

Office of the Attorney General
State of North Dakota

Opinion No. 81-89

Date Issued: August 18, 1981

Requested by: A. L. Larson, OD
Secretary
State Board of Optometry

--QUESTION PRESENTED--

Whether the Social Service Board of North Dakota may require a recipient of medical assistance to pay a portion of the cost of a second pair of eyeglasses acquired within a one-year period.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the Social Service Board of North Dakota may require a recipient of medical assistance to pay a portion of the cost of a second pair of eyeglasses acquired within a one-year period.

--ANALYSIS--

The State of North Dakota provides medical assistance to eligible persons through the purchase of eyeglasses among other expenses. The state's share of the cost of eyeglasses comes from federal funds provided under the Medical Assistance Program (Medicaid), Title XIX of the Social Security Act, codified as 42 U.S.C. § 1396a.

The Social Service Board has promulgated rules found in Chapter 75-02-02 of the North Dakota Administrative Code. Subdivision d of subsection 2 of section 75-02-02-08, N.D.A.C., provides limitations with respect to eyeglasses. That subdivision states:

Coverage and payment for eye examinations and eyeglasses for eligible recipients shall be limited to examinations and eyeglass replacements necessitated because of visual impairment. Coverage and payment for eyeglass frames shall not exceed forty-four dollars per pair. A recipient is responsible for copayment of three dollars for the replacement of eyeglasses when the replacement is occasioned by loss or breakage. (Emphasis supplied)

This rule requires a recipient of medical assistance to share the cost of eyeglasses in certain circumstances. This cost sharing practice is in accord with the provisions of 42 U.S.C. § 1396a(a)(14)(ii) if 'three dollars' has a 'nominal' value. The word 'nominal' is not defined in either statute or regulation, so it must be understood in its ordinary sense. By

dictionary definition, something of 'nominal value' is 'trifling, insignificant' (Webster's Seventh New Collegiate Dictionary). In the context of the price of a new pair of eyeglasses, three dollars may fairly be trifling and insignificant.

--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