

DIVISION OF WELFARE:
AID TO DEPENDENT CHILDREN:

Division of Welfare shall not accept any statements or certificates from physicians, clinics or other authorities as to the physical or mental incapacity of the parent unless such authorities have been designated by the Division of Welfare to examine the parent. Their statements or certificates of unauthorized examinations of a parent cannot be considered upon appeal.

SEE LETTER ATTACHED MODIFYING
OPINION AS RELATING TO DEPT.
PUBLIC HEALTH AND WELFARE
DIRECTOR ON APPEAL.

April 21, 1950



Honorable Samuel Marsh
Director, Department of
Public Health and Welfare
Jefferson City, Missouri

Dear Sir:

This department acknowledges receipt of your request for an official opinion on the following questions:

"Section 9408 of the Missouri Revised Statutes Annotated provides as follows:

'Section 9408. Aid to dependent children shall be granted to a parent or other relative as herein specified for the benefit of any child who' * * *(2) has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent * * * and provided further that when benefits are claimed on the basis of physical or mental incapacity of a parent, the probable duration of the physical or mental incapacity must be three months or more and if the incapacity is not obvious, such incapacity shall be certified to by a competent and appropriate authority designated by the Division of Welfare. Benefits may be granted and continued for this reason only while it is the judgment of the Division of Welfare that a physical or mental defect, illness or disability exists which prevents the parent from performing any substantially gainful activity.'

"In determining physical and mental incapacity of a parent, when the incapacity is not obvious, it has been the policy of the Division of Welfare to designate

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certain examining doctors, clinics, hospitals or other medical institutions and to require of them written reports of their diagnosis.

"Section 9411 of the Missouri Revised Statutes, Annotated, provides in effect that if the claimant is not satisfied with the decision of the Division of Welfare he or she may appeal to the State Commission, and your office has ruled in an opinion dated May 20, 1947, 'that appeals granted under Section 9411 Revised Statutes of Missouri, 1939, should be made to the Director of the Department of Public Health and Welfare and that officer shall render judgment on said appeal in conformity with Section 9411, supra.' Said Section 9411 provides among other things as follows:

'The State Director of Public Health and Welfare upon receipt of such appeal shall give the applicant reasonable notice of, and opportunity for a fair and speedy hearing in the county of the residence of the applicant. Every applicant on appeal to the Director of Public Health and Welfare shall be entitled to be present, in person and by attorney, at the hearing, and shall be entitled to introduce into the record at the hearing any and all evidence, by witnesses or otherwise, pertinent to such applicant's eligibility as defined under the provision of Section 208.2(9407) and 9406 Revised Statutes, Missouri, 1939, and all such evidence shall be taken down, preserved and shall become a part of the applicant's record in said case, and upon the record so made the Director of Public Health and Welfare shall determine all questions presented by the appeal.' (Underlining ours)

"Section 9406 of the Missouri Statutes Annotated provides among other things as follows:

'In determining the eligibility of an applicant for public assistance under this law, it shall be the duty of the Commission (Director of Department) to consider and take into account all facts and circumstances surrounding the applicant, including his earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the applicant is not found to be in need, assistance shall be denied.'

(Parenthesis ours) (Underlining ours)

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"In determining eligibility by the Division of Welfare some applicants have objected to being examined by other than their family physicians, or physicians in their locality that they know, and we would appreciate receiving an opinion from you on the following questions:

*(1) Should the Division of Welfare accept any certification of medical or mental examination from a doctor or medical institution other than designated by the Division of Welfare?

*(2) If the Division of Welfare accepts reports from examining doctors other than designated by the Division of Welfare, what weight, if any, should the Division give their certification if such certification conflicts with the report submitted by the examining authority designated by the Division of Welfare?

"If your answer should be in the negative on Question (1) above, then when the claimant appeals from the Division of Welfare to the Director of the Department of Public Health and Welfare can the Director of the Department consider testimony or written statements of physicians, clinic or hospital authorities, other than those designated by the Division of Welfare, as to the physical or mental incapacity of the claimant under the law as set out in Section 9411, Section 9406 and Section 9408."

II.

