

Opinion No. 61-04

January 6, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Carl P. Dunifon, Assistant Attorney General

TO: Mr. Murray A. Hintz, State Director, Department of Public Welfare, P. O. Box 1391, Santa Fe, New Mexico

QUESTION

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Are the provisions of our statute which is commonly known as the "Relative Responsibility Act", applicable to eligible recipients under the New Mexico proposed Medical Aid for the Aged Program?

CONCLUSION

Yes.

OPINION

ANALYSIS

Section 13-1-45, N.M.S.A., 1953 Compilation (P.S.) reads:

"Every child who has reached his twenty-fifth birthday shall support or contribute to the support of his parent or parents if:

A. The parent is unable to support himself and is, or is about to become, a public charge;

and

B. The child is financially able to furnish partial or complete support."

Sections 13-1-46 and 13-1-47, N.M.S.A., 1953 Compilation (P.S.) provide for enforcement and the method of determining the ability of a child to support his parent or parents.

Accompanying your opinion request was Public Law 86-778, 86th Congress, (74 Stat. 924) together with a Committee Print.

In the request you quoted verbatim from said Committee Print No. 60843 entitled "Medical Care For the Aged", which is a summary of Provisions in Public Law 86-778 Relating To Federal-State Grant-In-Aid Medical Assistance Programs For The Aged. This "print" was compiled by Education and Public Welfare Division, Legislative Reference Service, Library of Congress and was printed for the use of the Committee on Finance.

We do not believe it is necessary to requote the quotation from the "Committee Print" or to make any further reference thereto for the purposes of this opinion.

We have carefully perused the pertinent provisions of Public Law 86-778, 86th Congress, (74 Stat. 924). The pertinent provisions so far as your query is concerned, are contained in Title VI Services for the Aged, Section 601.

As a matter of fact, we deem it necessary only to quote from Section 2 thereof as follows:

"Section 2. (a) A State plan for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged must --

. . . .

"(10) (a) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance; . . ."

By the enactment of the aforementioned legislation, the United States Congress did not over-ride, did not add to or detract from nor vitiate in any manner whatsoever the provisions of our so-called "Relative Responsibility Law", Section 13-1-45, N.M.S.A., 1953 Compilation (P.S.) supra.

We find no cases cited in the legal encyclopedias bearing upon the subject at hand.

We do refer, however, to our Opinion No. 60-200 issued October 18, 1960, to which you referred in your query. Opinion No. 60-200, supra, should perhaps be read in conjunction with the instant opinion. The previous opinions of this office cited in our said Opinion No. 60-200 should also be considered as bearing upon the general subject covered in the instant opinion. In view of the foregoing, we answer your question in the affirmative.