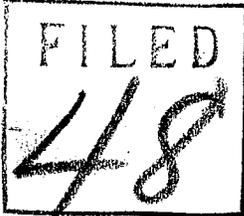


OLD AGE ASSISTANCE:  
DIVISION OF WELFARE:

Determination of State Division of Welfare that an applicant for old age assistance is legally ineligible, if based upon evidence applicant was owner of insurance policy having cash surrendervalue of \$600, being in excess of maximum allowed by Subsection 5, Sec. 208.010, Laws of 1953, p. 644, and Rule 14 of Division of Welfare is in accord with statute and rule and is proper.



November 22, 1954

Honorable Harry Keller  
Representative, Ninth District  
1301 East Armour  
Kansas City, Missouri

Dear Sir:

This department is in receipt of your recent request for a legal opinion which reads as follows:

"Can the state welfare department compel an applicant for old age assistance to sell an insurance policy in order to be granted aid?"

"In the instant case the applicant and a daughter make premium payments jointly and have been doing so for the last 18 years. The insurance policy has a cash surrender value of perhaps more than \$600, but the daughter has declined to give up her share of the policy. As a result the welfare department has taken the mother off of old age assistance.

"It is my belief the 67th General Assembly remedied such conditions. I would like to know if the welfare department now has authority to take the action it did in this case. If so, then I want to be prepared to remedy the situation in the next session."

We understand the inquiry to be in regard to whether or not the lady referred to was qualified under the applicable statutes to receive old age assistance benefits.

Sections 208.010 and 208.011, RSMo 1949, as amended by Laws of Missouri, 1951, pages 758 and 759, were repealed and a new section enacted known as Section 208.010, Laws of Missouri, 1953, page 644. This section prescribes the eligibility requirements for public assistance, including old age assistance, and reads

Honorable Harry Keller

as follows:

"Eligibility for public assistance--means test.-- 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 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 standards developed by the Division of Welfare. In determining the need of a claimant in federally aided programs, such amounts per month of earned income shall be disregarded in making such determination as shall be required for federal participation by the provisions of the Federal Social Security Act, or any amendments thereto. Irregular, casual, and unpredictable income received by a claimant from performing odd jobs shall be excluded in calculating income. Benefits shall not be payable to any person who:

(1) Has made, or whose spouse has made, a voluntary assignment, conveyance or transfer of property within five (5) years for the purpose of rendering himself or spouse eligible for benefits or for the purpose of increasing his or their need for benefits. Any person who has assigned, conveyed or transferred property without receiving fair and valuable consideration therefor within five (5) years preceding the date of the investigation shall be presumed to have made such assignment, conveyance or transfer for the purpose of rendering himself or spouse eligible for benefits or to increase his or their

Honorable Harry Keller

need for benefits. 'Fair and valuable consideration' as used herein shall not, for the purpose of this act, be construed to include past support, contributions or services rendered by a relative to a claimant:

(2) owns or possesses cash or securities in the sum of \$500.00 or more; provided, however, that if such person is married and not separated from spouse, he or they, individually or jointly, may own cash and securities of a total value of \$1000.00; and provided, further, that in the case of an aid to dependent children claimant the provisions of this subsection shall apply only to the cash and securities owned by the parent and child or children, who may own cash and securities of a total amount not to exceed \$1000.00, and not to other relatives with whom the child may reside;

(3) owns or possesses property of any kind or character, or has an interest in property, the value of which, as determined by the Division of Welfare, exceeds \$5000.00, or if married and actually living with husband or wife, if the value of his or her property, or the value of his or her interest in property, together with that of such husband or wife, exceeds said amount; provided, however, that in the case of an aid to dependent children claimant this limitation shall apply only to property owned by parent and child or children and not to other relatives with whom the child may reside;

(4) is an inmate of a public institution, except as a patient in a medical institution, or to any individual who is a patient in an institution for tuberculosis or mental diseases, or who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof. An inmate of a public institution

Honorable Harry Keller

may, however, make application for such benefits, which, if granted, shall not begin until after he or she ceases to be an inmate;

(5) has earning capacity, income, or resources, whether such income or resources is received from some other person or persons, gifts or otherwise, sufficient to meet his needs for a reasonable subsistence compatible with decency and health."

In the case of Parks vs. State Social Security Commission, 160 S. W. (2d) 823, in determining whether or not an applicant is eligible for old age assistance, it was held that this application must be tested by all six of the disqualifying clauses of Section 9406, RSMo 1939. At l. c. 825, the Court said:

"Claimant's application for assistance must be tested not only by one of the disqualification clauses of section 9406 but all of them, including clause 6. Clauses 1 to 6 are all disqualifying clauses and are of equal weight and, if claimant is disqualified under any one of them, he is not entitled to old age assistance. Chapman v. State Social Security Commission, 235 Mo. App. 698, 147 S. W. 2d 157, 162."

