

BLIND PENSIONS: Eligibility for pension determined as  
of date of hearing.

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May 26, 1942

Mrs. Lee Johnston  
Chief Investigator  
Missouri Commission for the Blind  
102 State Capitol Building  
Jefferson City, Missouri



Dear Mrs. Johnston:

Under date of May 14, 1942, you wrote this office  
requesting an opinion upon the following question:

"Kindly render an opinion on the following question. In a case where an application for a blind pension was made more than a year ago, and the income for the twelve months prior to the date of application was less than Six Hundred Dollars (\$600.00), but for a period of twelve months since application was made, income has been more than Six Hundred Dollars (\$600.00), would the applicant be eligible to receive a pension for a period after date of application when income had not reached Six Hundred Dollars (\$600.00) per year, and, therefore, be stricken as of the date that income did reach this amount?"

The answer to the question seems to be supplied by the case of Dahlin v. Missouri Commission for the Blind, reported in Vol. 262 S. W. at page 420 and following. In this case the Springfield Court of Appeals had before it the question of the time at which the vision of the pension

applicant should be determined. In ruling upon the question the court spoke as follows, at l. c. 421:

"Having disposed of the question of jurisdiction, we are brought to the merits. The question is raised as to the time at which the extent of vision of the applicant is to be determined. Is it the day of filing the application, or the date of the examination by the oculist, or the date the application is passed on by the commission, or the date of the trial in the circuit court on appeal from the commission? The first authoritative determination of the facts is made when the commission passes on the application. We see no reason why the commission should be bound to any date prior to the date of its determination. While the statute provides that the beginning of the pension shall be from the filing of the application, it is apparent that changes in the condition of the applicant as to any of the qualifications necessary to entitle a party to a pension might take place after the filing of the application which change might prevent its allowance.

"In addition to the question of the degree of sight possessed by the applicant, there are property and other qualifications. An applicant might not be subject to any of these disabilities when the application was filed, or when examined by the oculist, but might be subject thereto when the application is passed on by the commission. In that event, the commission ought, and we think could, under the law, re-

ject the application. Some one or more of these disabilities might be present when the application is filed, but not present when passed upon by the commission. In that event, it would seem that as to the commission the condition at the time of the hearing before the commission should be the proper date at which to determine the facts as to the eligibility of the applicant. Suppose, on the evidence sent to the commission by the probate judge, it should appear that the applicant was eligible, but the commission should learn of other testimony which would show the applicant not eligible. We think that on proper notice to the applicant the commission could secure the attendance of witnesses, and hear further testimony, or, if they should think it advisable, require further examination by approved oculists before passing upon the application. We see no reason why the circuit court could not follow the same course. Our conclusion is that the condition of the applicant at the time of the hearing is to govern, and this applies to both the commission and the circuit court."

(Underscoring ours.)

In the case about which you inquire, the applicant apparently did not have an income in excess of \$600.00 for the twelve months preceding the date of the application. However, your letter indicates that for the twelve months prior to the passing upon the application by the Commission the income of the applicant had been in excess of \$600.00. Section 9451, R. S. Mo. 1939, provides that no person who has an income, or, is the recipient, of \$600.00 or more per annum shall be entitled to receive a blind pension.

Mrs. Lee Johnston

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CONCLUSION

Inasmuch as the applicant had an income in excess of \$600.00 for the twelve months preceding the date of action by the Commission for the Blind, under the rule announced in the Dahlin case, supra, the applicant would not be entitled to a pension for any portion of the time.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

WOJ:CP