

**WELFARE, DEPARTMENT OF PUBLIC: Whether adjusted service compensation may be considered a resource in determining eligibility of dependent child for assistance under the Welfare Act.**

July 24, 1937.

Hon. T. A. Gottschalk, Administrator,  
State Department of Public Welfare,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter reading in part as follows:

"An applicant for assistance to dependent children under part III of the Welfare Act of 1936 was rejected by the county department of public welfare on the ground of sufficient resources. The resources on which the rejection was based consisted of a sum of money paid into the estate of a veteran, the deceased father of the children, as an adjusted compensation certificate, and a dependency pension based on the decedent's services in the World War, payable by the Federal Government to the mother each month.

"The applicant, with the assistance of an attorney, appealed the case to the State Department, presenting among other reasons the following ground for appeal: 'Any bonus money or adjusted service bonds in possession of an applicant is not income or a resource within the meaning of the Welfare Act.' The contention was also made that the bonus money in possession of an administrator or guardian of an incompetent ward is not to be considered income or a resource in determining need for assistance under the Welfare Act."

On the basis of the foregoing statement of facts you request an official opinion in answer to the following questions:

"1. Is money in possession of an applicant for assistance to dependent children to be considered as income or a resource if such money was obtained from the Federal Government as adjusted service compensation?

"2. Assuming that the answer to question No. 1 is

yes, would the answer be different if the applicant were applying for assistance to the aged or to the blind?

"3. Assuming in the case mentioned that the adjusted service compensation inured to the benefit of the widow and not to the children, could the county department declare the children ineligible on the basis that a legally responsible relative (the mother) was able to support them?"

I desire, at the outset, to call attention to certain applicable statutory provisions.

It is provided by Act of Congress that:

"No sum payable under this chapter to a veteran or his dependents, or to his estate, or to any beneficiary named under part V of this chapter" (referring to the chapter providing for adjusted compensation) "no adjusted service certificate, and no proceeds of any loan made on such certificate, shall be subject to attachment, levy, or seizure under any legal or equitable process, or to National or State taxation."

38 U. S. C. A., Sec. 618.

The Welfare Act of 1936 defines dependent child as follows:

"The term 'dependent child' means a needy child, under the age of sixteen years, who 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 whose relatives liable under the law for his support are not able to provide adequate care or support for such child without public assistance, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, in a place of residence maintained by one or more of such relatives as his or their own home.*" (Our italics.)

Acts of 1936, p. 13.

Section 72 of the Welfare Act of 1936 in providing for the amount of assistance which may be awarded for a dependent child provides as follows:

“The amount of assistance which shall be granted for any dependent child shall be determined by the county department *with due regard to the RE-SOURCES and necessary expenditures OF THE FAMILY and the conditions existing in each case and in accordance with the rules and regulations made by the state department, and shall be sufficient, WHEN ADDED TO ALL OTHER INCOME AND SUPPORT AVAILABLE TO THE CHILD, to provide such child with a reasonable subsistence compatible with decency and health.* In no event shall the total amount paid to any dependent child, for any calendar month, exceed twenty dollars, and, if there is more than one dependent child in the same home, the total amount paid shall not exceed twenty dollars for any calendar month to the first such dependent child, and eighteen dollars for any calendar month to the second such dependent child, and twelve dollars for any calendar month to each such additional dependent child.” (Our italics and capitals.)

Acts of 1936, p. 52.

Section 75 of said Act provides in part as follows:

“Upon the completion of such investigation, the county department shall decide whether the child is eligible for assistance under the provisions of this Act and shall determine the amount of such assistance and the date on which such assistance shall begin. *In determining the amount of such assistance, due account shall be taken OF ANY INCOME OR PROPERTY OF THE CHILD and OF ANY SUPPORT WHICH HE MAY RECEIVE FROM OTHER SOURCES.*” (Our italics and capitals.)

Acts of 1936, p. 53.

The position of the applicant seems to be that since the Act of Congress, above referred to, provides that neither bonus money nor adjusted service bonds in possession of the applicant shall be liable to attachment, levy or seizure under any legal or equitable process, they are not a *resource* which may be taken into consideration by the county board in fixing

the amount payable as assistance to dependent children under the Welfare Act.

It is true that the courts have generally held that the exemption provisions of the above quoted Act of Congress should be liberally construed to protect the fund for the purposes for which it is designed, but I do not think those who legally depend upon the veteran for support can be put in the class of creditors of the veteran seeking to avail themselves of the benefits of the government payments. On the other hand, I think it is manifest that such payments are for their benefit when necessary and that the county department is not infringing upon the exemption provisions of the Act of Congress in taking same into consideration as a resource. I think the answer to your first question as stated should be in the affirmative. However, this does not necessarily mean that such payments must all be applied to the support of dependents before assistance under the Welfare Act may be granted. Under the Welfare Act of 1936 the county board and the State board on appeal are vested with a certain amount of discretion in such matters, but I think, in such cases, the Act requires that due regard must be given to the resources of the family and that such government payments under ordinary circumstances would constitute such a resource.

The answer to your second question is in the negative.

Limited, as stated in my answer to the first question, your third question, I think, should be answered in the affirmative.

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**TAX COMMISSIONERS, STATE BOARD OF: Whether county boards of welfare may contract for services of investigators beyond appropriation for same.**

July 26, 1937.

Hon. C. R. Benjamin,  
Commissioner,  
State Board of Tax Commissioners,  
231 State House,  
Indianapolis, Indiana.

Dear Mr. Benjamin:

I have before me your request for an official opinion in answer to the following questions: