

OPINION
78-151

December 4, 1978 (OPINION)

Mr. Robert N. Lee
Pembina County State's Attorney
Pembina County Courthouse

Cavalier, ND 58220

Dear Mr. Lee:

This is in response to your September 26, 1978, letter in which you requested an opinion on the residency of an individual for public assistance based on the following factual situation:

In October of 1973 an individual came to North Dakota from Minneapolis, Minnesota. She lived in Fort Totten, from October, 1973 to January 1974; she entered a rest home in Devils Lake in January, 1974 and remained there until February, 1975; she was a patient at the State Hospital in Jamestown from February, 1975 until August, 1975; she lived in a rest home in Aneta from August, 1975 until September 11, 1976; was a patient at United Hospital, Grand Forks, from September 11, 1976, until October 6, 1976; and then entered a nursing home in Walhalla until her death on April 20, 1977.

An application for assistance was signed in Benson County on July 27, 1976, forwarded to Ramsey County, then forwarded to Nelson County, and finally to Pembina County where on September 7, 1977, the Medical Assistance was certified "under protest".

From the facts and circumstances surrounding this case, it does not appear that the individual entered North Dakota for a "temporary purpose," but rather, entered with the idea of remaining in the state. As such, pursuant to the United States Supreme Court decision in *Sharp v. Thompson*, 394 U.S. 618, which struck down durational residence requirements, as well as the federal regulations concerning residence for Medical Assistance, 42 CFR 450.40, which provides that a person is a resident of a state when voluntarily living in the state with the intention of making the state his home and not for a temporary purpose, it is our opinion that the individual in this situation became a resident of North Dakota for poor relief purposes in October, 1973.

Having concluded that the individual has been a resident of North Dakota since October, 1973, it is now necessary to determine which county is the county of legal residence for purposes of public assistance (Medical Assistance). In this regard, it is our opinion that North Dakota Century Code Section 50-02-04 is controlling.

North Dakota Century Code Section 50-02-04 provides:

If no type of public assistance or poor relief, whether county,

state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each male person and each unmarried female over the age of eighteen years, who has resided one year continuously in any county in this state, shall be deemed to have residence in such county;
2. Each person who has resided one year continuously in the state, but not in any one county, shall have a residence in the county in which he or she has longest resided within such year;
3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he has last resided;
4. For the purposes of this section the time spent while receiving institutional care in any state licensed home for the aged, infirm, neglected or indigent shall not be included in the computation of time necessary to establish residence hereunder.

In the situation presented, the individual lived in Benson County for roughly three months (October, 1973 - January, 1974), then entered a rest home in Ramsey County for roughly thirteen months (January, 1974 - February, 1975). She then entered the State Hospital and remained there until August, 1975, when she moved to a rest home in Nelson County where she was living at the time of application, September, 1976.

As such, it is clear that the individual continuously resided in this state for one year. However, pursuant to subsection 4 of North Dakota Century Code Section 50-02-04, it is our opinion that the time spent in the rest homes and the State Hospital cannot be used in the computation of the time necessary to establish county residence. Therefore, pursuant to subsection 2 of North Dakota Century Code Section 50-02-04, it is our opinion that the county in which the individual longest resided was Benson County, and as such, the individual was a resident of Benson County for poor relief purposes at the time she made application for Medical Assistance.

As, in our opinion, the residence of the individual at the time of application is determinative of this question, it is unnecessary to consider the facts subsequent to the date of said application, September 11, 1976.

Sincerely,

ALLEN I. OLSON

Attorney General