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BLIND PENSION:—Fact that person upon one examination may refuse to submit to an operation as ordered by the Commission will not deprive applicant of pension if, according to facts as found by Commission upon a subsequent examination, she is entitled to pension.

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November 7, 1933.



Miss Marie M. Finan, Pension Secretary,
3858 Westminister Place,
St. Louis, Missouri.

Dear Miss Finan:

We are acknowledging receipt of your letter in which you inquire as follows:

'Section 8898 of the Revised Statutes of the State of Missouri, 1929, Volume II, Chapter 51, page 2467, covering pensions to deserving blind, provides in part as follows:

'No person shall be entitled to the benefits of this article who shall refuse to submit to treatment or operation to effect a cure when recommended by the examining oculist and approved by the commission; but upon submission to such treatment or operation the pension of applicant, otherwise entitled thereto, shall be paid as in other cases; Provided further, that no applicant who is more than seventy-five years of age, shall be required to submit to an operation to restore his or her vision in order to come under the provisions of this article, but may voluntarily submit to operation.'

There is a difference in opinion as to whether or not the refusal of an applicant at any time to submit to an operation or treatment recommended by the examining oculist makes them ineligible for the pension for all time.

For instance, we have a case in Butler County. The applicant was examined September 2, 1933, and found ineligible for the pension. However, an operation was recommended by the examining oculist which the applicant refused, signing a refusal slip reading as follows:

'I, the undersigned, applicant for the blind pension do hereby indicate my refusal to submit to such treatment or operation in an effort to effect a cure as may be recommended by the examining oculist, and approved by the Missouri Commission for the Blind.'

This party has again been re-examined, and this time patient denies even light perception in either eye, and if we are unable to disprove her claimed loss of vision, will she be eligible for the pension regardless of the refusal slip which she signed, refusing to have the operation recommended at the time of the last examination."

You inquire whether the fact that a blind person has refused to submit to an operation, as required under certain circumstances under the statute, does by that act forever forfeit her right to receive a pension under the Blind Pension Act.

Section 8898, R. S. Mo. 1929, among other things, provides as follows:

"* * *No person shall be entitled to the benefits of this article who shall refuse to submit to treatment or operation to effect a cure when recommended by the examining oculist and approved by the commission; but upon submission to such treatment or operation the pension of applicant, otherwise entitled thereto, shall be paid as in other cases: Provided further, that no applicant who is more than seventy-five years of age, shall be required to submit to an operation to restore his or her vision in order to come under the provisions of this article, but may voluntarily submit to operation."

It appears from your inquiry that a certain applicant was examined on September 9, 1932, and found ineligible for pension. Operation was recommended by the examining oculist but the applicant refused to submit and signed a refusal slip. The party has now been re-examined and apparently is entitled to the benefits of the Act, unless her refusal to have an operation in 1932 shall now bar her from the provisions of the Act.

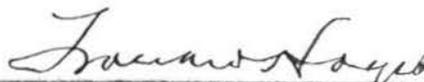
Under the above section, if a person comes up for an examination for the purpose of receiving the pension upon recommendation by the examining oculist, the Commission may require that the applicant submit to an operation. If the applicant fails to submit to the operation, then she is denied a pension. We believe, however, that the proper construction of the Act is that she is to be denied the pension based upon the results of that particular examination, at which time the order directing the operation was made. The penalty for refusing the operation is that the applicant shall not be entitled to the pension. We do not believe that it was the intention of the Legislature that such applicant would not be entitled to re-examination, and, if so, that upon re-examination the applicant would be barred from pension by a refusal to submit to an operation when required at a previous examination. A person may not be entitled to a pension upon one examination and because of changing conditions of the eyes may upon a subsequent examination be entitled to the

benefits of the Act. We believe that each examination and each application shall be treated upon its own merits changed as of the time the examination is made, without being prejudiced by what it might have transpired at the time of a previous examination.

Unquestionably it was the intention of the Legislature that the applicant should not receive a pension where she refused to submit to an operation upon the first examination. The applicant in this particular case has paid the penalty for her refusal to submit to the operation and no pension has been received by her up to this time because of her refusal to submit to the operation. When she is again examined the Board may again require that she submit to an operation and upon her failure so to do she would again be denied the benefits of the pension law. If, however, upon the re-examination, her condition is changed to such an extent that the Board no longer requires submission to an operation, then we do not believe that she is to be denied the right of a pension because of the refusal for which she has already paid the penalty. We believe that each application for an examination should be treated upon its own individual merits. The statute does not prohibit a subsequent examination, nor does it expressly or impliedly indicate that the Commission's finding on one examination would be finally decisive of the case to the extent that the individual might not file a new application where a change of conditions would warrant it. Each new examination, therefore, must stand alone, unprejudiced by previous examinations, and the applicant's right to a pension must be determined according to her condition at the time of the examination.

It is therefore the opinion of this Department that though the applicant was examined in September, 1932, and at that time was required to submit to an operation which she refused, yet, if upon a subsequent examination her condition is such as to warrant the awarding of a certificate according to the facts as they are found at that time, we do not believe that her refusal to submit to an operation at some date in the past would deprive her of the benefits of the Act. She paid the penalty of her refusal by not being awarded the pension during the period between the two examinations. We do not believe that the refusal to submit to an operation on one examination shall forever forfeit her right to receive the pension under different conditions at a later time.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

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