



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 7, 2022

John McAdams
Harrison County Chancery Clerk
Post Office Drawer CC
Gulfport, Mississippi 39502

Re: Statutory Cap on Costs Incidental to Court Proceedings in Commitment Proceedings

Dear Mr. McAdams:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, your office receives the sworn statements requesting psychiatric treatment for persons thought to be suffering from mental illness, and your office subsequently arranges the requisite prescreening evaluations with a physician, psychologist, or nurse practitioner. Often, the costs of custody and pre-evaluation screening exceed the \$400.00 cap placed on “costs incidental to court proceedings” as set forth in Mississippi Code Annotated Section 41-21-79. You present the following questions for our consideration.

Questions Presented

1. Does the \$400.00 cap in Section 41-21-79 of the Mississippi Code strictly refer to the *court* costs associated with the court proceedings necessary to initiate the process, or is the \$400.00 inclusive of the prehearing hospitalization costs, cost of transportation, reasonable physician’s, psychologist’s, nurse practitioner’s or physician assistant’s fees, and reasonable attorney fees?
2. Does the \$400.00 statutory cap apply to both non-indigent and indigent respondents?
3. Is the respondent’s county of residence responsible for paying the prehearing hospitalization costs, cost of transportation, reasonable physician’s, psychologist’s, nurse practitioner’s, or physician assistant’s fees when the county is a partial owner of the hospital?

Brief Response

1. The statutory cap of \$400.00 on costs incidental to court proceedings in Section 41-21-79 includes, but is not limited to, the following: court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees, and reasonable attorney's fees.
2. The statutory cap applies to both indigent and non-indigent respondents. The total that may be charged for all the costs incidental to the court proceedings is \$400.00, and it either will be paid by the respondent, or by the respondent's county of residence if the respondent is indigent.
3. If the county of the respondent's residence is responsible for the prehearing hospitalization costs, the county is still responsible despite being a partial owner of the hospital. Otherwise, it would amount to an unconstitutional forgiveness or waiver of debt.

Applicable Law and Discussion

Section 41-21-79 reads as follows:

The costs incidental to the court proceedings including, but not limited to, court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court, shall be paid out of the funds of the county of residence of the respondent in those instances where the patient is indigent unless funds for those purposes are made available by the state. However, if the respondent is not indigent, those costs shall be taxed against the respondent or his or her estate. The total amount that may be charged for all of the costs incidental to the court proceedings shall not exceed Four Hundred Dollars (\$400.00). Costs incidental to the court proceedings permitted under this section may not be charged to the affiant nor included in the fees and assessments permitted under Section 41-21-65(6).

You state that clarity is needed regarding the meaning of "costs incidental to the court proceedings" in Section 41-21-79. The plain language of the statute lists the main costs incidental to court proceedings, including, but not limited to: "court costs, prehearing hospitalization costs, cost of transportation, reasonable physician's, psychologist's, nurse practitioner's or physician assistant's fees set by the court, and reasonable attorney's fees set by the court. . . ." *Id.* Because the list is not an exhaustive one, it is for the county to determine if any costs not included in this list may also be incidental to court proceedings.

The statute does not limit the application of the \$400.00 cap to indigent respondents. Thus, it is the opinion of this office that the \$400.00 cap applies to both indigent and non-indigent respondents. If the respondent is indigent, then the county of his or her residence pays for the costs incidental to the court proceedings, up to \$400.00. *See MS AG Op., Blakley at *2 (Aug. 25, 2006)* (opining that costs incidental to the court proceedings be borne by either the respondent or the

county of his or her residence); MS AG Op., *Williams* at *1 (July 6, 2001) (stating that a hospital may collect costs from the individual unless he or she is indigent, then the hospital should bill the county for the expenses). Section 41-21-79 does make provision for payment of costs for an indigent respondent by the state if such funds are available for that purpose. If the respondent is not indigent, then the respondent is responsible for the costs incidental to the court proceedings, up to the \$400.00 cap.

Finally, you ask if the county of respondent's residence is responsible for paying the prehearing hospitalization costs, reasonable physician's, psychologist's, nurse practitioner's, or physician assistant's fees when the county is part owner of the hospital. This office has previously opined that a county hospital and the county "are separate and distinct governing authorities with respect to community hospital affairs" MS AG Op., *Aldy* at *1 (Aug. 9, 1989). Moreover, a community or county hospital is a political subdivision of the State. *Parish v. Frazier*, 195 F.3d 761, 764 (5th Cir. 1999). This office has previously opined "that neither the state or [sic] any of its political subdivisions is authorized to forgive a debt." MS AG Op., *Thomas* at *2 (Nov. 19, 1999). Even when the debt is owed by one county entity to another, this office has opined that Article 4, Section 100 of the Mississippi Constitution of 1890 prohibits the forgiveness or waiver of a debt by the state or its political subdivisions. MS AG Op., *McDonald* at *1 (Nov. 8, 1996) (reviewing debt owed by county nursing home to county-owned hospital). Therefore, the county of respondent's residence is still responsible for the applicable costs despite being part owner of the hospital.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe
Assistant Attorney General