1972

Weber County v. Davis County : Brief of Appellant

IN THE SUPREME COURT
of the
STATE OF UTAH

WEBER COUNTY
Plaintiff-Appellant.

vs

DAVIS COUNTY,
Defendant-Respondent.

Case No. ~~11945~~ 12861

BRIEF OF APPELLANT

Appeal from the Judgment of the
First Judicial District Court of Box Elder County
Honorable VeNoy Christofferson, Judge.

ROBERT L. NEWEY, Esq.
Weber County Attorney
PHILIP J. WILLIAMSON, Esq.
Deputy Weber County Attorney
Attorneys for Plaintiff-Appellant
2471 Grant Avenue
Ogden, Utah

BENNETT P. PETERSON, Esq.
Davis County Attorney
Attorney for Defendant-Respondent
County Court House
Farmington, Utah

TABLE OF CONTENTS

LEGAL AUTHORITIES

STATUTES AND RULES CITED

CASES CITED

OTHER AUTHORITIES

IN THE SUPREME COURT
of the
STATE OF UTAH

WEBER COUNTY

Plaintiff-Appellant.

vs

DAVIS COUNTY,

Defendant-Respondent.

Case No. 11346

BRIEF OF APPELLANT

ROBERT L. NEWEY, Esq.
Weber County Attorney
PHILIP J. WILLIAMSON, Esq.
Deputy Weber County Attorney
Attorneys for Plaintiff-Appellant
2471 Grant Avenue
Ogden, Utah

NATURE OF CASE

This is an action on an account for medical care and treatment furnished by Weber County Memorial Hospital

to indigent residents of Davis County during the years 1968 and 1969.

STATEMENT OF FACTS

Weber County Memorial Hospital is an agency of Weber county and the only extended care hospital in northern Utah (T39-40, 65-66, 100-102). Davis County does not have a tax supported hospital, although such a facility was under serious consideration in 1968 (T57, 121; Exh. 3 P1).

The table below shows pertient factual data respecting the patients for whom appellant claims payment for hospitalization subsequent to January 1, 1968.

INDIGENT SICK

NAME	CLAIM	DATES OF HOSPITALIZATION FROM	TO	
Bishop, N. K.	$ 278.30	5/ 5/69	5/17/69	(T 9-10)
Bodily, Julia	978.53	2/27/67	2/27/67	(T 10-22)
		2/29/68	12/19/69	
Bodily, Fred	5,033.09	2/27/67	12/19/69	(T 23-31)
Fitzpatrick, Beulah	2,303.91	5/ 9/68	5/ 3/69	(T 32-33)
Goldsberry, Mary	1,925.93	5/ 3/66	12/18/69	(T 33)
Murphy, Margaret	11,217.20	10/14/66	12/ 3/69	(T 33-36)
Robins, Elsie Emily	5,607.44	6/ 8/66	12/18/69	(T 36)
Seagrist, Judy	169.50	9/ 4/69	9/ 8/69	)T 36-37)
Shiramizu, Youkichi	3,560.74	4/14/66	2/18/67	(T 37
		3/24/67	5/ 2/69	
Taylor, Eva	4,479.08	10/14/67		(T 37-38)
		8/29/68	12/24/69	
Willey Vosco	1,334.13	2/16/68	5/20/68	(T 38
		5/22/68	3/13/69	
TOTAL CLAIMED	$36,887.45			

All of the listed patients were Davis County residents throughout the period of hospitalization and each

of them was without sufficient income or property to provide for medical care; and, if a determiniation were made by the Division of Family Services, it would be that each patient was "medically indigent" and qualified as a recipient of public welfare (Stipulation T 2-4).

Most of the listed patients were of advanced age; some died at discharge; some required acute care, i. e. the injury or illness was such as to require special 24 hour attention; some were admitted from private hospitals; most were extended care patients; and, in every case, the type of care and necessity therefor was determined in the first instance by a physician subject to review by a hospitalization review board (T40-43, 67-89). In each case, the care provided was "reasonable and necessary" (T43).

The amounts claimed by plaintiff, as shown in the table above, reflect only charges accruing on and after January 1, 1968, after crediting all payments received from the patient or on his behalf from welfare or other sources (T9-38).

