

OLD AGE ASSISTANCE: Benefits from war risk insurance not public funds, but may be taken into consideration under Secs. 4 and 6 of the Act and deducted from maximum amount of \$30.00 per month.

12-4

December 3, 1935.

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

Dear Miss Choate:

This department is in receipt of your letter of November 26 requesting an opinion relating to the Old Age Assistance Act. Your letter is as follows:

" * * * * Many applicants for assistance are receiving from the Federal Government World War Insurance benefits. The Buchanan County Board contends that this is not money from public funds and have requested that we secure an opinion from your office as to whether or not applicants for old age assistance who receive from the Federal Government payments on war risk life insurance carried by a son who was killed in France, are eligible to apply for old age assistance."

Your request involves an interpretation of Section 16 of the Old Age Assistance Act, which is as follows (Laws of Mo. 1935, page 312):

"No person receiving assistance under this Act shall at the same time receive any other relief from any public funds, except for medical and surgical assistance."

Under the terms of this act, any person possessing the qualifications enumerated in Section 6 thereof may make application, and if found to possess the proper qualifications, is entitled to receive not more than \$30.00 per month; but under the terms of Section 16, the person shall not at the same time receive any other relief from any public funds except for medical and surgical assistance. We think it was the intention and purpose of the Legislature in inserting Section 16 in the Act to prevent persons from receiving assistance, help, aid or relief from several sources at the same time, i.e., state, county, city or federal government. At the time the Act became effective and until such persons were found to be qualified and entitled to the old age assistance and actually received the assistance, many of such persons will continue to receive relief from the county or city, such relief being paid from public funds, examples of such persons being those in county infirmaries, in soldiers' homes, and those receiving monthly relief from the county.

The term "public funds" is defined in *Ayres v. Lawrence*, 59 N.Y., 1.c. 198 as:

"Taxes, customs, etc. appropriated by the government to the discharge of its obligations."

Therefore, by inserting in Section 16 the exception, to-wit, "except for medical and surgical assistance", all relief from public funds, and we might go so far as to include in the above mentioned Community Chest funds and funds collected purely for charitable purposes and disbursed by charitable organizations, must cease before a person may be entitled to receive the old age assistance; however, in the event the person becomes in need of medical or surgical assistance, public funds of the nature mentioned above may be used and the persons receive the old age assistance in the same amount as adjudged by the Board.

Coming closer to the question, i.e., whether or not benefits received by a mother or father from the government under a war risk insurance policy are public funds within the meaning of Section 16 of the Old Age Assistance Act---during the World War, when a man entered the army he had the privilege, if he so desired, to avail himself of the opportunity to enter into a contract with the United States Government for a maximum amount of insurance, \$10,000.00. The premiums were cheaper than on contracts of insurance with some private insurance company. At the close of the War the soldier was given the privilege of converting the insurance into old line or other types of insurance with private insurance companies. Many elected to retain their government insurance. In either event, we consider the same to be insurance paid according to contract--at least, the government treats the same as a contract in the case of *Eggen v. United States*, 58 F (2d) 618:

"A policy of war risk insurance was a contract of insurance between the government and the insured. It was not a gratuity nor an arrangement for a pension. The contingencies insured against were death and total permanent disability. If a policy lapsed, for nonpayment of premiums, before death or total permanent disability occurred, there could be no recovery under the policy. If either of the contingencies insured against occurred during the life of the policy, there could be a recovery."

The beneficiary under the policy is receiving funds by virtue of a contract made by the deceased person, and we consider payments made to the beneficiary under the contract in the same category as payments received from old line insurance companies by virtue of a contract made by a deceased person.

CONCLUSION

We are of the opinion that benefits or payments made under a war risk insurance policy are not public funds within the meaning of Section 16 of the Old Age Assistance Act, and would not preclude persons from making applications and receiving benefits under the Act; however, the benefits received under the war risk insurance policy may be taken into consideration under Section 4; likewise, Section 5, and the war risk insurance payments may be deducted from the maximum amount of \$30.00 per month.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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