

Blind Pensions: Blind pension shall terminate on the date Commission makes finding that such person is not qualified.

February 13, 1942

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Missouri Commission for the Blind  
Jefferson City, Missouri

Attention: Mrs. Lee Johnston, Chief Investigator

Gentlemen:

We are in receipt of your request for an official opinion from this department, which request reads as follows:

"In striking a pensioner from the pension rolls, should the effective date be the date of examination when the pensioner was found to be ineligible as to vision, income, maintenance, or for any other reason, or should it be the date on which the Board of the Commission for the Blind met and approved that said person be stricken from the rolls?"

"It has always been the custom to use as the effective date, the date of examination or investigation, even though that was a prior date to the date of the monthly Board meeting. The Auditor and pensioner were so advised after the approval of the Board of the Commission for the Blind had been voted at the Meeting."

Section 9454, R. S. Mo. 1939, provides in part as follows:

"\* \* \* \* \* And whenever it shall become known to the commission that any person whose name is on the blind pension roll is no longer qualified to receive a pension, after reasonable notice mailed to such person at his or her last known residence address, such fact shall be certified to the state auditor and the name of such person shall be stricken from the blind pension roll: \* \* \* \* \*"

Section 9453, R. S. Mo. 1939, provides as follows:

"The state auditor shall place the names of all persons certified to him for a pension under this article upon a record to be kept in his office to be known as the 'blind pension roll' which shall contain also the residence, postoffice address, date upon which the application for pension was filed with the judge of the probate court or commission for the blind, and the date the certificate was received by the state auditor; and the name of any person appearing upon the said blind pension roll shall be prima facie evidence of the right of such person to the pension herein provided." (Underscoring ours)

In the case of State ex rel Smearing v. Thompson, 45 S. W. (2d) 1078, 1. c. 1079, the court, in construing the above section, supra, said:

"Section 8893 (Revision of 1929) provides that an adult blind person having the qualifications therein prescribed 'shall be entitled to receive, when enrolled under the provision of this article, an annual pension,' etc. One is 'enrolled under the provision of this article' when his name is placed on the blind pension roll by the state auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An applicant's name is placed on the blind pension roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension."

It will be noted from the reading of the excerpt from the above case, that the court has construed Section 9454, supra, to mean that in order to strike a pensioner from the roll after he or she has once been placed upon the roll, it is necessary to give a notice to such person by mail, directed to his or her last residence address. Further, a hearing must be had before the Commission. At this hearing, of course, evidence should be introduced on the part of the Commission, and the person to whom a

notice has been given would have the right to also produce evidence substantiating his or her contention that he or she was eligible, and from the whole evidence produced at the hearing the Commission should make a finding as to whether or not such person has sufficient qualifications to be entitled to a blind pension. After this determination has been made, if the Commission has found that such person is not entitled to a pension, they should immediately certify such fact to the State Auditor, and such named person should be immediately stricken from the blind pension roll.

It is our view, from the reading of Sections 9454 and 9458 and the case of Smearing v. Thompson, supra, that a person whose name is on the blind pension roll is presumed to have the necessary qualifications until the finding and judgment is made by the Commission. Upon the rendition of the finding and judgment, if such finding and judgment is that such person is ineligible, then he or she shall immediately thereafter not be entitled to a pension.

We also wish to call attention to the case of State ex rel Fitzgerald v. The State Social Security Commission, 48 S. W. (2d) 872. The court, after quoting from Section 9454, supra, had this to say:

"\* \* \* At that time the commission for the blind certified to the state auditor that Fitzgerald was 'no longer qualified to receive a pension,' and his name was stricken from the 'blind pension roll.' Of course, payment of the pension was discontinued. We assume the commission acted on reasonable notice to Fitzgerald for the proceeding is not questioned for failure of notice."

\* \* \* \* \*

"It will be noted that defendant in error grounds his right to relief on the judgment of the circuit court. He does not claim t at the judgment is final on the question of his qualifications for a pension, but contends that, if the commission had knowledge that he was no longer qualified to receive a pension, it should have moved in the circuit court to modify the judgment, alleging disqualification and proving facts which established disqualification.

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"The commission does not agree to this contention. It contends that the procedure is fixed by section 3896, Rev. St. 1929, which in part follows: (This portion appears on page 1 of this opinion) \* \* \* \* \* Defendant in error argues that this provision applies only to enrollments of pensioners on a finding and certificate of the commission. It is not so written in the statute. Moreover, a judgment of qualification by the circuit court on appeal is of no more force and effect than a finding and certificate of qualification by the commission. The judgment of either that petitioner is qualified authorizes an enrollment and payment of the pension."

We wish to point out that the case above had to do with a different situation than the one described in your opinion request, however, it will be noted from a reading of the excerpt from the Fitzgerald case, supra, that the court states that the Commission must make a finding and also uses the word "judgement". As we interpret it, the finding and judgment are one and the same.

Undoubtedly, the Missouri Commission for the Blind is an executive governmental agent and any decision of the Commission is like a judgment in a court of law, in this: First, the Commission must, from the evidence produced, determine the facts in the case. Secondly, it must conclude from the constitutive facts so found certain legal consequences follow, to-wit: that the applicant is or is not entitled to assistance -- a determination of law. Howlet v. State Social Security Commission, 149 S. W. (2d) 306, 1. c. 309, and other cases cited in said opinion.

#### CONCLUSION

We are of the opinion, therefore, that in order to strike a person from the blind pension roll, he or she must be given notice in writing, addressed to his or her last known residence address, and a hearing had wherein evidence may be produced by the pensioner as well as the Commission. From the evidence produced, the Commission shall make a finding and judgment, and if the Commission finds the pensioner to be ineligible, such fact

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shall be certified to the State Auditor and the name of such person shall be immediately stricken from the blind pension roll.

We are further of the opinion that the effective date upon which a blind pension shall end is the date that the Commission renders its finding and judgment that such person is no longer qualified to receive the blind pension and makes its order that such person's name shall be stricken from the roll.

Respectfully submitted,

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

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