Until February 10, 1968, Weber County had not made a demand upon Davis County concerning the instant claims because the hospital accounting system theretofore employed did not afford an adequate basis for accurately costing care rendered each patient (T98). However, from January 1, 1968, forward, an accounting system was in operation which did enable reliable tracking of costs in relation to each patient (T98-102).

The new accounting system was installed by an independent certified public accountant who has since con-

tinued to audit its operation (T101-103). According to him, patient records maintained in Weber County Memorial Hospital on and after January 1, 1968, have been kept by competent personnel in consonance with accepted accounting principles and in a manner approved by the American Hospital Association (T 102). Respecting the particular accounts in litigation, audits reflected that the amounts claimed against Davis County were "true and correct cost figures" T101-102).

Shortly after the first billing had been mailed to Davis County, the Weber County hospital administrator was queried by the Davis County Clerk concerning details of the claim (T50, 91). There followed much correspondence and discussion between the hospital administrator, Mr. George Goodell, the Davis County Clerk, Mr. John M. Park, and the Boards of Commissioners of both counties (T54 et seq). Letters in May, July, and November of 1968 from Mr. Goodell to the Davis County Commissioners repeated demands for payment on accounts then due (Plaintiff Exhs. 1, 2, and 4; T51, 56, 60). On August 5, 1968, Mr. Goodell met with the Davis County Commissioners and, after explaining the situation in detail, asked for relief. He was informed that Davis County was unable to provide for the indigent patients, but that the matter would be investigated further (Plaintiff Exh. 3; T57, 113. Thereafter Mr. Moore, administrator of South Davis Hospital, a privately owned and operated institution in Davis County, visited Mr. Goodell, representing that he had been asked by the Davis County Commissioners to look into the possibility of transfer of the indigent patients (T-59). Noth-

ing came of the demands, discussion and inquiries until about March 1969 when Mr. Calvin E. Smoot, Chairman of the Board of Davis County Commissioners, met with the Weber County Board of Commissioners (T60-62). This last meeting, was also attended by Mr. Goodell and Mr. Bennett P. Peterson, Davis County Attorney. The patients were offered to be delivered to Davis County on the following morning, unless Davis County assumed the responsibility for their care. Mr. Smoot demurred, with the suggestion that Davis County could work something out (T64-65).

In addition to the intercourse between Weber and Davis counties regarding these claims, individual appeals for assistance were made directly to the Davis County Board of Commissioners. On March 13, 1968, the husband of Elsie Robins, one of the indigent patients, appeared before the Davis County Board of Commissioners and asked for county aid for medical expenses. The plea was taken under advisement but Mr. Robins heard nothing further (Stipulation T3; Plaintiffs Exh. 3; T57, 118-120). Later, in about April, 1969, the daughter of Fred and Julia Bodily who were also indigent Davis County residents hospitalized in the Weber facility, appealed to the Davis County Commissioners (T-25). She was informed that no funds were available (T30). On another occasion in January 1968, Tanner Clinic of Davis County applied for relief on behalf of indigent suppliants for medical aid but the Board of Commissioners referred the Clinic spokesman to the welfare department (Plaintiff Exh. 3; T57).

Davis County had budgeted $18,000 in 1968 for poor and indigent of the county, but the appropriation was not fully expended (T115-116). Among other things the fund was used to provide legal aid (Defendant Exh. 1; T108-114). However, defendant's commissioners took the position that indigent medical aid should not be provided for individuals eligible for welfare assistance and therefore funds appropriated by the county for the poor and indigent could not be expended to satisfy any part of the claim in litigation (T113, 124).

In March, 1970, a final demand was made on defendant by plaintiff, for the balance shown due in the table above (Plaintiff Exh. 5; T67). Defendant refused payment on the ground that it is not legally liable for any part of the medical care of Davis County indigents who are eligible and qualify for welfare assistance, whether or not such assistance and other source payments are adequate to cover the cost of such care (T113-124).

DISPOSITION BELOW

This case was heard in the District Court of Box Elder County before the Honorable VeNoy Christofferson, District Judge, presiding without jury, on September 28, 1971. Subsequently, the Trial Court issued a Memorandum Decision on February 3, 1972, in which it was held that Davis County was not liable in the premises (R 166). Pursuant thereto, on March 13, 1972, the Box Elder District Court entered judgment for defendant Davis County with pertinent "Findings of Fact"

and "Conclusions of Law" (R170). This appeal is from that judgment.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks to have the judgment below reversed and the case remanded to the trial court with instructions to enter judgment for plaintiff or such other relief as may be appropriate.

