

BLIND

(S. )

Blind Pension discussed; duty of husband to use pension in support of his wife and family.

PAUPERS:

302  
March 19, 1935.



Miss Lucile Bruner  
Assistant Social Director  
Missouri Relief and Reconstruction  
Commission  
412 E. High Street  
Jefferson City, Missouri

Dear Miss Bruner:

This is to acknowledge your memorandum as follows:

"Mrs. Mary E. Ryder advises us that the blind pension is not a relief measure, but rather, a gratuity paid to the blind person in lieu of his sight, and as such, can not be considered as a family income.

In determining eligibility for relief from FERA funds, we are governed by rules and regulations, as follows:

A. 'Relief shall be given as provided in this act to all needy unemployed persons and/or their dependents. Those whose employment or available resources are inadequate to provide the necessities of life for themselves and/or their dependents are included.'

B. 'The amount of relief to be given must be based on the following:

(1) An estimate of the weekly needs of the individual or family including an allowance for food sufficient to maintain physical well-being.

'(2) An estimate of the weekly income of the family, including wages or other cash income, produce of farm or garden, and all other resources.

'(3) The relief granted should be sufficient to provide the estimated weekly needs to the extent that the family is unable to do so from its own resources.'

C. 'To carry out the purposes of the Federal Emergency Relief Act of 1933 the investigation of all applications for direct and/or work relief is required. The minimum investigation shall include a prompt visit to the home; inquiry as to real property, bank accounts, and other financial resources of the family; an interview with at least one recent employer; and determination of the ability and agreement of family, relatives, friends, and churches and other organizations to assist; also the liability under public welfare laws of the several States, of members of a family, or relatives, to assume such support in order to prevent such member becoming a public charge.'

In making an investigation it is mandatory that the social worker take into consideration all available resources of the family. The blind pension always has been considered as a definite financial asset and we have asked that that income go to maintaining the household, the same as a soldiers' pension or disability allowance. Where this income is adequate to meet the needs of the family we have not certified such family for additional relief. If, however, the blind pension allowance is not adequate to meet the family's budgetary requirements, the difference between the total amount of the

budget and the amount of the blind pension is allowed.

With limited relief funds it would work a definite hardship on relief agencies if we were not able to utilize this blind pension income for family needs. Since, according to the Federal Regulations, income under public welfare laws is a consideration, we would like to continue with authority to count that as a resource in the family."

The question presented concerns whether or not a blind pension may be used as a resource in determining the income of a family, the family being defined as "a unit or group living together under one roof?"

Chapter 51, Article 1, R. S. Mo. 1929, pertains to "Pensions to deserving blind." Section 8893 of said article and chapter provides that one to receive a pension must possess certain qualifications, namely: (1) Over twenty-one years of age; (2) of good moral character; (3) resident of the State of Missouri; (4) lack of income and property qualifications, and (5) not being maintained in public, private or endowed institutions, etc. It is well to keep in mind this provision in Section 8893, supra, relative to income and property qualifications:

"Provided, that no such person shall be entitled to a pension under this article who has an income, or is the recipient, of six hundred (\$600.00) dollars or more per annum from any source whatever, or who owns property, or has an interest in property to the value of five thousand (\$5,000.00) dollars or more, or who lives with a sighted husband or wife who has an income or is the recipient of six hundred (\$600.00) dollars or more per annum from any source whatever or has property or an interest in property to

the value of five thousand (\$5,000.00) dollars or more, or who has a parent or parents, resident in this state who upon the investigation of the commission may be found to be able to provide for the reasonable support of such applicant; "

It is thus seen that one could have an income of \$559.00 a year, or an interest in property of \$4999.00, and possessing the other qualifications, still be eligible to a pension. We direct your attention to this fact to show that while a blind pension is ordinarily used for the support of a person, yet, under certain facts and circumstances, it would not be so used.

Corpus Juris, Vol. 48, page 786, paragraph 2, says the following:

"Pensions, it is said, are mainly designed to assist the pensioner in providing for his daily wants. A pension is not a matter of contract, and is not founded upon any legal liability. No man has a legal vested right to a pension; it is a mere bounty or gratuity given by the government \* \* and 'springing from the appreciation and graciousness of the sovereign.' It may be bestowed on such persons and upon such terms as the lawmaking body of the government prescribes. \* \* \* And although existing pension laws may entitle one to a pension, the government may, at its pleasure, at any time, change the amount thereof or revoke or destroy it altogether."

Article IV, Section 47, Constitution of Missouri, provides in part as follows:

"That the General Assembly of the State of Missouri shall cause an annual tax of not less than one-half of one cent nor more than three cents on the one hundred

dollars valuation of the taxable property of the State to be levied for the purpose of providing a fund to be devoted in the manner provided by law to the pensioning of the deserving blind."

In State ex rel. Palmer v. Thompson, 297 S. W. 62, 1. c. 63, the Supreme Court of Missouri, en Banc, said:

"The entire matter of pensions for the deserving blind was thereby left to the General Assembly."

