

Date Issued: May 12, 1983 (AGO 83-20)

Requested by: Dale Moug, Executive Director  
Department of Human Services

- QUESTION PRESENTED -

Whether the Department of Human Services has the authority to establish, by rule, a new method for use in determining each county's share of Aid to Families with Dependent Children and Medical Assistance program costs.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Department of Human Services has the authority to establish, by rule, a new method for use in determining each county's share of Aid to Families with Dependent Children and Medical Assistance program costs.

- ANALYSIS -

Section 50-09-21 of the North Dakota Century Code which concerns the financing of the Aid to Families with Dependent Children program (AFDC), requires the county to pay "one-fourth of the amount expended for aid to dependent children in such county, in excess of the amount provided by the federal government . . . ." Section 50-24.1-03, N.D.C.C., which relates to the financing of the Medical Assistance program (MA), requires the county to pay "for amounts expended for medical assistance in that county in excess of the amount provided by the federal government, in the amount of fifteen percent". Both the AFDC and the MA programs are administered under the direction of the Department of Human Services. That department possesses rulemaking authority under both programs (see sections 50-09-02(3) and 50-24.1-04, N.D.C.C.), as well as broad, general rulemaking power (see section 50-06-16, N.D.C.C.).

Without any more thorough examination, it would appear that the department possesses ample authority to promulgate rules for use in determining each county's share of program costs.

The law concerning residence for poor relief purposes has, however, historically been used in determining residence for the AFDC and MA programs even though the benefits conferred under those programs do not constitute poor relief. A review of the reported court decisions, and the opinions of the Attorney General, does not reveal any stated basis for the application of these residency laws to the AFDC and MA programs. Neither is there any stated basis for connecting the law of residency for poor relief purposes to such now abandoned programs as Old Age Assistance, Aid to the Blind, or Aid to the Disabled. The general impression gained is that all types of public assistance were simply, but incorrectly, regarded as "poor relief".

That is not to suggest that the application of the law concerning residency for poor relief purposes was incorrect. A previous opinion of this office, issued to T. N. Tangedahl on May 16, 1973, held that "in the absence of any . . . provision (elaborating on section 50-09-21, N.D.C.C.) chapter 50-02 would be an appropriate standard to follow". Should the department, by rule, establish some other appropriate standards to follow, the May 16, 1973, opinion presents no obstacle to their implementation.

There is one impediment which does, however, prevent the department's immediate implementation of the suggested rule. Two express provisions found in chapter 50-02, N.D.C.C. (50-02-01 and 50-02-03, N.D.C.C.), call for their application to the whole of Title 50. The reference to "title", in these sections, first appeared in the North Dakota Revised Code of 1943. The 1943 Code was also the first in which the "public welfare" title appeared. No available records suggest that the Legislature considered the propriety of references, to the entire public welfare title, in N.D.R.C. chapter 50-02, Residence for Poor Relief Purposes, when only N.D.R.C. chapter 40-01, County Poor Relief, Administration, concerns itself with poor relief. The Legislature has, some forty years later, considered those references to "title" and has removed them. Both sections 50-02-01 and 50-02-03, N.D.C.C., received major amendments in Senate Bill 2249 (effective July 1, 1983), including the substitution of the word "chapter" for the word "title". The legislative history of Senate Bill 2249 indicates that this change was intended to limit the application of chapter 50-02, N.D.C.C., to the area of poor relief only.

In view of these facts, it appears that the Department of Human Services will not be bound by the residency laws of chapter 50-02, N.D.C.C., in the administration of programs other than poor relief, and it further appears that the department has sufficient rulemaking authority to, by rule, establish a mechanism for determining each county's share in the AFDC and MA programs.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

ROBERT O. WEFALD

Attorney General

Prepared by: Blaine L. Nordwall  
Assistant Attorney General