

LETTER OPINION
96-L-216

November 15, 1996

Mr. John E. Greenwood
Stutsman County State's Attorney
511 2nd Avenue SE
Jamestown, ND 58401

Dear Mr. Greenwood:

Thank you for your letter concerning the responsibility of the Stutsman County Social Service Board (Board) to bury or cremate indigent patients who die at the North Dakota State Hospital under N.D.C.C. § 23-06-03(4). Specifically, you ask whether the Board is responsible for the expenses of burial or cremation for "long term" patients that you describe as persons who have been in the State Hospital for many years as well as persons who are living in Stutsman County "only for the purpose of treatment at the State Hospital."

N.D.C.C. § 23-06-03 governs the duty, and consequently the responsibility of paying, for burial or cremation of a deceased person. A spouse, or, if none, the next of kin is required to bury or cremate a decedent. N.D.C.C. § 23-06-03(1), (2). If the decedent is indigent and has no spouse or next of kin, a county social service board has the duty of paying for burial or cremation. N.D.C.C. § 23-06-03(4). That section provides, in pertinent part:

If the deceased is not survived by a [spouse or kin] and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation.

With respect to deceased patients at the North Dakota State Hospital located in Jamestown, Stutsman County, North Dakota, who have neither spouse nor kin, the Board's obligation to pay for burial or cremation depends upon the "residence for county general assistance purposes" of the patients. Id.

The 1995 Legislature substantially amended N.D.C.C. ch. 50-01 concerning county general assistance, which previously was referred to as county poor relief. 1995 N.D. Sess. Laws ch. 456, §§ 5-16.

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Previously, a person gained residence for poor relief purposes after living in a county for one year. N.D.C.C. § 50-02-04(1) (1993). The time a person was confined in a hospital or institution did not count in determining residency for poor relief purposes. N.D.C.C. §§ 50-02-04, 50-02-05 (1993). See also 1978 N.D. Att'y Gen. Op. 151; In Re Wilson, 58 N.W.2d 470, 474 (N.D. 1953). The repeal of N.D.C.C. ch. 50-02 concerning residency for poor relief purposes eliminated any time frame in determining residency for county general assistance purposes. 1995 N.D. Sess. Laws ch. 456, § 25.

Currently, residence for general assistance purposes is in the county where the person "is living on other than a temporary basis." N.D.C.C. § 50-01-26. Residence for general assistance purposes is different than legal residence. Compare N.D.C.C. § 54-01-26 (defining residence generally as where one intends to remain when not temporarily elsewhere). Legal residence is a question of fact. See, e.g., Matter of Estate of Bursheim, 483 N.W.2d 175, 180 (N.D. 1992) (probate proceeding); BRT v. Executive Dir. of Social Service Bd., 391 N.W.2d 594, 598 (N.D. 1986) (termination of parental rights); Shulze v. Shulze, 322 N.W.2d 250, 252 (N.D. 1982) (concluding penitentiary inmates are not legal residents of the county where imprisoned in determining venue in a divorce action). The North Dakota Supreme Court has explained that residence under the poor relief statutes refers to where a person actually lives without regard to intent. In Re Wilson, 58 N.W.2d at 471-472.

In my opinion, whether a patient in the North Dakota State Hospital is a resident of Stutsman County for general assistance purposes related to the Board's obligation to pay for burial or cremation is a question of fact. See 1995 N.D. Att'y Gen. Op. 30; Matter of Estate of Bursheim, 483 N.W.2d at 180; Habberstad v. Habberstad, 444 N.W.2d 703, 704 (N.D. 1989).

The patients you refer to "who have been in the State Hospital for many years" arguably are living in Stutsman County "on other than a temporary basis." Because "temporary" under N.D.C.C. § 50-01-26 is not defined, it must be given its plain, ordinary, and commonly understood meaning. Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). The common definition is imprecise, meaning "[l]asting, used, or enjoyed for a limited time; impermanent." The American Heritage Dictionary 1252 (2d col. ed. 1991). Arguably, a patient who is subject to a court order for involuntary treatment for a period of 14 days, N.D.C.C. § 25-03.1-17, or for 90 days, N.D.C.C. § 25-03.1-22(1), is living at the State Hospital on a temporary basis whereas patients "who have been in the State Hospital for many years" are living there other than on a

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temporary basis. If authorized, a guardian can establish residence of a ward in the State Hospital subject to certain limitations. See N.D.C.C. §§ 30.1-28-04(5), 30.1-28-12(2). A State Hospital patient without a guardian is presumed competent regardless of receipt of treatment (N.D.C.C. § 25-03.1-33) and arguably may establish residence at the State Hospital under general residency laws if the patient so intends. N.D.C.C. § 54-01-26. If the patient has established legal residency in this manner, the patient is there "on other than a temporary basis."

Residency is a fact specific determination. Thus, even patients living in Stutsman County solely for the purpose of treatment, if on other than a temporary basis, are residents of Stutsman County for county general assistance purposes. N.D.C.C. § 50-01-26. If there is uncertainty about residency for county general assistance purposes, "the county in which the person lives shall provide county general assistance." N.D.C.C. § 50-01-29. This is consistent with N.D.C.C. § 23-06-03(4) providing that if residence for county general assistance purposes cannot be established, "[t]he cost of burial must be paid by the county social service board of the county in which the death occurs. . . ." N.D.C.C. § 23-06-03(4). If the cost of burial or cremation of indigent long-term patients at the State Hospital without spouse or kin is burdensome to the county, any change will have to be made by the Legislature. See, for example, N.D.C.C. § 25-03.1-38 (requiring the Department of Human Services, which operates the State Hospital, to reimburse the Stutsman County District Court for expenses in connection with patients "in residence" at the State Hospital).

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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