From the above we conclude that the blind pension is a gratuity and is given to a person physically handicapped by loss of eyesight for his use and support.

The question then presents itself as to whether or not a blind person would have to share this pension with any other person or persons. The answer to this question depends upon the status (husband) of the person. In other words, if there is an obligation on the person to support another, then it could be said that if his pension was more than enough to support him then he would have to use part of it in the support of dependant or dependants.

In Howard County v. Enevoldsen, 224 N. W. 280, 1. c. 282, the Supreme Court of Nebraska said the following:

"In Inhabitants of Poland v. Inhabitants of Wilton, 15 Me. 363, it was held that where a father was able to support himself, but was unable to support his wife and children, he was a poor person or pauper within the meaning of the law."

This brings us to a consideration of the duty of a father (husband) to support his wife and children.

Corpus Juris, Vol. 30, page 516, in part reads as follows:

"It is the duty of a husband to support and maintain his wife and family. There

is not only a moral obligation resting on the husband to support his wife, but also a duty imposed by law."

And further, page 518,

"As between husband and wife the primary obligation to provide for the support of the wife rests on the husband. The duty of a husband to support his wife and family is paramount to that of paying his debts."

In Missouri there is a criminal statute that provides in part as follows (Section 4026, R. S. Mo. 1929):

"If any man, shall, without good cause, \* \* \* or shall fail, neglect or refuse to maintain and provide for such wife; \* \* \* or refuse to provide the necessary food, clothing or lodging for his or her child or children born in or out of wedlock, under the age of sixteen years, \* \* \*, he or she shall, upon conviction, be punished \* \* \* \* \*."

However, a husband cannot do the impossible, that is, if he is a poor person and does not have the means he cannot provide the necessaries for his wife and children. However, if he does have the means and fails to do so, then he would be liable.

Broadus v. Broadus, 221 S. W. 804.

In Jennings v. City of St. Louis et al., 58 S. W. (2d) 979, the Supreme Court of Missouri, en Banc, l. c. 981, said the following:

"The good of society demands that when a person 'is without means, and unable, on account of some bodily or mental

infirmity, or other unavoidable cause, to earn a livelihood,' he is entitled to be supported at the expense of the public. 'It is immaterial how the alleged pauper is brought into need, as it is the fact of the situation and not the method of producing it that is important.' 'So the fact that a person's want is the result of gross intemperance does not prevent him from securing relief as a pauper.' 'An able-bodied man, who can, if he chooses obtain employment which will enable him to maintain himself and family, but refuses to accept employment, is not entitled to public relief, though relief may be properly extended to the wives and children of such men.' 21 R. C. L. 705, 706. It necessarily follows that an able-bodied man, who is unable to obtain employment on account of the economic conditions existing at the time, and who is without means of support, is entitled to public relief."

Article 4, Chapter 90, Section 12950, R. S. Mo. 1929, provides as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

Thus, if a person is poor he is to be relieved, maintained and supported by the county in which he resides.

As to a husband being liable to pay for the necessities of his wife, we quote from the Supreme Court of South Dakota in the case of Haakon County v. Staley, 243 N. W. 671, 1. c. 672:

"The support alleged to have been furnished by the first cause of action consisted of 'necessaries.' The husband's

liability for necessaries is not changed by the fact that he is in the penitentiary. Ahern v. Easterby, 42 Conn. 546; Moran v. Montz, 175 Mo. App. 360, 162 S. W. 323."

In Moss v. Moss, 1 P. (2d) 916, the Supreme Court of Washington, 1. c. 918, said:

"The duty of a parent to provide support for an adult son who is unable to earn his livelihood because of bodily infirmity or by reason of mental disability is statutory. No legal liability existed at the common law."

In Missouri we find no statute that provides that the parent shall support an adult child or that a child shall support a parent. However, certain States, namely, Nebraska, Washington, Michigan and others, have statutes providing that if a parent is a pauper that the child financially able must support same. In other words, those states cast the burden upon relatives to support and look after those not able to provide for themselves, the same as the common law places the burden upon the husband to support his wife and minor dependent children.

#### CONCLUSION.

From the above we conclude and it is our opinion, (1) that the blind pension is a gratuity not founded on contract and is to be used in the supplying of the daily wants of the pensioner, (2) that if the pensioner has a lawful wife, then he is under liability to her support insofar as he is able, (3) that if the pensioner has minor dependent children, then he is liable for their support to the extent only as far as he is able, (4) that the blind pension fund, then, would only be considered a resource in the case where a blind pensioner had the duty and obligation imposed upon

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him to support other people, and this duty and obligation only goes to the extent of his ability, in other words, so that he does not deprive himself and place himself on the charity or alms roll.

We are returning herewith your file.

Yours very truly.

James L. HornBostel  
Assistant Attorney-General.

APPROVED:

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ROY MCKITTRICK  
Attorney-General.

JLH:EG  
Encs.