

AID TO DEPENDENT
CHILDREN BENEFITS:
COURT RECORDS:
INSPECTION OF PUBLIC
RECORDS:

1) Division of Welfare may grant A.D.C. benefits when parent is paroled with provision that he support his children.

2) The records of the St. Louis Court of Criminal Corrections concerning paroles are public records and open to public inspection.

June 6, 1963



Honorable T. D. McNeal
State Senator
Fourth District
4772 Palm Street
St. Louis 15, Missouri

Dear Senator McNeal:

On April 10, 1963, you requested an opinion from this office concerning the following two questions:

"1. When a father is paroled with the provision that he shall support his wife and family does the Division of Welfare have authority to grant benefits under the aid to dependent children provisions of the welfare law, if the actual amount of support being provided by the father is not sufficient to meet the needs of the dependent children and a needy eligible relative caring for such dependent children?

"2. Where the judgment and sentence of the St. Louis Court of Criminal Corrections shows that probation and parole has been granted on the condition of payment of full support with no amount specified, is the Division of Welfare entitled to inspect the records of the parole office of the Court of Criminal Corrections for the purposes of determining the amount of support required under the court's terms of probation or parole, and actually being paid thereunder, in order to determine the actual amount available to applicants for and recipients of benefits under the aid to dependent children program."

Statutes governing the Aid to Dependent Children program are to be found in Chapter 208, RSMo 1959.

Section 208.010, RSMo 1959, provides in part:

"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; * * *."

This statute is referred to as the needs statute. An applicant for public assistance is required to meet other eligibility requirements as to age, residence and total property. If the applicant meets these statutory requirements, the applicant must also be found to be in need under the provisions of Section 208.010. *Howlett v. State Social Security Commission*, 149 SW2d 806; *Chapman v. State Social Security Commission*, 147 SW2d 157. It has been held that under the above statute it is the duty and responsibility of the Division of Welfare to determine whether an applicant is in need of public assistance before assistance can be granted. In order to determine this need, it is necessary for the Division of Welfare to make an investigation and determine the facts surrounding the living conditions of the applicant to determine whether need exists. In *Bratten v. State Social Security Commission*, 194 SW2d 536, after quoting the above statutes, the Springfield Court of Appeals stated l.c. 539:

"To ascertain these facts and circumstances the above section implies that the Commission has the right to make the necessary pertinent inquiries and the law contemplates personal contact with the applicant and the right to interrogate her as to her living conditions, earning power,

cost of support, property, etc. Parks v. State Social Security Commission, 236 Mo. App. 1054, 160 S.W.2d 823. Nevertheless, it is well established that the burden of proof is upon the applicant to show that he is qualified for benefits under the Act and in the absence of such proof application should be rejected. Chapman v. State Social Security Commission, 235 Mo. App. 698, 147 S.W.2d 157; Kelley v. State Social Security Commission, supra; Bare v. State Social Security Commission, Mo. App., 187 S.W.2d 519; Edwards v. State Social Security Commission, Mo. App., 187 S.W.2d 354."

In making this determination of need, it is necessary for the Division of Welfare to determine the amount of income and resources the applicant has as well as to know about all the necessary expenses and from this information, it is customary for the Division of Welfare to prepare a public assistance budget setting out all the expenses that the Division of Welfare determines to be necessary, together with the income in the home and the difference, if any, will represent the amount of the grant. This method has been approved by the appellate courts of this state. Kelley v. State Social Security Commission, 161 SW2d 661; Thornberry v. State Department of Public Health and Welfare, 295 SW2d 372, 365 Mo. 1217. These principles of law are to be applied in all public assistance cases including Aid to Dependent Children Benefits.

Under Section 208.040, RSMo 1959, it is provided that Aid to Dependent Children Benefits shall be granted to any needy child under the age of 18 who has been deprived of parental support or care by reason of death, continued absence from the home or physical or mental incapacity of a parent. It further provides:

"* * *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 nonsupport 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. * * *

On January 24, 1963, this office issued an opinion to Mr. Proctor N. Carter, Director of the Division of Welfare, State Office Building, Jefferson City, Missouri, stating that it is not necessary that the defaulting parent be prosecuted as a condition precedent to the granting of Aid to Dependent Children Benefits as long as the Division of Welfare finds that the claimant has made all reasonable efforts and assisted the proper authorities in trying to secure support for the child. We further ruled in that opinion that the Division of Welfare has authority to make grants to supplement the income, resources, support and maintenance being received by the claimant or child when the income, resources and support being received are not adequate to provide a reasonable subsistence compatible with decency and health in accordance with the standards developed by the Division of Welfare. This opinion was based on the fact that the Division of Welfare had determined that the applicant for assistance had complied with this statutory provision for securing support from the defaulting parent.

