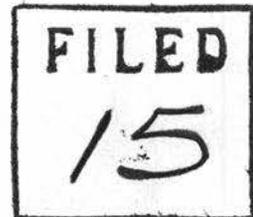


BLIND PENSIONS: Amount of payment under House Bill No. 97 and House Bill No. 98, passed by the 66th General Assembly.

August 9, 1951

8-17-51

Mr. Proctor N. Carter, Director
Division of Welfare
Department of Public Health & Welfare
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"House Bills 97 and 98, enacted by the 66th General Assembly, will become effective on October 9, 1951. Both of these bills increase payments to blind persons from \$40.00 a month to \$50.00 a month. House Bill 97 contains amendments to the present blind pension law, and House Bill 98 provides for aid to the blind. Assuming that a state plan will be approved by the Federal authorities by October 9 and that we can make the necessary transfers of persons from the blind pension rolls to the aid to the blind rolls, I desire to make blind pension payments and aid to the blind payments for October and succeeding months on a current basis; that is to say, payments would be made within the month for that particular month.

"Blind pension payments in the past have been made in arrears; that is, a person whose name appeared on the rolls did not receive his check for a month's pension until the following month, when he was paid by check for the previous month's accrued pension. The payment of blind pensions in arrears or 'last accrued' was required by Section 9457, R.S. Mo. 1939, prior to the amendment of this section in 1949, Laws of Missouri, 1949, page 522, and what is now Section 209.090, R.S. Mo. 1949.

"To blind pension recipients who are duly enrolled on the blind pension rolls on

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October 9, 1951, and to persons determined to be eligible to receive aid to the blind, who have been transferred from the blind pension rolls, I propose to issue a \$40.00 check in the month of October for the month of September and to issue a second check in the month of October on the basis of \$40.00 a month for the first eight days in October and on the basis of \$50.00 per month for the balance of the month.

"I would appreciate receiving an opinion from you as to the legality of the proposed plan of payment as outlined above."

Under the present blind pension act, Chapter 209, RSMo 1949, payment of blind pensions is made in arrears--that is, one on the blind pension roll during the month of January is paid for January in the month of February. Under the present blind pension law, one qualified and on the roll is entitled to receive \$40.00 per month (see Section 209.040, RSMo 1949). Under House Bill No. 97, passed by the 66th General Assembly, which amends the present blind pension law, and House Bill No. 98, also passed by that body, which provides aid to the blind, the monthly benefit is increased to \$50.00. However, neither of these bills become effective until October 9, 1951. For this reason, you inquire as to how much and when to pay recipients of blind pensions and aid to the blind in this state for the month of September and October, 1951, the month immediately prior to and the month when the two bills become effective.

Certainly payments under the two new bills, namely House Bill No. 97 and House Bill No. 98, supra, cannot be made until such bills finally become effective. Retrospective payments cannot be made thereunder as there is nothing in the two bills to indicate that the legislative intent was to allow benefits thereunder for the full month of October. Furthermore, Section 13 of Article I of the Constitution of Missouri, 1945, is a prohibition against ex post facto laws or laws operating retrospectively. Said amendment reads:

"That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

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In *Lucas v. Murphy*, 156 S.W. (2d) 686, 348 Mo. 1078, the court held that statutes must be held to operate retrospectively only unless the intent is clearly expressed that they shall act retrospectively or a language of the statute admits no other construction. See also *United States v. United Shoe Machinery Co.*, 264 F. 138, affirmed 42 S. Ct. 363, 258 U.S. 451.

In view of this, it seems the only law in full force and effect relative to the payment of blind pensions until October 9, 1951, when House Bill No. 97 and House Bill No. 98, supra, become effective, is the present blind pension act which authorizes payments in an amount of \$40.00 monthly to those who are qualified thereunder and on the blind pension roll. In view of this, the only logical and reasonable conclusion is that those persons qualified under the present blind pension act and on the blind pension roll shall be issued a check for benefits in the amount of \$40.00 for the month of September and be paid a check for benefits for the first eight days of October at the rate of \$40.00 per month, and then said recipient shall be entitled to a benefit payment from October 9 to the balance of that month based on \$50.00 monthly under whichever bill he qualifies, either House Bill No. 97 or House Bill No. 98, supra. While this may be a little inconvenient in the administration of the law, it appears to be the only equitable solution. We cannot by the greatest stretch of imagination see why this manner of payment should cause the Federal Social Security Board to refuse to participate in payments under these programs.

CONCLUSION

Therefore, it is the opinion of this department that any person now on the blind pension roll shall be entitled to receive a \$40.00 payment for September under the present law and then another payment for only the first eight days of October, 1951, prorated on a monthly benefit of \$40.00, and for the balance of October, be entitled to a payment prorated on a monthly benefit of \$50.00. This is the same whether he qualifies under the present blind pension law and amendment thereto, namely House Bill No. 97, or qualifies under House Bill No. 98, supra, for aid to the blind.

Respectfully submitted,

APPROVED:



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ARH:VLM