ARGUMENT

POINT I

THE FINDINGS OF FACT BELOW ARE DEFICIENT IN SCOPE AND DO NOT FAIRLY REFLECT THE WEIGHT OF THE EVIDENCE.

Findings of fact must be as broad as the legal issues in dispute Rule 52, URCP ;*Simper v Brown,* 74 Utah 178, 185-186, 278 P. 529; *Gaddis Investment Co. v. Momson,* 2 Utah 2d 43, 278 P. 2d 284, 285. It is necessary, therefore, in evaluating the findings reached below to examine the law respecting liability of a county to make adqeuate provision for its indigent sick.

That counties have a substantial obligation in this area is beyond dispute. As was noted in our trial brief, from early times it has been considered the responsibility of civilized government to help the helpless - . . at least with respect to the necessities of life. Sec. 41 Am. Jur., Poor and Poor Laws, §2, et, seq. In the twentieth century in America, who would seriously contend that the poor must survive or perish according to the generosity or niggardliness of alms-givers. The only real question is which political entity is assigned

the role of protector. Answering that question, the Utah legislature has provided:

> "They [the county commissioners,] may provide for the care, maintenance and relief of all indigent sick or otherwise dependent poor persons who have lawfully settled in any part of the county . . . ; and it is hereby made the duty of each board of county commissioners to provide such care, maintenance and relief for the indigent sick and poor, whether found within or without the corporate limits of incorporated cities or towns." Section 17-5-55, UCA, as amended.

The word "may" as used in the above statute has been construed to express a mandate. See Op. Atty. Gen. #68-052, Aug. 5, 1968, citing *Board of County Commissioners v. State* (Wyo. 1962) 369 P. 2d 537, 542.

In *Ogden City v. Weber County* (1903) 76 Utah 129, 72 P. 433, it was held that 17-5-55, UCA, supra, imposed a duty on Weber County to provide medical aid to an indigent transient found in the City of Ogden and the decision required the county to compensate the city for expenses incurred in providing such care following refusal by county authorities to do so. Addressing the thrust of that decision, the attorney general observed:

> "Justice Bartch, speaking for the Utah Supreme Court, said:
>
> > 'The enactment was made in the interest of humanity and mercy, and must receive a liberal construction, so as to carry into

effect the humane and benevolent policy adopted by the legislature.'

If, as the high tribunal held in the *Ogden City* case, it is the duty of the county to provide for care of the transient poor found within the county in a helpless condition, then would a resident of the county similarly situated be entitled to county assistance? An affirmative reply is fairly compelled because the statute under consideration in the Ogden City case was interpreted to mean 'all' indigent sick within a county." Op. Atty. Gen. #68-052, supra.

Twenty four years after *Ogden City,* this honorable Court again addressed the question of county liability respecting indigent sick. *Cache Valley General Hospital v. Cache County,* 67 P. 2d 639 (1937). *Cache Valley* dealt with a county indigent named Frank Palmer who had been previously treated by plaintiff hospital with defendant county's approval. Shortly after his release from the first course of treatment, in which a toe had been amputated, Frank Palmer was rehospitalized and a leg was amputated. Apparently his condition was critical, at least initially, and the county clerk had assented to the rehospitalization. Frank Palmer was kept in the hospital five months following the amputation of his leg and the county was not billed by the hospital until the fourth month of his confinement. Cache County paid one-third of the bill and plaintiff hospital sued for the remaining two-thirds. The trial court there found against the hospital and on appeal, this Court remanded with instructions "to take evi-

dence on the question of whether the plaintiff had, after Palmer was returned, endeavored to get in touch with the county before the amputation of a leg. If so and it had not succeeded, how long after the amputation it was necessary to keep Palmer before it would be safe to remove him. If the hospitalization for such period is more [than the sum already paid by the county] plaintiff to obtain judgment for such additional sums and costs of this appeal, if not the plaintiff is not to recover any additional and defendant shall be allowed its costs on this appeal. If the lower Court finds that plaintiff failed to use reasonable efforts to contact the county commissioners before the amputation after Palmer returned, the judgment shall stand [leaving the post-operative claim unpaid] and defendant shall have its costs on appeal"

