

PROBATE COURTS: )  
SOCIAL SECURITY: )  
GUARDIANSHIP PROCEEDINGS: )  
INSANITY: )

Section 9417, Mo.R.S.A., applicable to all expenses incurred in proceedings to declare person of unsound mind and to appoint guardian.

May 24, 1947

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12

Honorable L. Madison Bywaters  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of May 9, 1947, requesting an opinion from this department, which reads as follows:

"At the request of the Clay County Social Security Commission, the Probate Court instituted incompetency proceedings against the above named and he was declared incompetent on March 6, 1947, and the public administrator has been appointed as his guardian.

"Under the provisions of Section 9417, the Probate Court is given the right to waive court costs in guardianship proceedings when in the opinion of the Court the aged person is unable to assume said expense.

"The Clay County Probate Court is desirous of an opinion as to whether or not the provisions of the section aforesaid apply to the court costs incurred in the proceedings to have the person declared incompetent, as well as the court costs which will accrue in the future in the administration of the guardianship estate."

Section 9417, Mo. R. S. A., provides as follows:

"Benefits hereunder shall be delivered to the applicant in person or, in the event of his incompetency, to his legally appointed guardian, and in the case of a dependent child to the person or relative with whom he lives. All guardianship proceedings in the case of an applicant or recipient shall be carried out without fee or other expense, when in the opinion of the Probate Court, the aged person is unable to assume said expense. At the discretion of the court such a guardian may serve without bond.

"Whenever any recipient shall have died after the issuance of a benefit check to him, or on or after the date upon which said benefit check was due and payable to him, and before the same is endorsed or presented for payment by the recipient, the Probate Court of the county in which said recipient resided at the time of his death shall, on the filing of an affidavit by one of the next of kin, or creditor of said deceased recipient, and upon the court being satisfied as to the correctness of said affidavit, make an order authorizing and directing such next of kin, or creditor, to endorse and collect said check, which shall be paid upon presentation with a certified copy of said order attached to the check and the proceeds of which shall be applied upon the funeral expenses and the debts of said decedent, duly approved by the Probate Court, and it shall not be necessary that an administrator be appointed for the estate of said decedent in order to collect said benefit check. No costs shall be charged in said proceedings."

The precise question presented is whether or not the term "all guardianship proceedings," as used in the above section, includes the inquisition, the declaration that the subject is of unsound mind and incapable of managing his affairs and the appointment of a guardian, or merely refers to the actual

appointment of a guardian and the future administration of the guardianship estate.

We submit that action to have a person declared of unsound mind and a guardian appointed is generally considered as one proceeding. No line can be drawn which will separate or divide such proceeding into two parts. In some jurisdictions a proceeding to adjudge a person incompetent and appoint a guardian may be had independently of and apart from proceedings to inquire into the sanity of such person and his commitment to an institution. In these jurisdictions an independent and valid proceeding for the appointment of a guardian is not affected by a prior invalid proceeding in which the alleged incompetent was adjudged incompetent (44 C.J.S., Sec. 40, p. 102). No Missouri case has been found to support this view. On the contrary, the cases in this state hold that if the insanity inquisition judgment is void the appointment of the guardian is also void. In *Skelly v. The Maccabees*, 272 S. W. 1089, it was said, at page 1090:

"September 20, 1922, insured was adjudged insane by the probate court of Jasper county, and his wife, Beatrice Skelly, was appointed as his guardian.  
\* \* \* \* \*

"\* \* \* Insured was not present at the hearing in the probate court, but the court appointed an attorney to represent him. This, however, could not take the place of service, and there is no such contention. There can be no escape from the conclusion that the judgment of the probate court adjudging insured to be insane is absolutely void and without effect because of failure to serve notice upon insured as required by law. Said judgment, being wholly void for want of jurisdiction, is subject to collateral attack. (Cases cited.) Since the sanity inquisition judgment was void, it follows, of course, that the appointment of the guardian was also void."

We can infer from this that the insanity inquisition and the appointment of a guardian are made in the same proceeding.

We believe that it is a common practice for the terms "guardianship proceedings" and "insanity proceedings" to be used interchangeably; that both these terms refer to the insanity inquisition, the declaration that the subject is of unsound mind and incapable of managing his affairs, and the appointment of a guardian to manage said affairs. The court in the Skelly case, supra, referred to the insanity proceedings as "the guardianship proceedings." And also in the case of Shanklin v. Boyce, 275 Mo. 5, the court referred to the inquisition of insanity as "the proceedings for the appointment of his guardian." It was said at page 14:

"\* \* \* Nor is it denied that the proceedings for the appointment of his guardian were had and conducted without any notice whatever to the plaintiff and without his personal presence in the probate court at the time of the alleged inquisition. \* \* \*"

Thus it is clear that the courts recognize no distinction between the aforesaid terms, and further that when the Legislature used the term "guardianship proceedings" in Section 9417, it had reference to the entire proceeding, that is, the insanity inquisition and the appointment of a guardian. We cannot believe that the Legislature intended to limit the waiver of expenses on the part of the recipient of social security funds to the expenses incurred in the actual appointment of a guardian and to require such person to assume the costs of that part of the proceeding which went on before and resulted in a finding that said person was of unsound mind.

#### Conclusion

Therefore, it is the opinion of this department that the provisions of Section 9417, Mo. R.S.A., apply to all expenses incurred in the proceedings to declare a person of unsound mind and incapable of managing his affairs and to appoint a guardian to manage said affairs and carry out the administration of the guardianship estate in the future.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General