

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

December 27, 1973

DEPARTMENT OF LAW LETTER OPINION

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ARIZONA ATTORNEY GENERAL
(R-5)

REQUESTED BY: THE HONORABLE J. MICHAEL FLOURNOY
Coconino County Attorney

QUESTION: May an unliquidated tort claim be considered
a resource in determining eligibility for
free medical care as an indigent?

ANSWER: No.

In order for a person to receive hospitalization, medical care or outpatient relief at county expense, such person must qualify as an "indigent" as defined by the rules and regulations of the Arizona Department of Economic Security (A.R.S. § 11-297.A). Such person must qualify as an indigent whether receiving care through a county operated hospital or a private hospital which seeks reimbursement from the county for services rendered.

The Arizona Department of Economic Security Regulation No. 3-1213, which was adopted pursuant to A.R.S. § 11-297.A, negatively defines indigency by stating that a person is a non-indigent if he has "other property or assets . . . having a total fair market value of eight hundred dollars."

Assuming said person would otherwise qualify as an indigent in order to receive free medical care, the sole question is whether an unliquidated tort claim may be considered "other property or assets . . . having a total fair market value of eight hundred dollars."

An unliquidated tort claim is not a chose in action. At most, it exists as a right to maintain a cause of action against the alleged tortfeasor. This is true even if the alleged tortfeasor or his insurer has made an offer of settlement. Although a tortfeasor is under obligation to compensate one injured by his tort, a cause of action for personal injuries does not become a debt until it is judicially determined. 52 Am.Jur. 363, Torts, § 4. Unless an admission or judicial determination of liability has been made against the tortfeasor, the injured party possesses no "property or assets"; merely a claim.

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Other public assistance programs require that only "currently available resources" be considered in determining eligibility for the particular program [45 C.F.R. § 233.20 (a)(3)(iic)] discussed in Attorney General Opinion No. 69-25 (R-98), September 30, 1969. Also see Graham v. Allen, 11 Ariz.App. 207, 463 P.2d 102 (1970), at p. 209.

Since an unliquidated tort claim is neither a currently available resource regardless if the tortfeasor has made an offer of settlement nor a chose in action, it may not be considered "property or assets" with which to determine eligibility for free medical care as an indigent.

Respectfully submitted,

Gary K. Nelson
by F.S.

GARY K. NELSON
The Attorney General

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