Applying the legal principles laid down in the above cited case to the facts before us, it is our thought that an application for old age assistance must be tested by all five of the disqualifying clauses shown in subsections 1 to 5, inclusive, of section 208.010, supra. In the event the application fails to meet the requirements of one or more of said disqualifying clauses, then such applicant is disqualified from receiving old age assistance.

The compliance or noncompliance with all of the disqualifying clauses of Section 208.010, supra, is always a question of fact. The statutes require the Division of Welfare to make an investigation of all the facts in each case and determine if the applicant has sufficiently complied with the law to entitle him to old age assistance.

For the purposes of our discussion, it will be assumed that

Honorable Harry Keller

the applicant has complied with Section 208.010, supra, with the exception of Subsection 5, and that the applicant has not complied with Rule 14 of the Division of Welfare. Rule 14 provides as follows:

"A single individual owning insurance with a cash or loan value of \$500 or more will not be considered eligible for assistance on the basis of available resources. A husband and wife living together may own insurance in any combination with a total cash or loan value up to \$1000, except in General Relief cases in which a \$500 limitation will apply.

"When the claimant has deposited money with any individual, firm, or corporation as an advance payment for a funeral, the amount of money deposited under such a plan will be considered a resource in the same manner as the cash or loan value of life insurance policies."

Apparently the action of the Division of Welfare in taking applicant's name from the roll of eligibles and in denying her further old age assistance payments was for the reason that she had not complied with Subsection 5, 208.010, supra, and Rule 14.

The question might be raised as to the legality of Rule 14, supra, promulgated by the Division of Welfare. In answer to such question, we wish to state that Rule 13 of the Division of Welfare providing that a person who owns property not his residence, worth more than \$500, is not eligible for old age assistance, was held to be a valid one in an opinion of this department dated June 23, 1954, and rendered to Honorable Arkley W. Frieze, State Senator, Carthage, Missouri.

It is our thought that the reasoning of this opinion is equally applicable to Rule 14, supra, and can lead only to the conclusion that said Rule 14 is a valid one.

The facts given in the opinion request are incomplete, and although an attempt has been made in a later letter to clarify them, they are still lacking in essential details.

While the question posed in the opinion request has been framed in such a manner it is obvious that an opinion answering

Honorable Harry Keller

such question either affirmatively or negatively is expected, since we have not been given all the facts, we are not in a position to answer the inquiry in the manner expected. Therefore, our answer must of necessity be given in a modified or alternative form.

Your letter states that the daughter claims a one-half interest in a life insurance policy having a cash surrender value of \$600 with the Mother, because the daughter has paid one-half the premiums of the policy for the past several years. However, it is not stated that the policy names the Mother and daughter as the insured or that it contains a provision the Mother and daughter shall each pay one-half the premiums and that each shall own a one-half interest in the policy.

There is no evidence that the insurer had any knowledge or had given its consent to such an agreement between the Mother and daughter, and certainly in the absence of such evidence the insurer would not be bound by any such private agreement.

If the policy named the Mother only as the insured, then the Mother is the sole owner of the policy insofar as the insurance company is concerned, and under the terms of same she alone has the right to surrender said policy and collect the \$600 cash surrender value. Under such circumstances, the insurer would be legally bound to pay no one but the Mother as the lawful owner of the policy.

From the facts given above, it is assumed that the Division of Welfare made the investigation and determination required of it by law, which was to the effect that the applicant was not entitled to old age assistance. The determination was evidently reached upon the grounds that the applicant owns an interest in an insurance policy worth more than the maximum amount allowed, and has resources within the meaning of Subsection 5, Section 208.010, supra, and also the value of said interest was in excess of that provided by Rule 14, supra.

On the other hand, if the investigation disclosed that provisions of the insurance policy showed the interest of the applicant in same to be only one-half and the other one-half interest was owned by the applicant's daughter, and if it appeared that the interest of the Mother in said policy was her entire assets and worth only \$300, then her assets were of less value than that provided by the statute.

Honorable Harry Keller

CONCLUSION

It is the opinion of this department a determination of the State Division of Welfare that an applicant for old age assistance is legally ineligible, if based upon evidence the applicant was the owner of an insurance policy having a cash surrender value of \$600, which amount is in excess of the maximum allowed by Subsection 5, Section 208.010, Laws of 1953, page 644 and Rule 14 of the Division of Welfare is in accord with the provisions of the statute and rule, and is proper.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Paul W. Chitwood.

Very truly yours,

JOHN M. DALTON  
Attorney General

PNC:DA