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PENSION—DIVISION OF AID FOR THE AGED—WHERE RECIPIENT IS PATIENT IN PRIVATE, CHARITABLE, FRATERNAL OR BENEVOLENT HOME OR INSTITUTION OTHER THAN STATE—DUTY SAID DIVISION TO PAY WITHIN LIMIT OF SECTION 1359-3, G. C., FOR REASONABLE COST OF MAINTENANCE, INCLUDING MEDICAL SERVICES—WHERE COST EXCEEDS \$30.00 PER MONTH—MEDICAL SERVICES—LOCAL RELIEF AREA MUST PAY—SECTIONS 3391-1 TO 3391-13, G. C.—HOSPITALIZATION COSTS—BORNE BY PROPER CITY OR TOWNSHIP AUTHORITIES—LEGAL SETTLEMENT—SECTIONS 3476 TO 3496, G. C.—PENSION MAY NOT BE CANCELLED WITHOUT CAUSE—APPEAL—PROMPT AND FAIR HEARING.

*SYLLABUS:*

1. *It is the duty of the Division of Aid for the Aged, when the recipient of aid is a patient in any private, charitable, fraternal or benevolent home or institution, other than a state institution, to pay within the limit of Section 1359-3, General Code, the reasonable cost of such maintenance, including medical services and such payment shall be made to the governing body of such institution.*

2. *When the total cost of such maintenance exceeds Thirty Dollars per month, then the amount in excess of Thirty Dollars must be borne, in so far as medical expenses are concerned, by the local relief area under Sections 3391-1 to 3391-13 inclusive, General Code, and the hospitalization costs must be borne by the proper city or township authorities, depending upon the legal settlement of the person, under the poor relief statutes, Sections 3476 to 3496, inclusive, General Code.*

3. *A pension may not be cancelled without cause, and if a cancellation does occur, a recipient whose aid has been cancelled may appeal from the action of the local subdivision to the Division of Aid for the Aged, and upon the filing of an appeal the recipient must be given a prompt and fair hearing.*

COLUMBUS, OHIO, December 30, 1939.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion on the following subject:

“A” is a resident of the city of Marion, Ohio, and is receiving a pension from the Division of Aid for the Aged. He has become seriously ill and needs hospitalization. The ques-

tion is: Whose duty is it to pay for the hospitalization and medical expenses—the City of Marion, Ohio, County of Marion, Ohio, or the Division of Aid for the Aged?

In this particular case the City of Marion and the County of Marion have both refused to pay the hospital and medical expenses for the care of this person, and the Division of Aid has threatened to cancel his pension without any reason whatsoever so that he would become either a county or city charge.

Second question: Does the Division of Aid for the Aged have the right to cancel a pension without sufficient cause?"

Your questions will be answered in the inverse order in which they appear in your communication.

In brief, the Old Age Pension Law was enacted by virtue of an initiative petition submitted to the electors of Ohio and adopted by a vote of the majority of the people on November 7, 1933, at the General Election and was carried into the statutes of Ohio under Sections 1359-1 to 1359-30 inclusive, of the General Code.

The Seventy-fourth Congress of the United States passed during its session in the year 1935 the so-called "Social Security Act" wherein it provided among other provisions that grants of money would be made to those states whose plan for old age assistance was approved by the Social Security Board and which Board was set up by the Social Security Act.

The Social Security Act provides also under Section 2 (a) of Title 1, that,

"A state plan for old age assistance must

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(4) provide for the granting to any individual whose plan for old age assistance is denied, an opportunity for a fair hearing before such state agency."

The Ohio plan for old age assistance was duly approved by the Social Security Board and Ohio has received grants of money from the Federal Government and likewise in approving said grants the Social Security Board directly passed on Section 1359-14, of the General Code of Ohio, in so far as it pertains to the procedure to be followed when a suspension or cancellation of aid occurs. Section 1359-14, General Code, reads in part, as follows:

"Any person aggrieved by an action of a subdivision in rejecting, suspending, modifying or cancelling a certificate, or otherwise, may appeal to the Division, in manner and under conditions prescribed by the Division, \* \* \*."