In reaching it's remand decision in *Cache Valley,* the Supreme Court directed attention to two major points which are also of immediate concern in this appeal. Firstly, there was the matter of necessitous circumstances. In discussing the kind of "emergency" which would render acts of mercy compensable under law, regardless of notice, the Court said:

> "We are inclined to the view that in a jurisdiction like ours, where there is a relaxation of the strict rule of nonliability for services rendered to a poor person without special authorization or consent of an official designated by state to authorize the performance (see note, 93 ALR 900), the rule that the necessity for attention must be urgent should be enforced; otherwise the door might

be opened for unscrupulous people to file claims against the county for alleged indigents they purported to care for. *But we do not want to be understood as saying that where, as in the instant case, the patient reasonably appeared in urgent need of attention and it was impossible to know what was his condition, that attention given in such case without authorization may not be the basis of a good claim." Cache Valley* 67 P. 2d 643; (Italics supplied)

Secondly, relative to the matter of "notice", it was observed that the Cache County Commissioners did indeed know of Frank Palmers' hospitalization, though the county clerk was without authority to obligate the county therefor. But, a distinction was drawn between such informal notice or knowledge and a demand for payment. Treating the issue as one of estoppel, the Court concluded, making reference to the laches of the hospital in demanding payment— "When one who has the duty to move, has not done so, he cannot excuse his failure on the theory that the other knew of his situation and therefore it was the other's duty to move" *Cache Valley* 67 P. 2d 644. That, of course, is not the instant case respecting the period of time for which claim was made.

What circumstances constitute an "emergency" under the rules applied in Cache Valley is important. To say that the situation must be "most urgent" does not particularly clarify the requirement. Some clarity, however, is attained by adverting to the language employed in *Cache Valley* in referring to the right of recoupment accruing absent notice but before the patient has

reached a level of health allowing him to be "safely removed". *Cache Valley* 67 P. 2d 644, supra. It is suggested that any condition below that level is an "emergency".

Among the facts found below is a finding that "There appears to have been no emergency in the admission of any of the patients." (Finding No. 4, R170). The trial court also found that the patients involved were admitted at various times during 1966, 67, 68 and 69 (Finding No. 6; R 170). And, it was further found that Davis County was not contacted at the time of admission of any of these patients (Finding No. 7; R 171). Apart from minor inaccuracies, (compare findings as to dates of admission with table in statement of facts above) these findings are severally questionable and are collectively pregnant with error.

Conceding that the record does not disclose many details of the condition of these patients at admission, it is not entirely silent. There is some evidence of emergency within the meaning of that term as applied in the *Cache Valley* case. Testimony shows that at least some of the patients were categorized as "acute care" cases (T68, 71, 77). All were hospitalized on the order of a physician whose judgment was reviewed by a hospital board (T41). And, the uncontradicted evidence of record shows that hospitalization in every case was "reasonable and necessary" (T43). Taking into consideration the complete absence of negative evidence on this issue, the finding that there was "No emergency" upon any of these admissions is unwarranted. Beyond that, those findings which concern admission dates long

antedating the period covered by plaintiffs claim and the further findings of "no notice" at such times suggest application of a rule more stringent than contemplated in statute or the reported cases. No where in the findings is there reference to the teaching of *Cache Valley* that a medical indigent's benefactor is entitled to compensation, regardless of notice until he may be "safely removed", i. e. discharged from the hospital. Accordingly, the findings referenced not only err in part in what they say but are equally deficient in failing to reach the issue presented by continuing necessitous circumstances long past the initial emergency, if such there was.

Two further findings of fact raise implications of error. It was found that "notice" was first given by Weber County to Davis County in February, 1968 but that "formal demand" was made in March 1970 (Finding No. 8; R171). The plain fact is that an itemized statement was sent to Davis County in February, 1968 and for several succeeding months in which payment for the claims here in issue was demanded (Plaintiff Exh. 1; T51-52). The 1970 demand was simply a prelude to suit required by staute and should have no significance in relation to the *Cache Valley* requirement of timely demand (17-15-10 UCA, 1953, as amended). Finally, it was found that Davis County did not "affirm, authorize or ratify" in the premises (Finding No. 9; R171). But, there is no finding to reach the issue raised by plaintiff's demand and defendants responsive demurrer to the Weber County proposal to turn out or discharge the Davis County indigent patients (T64-65). The language

of *Cache Valley* indicates that unlike that case, this may be one to apply the doctrine of estoppel and findings of fact appropriate to that issue were required.

