

STATE SOCIAL SECURITY  
COMMISSION:

Benefits accruing to an individual entitled  
~~to~~ thereto under the provisions of the act,  
after the date which the commission has de-  
termined such benefits shall be due and  
payable, and the individual dies, such bene-  
fits shall be administered as estates of  
other deceased persons.

November 30, 1937

Mr. George I. Haworth  
Acting Administrator  
State Social Security Commission  
Jefferson City, Missouri



Dear Mr. Haworth:

This is to acknowledge receipt of your  
letter of recent date requesting an opinion from  
this department, which reads as follows:

"Under Section 22 of C. S. S. B.  
#125 it is provided that:

'Section 22. Delivery of benefits,  
to whom. -- Benefits hereunder  
shall be delivered to the applicant  
in person, or in the event of his  
incompetency, to his legally ap-  
pointed guardian, and in the case  
of a dependent child, to the person  
or relative with whom he lives.  
Benefits becoming due and payable  
subsequent to the death of the in-  
dividual entitled thereto shall be  
cancelled.'

"Questions: 1 - What is the status  
of an old age assistance check if  
the beneficiary dies after the  
check has been issued, but before  
he can endorse and cash it?

"2 - Can the surviving heirs cash  
the check under a probate court  
order refusing letters or granting  
letters of administration on the  
deceased's estate?

"We would appreciate receiving an opinion from you on the above questions in order that we may know whether or not a legal representative can be appointed to receive a deceased beneficiary's old age assistance check."

You will note from Section 22, supra, as set forth in your opinion request, that "benefits becoming due and payable subsequent to the death of the individual entitled thereto shall be cancelled."

In order to determine your request for an opinion it is necessary to consider what is meant by the words "due and payable." A reading of the whole act does not disclose wherein any benefits are to become due and payable on a certain date. Therefore, we necessarily assume that the date which benefits are to become due and payable has been left to the Social Security Commission to determine, since it is their duty, under Section 4 of the Act, to adopt rules and regulations not inconsistent with the laws of this state.

It is proper for the present Social Security Commission to supply any details which the Legislature has omitted by necessary rules and regulations. Such details may only be supplied for the purpose of carrying into effect the provisions of the law itself. Ex Parte Cavanaugh, 313 Mo. 375, Sawyer vs. U. S., 10 Fed. (2d) 314.

After the commission has determined by its rules and regulations the date as to when the benefits are to become due and payable, then any benefits becoming due and payable subsequent to the death of the individual entitled thereto shall be cancelled. Therefore, benefits issued by the commission in the form of a check which has not been presented for payment prior to the death of the individual entitled thereto shall be administered as estates of other deceased persons.

On the other hand, should any benefits be given to an individual who has died prior to the due date of such benefits, then such benefits shall be cancelled as the statute indicates.

It is our understanding that the Social Security Commission has determined the date benefits shall be payable under the provisions of the Act, to be the first

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of each month for that particular month. To illustrate, benefits for the month of November would be due and payable on November 1st.

If an applicant should die on October 31st, and such applicant's benefits would become due and payable on November 1st, then such benefits shall be immediately cancelled.

In construing the word "shall" as used in Section 22, supra, your attention is directed to State ex rel. Stevens vs. Wurdeman, 246 S. W. 189, where the court, in speaking of the word "shall", said:

"Usually the use of the word 'shall' indicates a mandate."

#### CONCLUSION.

In view of the above, it is the opinion of this department that benefits which are due and payable prior to the death of the beneficiary, cannot be cancelled, whether or not a check has been issued for same, and that such benefits due a pensioner which are not received or cashed prior to his death are a part of his estate and should be administered upon in the same manner as any other property belonging to such deceased pensioner. Benefits not due and payable at the time of the death of the beneficiary should be cancelled by the Social Security Commission.

Yours very truly,

RUSSELL C. STONE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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