Section 1520, Revised Codes of Montana, 1935, deals with the admission of patients to the sanitarium and, insofar as applicable to the question presented, provides:

"The executive board of said sanitarium is hereby given power and authority to receive therein patients who have no ability to pay. . . . Every person desiring free treatment in said sanitarium shall apply to the local authorities of his or her town, city or county, having charge of the relief of the poor, who shall thereupon issue a written request to the president of said sanitarium for the admission and treatment of such person. Such request shall state in writing whether the person is able to pay for his or her care and treatment while at the sanitarium. . . . Every person who is declared, as herein provided, to be unable to pay for his or her care and treatment, shall be transported to and from the sanitarium at the expense of said local authorities and cared for, treated and maintained therein at the expense of the county or municipality which would otherwise be chargeable with the support of such poor or indigent persons, and the expense of transportation, treatment, maintenance and actual cost of articles of clothing furnished by the sanitarium to such poor and indigent persons shall be a county or town charge as the case may be; . . ."

Insofar as recipients of benefits under the provisions of Chapter 5, Laws of 1941, known as the "Silicosis Act," are concerned in determining the question here presented, Section 1520, Revised Codes of Montana, 1935, must be read in connection with the provisions of said Chapter 5 and the objects, purposes and intent of both must be given effect, if possible.

The State Tuberculosis Sanitarium was established by Act of the Twelfth-Legislative Assembly of 1911 under Chapter 125, Laws of 1911 and carried into the Political Code of 1935 as Chapter 132, Vol. 1, Revised Codes of Montana, 1935. Its obvious purpose was to provide treatment, care and maintenance for residents suffering from tuberculosis and silicosis, or what is generally known as "Miners' Consumption," at the expense of the county or municipality of their residence. In other words the expense of such care, treatment and maintenance was to be a public charge.

From the language of the act it is very apparent it was the intention of the lawmakers the facilities of this institution were primarily provided for those not able to pay for such services. While those able to pay may be admitted, yet they cannot be received by the institution while there are those unable to pay seeking admission.

Under the provisions of Section 1520, Revised Codes of Montana, 1935, the county commissioners to whom application for admission is made, in certifying the applicant for admission, have the duty of determining the ability of the applicant to pay. Under Section 1522, the cost of treatment, care and maintenance is fixed at not to exceed one dollar per day. We are advised by the letter of Dr. Terrill such rate has been fixed at one dollar per day.

Therefore, the commissioners must determine if the applicant is able to pay one dollar per patient day while at the institution. While the statute places this duty within the discretion of the commissioners, such discretion must be exercised in a reasonable manner. It is not provided by statute, nor can we assume from any provisions thereof, that in order to obtain the benefits of the sanitarium one must be a pauper. The only question to determine is if the applicant is able to pay one dollar per day. Can it be reasonably said that one whose only and entire income is thirty dollars per month is able to pay thirty or thirty-one dollars per month for care, treatment and maintenance at the sanitarium?

As mentioned above, Chapter 132, Volume 1, Revised Codes of Montana, 1935, must be read in connection with Chapter 5, Laws of 1941. Both acts are designed to benefit those suffering from silicosis. Benefits provided under Chapter 5 are not based on need. As pointed out in Opinion No. 240, Volume 19, Report and Official Opinions of the Attorney General, it was the intention of the legislature—in enacting Chapter 5—

that each person qualifying for benefits thereunder should receive a minimum of thirty dollars per month, regardless of whether such person was an inmate of the sanitarium and receiving treatment, care and maintenance as a free patient. It was not the intention of the legislature the benefits provided under Chapter 5 should be utilized to pay for treatment at the sanitarium. If such was the intent, the legislature would have exempted from such benefits persons who were inmates therein. On the contrary, however, it specifically provided that inmates were entitled to benefits under Chapter 5. (See Opinion No. 240, supra.)

In the first instance, by Chapter 132, Volume 1, Revised Codes of Montana, 1935, the legislature determined the cost of care, treatment and maintenance at the sanitarium should be a charge upon county funds. The payment to inmates under Chapter 5, Laws of 1941, is made from state funds entirely. If this is required to be paid by the recipient for his care, then it must be the legislature intended by Chapter 5 to relieve the county of this expense. I cannot interpret the provisions of Chapter 5, supra, as evincing such intent. On the contrary, I think it very clear payments provided under Chapter 5, Laws of 1941, were intended by the legislature "to make amends for a disability attributable to the employment," as was stated by the Supreme Court of Maine in the *Husties* case, 123 Me. 428, 123 A. 514. That the legislature did not intend payments under Chapter 5 should be used to pay for care and treatment at the sanitarium, but were in addition to such, is evidenced from the provisions of paragraph (c) of Section 3 of the act, where it is provided payment shall not be made to one while in a public institution other than the tuberculosis sanitarium. In other words, if the person qualified for payment is an inmate of any other public institution, payment is not made to him; but if he is an inmate of this public institution, the state sanitarium, payment is made to him. Further in the same paragraph, it is provided that, if he is an inmate of the sanitarium and has a wife and child, the payment is made to the wife and child.

It is a well known fact most, if not all, patients at this institution are free patients—persons who, because of lack of financial resources, cannot obtain like treatment elsewhere. It is also well known the basis of treatment for this disease is rest and freedom from worry. I think the legislature, recognizing these facts, intended the benefits provided under the act should serve to relieve the patient of financial worries. The inmate with dependents would naturally worry about the welfare of his dependents, and the inmate without dependents would worry because of his lack of funds or income to provide him with the little necessities not provided by the institution. These payments would relieve such worry and thus aid in the recovery of the patient.

Dr. Terrill has, in his letter to you, advised:

"One county has gone so far as to state that unless the individual return the entire amount to them, it will be necessary for us to discharge him from the institution. It so happens that this man is in a very far advanced condition and of course it would be criminal if it were necessary to discharge him."

It is difficult for me to believe any public official or board could be so bereft of humane qualities as to make the demand referred to by Dr. Terrill. Such action would cause a victim of a disease contracted while developing the resources of this state to be discharged from an institution created by the people especially for such victim's benefit—merely because the victim does not give up his last cent for care therein.

I do not hesitate to state I—as Attorney General and as a member of the State Board of Examiners, which has supervision and control of the state sanitarium—shall strenuously oppose the discharge from said institution of any bed-ridden patient who is unable to pay or fails to pay for his care, treatment, and maintenance therein under the circumstances set forth above.

It is therefore my opinion it was not the intention of the legislature that inmates of the Montana state tuberculosis sanitarium, receiving benefits under Chapter 5, Laws of 1941, should be required to pay for their care and treatment therein.

Sincerely yours,

JOHN W. BONNER
Attorney General