POINT II

THE TRIAL COURT ERRED IN CONCLUDING AS A MATTER OF LAW THAT THE CARE RENDERED TO DAVIS COUNTY INDIGENTS BY WEBER COUNTY WAS VOLUNTARY.

It was concluded by the trial court that "the care rendered by Weber County was given on a voluntary basis" (R171).

Presumably the foregoing conclusion of law is predicated on the preliminary findings of fact relating to "no emergency" and failure to make timely demand discussed in Point I, above. Whether in the first instance, appellant was a pure volunteer in the sense that the care extended was an act of charity stemming solely from humane impulse has no more relevance than such a supposition is deserving of credit. High purpose of a good samaritan should not lessen the legal obligation of one otherwise liable for benefits bestowed ex necessitate. Nor does it.

Moving forward to post admission time frames, the proposition that appellant could summarily discharge the Davis County indigents and put them on the street without dire legal consequences, medical judgment to the contrary notwithstanding, is not in accord with the weight of authority. 35 ALR 3d 841, 842; 40 Am Jur. 2d Hospitals and Asylums §16. Mere continuation of hos-

pitalization in the face of rejection of liability by Davis County does not convert a dutiful act to one of pure charity or make Weber County a "volunteer".

The situation of an indigent sick person in relation to his county of residence is analogous to that of child to parent, insofar as medical necessaries are concerned. Cf, Section 17-14-1, UCA, 1953, as amended; and, 39 Am. Jur. Parent and Child §47,54; 59 Am. Jur. 2d Parent ann Child, 59, 87. Lack of prior notice in such cases is not a bar to recovery by one who furnishes necessaries if the parent has refused and neglected to do so or if the need is patently clear. See *Rees v. Archibald* 6 Utah 2d, 264, 311 P 2d 788 (1957). Here, appellant furnished medical necessaries to defendant's indigent sick in the role of an agent *ex necessitate* after notice and demand on appellee in February of 1968 and, accordingly, appellant is entitled to reimbursement for the expense incurred. Cf. *Stimpson v. Hunter* 25 NE 155 (Mass, 1919, 7 ALR 1067, 1070).

Implicit in the pertinent legislation is a proscription; viz., a county may not shunt its burden of poor relief to a neighboring county by the simple expedient of not providing an accessible public medical facility of its own. Persons in immediate need of the services of a hospital, as the evidence presented at trial shows was the instant case, should not be expected to first navigate county administrative and executive channels, particularly if the question is whether, rather than where. Even assuming a prospective patient lives so long, ad hoc decisions by boards of county commissioners are dubious substitutes

for informed medical judgments. When the legislature declared it to be:

> " . . . the duty of each board of county commissioners to provide such care . . . for the indigent sick . . . " Section 17-5-55, UCA, supra.

it could hardly have intended that the board would never be bound to provide care without "prior" consultation and direction in each individual case.

Ogden City, supra, has been cited in support of the contention that county responsibility for care of its indigent sick is conditioned upon a right of first refusal, regardless of circumstances. It does not establish any such rule. Though there was, in fact, a refusal by the defendant county in *Ogden City* to provide for the care of an ailing transient, the case holds no more than that the county was not at liberty to reject its responsibility out of hand. Neither in that case nor in any other known to appellant has it been held that application or notice "prior" to rendering aid is an absolute prerequisite to liability under Section 17-5-55, UCA.

Applying a strict rule of "prior" notice to avoid the label "volunteer", would contravene that rule of interpretation which requires a liberal construction of statutory provisions with a view toward insuring effectuation of legislative purpose. Section 68-3-2, UCA, 1953, as amended. The humanitarian object of the statute in issue, i e, Section 17-5-55, is clear, *necessary medical assistance shall not be denied the poor.* But, the indigent sick might well be the indigent dead if a rigid notice and refusal condition is interposed. At best, such a rule

draws justification from the premise that a county is prejudiced if denied the opportunity to select a care and treatment facility or to make an indigency evaluation. But, no possibility of prejudice exists in the circumstances under which these claims arose since the indigents were members of an ineligible class under county interpretation of the law and the condition of indigency was stipulated.