In the instant case, if the Subdivision Manager has caused a pension to be cancelled without sufficient cause then the recipient should seek relief by appealing from the action of the Subdivision through its investigators and manager and he will thereupon be given a fair and prompt hearing in accordance with the provisions of Section 1359-15a, General Code. Such section provides in part, as follows:

“Every rule and regulation of the Division governing the method of appeal from decisions of a Subdivision, or any other proceedings of the Division under this act, whereby a claim for aid may be denied, or a Certificate of Aid may be rejected or cancelled, shall provide for granting to the individual concerned, such opportunity for a fair hearing as may be necessary to meet the conditions in that behalf, prescribed by or under authority of section 2 (a) of title I of the act of the Congress of the United States, known as the ‘Social Security Act.’”

While there is no vested right in a pension, it is apparent that since the lawmakers of Ohio have spoken on the subject of the rights of the recipients in two specific provisions of the Act, it is obvious that old age assistance is not to be denied without cause and justification and if denied by the Subdivision Office the grounds are appealable by the recipient to the Division of Aid for the Aged in accordance with the rules, regulations and forms prescribed for such procedure.

In answer to your first question as to whose duty it is to pay for the hospitalization and medical expenses of “A”, I direct your attention to the provisions of Section 1359-8 of the General Code of Ohio, which reads in part, as follows:

“The following provision shall apply in every case where a recipient of aid is being maintained in any private, charitable, fraternal or benevolent home, hospital or institution, (but excluding penal and correctional institutions and state hospitals):

(a) The reasonable cost of such maintenance shall be paid out of the aid to which the individual is entitled under this act;

(b) For the purpose of making such payment, installments of the aid to such extent as necessary, shall be paid to the governing body of the institution, and the balance, if any, to the person entitled to the aid.”

Therefore, if the recipient of aid for the aged is a patient in a hospital, other than a state institution, then the Division of Aid for the Aged shall pay to the governing body of such institution the reasonable cost of such maintenance.

However, I desire to specifically point out that in the event the actual cost of such maintenance exceeds the sum of \$30.00 per month, the Division of Aid for the Aged may contribute only to the extent of the statutory amount set forth in Section 1359-3, General Code, which section reads as follows:

“The amount of aid payable to any person shall not exceed \$30.00 per month, diminished by such amount that the total income of such person from any and all sources, including such aid, shall not exceed \$360.00 per year.”

Therefore, in view of the foregoing, the amount in excess of \$30.00 per month necessary to maintain and care for the recipient must be borne, in so far as medical expenses are concerned, by the local relief area in accordance with Sections 3391-1 to 3391-13 inclusive, General Code, and that portion of the cost in excess of \$30.00 which may be accounted for as hospitalization expense must be borne by the proper city or township authorities, depending upon the legal settlement of the person under the poor relief statutes, Section 3476 to 3496, inclusive, General Code.

Therefore, in specific answer to your question, I am of the opinion:

That it is the duty of the Divisions of Aid for the Aged, when the recipient of aid is a patient in any private, charitable, fraternal or benevolent home or institution, other than a state institution, to pay within the limits of Section 1359-3, General Code, the reasonable cost of such maintenance to the governing body of such institution.

Where the total cost of maintenance and care of the recipient is in excess of \$30.00 per month, then the medical expenses of such cost must be borne by the local relief area under Sections 3391-1 to 3391-13, General Code, and the hospitalization expense must be borne by the proper city or township authorities, depending upon the legal settlement of the person, under the poor relief statutes, Sections 3476 to 3496, inclusive, General Code.

A pension may not be cancelled without cause, and if a cancellation does occur, a recipient whose aid has been cancelled may appeal from the action of the local subdivision to the Division of Aid for the Aged, and upon the filing of an appeal must be given a prompt and fair hearing.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*