

BLIND PENSIONS - Method of Application for.

February 9, 1934. 2-17-34



Missouri Commission for the Blind,
3858 Westminster Place,
St. Louis, Missouri.

Attention: Miss Marie M. Finan, Pension Secretary.

Gentlemen:

A request for an opinion has been received from you under date of October 4, 1933, such request being in the following terms:

"Recently we have received several applications filed by applicants before notary publics, in place of the probate judge of the county in which they reside.

These applications have been forwarded to us by the probate judges and by the applicant, and in one instance the probate judge forwarded the application to us which had been filed before a notary and sent in to him, and the judge requested us to advise him how to proceed.

We referred the judge to section 8836 of the pension law, which provides that - "any person who desires the benefits of this article shall apply to the judge of the probate court within his or her county or city or to the Commission for the Blind, who, if satisfied that the applicant comes within the provisions of this article, shall grant to the applicant a certificate of such fact and the certificates granted by the probate judges shall be certified to the Missouri commission for the blind at its office in St. Louis, Missouri, which shall consider the merits of such application and if approved by the commission, it shall certify same to the state auditor. All pensions payable under this article shall begin on the date of the filing of the application therefore before the probate judge of the commission, as may be."

We further advised the judge that we continually received requests for pension applications, and we had advised in each instance that we were not permitted to forward applications to individuals, and have suggested that the applicant call on the Probate Judge of his or her county and file an application. Our predecessor followed this plan, and it has worked out very successfully.

Our interpretation of the law is, that the applicant must appear personally before the probate judge or the duly authorized agent of the Missouri commission for the blind at its St. Louis office

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in order to file an application.

All applications filed before the commission at our office are filed before the writer, it being one of the duties of the pension secretary to accept such applications.

We are attaching hereto copy of application used when the applicant files with the probate judge, and our interpretation of the certificate of probate judge attached to this application is that the applicant must appear before the judge, before the application is acceptable to the commission.

We are also attaching a copy of application used when the applicant appears at our office, and our interpretation of the certificate attached to this application, is that the applicant must personally appear at the office of the commission before the commission's authorized agent.

On September 15, 1933, we received an application in the name of H. J. Robinson, Pike County, subscribed and sworn to before L. Edgar Estes, a notary public, copy of which application is enclosed herewith.

We wrote the applicant that as the law provided that any person desiring to obtain the pension should apply to the judge of the probate court within his or her county, we could not accept or act upon an application filled out before a notary, and suggested that the applicant appear before the probate judge of Pike County and file his application, to which we received a reply from Mr. Estes under date of September 29, 1933, taking exception to our attitude in the matter and stating that the law provides 'that the applicant shall apply to the judge of the probate court or to the commission for the blind, and as the party would probably have to be examined by the commission before the certificate of the probate judge would be approved, I thought it best to have him apply directly to the commission'.

Mr. Estes further states the application was not filed before him as a notary, he only took the affidavit as a notary public, that the applicants statements and answers to the questions were true.

As stated above, we have had several cases recently where the applications have been secured by applicant from the probate judge, filled out by some notary and notarized, and we have refused to accept them. We will therefore, greatly appreciate it if you will give us a ruling in this matter. If, we are going to accept applications filled out by notaries in this manner, and without having the applicant appear before the probate judge or the commission, it is our opinion we will be swamped with applications from ineligible applicants.

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We are most particular before accepting applications in this office that the applicant is eligible, particularly from a vision standpoint, and we are continually asking the cooperation of the probate judges to, as stated in their certificate 'inquire into the merits of the application, and be satisfied the applicant comes within the purview of the act'.

Our fund, for examination of ineligible applicants is limited and if the applicants are going to be permitted to file applications when and before whom they choose, and we in turn are going to be forced to permit an examination to decide whether or not they will be eligible from a vision standpoint, we are very much afraid it is going to greatly eat into our fund for examination of ineligible applicants.

We will appreciate having an opinion from you in this matter at your earliest convenience."

Revised Statutes Missouri 1929 Section 8896 provides the methods for applying for a blind pension, said statute being in part as follows:

"Sec. 8896. Judge of probate court to grant certificate to applicant for pension - - to be certified to Missouri commission for blind. - - Any person who desires the benefits of this article shall apply to the judge of the probate court within his or her county or city or to the commission for the blind, who, if satisfied that the applicant comes within the provisions of this article, shall grant to the applicant a certificate of such fact and the certificates granted by the probate judges shall be certified to the Missouri commission for the blind at its office in St. Louis, Missouri, which shall consider the merits of such application and if approved by the commission, it shall certify same to the state auditor. * * * "

This statute was explained in the case of Hagan v. Commission for the Blind, 219 Mo. App. 330, 271 S. W. 1014 (1925) as follows:

