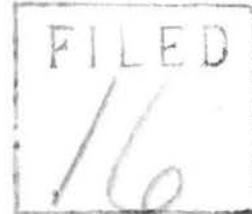


PENSIONS: Accrued assistance due applicant to be applied on funeral expenses, When.

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

Dear Madam:

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

"Section 24 of the Missouri Old Age Assistance Law states:

' . . . 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. . . . '

"We should like to ask if accrued assistance does not constitute a portion of the applicant's estate and if, under Section 15 of the Law, it should not apply to burial expense. Will you study through this phase of the law and let us know whether or not accrued assistance is a part of the applicant's estate and whether, as such,

it should apply on funeral benefit.

"We should appreciate your opinion soon."

Section 15 of the Old Age Assistance Act 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 \$190.00 and the estate of the deceased is insufficient to defray the same."

Section 24 of said Act provides that any accrued assistance due an applicant at the time of his death shall be paid to the legal representative of such applicant. If there be no administration on the estate of the deceased within a period of sixty days after his death, the amount is to be paid to whosoever is entitled thereto under the laws of the state. It is plain, therefore, that the accrued assistance due an applicant at the time of his death is to be paid to the administrator of his estate, if any. It is also plain that the board shall pay the funeral expenses of such person if they do not exceed one hundred dollars (\$100.00), only in case the estate of the deceased is insufficient to pay the same. The accrued assistance paid to an administrator would, of course, be a part of the estate of said deceased pensioner and would be administered upon in the same manner as any other property. Whether or not the money so paid to the administrator, or any part thereof, would go to pay the funeral expenses would have to be determined in each particular case. Under the provisions of Section 182, Revised Statutes Missouri 1929, funeral expenses are placed in Class 1 of demands against the estate and have priority over other debts against the estate. However, in particular cases, statutory allowances are made to certain persons free of debt. For instance, under the provisions of Section 107, Laws of Missouri 1933, page 164, the widow or widower is entitled, in addition to dower, to certain

articles of property and such sums of money, in exclusion of all debts, claims, charges, legacies and bequests, as the court may deem reasonable for the proper support of said widower or widow and the minor children under the age of eighteen years, if any, for the period of one year after the death of the spouse.

In addition thereto, the widow or widower is allowed personal property not to exceed the appraised value of four hundred dollars (\$400.00) under the provisions of Section 108, Revised Statutes Missouri 1929. And under the provisions of Section 110, if the widower or widow does not receive the property thus allowed, the court shall order the money to be paid to the widower or widow.

Under the provisions of Section 111, Revised Statutes Missouri 1929, if a widow or widower dies leaving no surviving husband or wife but minor children under eighteen years of age, they are entitled to the same property and allowances as the widow or widower would have been.

Under the provisions of Section 2, Revised Statutes Missouri 1929, the probate court may refuse to grant letters of administration on estates of deceased persons not greater in amount than is allowed by law as the absolute property of the widower, widow or minor children under the age of eighteen years, and, if he order no letters of administration shall be issued on such estate, such widower, widow or minor children are authorized to collect, sue for and retain all the property belonging to such estate.

CONCLUSION

In view of the above, it is the opinion of this department that any accrued assistance due an applicant at the time of his death shall be paid to the administrator or executor of his estate, if one be appointed within sixty days after his death, and that the money so paid is a part of decedent's estate and should be administered upon as any other property belonging to the estate. If the probate court finds that the estate of such deceased person is not greater in amount than is allowed by law as the absolute

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property of the widower, widow or minor children under the age of eighteen years, if any, such accrued assistance should be paid to such widower, widow or minor children. If the estate of such deceased pensioner is sufficient to pay the funeral expenses of the deceased, after deducting the costs of administration, and the absolute property allowed any widower, widow or minor children, then the State Board should not pay the funeral expenses of such person under the provisions of Section 15 of the Old Age Assistance Act. If the estate is not sufficient to pay the same, the Board should pay such expenses if they do not exceed one hundred dollars (\$100.00).

Yours very truly,

J. E. TAYLOR
Assistant Attorney General

APPROVED:

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

JET:LC