

COUNTIES - County of financial responsibility for nursing home patients on general relief;

COUNTIES - County of financial responsibility where general relief recipient moves to a nursing home in another county;

NURSING HOMES - County of financial responsibility for nursing home patients receiving public assistance;

MONTANA CODE ANNOTATED - Sections 1-2-102, 1-7-215, 53-2-610, 53-3-103, 53-3-105, 53-3-204, 53-3-301, 53-3-302, 53-3-306.

HELD: 1. Under section 53-3-306, MCA, a county may not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the placement in the nursing home is permanent or temporary; in which county the applicant is registered to vote, owns property, owns or leases a home, pays property taxes or registers a vehicle; and in which county the applicant intends to remain.

2. Under section 53-2-610(3), MCA, recipients of general relief who move to a new county in order to receive medical care in a nursing home remain the financial responsibility of the original county unless a court decree declares the recipient's residence to be other than the original county.

7 April 1983

C. Ed Laws
Stillwater County Attorney
Stillwater County Courthouse
Columbus MT 59019

Dear Mr. Laws:

You have requested my opinion on the following question:

Do individuals leaving their county of residence in order to receive medical care in a nursing home facility in another county gain residence in the county in which the nursing home is located for the purpose of applying the provisions of Title 53, chapter 3, MCA, dealing with general relief or do they remain a resident of the county they are leaving for such purposes?

The Legislature, pursuant to article XII, section 3(3) of the Montana Constitution, has provided for the cooperative state-county administration of a number of programs for economic assistance to the aged or infirm. The program for "general relief" governed by Title 53, chapter 3, MCA, and commonly known as county general assistance, provides aid to those individuals in need of public assistance who are not otherwise cared for through federal-state programs such as Medicaid (Tit. 53, ch. 6, pt. 1, MCA) or Aid to Families with Dependent Children (Tit. 53, ch. 4, pt. 2, MCA). See 37 Op. Att'y Gen. No. 35 at 157 (1977); Tit. 71, ch. 3, R.C.M. 1947 (now codified as Tit. 53, ch. 3, MCA). General relief encompasses three types of payments: payment of medical expenses (§ 53-3-103, MCA), payment of burial expenses (§ 53-3-105, MCA), and grants of assistance necessary

"to meet a minimum subsistence compatible with decency and health" (§§ 53-3-204, 53-3-302, MCA). While the Montana Department of Social and Rehabilitation Services has overall responsibility for the administration of federal and state programs of public assistance, each county is primarily responsible for the administration and financial support of its own general relief program. Compare, e.g., § 53-2-608(1), MCA, with §§ 53-3-301 to 302, MCA.

The general rule concerning county liability for general relief, § 53-3-306, MCA, provides as follows:

- (1) General relief assistance shall be paid from the poor fund of the county where the eligible person resides.
- (2) A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana is considered a new resident for the purposes of this chapter and 53-2-610(3).
- (3) When a person who receives general relief assistance moves to reside in another county, he becomes the financial responsibility of the new county from the date he begins to reside in that new county.

This provision establishes a general rule that a county's liability to make general relief payments depends upon the recipient's present residence, regardless of former place of residence. Where the legislative intent can be determined from the plain meaning of the words used, we need not go further and apply any other means of interpretation. Tongue River Electric Cooperative v. Montana Power Company, 38 St. Rptr. 2032, 636 P.2d 862, 864 (1981). Under section 53-3-306, MCA, a county must bear the financial responsibility for all residents, old and new.

Historically, this was not the case. Until 1979 the rule was that a person who moved from one county to another "continue[d] to be a financial responsibility of the original county of residence for one (1) year from the date of his change of residence." § 71-302.2, R.C.M. 1947; see Blaine County v. Moore, 174 Mont. 114, 568 P.2d 1216 (1977). The 1979 enactment of section

53-3-306, MCA, as it now reads unambiguously removed the one-year residency requirement for liability when a person moves to another county, and imposed financial responsibility on that county where a general relief recipient resides. 1979 Mont. Laws, ch. 450. The legislative intent is clear. As a general rule, no county may look to another to shoulder financial responsibility for new residents.

Your question is particularly directed to the issue of the financial responsibility imposed on counties by persons moving into nursing homes located there. Section 53-2-610(3), MCA, deals specifically with these situations:

(3) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall be the financial responsibility of the appropriate county as provided in subsections (3) (b), (3) (c), and (3) (d) of this section.

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. Such a person becomes the financial responsibility of the new county of residence. [Emphasis added.]

It is well settled that in interpreting statutes, sections must be read and considered in their entirety. Effect should be given to all sections where possible. § 1-2-101, MCA; see State v. Meader, 36 St. Rptr. 1747, 606 P.2d 507 (1979). If there is a conflict between statutes, the more specific section must prevail. § 1-2-102, MCA. Applying these rules here, it is necessary to harmonize the more specific statute, § 53-2-610, MCA, with the general provisions in section 53-3-306, MCA. Section 53-2-610(3), MCA, establishes a presumption that a recipient of public assistance who moves to another county in order to become a patient in a licensed nursing home moves for a "special purpose" and therefore does not change residence. § 1-1-215(1), MCA; see In re Ingersol's Estate, 272 P.2d 1003, 1005 (1954). This presumption may be overcome only by court decree.

Section 53-2-610(3), MCA, is limited only to "recipients of public assistance who become...patients in a licensed nursing home." (Emphasis supplied.) Thus it requires only that a county already providing public assistance to a person must generally continue to provide assistance if that person moves to another county in order to become a nursing home patient. The presumption of section 53-2-610(3), MCA, does not apply to the situation in which a nonrecipient of public assistance moves to another county in order to become a nursing home patient and subsequently applies for public assistance in the new county. Cf. 37 Op. Att'y Gen. No. 35 at 157 (1977). In that situation, the general rule of section 53-3-306, MCA, applies. The new county may not automatically disclaim financial responsibility.

The above interpretation requires that residence, and therefore financial responsibility, be determined on a case-by-case basis. To assist in those determinations I offer the following guidelines.

The general rules for determining residence are contained in section 1-1-215, MCA:

Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

(1) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which he returns in seasons of repose.

(2) There can only be one residence.

(3) A residence cannot be lost until another is gained.

....

(6) The residence can be changed only by the union of act and intent.

See McCarthy v. Montana Power Co., 143 Mont. 134, 387 P.2d 438 (1963). Appropriate indicia for determining county residence include home ownership or lease, county vehicle registration, voter registration, property ownership in the county, and payment of county property taxes. 35 Op. Att'y Gen. No. 63 at 153 (1974). It is important to remember, however, that the above factors in and of themselves do not establish residence. The intention of the individuals must be considered and may be the deciding factor if no other indicia exist.

In summary, the financial responsibility for a nursing home patient depends on examination of several factors: the status of the applicant, the legal residence of the individual, and the reason for change of residence all play a role. As stated above, the determination of financial responsibility in this area must be done on a case-by-case basis.

THEREFORE, IT IS MY OPINION:

1. Under section 53-3-306, MCA, a county may not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the

placement in the nursing home is permanent or temporary; in which county the applicant is registered to vote, owns property, owns or leases a home, pays property taxes or registers a vehicle; and in which county the applicant intends to remain.

2. Under section 53-2-610(3), MCA, recipients of general relief who move to a new county in order to receive medical care in a nursing home remain the financial responsibility of the original county unless a court decree declares the recipient's residence to be other than the original county.

Very truly yours,

MIKE GREELY
Attorney General