

PUBLIC ASSISTANCE:

AID TO DEPENDENT
CHILDREN:

1) It is not mandatory that the defaulting parent be prosecuted as a condition precedent to the granting of A.D.C. benefits. 2) Support payments or other income should be deducted from the needs of the family as determined by the Division of Welfare and not from the maximum amount payable under Section 208.150.

January 24, 1963

Opinion No. 78 - 1963

Mr. Proctor N. Carter, Director
Division of Welfare
State Office Building
Jefferson City, Missouri



Dear Mr. Carter:

This will acknowledge receipt of your letter of January 14, 1963, requesting an official opinion as to the construction of Section 208.040, Subsection (2), RSMo 1959, and Section 208.010, RSMo 1959, relating to the administration of the Aid to Dependent Children program in Missouri.

Restating your request for sake of brevity, in your first question you inquire whether under the provisions of Section 208.040, Subsection (2), RSMo 1959, it is mandatory or a condition precedent to the granting of Aid to Dependent Children benefits by the Division of Welfare to require that the defaulting parent be prosecuted to secure support for a dependent child.

Section 208.040, Subsection (2), RSMo 1959, reads as follows:

"* * * provided; however, that when benefits are claimed on the basis of continued absence from the home of a parent and such absence is due to divorce, desertion or non-support of a child by a parent, the Division of Welfare shall as a condition to granting of benefits require the claimant to initiate or prosecute legal proceedings against the defaulting parent to secure support for such child, or through its investigation determine that the claimant has in good faith informed and assisted the proper

authorities and made all reasonable efforts to apprehend the parent and charge him with the support of said child. When any report is made to the prosecuting attorney of the desertion or nonsupport of a child for whom benefits are claimed, and the whereabouts of the deserting or defaulting parent is known, or can be ascertained, it shall be the duty of the prosecuting attorney to fully investigate all the facts concerning the desertion or nonsupport and institute such action as he deems necessary to secure support for such child. If the prosecuting attorney determines for any reason that an action should not be instituted, a report of his findings and the reason an action was not instituted shall be made to the Division of Welfare. * * *

It is to be noted that the above provision requires a claimant to initiate or prosecute legal proceedings against the defaulting parent to secure support for such child or the Division of Welfare through its investigation determine that the claimant has in good faith informed and assisted the proper authorities and made all reasonable efforts to apprehend the parent and charge him with the support of said child.

The above quoted portion of Section 208.040, Subsection (2) does not provide that it is a mandatory requirement or a condition precedent to the granting of Aid to Dependent Children benefits by the Division of Welfare that the defaulting parent be prosecuted to secure support for a dependent child. The compliance or non-compliance with the provisions of this section is a question of fact and if the Division of Welfare determines that the claimant has in good faith informed and assisted the proper authorities (including the Prosecuting Attorney) and made all reasonable efforts to apprehend the defaulting parent and charge him with the support of a child, the Division of Welfare is authorized to find the claimant eligible on this point of eligibility.

We understand your second question, in a broad sense, to be: In determining the amount of grant an eligible Aid to Dependent Children claimant is entitled to receive should support payments be deducted from the amount determined by the Division of Welfare under Section 208.010, RSMo 1959, to be necessary for a "reasonable subsistence compatible with decency

and health" or should they be subtracted from the maximum amount payable as specified in Section 208.150, Subsection (3), RSMo 1959?

Section 208.010, RSMo 1959, provides, in part, as follows:

"In determining the eligibility of a claimant for public assistance under this law, it shall be the duty of the division of welfare to consider and take into account all facts and circumstances surrounding the claimant, including his living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. The amount of benefits, when added to all other income, resources, support and maintenance, shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the division of welfare. * * *"
(Underscoring ours.)

It appears to us that under the provisions of Section 208.010 need is a basic eligibility factor underlying the determination of whether a family or individual is eligible to receive public assistance benefits. The assistance payment that is made to a needy claimant is to supplement the income, resources, support and maintenance when these are inadequate to provide a reasonable subsistence compatible with decency and health in accordance with standards developed by the Division of Welfare. See also Section 207.020, Subsection 19. The amount of the benefit payment, however, cannot exceed the maximums as specified in Section 208.150, RSMo 1959. The budgetary method of determining need has been held by our Appellate Courts to be a fair and proper method of applying the public assistance law. Kelley vs. State Social Security Commission, 161 S.W.(2d) 661.

In view of the provisions of Section 208.010, supra, the needs of an eligible Aid to Dependent Children claimant are to be determined by deducting any support payments or other income from the needs as computed by the application of standards developed by the Division of Welfare and the amount of benefits paid shall not exceed the maximum specified in Section 208.150, RSMo 1959.

CONCLUSION

It is, therefore, the opinion of this office that:

1) It is not mandatory or a condition precedent to the granting of Aid to Dependent Children benefits by the Division of Welfare that the defaulting parent be prosecuted to secure support for a dependent child;

2) Support payments or other income received by an eligible Aid to Dependent Children claimant should be deducted from the needs of the family as determined by the Division of Welfare by the application of standards developed by the Division of Welfare and not from the maximum amount payable as specified in Section 208.150, Subsection (3), supra.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

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