Good sense and a reasonable concession to the humanitarian object of Section 17-5-55 suggests that liability of the county of residence attaches at the instant that necessary medical aid is rendered an indigent resident, subject only to equitable considerations of estoppel or laches operating to prejudice the rights, privilege or position of the resident county. If, in the instant case, appellant had failed to notify appellee of the illness of these indigents within a reasonable time, perhaps such failure would be a valid defense. But the facts are otherwise. Here, there is evidence of grave illness, prompt attention and notice in the course of hospitalization. Appellants claim is limited to the period covered by timely demand, that is from January, 1968 forward, and, Weber County has not sought recovery for those earlier costs as to which timely notice and demand were not made. Further, there is evidence of refusal by appellee to render aid to its medical indigents at the time of need, even as in *Ogden City*. For the latter portion of the claims i. e. those accruing subsequent to February 10, 1968, it would seem appellee is liable under the rule of "prior" notice that it has urged should be the law. As to liability for the initial month of treatment in each case,

i. e. January 1968, appellant contends it is entitled to recover under the literal terms of the statute, absent any showing by defendant that plaintiffs conduct operated to its prejudice.

POINT III

THE TRIAL COURT ERRED IN CONCLUDING THAT COMPLIANCE BY DAVIS COUNTY WITH §17-5-55. 5 UCA, 1953, as amended, FULFILLED ITS OBLIGATION TO DAVIS COUNTY INDIGENTS.

According to the trial court, the obligation of a county to provide care to medical indigents who are qualified for welfare assistance ceases upon appropriation of a sum equivalent to a ½ mill levy to the state hospital and medical care account (R 171).

At the time of *Cache Valley,* state law specifically limited county levies for the relief of sick and indigent. Then, in counties with property valuation of over $12,000,000 - the maximum levy was ½ mill (RS 1933, § 80-9-5). In the Code of 1953, the *Cache Valley* law was replaced, permitting, inter alia, a 1 mill levy for sick and indigent in counties with a valuation in excess of $100,000,000 - (59-9-6, UCA, 1953). Finally, in it's wisdom, the legislature in 1961 repealed the formula levies imposed on counties and substituted a single aggregate mill levy limitation, leaving sick and indigent allocations to the discretion of local authorities. At the time these claims arose, Davis County was vested with full discretion, as it is now, to make adequate provision in it's budget for the needs of medical indigents (59-9-6-2 UCA, 1953, as amended).

In the Memorandum Decision below, *Cache Valley* is quoted at length in connection with the then prevailing mill levy limitation applicable to sick and indigent. Among excerpts quoted, is the observation that; "A requirement imposed upon an official or board to expend money is not a duty past the amount available" (Memo, Dec.; R 107). However, as indicated, express limitations on sick and indigent expenditures are no more and whatever force the *Cache Valley* opinion may have had before 1961, in that respect it is no longer apt.

To properly assess the interaction of the public welfare statutory provisions with the mandate of § 17-5-55 it is necessary to look at both the letter of the law and the law in action. § 17-5-55.5 UCA, which is said below to relieve Davis County of its obligation in this case, reads as follows:

> "Each and every county commissioner shall appropriate from the general funds of the county an amount of money not to exceed the equivalent of a ½ mill levy which, in its judgment, based upon historical experience and projected need as determined in consultation with the state department of public welfare, shall be equal to one-third (1/3) of the anticipated annual costs of medical treatment and hospitalization for the medically indigent, but in no event shall such annual appropriation be less than one hundred dollars ($100). Moneys so appropriated shall be deposited with the state treasurer who shall credit the same to a hospital and medical care account.

> Eligibility requirements for hospital and medical care shall be determined by the state department of public welfare and shall be uniform for all counties. Payment for such care shall be made by the department or division of state government administering the Public Assistance Act of 1961 upon notification to the county in which the indigent resides for whom payment is being made and the county commissioners agree. Disbursement from the hospital and medical care account shall be made only for costs accrued in excess of care limits otherwise established for the care of such patients by the state department or division administering the Public Assistance Act of 1961." Section 17-5-55.5, UCA, supra.