Section 9408, R.S.A., Laws 1949, page _____ S.B. No. 68, provides as follows:

"Section 9408. Aid to dependent children shall be granted to a parent or other relative as herein specified for the benefit of any child who:

"(1) Is under the age of fourteen years; provided, however, that aid to dependent children shall be granted to children between the ages of fourteen and sixteen years, if the child with respect to which aid is granted is regularly attending some day school; and provided, further, that aid to dependent children shall be granted with respect to children under the age of six-

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teen years who otherwise qualify to receive such aid under the provisions of this Section, even though said child is not attending some day school, if such child is either physically or mentally incapable of attending school;

"(2) has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, step-sister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their own home and financial aid for such child is necessary to save him from neglect and to secure for him proper care in such home, 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 or desertion and non-support of a child by a parent, the Division of Welfare shall, as a condition precedent to granting of benefits, require the claimant to initiate or prosecute legal proceeding 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; and provided, further, that when benefits are claimed on the basis of physical or mental incapacity of a parent, the probable duration of the physical or mental incapacity must be three months or more, and if the incapacity is not obvious, such incapacity shall be certified to by competent and appropriate authority designated by the Division of Welfare. Benefits may be granted and continued for this reason only while it is the judgment of the Division of Welfare that a physical or mental defect, illness or disability exists which prevents the parent from performing any substantially gainful activity:

"(3) has resided in the state for one year immediately preceding the application for benefits, or who was born within one year immediately preceding the application and whose mother has resided in the

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state for one year immediately preceding the birth."
(Underscoring ours)

Section 9406, R. S. Mo. 1939, as amended, Laws 1943, page 950, Laws 1949, page _____ S.S.H.B. No. 36 and Section 9411, R.S. Mo. 1939, were cited in your letter, and have been considered in regard to the above questions.

The court in the case of Hardy v. State Social Security Commission, 187 S.W. 2d. 520, l.c. 523, said:

"Old age assistance is a gratuity of the sovereign. It is a creature of the statute and not a right that a claimant may demand. The legislature can grant it or withhold it at will, or it may grant it with such reservations and under such conditions as it deems proper. Such restrictions, if reasonable, are binding upon the commission and upon the courts. Howlett v. State Social Security Commission, 347 Mo. 784, 149 S.W.2d. 806; Chapman v. State Social Security Commission, 347 Mo. 784, 149 S.W.2d. 806; Chapman v. State Social Security Commission, 235 Mo. App. 698, 147 S.W.2d. 157; Oliver v. State Social Security Commission, Mo. App., 184 S.W.2d. 774."

Aid for dependent children is also a gratuity of the state. The Legislature can grant it or withhold it at will, or may grant it with such reservations and under such conditions as it deems proper.

Prior to the amendment of section 9408, by the Legislature in 1949, the law did not provide for the examination of the parent by competent and appropriate authority designated by the Division of Welfare. The provision for the examination of parents claimed to be physically or mentally incapacitated was enacted by the Legislature to prevent parents, claimed to be so incapacitated, acquiring favorable medical statements from friendly physicians or from going from one physician to another until they find one who would certify or testify that they were incapacitated.

The court in the case of Galvin v. State Social Security Commission of Missouri, 129 S.W.2d. 1051, l.c. 1053, said:

"In construing the act we should consider the former state of the law, the new provision the evil sought to be removed, as well as the remedy provided, and so construe the law as to

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further the remedy and retard the evil. Such is a venerable rule of construction, none the less alive because old.' *Boll v. Condie-Bray Glass & Paint Co.*, 321 Mo. 92, 11 S.W.2d.48, 52."

This statement was quoted with approval by the Springfield Court of Appeals in the case of *Akers v. Division of Welfare*, and State Department of Public Health and Welfare, 224 S.W. 2d. 850.

In the *Akers* case cited above, the court said that the Commission (Division of Welfare) could only act upon competent evidence. The Legislature by the new enactment of Section 9408 has stated what shall be competent evidence as to the incapacity of a parent that is not obvious. The Legislature has said that the certificate by the physician, physicians or other competent and appropriate authority designated by the Division of Welfare shall be the evidence in regard to the physical or mental incapacity of a parent, who does not have an obvious infirmity. The Legislature further said that the benefits may be granted and continued for this reason only while it is the judgment of the Division of Welfare that a physical or mental difficulty, illness or disability exists which prevents the parent from performing any substantially gainful activity.

