

## **Opinion No. 73-48**

June 14, 1973

**BY:** OPINION OF DAVID L. NORVELL, Thomas Patrick Whelan, Jr

**TO:** Richard W. Heim Executive Director Health and Social Services Department P.O. Box 2348 Santa Fe, New Mexico 87501

### **QUESTIONS**

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If the Health and Social Services Board were to determine that funds were available, could the Health and Social Services Department, during the 62nd fiscal year, pay financial assistance in its program of aid to families with dependent children at a rate higher than 94% of the standard of need defined by the department on January 1, 1973?

#### **CONCLUSION**

Yes.

### **OPINION**

#### **{\*95} ANALYSIS**

Three statutory provisions enacted during the 1973 legislative session determine the answer to this question. The first provision is Chapter 403 (The General Appropriations Act), Section 4G, New Mexico Laws 1973. In that section the legislature added the following language to the appropriation for the Department of Health and Social Services:

"The department may use this appropriation to pay financial assistance at a rate equal to 94 percent of standard of need as defined by the department on January 1, 1973, if the health and social services board determines that said rate of payment would not cause the department's total expenditures to exceed total available funds."

Chapter 403, Section 4, New Mexico Laws 1973. We interpret this language to mean that the legislature authorized the department to pay financial assistance at a maximum rate of 94 percent of the applicable standard of need. This interpretation is indicated by the proviso that the department may pay assistance at 94% of the standard of need only if funds are available.

Where Section 4 of Chapter 403 the only relevant statute, the answer to your question would be no; however, Chapter 376, Section 5A, New Mexico Laws 1973, provides another formula for paying financial assistance. That section provides:

"The amount of an eligible person's maximum grant of public assistance is determined by deducting the total amount of his non-exempt income from the applicable standard of need. However, if the amount of federal and state funds available for public assistance is insufficient to provide the grants for all eligible persons, the amount of grants to eligible persons may be reduced as necessary."

Chapter 376, Section 5A, New Mexico Laws 1973. This section does not include any percentage of the applicable standard of need in its formula. If there were no non-exempt income, the grantee would receive assistance at the rate of 100 percent of the applicable standard of need. The grantee would be paid at a lower rate only if there were insufficient funds.

{\*96} The essential feature of this section, for purposes of your question, is that it provides for payment of public assistance at a maximum rate of 100 percent of the applicable standard of need. Chapter 403, Section 4, and Chapter 376, Section 5A, are in direct conflict on the maximum rate for payment of public assistance.

Chapter 403, Section 3M, New Mexico Laws 1973, resolves this conflict. That section provides:

"If the provisions of any other act of the thirty-first Legislature, First Session, approved by the governor, conflict with the provisions of the General Appropriation Act of 1973, the provisions of the other act shall apply."

Chapter 403, Section 3M, New Mexico Laws 1973. Therefore, Section 5A of Chapter 376 controls. The Department may pay public assistance at a maximum rate of 100 percent of the applicable standard of need if sufficient funds are available.

Assistant Attorney General