

STATE CANCER HOSPITAL:) No specified length of time required
) to establish a new residence. Where
RESIDENCE:) new residence established by patient,
) must be recertified and county of
) patient's new residence becomes liable
) for future support.

November 27, 1940



Miss Dorothy Hehmann
Executive Director
State Cancer Commission
3713 Washington Blvd.,
St. Louis, Missouri

Dear Miss Hehmann:

We are in receipt of your letter of November 13th, wherein you state as follows:

"As you know, according to State law, the county of residence of a patient must certify the individual into The Ellis Fischel State Cancer Hospital, thus becoming liable for a fee of no more than \$5.00 per month for the time the individual is in the hospital. Arrangements for such original certification and payment of fees has been worked out in a very satisfactory manner. However, as you know, we are dealing with only indigent citizens of the State of Missouri. Quite a number of these are elderly people, completely without funds, and spend a portion of their time with one relative, then move to live with another in a different county of the state. Also, many of these patients must be re-admitted to the hospital for further treatment after a period of time has elapsed, sometimes as much as six months or a year. Occasionally we find that in the interim between the first and second admissions the

patient has moved from one county to another. The problem now arises: Must that patient be recertified by the second county and, if so, how long must the patient live in the county before such recertification is necessary? At one time we received an opinion from your office to the effect that residency in the State of Missouri is interpreted on the basis of intent to stay. We know for voting privileges an individual must reside in a county at least 60 days before he is permitted to vote. Does this mean that an individual must reside in a county 60 days before that county is responsible for him, provided he is indigent? In other words, what we are trying to learn is

1- Whether a patient must live in a county more than two months before he needs to be recertified for admission to the hospital.

2- If this (1) is true, and the patient is admitted during this two month period, which county do we bill, the original county that certified the patient or the county in which the patient is residing at a given time?

"We would appreciate having an opinion from you in regard to this."

The Fifty-ninth General Assembly (Laws of Missouri, 1937) created the State Cancer Hospital. Section 7, page 496, of said Act, provides for the treatment of "indigent persons," "unable financially" to secure care and treatment for cancer:

"The State Cancer Hospital shall be primarily and principally designed for the care and treatment of indigent persons afflicted with cancer, such scientific research as will promote the welfare of indigent patients committed to its care and for the care of legal residents of Missouri only. Where such patient is unable financially to secure such care or, in the case of a minor, where the parent, guardian, trustee or other person having lawful custody of such minor's person, as the case may be, is unable financially to secure such care the State Cancer Hospital is hereby designated as a place of treatment for such persons."

Section 8, page 497, of said Act, provides as follows:

"Whenever the existence of a case described in Section 7 of this Act shall come to the notice of the sheriff, health officer, public health nurse, peace officer, or any other public officer, or any physician or surgeon, it shall be his duty to, and any other person may, file with the Judges of the County Court of the county of the legal residence of such person, or if such person be a resident of the City of St. Louis, then with the corresponding authority of said City, and application for the treatment of such person at the State Cancer Hospital. Such application shall be made on blanks to be furnished by the State Cancer Hospital and shall contain a full statement of the financial situation of the person sought to be treated and a general statement of his physical condition.

Upon the filing of such application, the Judges of the County Court shall make investigation in such manner as they shall deem advisable, and it shall be the duty of any public official of any county, city, town, village or ward of the residence of the person to be treated to supply the Judges of the County Court on request thereof all information within their knowledge relative to the financial situation of the person sought to be treated. If, after such investigation, said Judges of the County Court shall be satisfied that the person on whose behalf the application is made is not financially able to provide himself with such treatment, or in case of a minor, that his parent, guardian or trustee, or the person having legal custody over him or legally responsible for his support or maintenance is not financially able to provide such treatment, then said Judges shall appoint a physician of said County whose duty it shall be to personally make an examination of the person on whose behalf said application for treatment has been filed. Said Physician shall thereupon make and file with the Judges of the County Court a report in writing, setting forth the nature and history of the case, and such other information as will be likely to aid in the medical or surgical treatment, especially tumors and diseases of a cancerous nature, affecting said person and shall also state in said report whether or not, in his opinion, the condition of such person can probably be alleviated. The report of said physician shall be made within such time as the court may direct, and upon blanks, to be furnished by the administrator of the

State Cancer Hospital for that purpose. Said report shall include any information within the knowledge of said physician relative to the financial condition of the person proposed to be treated. The physician appointed to make said examination unless he is already a salaried officer of the State or some political subdivision thereof or municipal corporation therein thereof shall receive the sum of Five Dollars (\$5.00) for making said examination and in any case shall receive his actual and necessary expenses; which fee and expenses shall be paid by the county of residence of the patient; and it shall be the duty of the county court of such county to provide for such payment. If, upon filing said report, the Judges of the County Court shall be satisfied that the patient is one who should be treated at the State Cancer Hospital and that the person to be treated, or his parent, guardian, trustee or other person having legal custody of his person in case of a minor, is not financially able to provide such person with proper treatment, the Judges of the County Court shall enter an order finding such facts. In case the Court is not satisfied they may take additional testimony or make such further investigation as to them shall seem proper. Upon the entry of the order of the Judges of the County Court, approving said application, they shall communicate with the Administrator of the State Cancer Hospital and ascertain whether or not the applicant can be received as a patient. If the State Cancer Hospital can receive such

applicant, the court shall thereupon certify their approval of such application to said hospital. In cases coming to the attention of the County Judges where proper and timely diagnosis may not be had locally, authority is hereby given to said Judges to make proper and necessary orders sending the patient to State Cancer Hospital for examination; the necessary expense incident thereto to be chargeable to the county of residence of the patient. A copy of each application and a copy of the report of the physician and court order in each case shall be sent to the Administrator of said hospital."