The maxim "Expressio Unicus Est Exclusio Alterius" meaning the expression of one thing is the exclusion of another is discussed in 35 C.J.S., page 283, and 25 C.J., page 220, and numerous cases are cited therein. This rule has been held to mean that whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative namely, a thing shall not be done otherwise. The Supreme Court in the case of *Kroger Grocer and Baking Co. of City of St. Louis*, 106 S.W.2d. 435, 1.c. 439, said:

"* * *that when special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim expressio unius est exclusio alterius, and 'forbids and renders nugatory the doing of the thing specified, except in the particular way pointed out';
* * *"

Therefore, the answer to your first question would be in the negative.

Since the answer to the first question is in the negative the answer to the second question is that the Division of Welfare should not give any weight to certificates by physicians who have not been

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designated to examine the parent who is alleged to be incapacitated.

In answer to your third question as to whether or not you should consider upon an appeal the testimony or written statements of physicians or others that were not designated by the Division of Welfare to examine the parent alleged to be incapacitated, we believe that there is no conflict between the requirements of Section 9408, as amended by the Laws of 1949, and the provisions of prior existing sections 9406 and 9411. But if there is a conflict between two statutes dealing with the same common subject matter, the statute which deals with it in a minute and particular way will prevail over one of a more general nature; and the statute which takes effect at the later date will also usually prevail (See the case of Vining v. Probst, 186 S.W.2d. 611, 239 Mo. App. 157.) Sec. 9408 as amended by the 1949 Legislature is a later amendment on this subject than Sections 9406 and 9411. Section 9408 definitely states who shall examine the parent claimed to be incapacitated.

"The Legislature is conclusively presumed to have intended what it plainly and unambiguously said in a statute, and if the statute so written needs alteration, it is for the Legislature, and not the courts, to make it--Crevisour v. Hendrix, 136 S.W.2d. 404, 234 Mo. App. 1012.

* * * * *

"Courts must confine themselves to carrying out the legislative intention as expressed in statutes, and any suggestion for change in the statutes should be addressed to the legislature.--In re Church, 204 S.W.2d. 126.

* * * * *

"The primary rule of statutory construction is to ascertain lawmakers' intent, from the words used if possible, and to put upon the statutory language, honestly and faithfully, its plain and rational meaning and to promote its object.

* * * * *

"In determining the meaning and intent of a statute, it is proper to consider purpose for which law was enacted, cause or necessity inducing enactment, and mischief sought to be remedied."

* * * * *

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"To determine true meaning of language employed in a statute, the court must look at whole purpose of the statute, the law as it was before the enactment, and the change in the law intended to be made.

"Primary rule for construction of statutes is to ascertain lawmakers' intent from words used, if possible, giving language thereof, honestly and faithfully, its plain and rational meaning, and to promote its object.

* * * * *

"Where meaning of language is plain, it must be given effect, regardless of results or wisdom of law.--Sleyster v. Eugene Donzelot & Sone, 25 S.W. 2d. 147, 223 Mo. App. 1166." (Missouri Digest Vol. 26, Pocket Part, pages 70, 73, 74 and 75.)

The intention of the Legislature, in our opinion, is clear and unambiguous in requiring that the certificate of the authority designated by the Division of Welfare to examine the parent shall be the only certificate or evidence considered in regard to the physical and mental incapacity of a parent. If the applicant on appeal alleges and proves that the examining physician, physicians or other competent and appropriate authority designated by the Division of Welfare to examine the applicant was biased and prejudiced against the applicant, then you could order that the applicant be examined by other competent and appropriate authority to be designated by the Division of Welfare.

III. CONCLUSION

It is the opinion of this department that when the physical or mental incapacity of a parent is not obvious then the Division of Welfare shall not accept any statements or certificates from physicians, clinics or other medical authorities as to the physical or mental incapacity of such a parent unless such authorities have been designated by the Division of Welfare to examine the parent. The certificate of the examining authority that such a parent is incapacitated is the basis upon which aid to dependent children may be granted. The Director of the Department of Public Health and Welfare cannot grant benefits upon an appeal involving aid to dependent children of an alleged incapacitated parent, if the incapacity is not obvious, without a certificate of such incapacity by competent and appropriate authority designated by the Division of Welfare to examine said parent.

APPROVED:

J. E. TAYLOR
Attorney General

SJM:mw

Respectfully submitted,


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