The question you have submitted concerns the authority of the Division of Welfare to pay benefits when the defaulting parent has been paroled by a court with the provision that he support his wife and family when the actual amount of support provided is not sufficient to meet the needs of the child or children. The question is whether the Division of Welfare may under these conditions supplement the amount of support that the parent on parole actually furnishes under such conditions.

It is assumed that criminal charges have been filed against the defaulting parent as required by Section 208.040 because this would be necessary before the parole could be granted. The defaulting parent would have to be convicted either under a plea of guilty or after trial. The terms and conditions of the parole would rest entirely in the discretion of the court.

Under these circumstances, it would appear that the applicant for public assistance has complied with the provisions of the statute as to making all reasonable efforts to have the defaulting parent charged with the support of the child. Under such circumstances, if the amount of support actually furnished by the defaulting parent is not sufficient to meet the standard for a reasonable subsistence compatible with decency and health, the Division of Welfare may issue a grant to supplement that being received by the applicant. The mere fact that the defaulting parent is paroled under conditions that he support his child is of no consequence because that is merely declaratory of what he is already legally obligated to do under the law of this State. We are assuming that the defaulting parent is continuously absent from the home and that the children are deprived of support by reason of this fact.

In determining the amount of support that is actually being furnished, the applicant for assistance must cooperate with the Division of Welfare and furnish all information that is necessary and possible for the applicant to furnish in order that the Division of Welfare may determine whether the applicant is in need of public assistance. Failure to do so would justify the Division of Welfare in denying the applicant assistance. The applicant should not be charged with failure to do or provide something beyond the control of the applicant.

When the court grants a parole to the defaulting parent under conditions that such parent furnish full support and applicant contends that such parent is not making payments adequate to provide a reasonable subsistence compatible with decency and health not to exceed the statutory maximum under Section 208.150, RSMo 1959, the Division of Welfare may require the applicant to report the matter to the court or parole officer in order that the parole may be terminated. The Division of Welfare may deny assistance until this is done on the basis that the applicant has not made all reasonable efforts to secure support for the child or children. If the parole is terminated and the parent is incarcerated, the child or children would be eligible for aid during such period of incarceration. If, however, the court refuses to terminate the parole and payment adequate to provide a reasonable subsistence is not being furnished for the child or children, they would be eligible for assistance under such conditions not to exceed the statutory maximum under Section 208.150, RSMo 1959.

If a parole is granted on the condition that the parolee pay a definite sum of money for the support of the child or children and that amount is paid but such amount is insufficient to meet the reasonable needs of the children for a reasonable subsistence compatible with decency and health under the standard as developed by the Division of Welfare, the Division of Welfare then may supplement the amount of support that is actually being paid so that the amount received would be sufficient to meet the maximum set by Section 208.150, RSMo 1959.

In answer to the second question which you have submitted, Article VY Section 1, Constitution of Missouri, 1945, provides that the judicial power of the state shall be vested in the Supreme Court and certain other courts named therein, including the St. Louis Court of Criminal Corrections. Implementing this constitutional provision is Section 479.010, RSMo 1959, establishing the St. Louis Court of Criminal Corrections, consisting of two divisions which shall be a court of record.

All official acts of a court of record must be made of record by the court before they become official. State ex rel. Gentry v. Westhues, 286 SW 396, 315 Mo. 672; Medlin v. Platte County, 8 Mo. 235. Whatever proceedings the law or practice of the court requires to be entered constitutes a part of the official court record. State ex rel. v. May Department Stores, 38 SW2d 44, 327 Mo. 567.

Section 109.180, Mo. Cum. Supp. 1961, provides in part that except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri and those in charge of the records shall not refuse the privilege to any citizen. It further provides for removal of the officer and makes it a misdemeanor for any officer to violate this provision. There is no provision of law that exempts the records of the St. Louis Court of Criminal Corrections from public inspection.

We are enclosing herewith an opinion issued by this office on February 5, 1963, to Honorable Loicen O. Boyd, Prosecuting Attorney of Worth County, interpreting Section 109.180 and Section 109.190, Mo. Cum. Supp. 1961.

CONCLUSION

1) It is our opinion that when a father is paroled with the provision that he support his children, the Division of Welfare may grant assistance in addition to that which is actually furnished to meet the needs not to exceed the maximum provided in Section 208.150, RSMo 1959.

2) It is our opinion that the records of the St. Louis Court of Criminal Corrections are open to public inspection concerning the granting and conditions of the parole as well as all official records kept by the parole officer concerning the amount of money that is paid under the terms of the parole and that the Division of Welfare is entitled to inspect such records.

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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