Elsewhere it is provided that the State Division of Family Services shall set standards and determine questions of eligibility. Cf. §55-15-21; §55-15-10; and, §55-15-23, UCA, 1953, as amended. Regarding the scope of §17-5-55.5, the Public Assistance Act Reads:

> " . . . It is declared to be the intent of the legislature that the most adequate medical care and services possible shall be provided for those eligible; *within the limitations of the appropriations made for the biennium* for the purpose of this subsection together with federal matching funds as may be available." 55-15-23 (6), UCA, 1953, as amended; (italics supplied).

Reason suggests the question: If the biennium appropriation is so thinly spread among the "medically indigent" or the indigent sick that it falls short of need,

who must pay? And the legislature has plainly answered:

> " . . . it is hereby made the duty of each board of county commissioners to provide such care . . . " 17-5-55,UCA, supra.

As was urged below, the contention that a recipient of welfare is a man without a county when in need of medical aid, would not only mistake legislative intent but do injustice both to the individual and to those who ministered to his need. It is not so easy to turn away a desperately ill patient at the hospital door as it might be to reject a plea for money at a commissioners meeting. Nor should it be. Yet, even apart from compassionate considerations, the door to the emergency room at the hospital must open, in appropriate cases, regardless of the ability of the individual to pay. See 35 ALR 3d 841, 847; 40 Am Jur. 2d, Hospitals and Asylums §16. And, as between a hospital which has no connection of any kind with the patient and the county where the patient lived, labored, and paid taxes, which has the greater obligation to bear the cost of his illness?

In the instant case, the patients came from Davis County. The institution in which they found refuge was constructed and is maintained at great expense to the taxpayers of Weber County. In 1968, the citizens of Weber County, in caring for their own indigent sick at the county hospital, incurred costs of $229,974.34; in 1969, the figure was $295,031.46; and, in 1970, $310,311.49. Appellee, has not undertaken to invest in a county medical facility and presumably, in accord with its con-

tention in this case, has a *no* cost record, at least for its welfare patients, for the same years. As to the annual appropriations under Section 17-5-55.5, UCA, supra, appellant has met assessments over and above direct county aid which, as noted, totalled $835,318.29 for the years 1968-70. Taking cognizance of the respective outlays and the provision each party has made to meet its obligation to the poor, denial of the claim of plaintiff would be to reward neglect of county obligations and penalize taxpayers whose only wrong was to act as good samaritans to strangers in need.

The record in this case clearly shows that even after all benefits obtainable from the state and other sources under the Public Assistance Act had been fully realized, Weber County was still out of pocket many thousands which, in both equity and law, ought to be paid out of Davis County tax revenues. Either the State, through its' Department of Social Services under appellees theory and that of the court below should be held to a full measure of cost or, as appellant has consistently urged, § 17-5-55 should be construed to require appellee Davis County to meet the legitimate needs of its indigent residents. A judgment against Weber County on the facts here present is a manifest injustice and an imposition on the taxpayers of the appellant county.

CONCLUSION

The judgment below misplaces the burden of public relief. Uuder the law of Utah, care of the indigent sick is a county obligation except to the extent that the state will provide necessary financial assistance. Where

state aid ends, county responsibility begins and both law and equity require that each county assume the burden in relation to those residing within their respective boundaries.

According to the record of proceedings in this case, indigent sick of Davis County received reasonable and necessary medical care in appellants hospital. So much of that care for which reimbursement is sought was furnished after demand had been made on appellee and appellee through its county commissioners neglected and refused either to pay or make alternative provision for the care of its' indigent sick. The record also shows that the claim is further limited and reduced by crediting all state aid and other benefits obtainable on the patients' behalf.

In the foregoing circumstances and on the basis of the whole record, the judgment given for defendant-appellee, below should be reversed and the case remanded with instruction to enter judgment for plaintiff-appellant.

Respectfully submitted,

Robert L. Newey, Esq.
Weber County Attorney
Philip J. Williamson, Esq.
Deputy Weber County Attorney
Attorneys for the Plaintiff-Appellant