

OLD AGE PENSION:

1. Only persons receiving assistance at time of death entitled to funeral expenses.
 2. No accrued or unpaid assistance due until application has been finally approved.
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11-14
November 12, 1935

Miss Reba E. Choate
Assistant Commissioner
Old Age Assistance Division
Jefferson City, Missouri



Dear Madam:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"The following question has arisen: Is an applicant for old age assistance who dies previous to the completion of his case by the State Old Age Assistance Board eligible for funeral benefit or accrued assistance?"

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Only persons receiving assistance at time of death entitled to funeral expenses.

Constitutional Amendment number 1, found at page 478 of Laws of Missouri 1933, which amends Article IV, Section 47, of the Constitution of Missouri and authorizes the granting of pensions by the general assembly to persons over seventy years of age who are incapacitated from earning a livelihood and are without means of support, reads as follows:

"That article IV, Section 47, of the Constitution of Missouri, be

and the same is hereby amended by adding at the end of said section the following words: 'Provided further, that nothing in this Constitution contained shall be construed as prohibiting the general assembly from granting or authorizing the granting of, pensions to persons over seventy years of age, who are incapacitated from earning a livelihood and are without means of support, as may be provided and regulated by law.'

Section 15 of the Old Age Assistance Act, Laws of Missouri 1935, page 312, provides:

"On the death of any person receiving old age assistance, such reasonable funeral expenses for burial shall be paid to such persons as the state board directs; provided, that such expenses do not exceed \$100.00 and the estate of the deceased is insufficient to defray the same."

Whether the general assembly, under the constitutional amendment to Section 47 of Article IV of the Missouri Constitution, had the authority to provide for the payment of funeral expenses of persons receiving assistance or applicants for assistance, we deem it unnecessary to decide. The plain wording of Section 15, supra, we think, answers your first question. Under the provisions of said section only the funeral expenses of persons receiving assistance at the time of their death are to be paid. If applicant's application for assistance has not been finally allowed and the amount of assistance fixed as provided by section 10 of the Old Age Assistance Act at the time of such applicant's death, it is obvious that the applicant would not be at such time receiving assistance.

It is, therefore, the opinion of this department that, under the provisions of Section 15 of the Old Age Assistance Act, only the funeral expenses of those persons receiving old age assistance at the time of their death should be paid.

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No accrued or unpaid assistance due until application has been finally approved.

It is plain, from a reading of the constitutional amendment authorizing the granting of Old Age Pensions and from a reading of the Old Age Assistance Act, that the Legislature intended to aid those persons over the age of seventy years incapable of earning a living and without the means of adequate support, and did not intend to aid the heirs or personal representatives of such persons. In other words, the right to assistance under the provisions of the Act is a personal right of those entitled to such assistance by reason of their age and inability to earn a livelihood, and who are without means of adequate support.

However, Section 24 of said Act provides that in case any applicant shall die having any accrued or unpaid assistance, the amount thereof shall be paid to the legal representative of said applicant, or if none be appointed within sixty days to those entitled thereto under the laws of this State. Said section reads, in part:

"* * * * and in case any applicant shall die, having any accrued or unpaid assistance, the amount thereof shall be paid to the legal representative of such applicant; but if there be no administration upon the estate of the deceased applicant within a period of 60 days after his death, then the amount due shall be paid to whomsoever would be entitled thereto under the laws of this State, and the provisions of this Act; * * *"

Webster's New International Dictionary defines the word "accrue" as follows:

"3. Law. To come into existence as an enforceable claim; to vest as a right; as, a cause of action has accrued when the right to sue has become vested."

Section 14 of the Act provides when assistance is to commence, if allowed. Section 10 of said Act provides the method and manner of allowing and disallowing applications for assistance, and of fixing the amount of assistance, if any. Said section reads:

"Whenever an application is made for old age assistance, the county board shall promptly make investigation of the facts, and, after hearing the applicant, if it approves the application, shall make a recommendation of the amount of assistance to be allowed, or, if it disapprove, make a recommendation that no assistance be allowed. Upon the request of an applicant, the county board may, if it sees fit, direct a rehearing, of which the applicant shall have at least ten days' notice, and at which he may appear and offer evidence. The decision of the county board shall be forwarded to the state Commissioner who may approve or disapprove, or recommend changes in the decision of the county board. If the state Commissioner and the county board are unable to agree in regard to the allowance, disallowance, or the amount of assistance, the application, along with a record of all the proceedings in regard to it, shall be forwarded to the State Board for review, whose decision shall be final, subject to the right of appeal as herein otherwise provided. An applicant whose application for assistance has been

rejected may not reapply for assistance until the expiration of twelve months from the date of the previous application, unless the rejection of said application shall be solely for failure to qualify as to age and such applicant has within the 12 months period reached the qualifying age."

From the above section it is plain that the county board first either allows or disallows the application for assistance, and, if it approves the application, makes a recommendation of the amount of assistance. The decision of the county board is forwarded to the State Commissioner, who may approve or disapprove or recommend changes in the decision of the county board. If the Commissioner and the county board agree on the allowance and the amount of the assistance then it would seem that the application is finally allowed and the amount of assistance is fixed. If, however, they are unable to agree the state board reviews the matter and its decision is final subject to the right of appeal to the circuit court.

In view of the above, it is our opinion that the amount of assistance is not allowed, within the meaning of Section 14, until either the county board and the State Commissioner agree on the amount of allowance or, if unable to agree, until the state board fixes the amount of assistance, or if an appeal is taken from the state board to the circuit court until said court renders a judgment allowing and fixing the assistance.

It is, therefore, the opinion of this department in view of all of the above, that no accrued or unpaid assistance is due any applicant until his application has been finally approved and the amount of assistance fixed, in one of the ways pointed out above. As stated above, the assistance allowed an applicant is for the personal benefit of said applicant and not for the benefit of his heirs or personal representative. Therefore, when the applicant dies before his right to assistance has been determined, there is no accrued or unpaid assistance due him and the right of assistance, if any, does not survive to such applicant's heirs or representative. If, however, applicant's application has been approved and the amount of the assistance determined during his lifetime, he was entitled to such assistance from the first day of the calendar month following

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that on which the petition was received by the county board, and if any of such accrued or unpaid assistance has not been paid the amount thereof should be paid to the legal representative of such applicant, or, if none be appointed within a period of sixty (60) days after death, to whomsoever is entitled thereto under the laws of this State.

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

~~JOHN W. HOFFMAN, Jr.~~
(Acting) Attorney General

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