

2328

TUBERCULOSIS—PERSONS IN NEED OF CARE AND MEDICAL TREATMENT BUT NOT IN NEED OF HOSPITAL CARE AND TREATMENT, NOT LIVING IN A TUBERCULOSIS SANITARIUM OR HOSPITAL—ENTITLED TO POOR RELIEF—PROVISO, ACQUISITION OF LEGAL SETTLEMENT IN ONE OF COUNTIES OF DISTRICT.

SYLLABUS:

Persons suffering from tuberculosis and in need of care and medical treatment, but not in need of hospital care and treatment, and not living in a tuberculosis sanitarium or hospital, are entitled to poor relief providing they have acquired legal settlement in one of the counties of the district.

Columbus, Ohio, September 28, 1950

Hon. Mathias H. Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“I am enclosing copy of a letter received from the Mont-

gomery County Relief Area. Also question for poor relief for persons suffering from tuberculosis, but not confined in a hospital:

June 23, 1950

Montgomery County Commissioners
Court House
Dayton, Ohio

Gentlemen:

Your attention is invited to a very controversial issue involving expenditure of relief funds for payment of medical care in the home for relief recipients who are released from tuberculosis hospitals. At the present time we are authorizing pneumothorax as well as periodic X-rays and physical check-ups to approximately twenty (20) of our active clients who have been declared arrested tuberculars. In addition to the above, we provide care for three who have voluntarily left the Sanatorium and two contagious cases who are awaiting beds at Stillwater.

Patients released from tuberculosis sanitoriums have for many years been authorized medical treatment (pneumothorax) by this agency. Now information comes to us from the District Representative of the State Division of Social Administration, Department of Public Welfare, quoting the Chief who points out that there are no mandatory provisions in law requiring counties to provide care in contagion cases except for non-residents. In view of this, the State will allow reimbursement for medical and hospital care in contagion cases eligible for relief. However, he further points out that this is not true in the instance of tuberculosis where there are specific provisions in the law for treatment. He claims that payments from relief funds are not proper charges and reimbursement cannot be allowed for such expenditures. Furthermore, he advises us that the State Department of Welfare will withhold reimbursement on a matching basis of these expenditures retroactively to January 1, 1950.

It is our contention that there are no specific provisions in the relief law in the treatment of this type case and if our practice has been illegal, why had it not been determined so in the past.

This information is submitted for consideration of an Attorney General's opinion.

Very truly yours,
/s/ Adam P. Kurpiel
Adam P. Kurpiel
Superintendent'

"The tuberculosis hospital located in Montgomery County is the district hospital, Montgomery and Preble

Counties comprising the district. My investigation of the matter discloses that Section 3139-2, General Code, provides that:

'The district hospital for tuberculosis shall be devoted to the care and treatment of those persons afflicted with tuberculosis who are residents of the district and *who are in need of hospital care and treatment.*'

"Section 3391-13, General Code, provides that:

'* * * Poor relief may be given to persons living in their own homes * * * but not to persons living in a * * * or tuberculosis sanitorium * * *.'

"Section 3391-14, General Code, provides:

'* * * The receipt of other forms of public assistance shall not prevent the receipt of poor relief if additional need exists.'

"The limitation on the expenditure of tax money levied under Sections 3139 to 3139-24 both inclusive, to aid those afflicted with tuberculosis, is to those who are in need of hospital care and treatment. The only persons afflicted with tuberculosis who are not entitled to poor relief under Section 3391-13, General Code, are those living in a tuberculosis sanitarium.

"I am assuming that these tubercular patients mentioned in the letter, had acquired legal settlement in either Montgomery or Preble Counties before entrance into the district tuberculosis hospital.

"Are persons suffering from tuberculosis, and in need of care and medical treatment, but are not in need of hospital care and treatment, and are not living in a tuberculosis sanitarium or hospital, entitled to poor relief, providing they have acquired legal settlement in one of the counties of the district?"

Section 3139, et seq., General Code, provides for the general supervision of all tuberculosis hospitals by the State Department of Health, establishment of district tuberculosis hospitals and the appointment of a board of trustees to manage and control such district tuberculosis hospitals. Section 3139 of the General Code provides in part that:

"The state department of health shall have general supervision of all sanatoria, hospitals and other institutions engaged in the maintenance, care and treatment of persons suffering from tuberculosis, * * *. By maintenance, care and treatment is meant proper housing and nutrition, * * *."

Section 3139-2 of the General Code provides that:

"The district hospital for tuberculosis *shall be devoted* to the care and treatment of those persons afflicted with tuberculosis who are residents of the district and who are in need of hospital

care and treatment, provided that if facilities are available and not used by such residents, trustees of such hospital may contract for the care of patients from counties not included in the district.” (Emphasis added.)

Section 3139-3 of the General Code provides that :

“As soon as possible after organization, the joint board of county commissioners shall appoint a board of trustees in whom shall be vested the management and control of such district tuberculosis hospital, said board to consist of one member from each county in the district. * * *”

It is a well-established principle of law that a board created by statute has only those powers specifically granted it or such as may necessarily be implied therefrom. It thus becomes apparent that a district tuberculosis hospital, through its board of trustees, may furnish care and treatment to only those persons who are confined in said hospital.

Section 3391-13 of the General Code defines “poor relief” and governs the disbursement for same. Said section reads as follows :

“Poor relief means food, clothing, shelter, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency. Poor relief may be given in cash or by order or both and shall be inalienable whether by way of assignment, charge, or otherwise, and exempt from attachment, garnishment or other like process. Local relief authorities shall not disburse funds through any private organization. *Poor relief may be given to persons living in their own homes or other suitable quarters, but not to persons living in a county home, city infirmary, jail, or tuberculosis sanatorium or to children who are not living with their parents, guardians or other persons standing in place of parents.*” (Emphasis added.)

The above statute appears to be quite clear and, in my opinion, no problem of interpretation arises.

In Sutherland Statutory Construction, Volume 2, §4801, at page 342, it is said :

“* * * that if an act is clear and unambiguous its only duty is to apply the act and that no problem of interpretation arises. Only when the act is of doubtful meaning does the judicial obligation to interpret it arise. * * *”

It is further said in Sutherland Statutory Construction, §4814, at page 358, that :

“It is a proper exercise of the legislative function to define the words contained in the statute and to prescribe rules for their

interpretation. When a legislature defines the language it uses, its definition is binding upon the court and this is so even though the definition does not coincide with the ordinary meaning of the words used. * * *

In view of the foregoing, and in specific answer to your question, you are advised it is my opinion that persons suffering from tuberculosis and in need of care and medical treatment, but not in need of hospital care and treatment, and not living in a tuberculosis sanitarium or hospital, are entitled to poor relief providing they have acquired legal settlement in one of the counties of the district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.