

Office of the Attorney General
State of North Dakota

Opinion No. 81-115

Date Issued: October 29, 1981

Requested by: T. N. Tangedahl, Executive Director
Social Service Board of North Dakota

--QUESTION PRESENTED--

Whether, following the determination of child paternity, there is a time limitation for recovery of Aid to Families with Dependent Children (AFDC) and Medical Assistance payments previously furnished to such child.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that, following the determination of child paternity, the time limitation for recovery of Aid to Families with Dependent Children and Medical Assistance payments previously furnished to such child is six years after the cause of action has accrued.

--ANALYSIS--

Once paternity has been established, the 'statute of limitations' contained in Section 28-01-16 of the North Dakota Century Code controls. That section states, in pertinent part:

The following actions must be commenced within six years after the cause of action has accrued:

2. An action upon a liability created by statute . . . when not otherwise expressly provided . . .

This question is answered assuming that paternity has been established. If paternity has not been established, the cause of action for support has not accrued. An action to determine paternity is not barred until three years after the child reaches majority (Section 14-17-06, N.D.C.C.). As a result, it is possible to bring an action to establish paternity at any time before the 21st birthday of an individual. Once paternity has been established, the child (or his representative) has another six years in order to bring a support action. This action may relate to support furnished from the birth of the child to his 18th birthday.

--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.

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