

BLIND PENSIONS: Is claimant entitled to payment of blind pension as of date of court decision, or as of date of his application to Probate Judge or Blind Pension Commission?

Is State Auditor authorized to pay claimant out of the 1933-34 appropriation for that part of pension due during 1932-33?

Sum. 8896-89-116

May 26, 1933.



Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

We have received your letter of May 19, 1933 requesting an opinion from this department, said letter being as follows:

'This office hereby requests an opinion in the case of David Bolick v. Missouri Commission for the Blind et al along the lines contained in the attached copy of court order.

The order sets out that "plaintiff herein has a right to have his name certified to the State Auditor by the defendants, and entered upon the pension roll of blind persons in the office of the State Auditor; that the defendants so certify the name of the said plaintiff and cause the same to be enrolled on said pension roll of the resident blind persons of Missouri; and that a copy hereof duly certified by the clerk of this court be, without delay, mailed to the Missouri Commission for the Blind at its office in St. Louis, Missouri.'

This court order was made January 30, 1933, whereas the plaintiff applied for pension February 1, 1932. His case was decided adversely by the Missouri Commission for the Blind, and suit was instituted resulting in the enclosed court order. This office is forced to accept the order as to enrolling the plaintiff on the blind pension roll, but desires the opinion of the Attorney-General as to the following:

1. Should the State Auditor enroll David Bolick as of date of court decision or as of date of his application to the Probate Judge for blind pension?
2. Is the State Auditor authorized to pay David Bolick from February 1, 1932 or from the beginning of the 1933 - '34 biennium, January 1, 1933'?

It is the opinion of this department that the answer to your first query is found in Sec. 8900 of the R.S. 1929, which is as follows:

"The State Auditor shall place the names of all persons certified to him for a pension under this article upon a record to be kept in his office to be known as the 'blind pension roll' which shall contain also the residence, postoffice address, date upon which the application for pension was filed with the judge of the Probate Court or Commission for the Blind, and the date the certificate was received by the State Auditor; and the name of any person appearing upon the said blind pension roll shall be prima facie evidence of the right of such person to the pension herein provided."

The above section of the statutes of Missouri appears unambiguous and unless there is some particular question confronting you about some of the provisions therein, we will assume the object of Question 1 is found in our answer to Question 2.

In answer to your question numbered 2, it is the opinion of this department that David Bolick is entitled to receive payment from the date of his application in view of Sec. 8896 R.S. 1929, which has among its provisions the following:

"All pensions payable under this article shall begin on the date of the filing of the application therefor before the Probate Judge, or the Commission, as may be."

And it is further the opinion of this department that the fact that Mr. Bolick's pension dates from a period during the past biennium instead of the present biennium is immaterial, and that payments should be made to Mr. Bolick from the appropriation made by the past Legislature for the biennial period of 1933-34.

The above opinion is predicated upon the case of State ex rel Smearing v. Thompson, Auditor, reported in 45 S.W. (2d) 1078. There,

the relatrix, an adult blind person, sought to compel the State Auditor to draw a warrant in her favor for \$740.00, the amount of the pension to which she was entitled under the statute for the period intervening between April 1, 1926 and September 12, 1928. The respondent refused to issue the warrant on the ground that the appropriation for the payment of pensions made by the General Assembly for the biennial period beginning January 1, 1931 was not available for the payment of what he termed a "back pension". Judge Ragland in his opinion relative to facts, which so far as principle is concerned are the same as contained in the instant case, said:

"The only question here is whether the payment which relatrix seeks to have made out of the state treasury is within the 'object' to which the appropriation under the act just set out is to be applied. If it is a 'pension to the deserving blind as provided for in chapter 51, Revised Statutes, 1929', it is. The language in the title of the Appropriation Act, 'for the biennial period beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1932,' if read into the act itself, merely limits the period within which the appropriation made shall be available, in conformity with said section 19 of the Constitution; it has no reference to the time when the right to the pensions for the payment of which the appropriation is made should accrue or had accrued, nor to the period for which such pensions are payable.

Section 8893 (Revision of 1929) provides that an adult blind person having the qualifications therein prescribed 'shall be entitled to receive, when enrolled under the provision of this article, an annual pension,' etc. One is 'enrolled under the provision of this article' when his name is placed on the blind pension roll by the state auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An applicant's name is placed on the blind pension roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension. Section 8896.

From the provisions of the statute referred to in the preceding paragraph, it appears that relatrix was 'entitled' to receive a pension only while her name

remained on the pension roll. She was not therefore entitled to a pension after April 1, 1926, until her name was restored to the roll; but when restored her right to receive a pension from the date of the filing of her application therefor with the probate court, in so far as the same had not been paid, was fully revived. The commission's reinstatement as of September 12, 1928, qualified for the purpose of depriving her of the right to a pension between that date, and April 1, 1926, was ineffectual for that purpose, and perhaps for any other. But its final order made on May 8, 1931, was in effect a rescission of its former erroneous order striking her name from the roll, thereby automatically reinstating her name thereon as of date April 1, 1926. Thereupon there inured to her for the first time a clear and undoubted right to receive a pension from and after April 1, 1926. As \$740 of such pension remains unpaid, relatrix is entitled to the relief she seeks. A peremptory writ is awarded. All concur. "

Yours very truly,

POWELL B. McHANEY
Assistant Attorney General.

APPROVED:

Attorney General

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