

996

1. AID FOR THE AGED—RECIPIENT—ENTITLED TO RECEIVE MAXIMUM AWARD PAYABLE UNDER SECTION 1359-1 et Seq., G. C. IF LOCAL RELIEF AUTHORITY DETERMINES AWARD INADEQUATE TO MEET NEEDS.
2. IF LOCAL RELIEF AUTHORITY DETERMINES BY REASON OF EMERGENCY, OR OTHERWISE, REWARD INADEQUATE FOR PRESENT NEEDS, RECIPIENT ENTITLED TO POOR RELIEF.
- 3' DUTY, LOCAL RELIEF AUTHORITY TO FURNISH POOR RELIEF TO RECIPIENTS IF AWARD INADEQUATE TO MEET NEEDS.

SYLLABUS:

1. A recipient of old age assistance entitled to receive the maximum award payable under the provisions of Section 1359-1, et seq., General Code, is entitled to poor relief if the local relief authority determines that such award is inadequate to meet the needs of such recipient.

2. A recipient of old age assistance is entitled to poor relief, even though not currently receiving the maximum award under provisions of Section 1359-1, et seq., General Code, if the local relief authority determines that by reason of an emergency, or otherwise, such award is inadequate to meet the present needs of such recipient.

3. It is the duty of the local relief authority to furnish poor relief to recipients of old age assistance if such authority determines that the old age assistance award is inadequate to meet the needs of such recipients.

Columbus, Ohio, June 7, 1946

Hon. Frazier Reams, Director Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“Certain limitations inherent in the Aid for the Aged law make this law inadequate to meet the entire needs of the aged poor. The maximum fixed by law upon the amount of such aid payable is not always sufficient to meet the required needs of the recipients. The administrative procedure established by the law leaves the Aid for the Aged Program unresponsive to emergency requirements of the recipients. The period of time

necessitated by the required procedure precludes the availability of Aid for the Aged funds to meet the immediate needs of the emergency. Considering these inadequacies in view of the following provisions of Section 1359-29 of the General Code (Aid for the Aged law)

‘Nothing herein shall be construed as repealing any other act or part of an act providing for the support of the poor except insofar as plainly inconsistent herewith, and the provisions of this act shall be construed as an additional method of supporting and providing for the aged poor.’

we respectfully request your opinion on the following questions relating to the provision of poor relief for persons receiving Aid for the Aged:

1. Is a recipient of Aid for the Aged entitled to receive poor relief if the maximum Aid for the Aged award payable to such recipient is inadequate to meet his needs?

2. Is a recipient of Aid for the Aged entitled to receive poor relief in case of an emergency even though he is not receiving the maximum award payable by the Division of Aid for the Aged, in view of the fact that the administrative procedure prescribed by law for the increase of an Aid for the Aged award requires a period of time from 18 to 48 days, rendering the increase in the Aid for the Aged award unavailable to meet the immediate needs of the emergency? (Changes in awards of recipients of Aid involve investigation by the Subdivision office, submission of the change of award to the Central office for approval and certification, and the writing of the warrant reflecting the change by the Auditor of State. This fact accounts for a relatively long delay between the time the local subdivision office receives notice of the need for a change and the time the change can be reflected in the recipient’s award. The present administrative practice requires normally about 30 days from the time case material is received in the Central office until the warrant is mailed. Due, however, to the method presently used to write warrants it is necessary to set up a rigid schedule for certifying to the Auditor’s office according to the alphabetic order of counties, and this precludes the possibility of promptly handling emergency changes. Because of this fact it may take from 18 to 48 days to reflect a necessary change in a recipient’s award and unless he can secure supplemental funds from other sources a considerable hardship results.

Local relief administrations could, if permissible under the law, meet these emergency situations of recipients of Aid as relief funds are immediately available to persons found by the relief departments to be in need, because final determination and payment is made by the local relief departments.)

3. If a recipient of Aid for the Aged is entitled to poor relief in the circumstances described in either or both of paragraphs 1 and 2 above is the local relief area required by law, under the provisions of Section 3391 et seq. of the General Code, to provide such relief?

We will deeply appreciate your consideration of these matters."

As stated in 41 Am. Jur., page 707:

"There is no obligation at common-law upon the state or any of its instrumentalities of government to furnish relief to the poor, accordingly, such obligation, if any, must rest upon statute. * * * Thus, all questions as to what extent, under what circumstances, at what place and by what agencies poor persons shall be relieved at the expense of the public are all purely legislative questions."