"It will be observed that under section 4, a person deserving to be placed on the Blind Pension Roll may make application to either the probate judge (not the probate court) of his or her county or to the Commission for the Blind for a certificate. But the probate judge does not pass on the merits of the application. He only certifies to the Commission whether the applicant comes within the provisions of the Act, and it is the Commission that 'shall consider the merits of such application' and if the Commission approves it, the applicant's name goes on the pension roll. It is the Commission which has original jurisdiction or power to consider the merits of the application and to

decide whether applicant's name shall go on the pension roll. * * * * * It would seem that the presentation of the application to, and the hearing before, the probate judge is in the nature of a mere preliminary matter for the convenience of the blind person, who is permitted to make his application there first if he chooses, for the Commission is the body which is to pass on the merits of all applications, even those made to the probate judge; and this being the case, and the statute being silent as to the procedure to be had by the applicant where the probate judge refuses a certificate, the only thing the applicant can do would seem to be to take the matter from there to the Commission itself, that is, by availing himself of the other privilege of applying to the Commission." (219 Mo. App. pp. 333, 334.)

As to the certificate that the applicant comes within the provisions of the statute the Commission is given authority to prepare suitable forms by Revised Statutes Missouri 1929, Section 6897, which provides as follows:

"Sec. 6897. Commission to prepare suitable blank application forms. - - It shall be the duty of the commission for the blind to prepare suitable blank application forms for the use of blind persons in making application for pensions, which shall contain such questions for applicant to answer and other matter as the commission may deem appropriate to the end to be accomplished. All statements of an applicant contained on such application form shall be verified by the applicant and shall also be supported by the certificates of two disinterested and responsible householders of the county wherein applicant resides, who have known applicant for not less than two years next prior to date of such application, that such statements are true."

The use of the word "verified" means "under oath", State v. Trook, 172 Ind. 558, 88 N. E. 930 (1909) wherein the court said:

"Appellee's counsel defend the ruling of the lower court, on the ground, first, that the oath attached to the report was not one required by law, since the statute provides only that the report shall be 'verified,' but does not say that it shall be by oath or affirmation. We are mindful of the rule that in criminal proceedings statutes involved must be strictly construed, but the term 'verified' as used in this connection has such a well-known meaning as to admit of no doubt of the legislative intent. The primary definition of the verb 'verify,' when used in matters of law, as given in the Standard Dictionary is: 'To affirm under oath; confirm by formal oath; as to verify pleadings in an action; to verify accounts; etc. This is plainly the sense in which the term was here used, and the oath attached was therefore one required by law. De Witt v. Mosmer, 3 How. Prac. (N. Y. 204;

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Patterson v. Brooklyn, 6 App. Div. 127, 40 N. Y. Supp. 581;
(88 N. E. 931).

However, this requirement for verification by an oath before an officer authorized to administer oaths does not dispense with the necessity of a certificate of the Judge of the Probate Court if the application is made to such Judge any more than such verification by Notary Public or other officer would dispense with the necessity of a certificate of the Commission that the applicant comes within the provisions of the statutes if the application were made to the Commission instead of to such Judge.

The statutory methods of making an application to receive a blind pension give the applicant two alternatives as is apparent from the statutes and the Missouri case cited above. The applicant, if he chooses the first method, must apply to the Judge of the Probate Court in his county, such application to be in the form designated by the Commission and verified before a Notary Public or other officer. There is no provision in the statute requiring a personal appearance by the applicant before the Probate Court except that the applicant must satisfy the Judge that he comes within the provisions of the article, and must secure a certificate of such Judge to this effect which is then to be certified to the Commission "which shall consider the merits of such application." (Section 8896). The second remaining method of application open to any person seeking a blind pension is to apply directly to the Commission. If such course is adopted the same verification must be made of the written application on the form prescribed by the Commission. Furthermore, in cases of applications made directly to the Commission, the Commission would be authorized to require a personal appearance before it of the applicant. The quotation just made from the statute authorizing the Commission to consider the merits of each application would seem to be sufficient to authorize the Commission to adopt and enforce a requirement that a personal appearance of each applicant would be necessary as a part of such consideration especially in view of R. S. Mo. 1929, Section 8891 which in defining the powers of the Commission for the Blind provides that "said commission may adopt by-laws or rules and regulations for its government."

In conclusion, it is our opinion that under the statutes and especially section 8896 any person desiring to apply for a blind pension must secure a certificate of the Judge of the Probate Court of his county that such applicant comes within the provisions of the statutory article governing blind pensions which must be certified to the Commission for the Blind, or that such applicant must secure such a certificate from the Commission for the Blind by direct application thereto, and that in the event the latter method is adopted by applicant it is our opinion that the Commission would have authority to require a personal appearance before it as a condition precedent to approval by the Commission of such application.

Very truly yours,
EDWARD H. MILLER

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.