The application for care and treatment must be made with the "judges of the county court of the county of the legal residence of such person," who, if satisfied that the person is "not financially able to provide himself with such treatment," appoint a physician to make an examination. The cost of the examination is paid by the "county of residence of the patient," and if the judges of the county court are satisfied that the person needs treatment they may enter an order finding such facts.

Section 9, page 498, of said Act, provides which county shall be charged with the cost of the patient:

"The State Cancer Hospital shall not make any charge directly to a patient admitted on certificate of the Judges of the County Court as heretofore outlined, but shall make a charge against the county from which said patient is sent only for the necessary maintenance and supplies used for the benefit of said patient."

Section 11, page 498, 499, of said Act, provides for the sending of monthly statements of amounts owed by the county court for said patients:

"The Administrator shall, under the direction of the Cancer Commission of the State of Missouri, cause, monthly, to be made out and forwarded to any county court which may send to the State Cancer Hospital a patient as described in this Act, an exact amount of the sum due and owing by such county court on account of such patient. Said county court, at its first session thereafter, shall proceed to allow and cause to be paid over to the Treasurer of the State of Missouri the amount of said account."

Section 14, page 500, of said Act, provides the amount to be paid by the several counties for each patient sent to the hospital:

"The several counties and the City of St. Louis sending indigent patients to the cancer hospital shall pay semi-annually such sums as the State Cancer Commission deem necessary not exceeding Five Dollars (\$5.00) per month per patient; and, in addition thereto the actual cost of their clothing and the expense of their removal to and from the hospital, and if they shall die therein, for burial expenses an amount not to exceed \$50.00; and, in case such indigent person shall die or be removed from the hospital before the expiration of six months, the cancer commission shall refund or cause to be refunded the amount due to the county entitled to the same."

We have a large number of statutes in our State defining what constitutes "residence." In determining who is an "inhabitant" within the meaning of our poor laws, Section 12952, R. S. Mo. 1929, provides that:

"No person shall be deemed an inhabitant within the meaning of this article, who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such poor person, or who shall have removed from another county for the purpose of imposing the burden of keeping such poor person on the county where he or she last resided for the time aforesaid."

The above section might throw some light on the period of time deemed by the Legislature necessary to acquire residence in a county. However, the above section refers to a "poor person," whereas, Section 7, supra, refers to "indigent persons." There is a distinction between a poor person and an indigent person seeking to avail himself of hospital facilities.

This distinction is recognized in the case of Goodall v. Brite, 54 P. (2d) (Cal.), 510, l. c. 514, 515:

"In the second phase of the case we have the problem of the care of the health and the promotion of the general welfare of what we may term the deserving needy, but not the pauper class of the county. This class must be hospitalized at the county hospital or permitted to suffer without proper care. It is common knowledge that this class composes a considerable proportion of the body of the citizenship of any county. As a rule those composing it are honest, industrious, and often thrifty people whose welfare should be of first concern to any governmental agency. It is admitted that a resident pauper must be hospitalized at public expense. This is a matter of pure humanity and no one, solely because of poverty, should be permitted to suffer because of lack of funds. The same reasons

apply with greater force to the class we are considering. We can visualize the head of a family who has employment and can keep it-- an honest worker, frugal and thrifty, who supports his family, educates his children and has perhaps acquired an equity in a modest home. If he is injured, not in the course of his employment, the family income stops and he may require hospitalization and may lack the funds with which to enter a private institution. Must it be said that he should be refused admission to the county hospital because he is not a pauper when if he were a pauper he would be admitted without question? This would amount to the penalizing of honest industry, thrift, and independence and would place a premium on indolence and shiftlessness. Under the principles of humanitarianism, and in the interest of a sound policy, we are compelled to hold that a patient in need of hospitalization, who cannot himself, or through legally liable relatives, pay the charges of a private institution, should be admitted to the county hospital because the care of such sick or injured promotes the public health and general welfare of the community in which he lives.