The statutory provisions concerning old age assistance in Ohio were proposed by initiative petition and adopted by a majority vote of the electors voting thereon at the election held November 7, 1933. There have been since that date amendments to various provisions of the law as originally enacted, but with those amendments we are not particularly concerned since it is the present effect and purview of the law which controls.

Section 1359-1 provides:

"Subject to the provisions of this act every person of the age of 65 years or more shall, while residing in the state of Ohio *if in need*, be entitled to aid as hereinafter specified."

(Emphasis added.)

Section 1359-2, General Code, sets forth the eligibility requirements for aid. That section provides in part:

"No person shall be eligible for aid under this act unless he fulfills the following conditions: * * *

(f) If unable to support himself, and does not have available to him sufficient income and resources from a husband, wife, child, or other person who is responsible by law for his support and found by the division of aid for the aged able to support him; * * *."

Section 1359-3, General Code, provides :

“The amount of aid payable to any person shall be determined, and in accordance with the rules and regulations of the Division of Aid for the Aged, with *due regard to his requirements and the conditions existing in his case* and to the income and resources available to him from whatever source, and shall be sufficient when added to the income and resources determined to be available to him, *to provide him with a reasonable subsistence compatible with health and well-being*; but such aid shall not exceed \$40.00 a month, diminished by such amount that the total income of such person from any and all sources, including such aid, shall not exceed \$480.00 a year.” (Emphasis added.)

Section 1359-8, General Code, reads in part :

“The following provisions 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 public institution) :

(a) Each such recipient, if eligible under this act, shall be entitled to aid in such an amount as determined by the division, based upon his individual *needs*, income and resources and within the limits fixed by law.

(b) The reasonable cost of maintenance in such home, hospital or institution shall be considered in determining the *needs* of such recipient; and such reasonable cost of maintenance, as determined by the division, shall be included in the amount of aid allowed and paid to such recipient.” (Emphasis added.)

Thus it will be seen that eligibility for old age assistance is based entirely upon the question of need as determined by the administering agency, the Division of Aid for the Aged in the Department of Public Welfare. The same theory controls the disbursement of poor relief. Section 3391, General Code, defines “poor relief” as follows :

“ ‘Poor relief’ means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters.”

Section 3391-2, General Code, reads in part :

“Local relief authorities shall administer poor relief in accordance with the following powers and duties :

1. In each local relief area, subject to the provisions of law, poor relief shall be furnished by the local relief authority to *all persons therein in need of such poor relief.*"

(Emphasis added.)

As stated in the case of *Crossman v. New Bedford Institute for Sav.*, 160 Mass. 503, 36 N. E. (2d) 477:

"No class of citizens should be held to be debarred from the right to ask for relief under the poor laws unless by explicit declaration of the Legislature, or by necessary or unavoidable implication. The fact that some other provision is made under which a citizen may be relieved is not of itself enough to take away his right to determine and receive assistance as a pauper."

Likewise it was held in the case of *Peabody v. Holland*, 107 Vt. 237, 178 Atl., 888:

"The status of a seriously injured person as a poor person for professional services to whom the town may be liable is not as a matter of law affected by the circumstances that he is an ex-service man with a bonus from the government and a government insurance policy, on each of which a loan is obtainable, when the statute makes it the duty of a town to relieve a poor person if in need of 'assistance'."

Section 1359-29, General Code, quoted in your letter, reads:

"This act shall be liberally construed to accomplish the purpose thereof. Nothing herein shall be construed as repealing any other act or part of an act providing for the support of the poor except insofar as plainly inconsistent herewith, and the provisions of this act shall be construed as an additional method of supporting and providing for the aged poor."

Thus, specifically by statute a person is not precluded from receiving old age assistance in this state by reason of assistance under any other act or law providing for the support of the poor, unless such other act or law is plainly inconsistent with the provisions contained in Sections 1359-1 to 1359-30, both inclusive, General Code. Nor do I find in the poor relief laws of this state any language that explicitly, or even impliedly, prevents a recipient of some other public assistance from receiving poor relief. There is an example of such legislation in the laws of this state. Section 2965-1, General Code, provides that:

“Relief shall be given under this act to any needy blind person except such blind persons as are receiving aid for the aged at the time of the passage of this act.”

Thus, it appears that if any inference is to be drawn it would be that no such limitation was intended in the poor laws, for no such provision appears in the Administration of Poor Relief Act (Section 339I, et seq., General Code.) On the contrary it appears to have been the intent of the Legislature in enacting the last named statutes that “such poor relief may afford either partial or total temporary, or continuing support,” regardless of the source of other support. There is nothing in the language just above quoted that limits eligibility for “partial support” from poor relief funds so that it would be said a person receiving old age assistance could not, if his needs warrant, be entitled to partial support the same as a person whose needs are partially satisfied by support furnished by some person legally responsible therefor or some charitable organization or benevolent association. Consequently, as I find nothing in the statutes pertaining to the administration of poor relief and those pertaining to old age assistance which indicate an intention that assistance furnished under one shall exclude assistance under the other, you are advised that in my opinion a recipient of aid for the aged is not precluded from receiving poor relief.

Your first question concerns instances where the recipient of aid for aged is receiving the maximum amount payable. By this I presume you refer to the provisions of Section 1359-3, General Code, that aid shall not exceed forty dollars a month, diminished by such amount that the total income from any and all sources including such aid shall not exceed \$480 a year.

Your second question relates to those recipients who are receiving less than such maximum award; in other words, those whose ordinary needs do not require assistance to the maximum amount provided in Section 1359-3. I see no difference so far as the poor relief statutes are concerned in a situation where a person receives no old age assistance, a situation where a person receives a part of the maximum amount permitted by law, or a situation where the maximum amount is being paid, so far as assistance from local relief authorities is concerned.

Therefore, in answer to your second question, you are advised that in my opinion a recipient of aid who is not receiving the maximum award payable by the Division of Aid for the Aged is not thereby precluded from receiving poor relief if the circumstances warrant such poor relief. In other words, by reason of an emergency or otherwise, a person who is receiving old age assistance may be entitled to poor relief if his need is found by local relief authorities to exceed the amount being paid by the Division of Aid for the Aged as old age assistance. Of course, in the event the award of old age assistance is not the maximum amount payable and an increase is granted after the occurrence of such an emergency, the circumstances after such increase may no longer warrant a continuance of poor relief from local relief sources.

Your third question concerns the liability of local relief areas to provide such relief.

Section 3476, General Code, reads in part:

“Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they can not be satisfactorily cared for except at the county infirmary or under county control.”

Section 3476 has been in effect for a great number of years (108 O. L., Pt. I, page 266), and it has long been the understanding that it and related sections were broad enough to impose liability and establish the duty upon cities and townships to furnish relief to all residents of the state, county and township or city who needed temporary relief and to all such residents who permanently needed partial relief; and to impose the duty upon the county to furnish relief to persons who do not have the necessary residence requirements prescribed by Sections 3477 and 3479, General Code, to persons who have become paupers and to other persons

whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control. See Opinions of the Attorney General for 1927, Vol. II, page 1106, and Opinions of the Attorney General for 1934, Vol. II, page 1011. However, since the enactment of the Administration of Poor Relief Act (Sections 3391 to 3391-12, General Code, 118 O. L. 710) the provisions of that act supersede those of Section 3476, General Code, with reference to the powers and duties of township trustees, excepting only the duty and liability to furnish emergency hospitalization. See opinion 852, Opinions of the Attorney General, rendered to the Prosecuting Attorney of Erie County, on April 4, 1946.

There are, in addition to those opinions referred to above, many other opinions by this office which discuss the duties and liabilities of local relief authorities. It is sufficient at this point, however, to state that it is the duty of the local relief authority to furnish poor relief to those recipients of old age assistance whose need is found by such local relief authority to exceed the amount being paid as old age assistance.

Therefore, in specified answer to your inquiry you are advised that in my opinion :

1. A recipient of old age assistance entitled to receive the maximum award payable under the provisions of Section 1359-1, et seq., General Code, is entitled to poor relief if the local relief authority determines that such award is inadequate to meet the needs of such recipient.

2. A recipient of old age assistance is entitled to poor relief, even though not currently receiving the maximum award under provisions of Section 1359-1, et seq., General Code, if the local relief authority determines that by reason of an emergency, or otherwise, such award is inadequate to meet the present needs of such recipient.

3. It is the duty of the local relief authority to furnish poor relief to recipients of old age assistance if such authority determines that the old age assistance award is inadequate to meet the needs of such recipients.

Respectfully,

HUGH S. JENKINS
Attorney General