"If it were necessary we could find another satisfactory reason for the admission of this class of patients to the county hospital. It is admitted that indigent persons are to be admitted when in need of hospitalization. As far as we know, the term 'indigent' has not been defined in California in so far as its use in connection with admissions to county hospitals is concerned. It has been defined in other states chiefly in

connection with the admission of the indigent insane to hospitals. The term when thus used has been held to include persons with insufficient means to pay for hospitalization after providing for those who legally claim their support. Depue v. District of Columbia, 45 App. D. C. 54, Ann. Cas. 1917E, 414; In re Hybart, 119 N. C. 359, 25 S. E. 963; Massachusetts Gen. Hospital v. Inhabitants of Belmont, 233 Mass. 190, 124 N. E. 21; People v. Board of Supervisors, 121 N. Y. 345, 24 N. E. 830. Applying this definition to the instant case, we hold that the word 'indigent,' when used in connection with admissions to county hospitals, includes an inhabitant of a county who possesses the required qualifications of residence, and who has insufficient means to pay for his maintenance in a private hospital after providing for those who legally claim his support."

We find no cases in this State wherein the term "indigent" has been defined, however, we believe that our courts will take the same position as the California court, viz., that a person would not have to be in the pauper class to be entitled to care and treatment at the State Cancer Hospital. It need merely be shown that the person is "not financially able to provide himself with such treatment."

Section 655, R. S. Mo. 1929, provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: * * * * *
* * * * *

seventeenth, the place where the family of any person shall permanently reside in this state, and the place where any person having no family shall generally lodge, shall be deemed the place of residence of such person or persons respectively; * * * * *

We find no statute in our State stating the time required for a person to acquire a new residence. 19 C. J., 403, declares the rule as follows:

"In the absence of any statutory regulation of the subject, no definite period of residence or specified length of time in a particular place is required to establish a domicile, but when coupled with the element of intent, any residence, however short, will be sufficient, even if it is but for a day."

In the case of State ex rel. v. Davis, 203 S. W. 654, 199 Mo. App. 439, the court amplifies the above rule, l. c. 445, 446:

"(Minor on Conflict of Laws, 114; Dicey on Conflict of Laws, 104.) 'Every person of full age having a right to change his domicile . . . if he removes to another place with an intention to make it his permanent residence (animo manendi), it becomes instantaneously his place of domicile.' (Story on Conflict of Laws, 50.) 'Neither presence alone nor intention alone will suffice to create a domicile of choice. Both must concur and at the very moment they do concur, the domicile is created.' 'The term "residence" as here used means simply the actual bodily presence of the party, if that

presence is coupled with the intention to remain permanently.' (Minor on Conflict of Laws, 115.) It is not necessary that the intention should be to remain one's whole life; what is meant by 'permanently' here is that there must be a fixed and definite purpose to remain 'for an unlimited or indefinite time, without any definite intention of ultimate removal.' (Minor, p. 117.) The same author at page 116 says: 'Since physical presence (coupled with the animus manendi) is all that is required, it is immaterial to inquire whether the party is living in a house of his own, in a rented house, in a hotel, in lodgings, or has no place to lay his head. These may be, and often are, of the greatest importance as evidence whereby to determine whether he has the proper animus; but if that is established otherwise they become unimportant.' . . . 'At the moment when a party, being present in a place, forms the definite intention to remain there permanently, from that moment a domicile of choice is created, which will in general continue until a new domicile is acquired.' That the above and foregoing principles, stated by the text books cited, are abundantly sustained by the decisions, is shown by an examination of the following authorities: Ringgold v. Barley, 5 Md. 186; Mitchell v. United States, 21 Wall 350; Allgood v. Williams, 92 Ala. 551; Price v. Price, 156 Pa. St. 617; White v. Tenant, 31 W. Va. 790; Lowrey v. Bradley, 1 Spier's Eq. (S.C.) 1, 39 Am. Dec. 142 Dupuy v. Wurtz, 53 N. Y. 556; City of Hartford v. Champion, 58 Conn. 268; Guier v. O'Daniel, 1 Binn (Tenn) 349, note; Sumrall's Committee v. Commonwealth, 172 S. W. (Ky.) 1057; Hart v. Lindsay, 17 N. H. 236.)"

Thus we see that all a person need to do to establish a new residence is to remove to another place with the intention of making it his permanent residence. No definite period of residence or specified length of time is required and it is immaterial whether a person live in a house of his own or with relatives.

The State Cancer Commission having determined or having been given notice that a patient has changed his residence, would have no authority to bill the county in which the patient has established a new residence until the latter county has had an opportunity to investigate and satisfy itself of the patient's condition and ability to pay.

Section 9, supra, provides that the State Cancer Hospital "shall make a charge against the county from which said patient is sent * * *."

Section 11, supra, provides that the monthly bill is to be made out and forwarded by the Administrator of the Cancer Commission "to any county court which may send to the State Cancer Hospital a patient * * *."

Section 14, supra, provides that "the several counties and the City of St. Louis sending indigent patients to the Cancer Hospital shall pay * * *."

This obviously contemplates that the county must send the patient before they become liable for his care. In other words, the patient must be recertified to the Cancer Hospital.

From the foregoing we are of the opinion that if a patient establishes a residence in a county other than that from which he was originally certified, said county becomes liable for his support irrespective of the length of residence, provided the county court has satisfied itself of the patient's inability to pay for needed

Miss Dorothy Hehmann

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care and treatment and has recertified the patient to the State Cancer Hospital.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
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