

period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. * * *."

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SOCIAL WELFARE: Responsible Relative Law: Poor Law. Indigent persons, parent receiving Aid to Dependent Children grant construed as "poor person" under Section 2 of the Michigan Poor Law for purposes of enforcing Michigan Responsible Relative Law.

No. 4188

April 9, 1964.

Mr. James G. Fleming
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The Opinion of the Attorney General is sought on the following question:

"Is a parent or other relative who receives aid to dependent children for, in behalf of, and/or by virtue of minor children living in his or her home, a 'poor person' within the meaning of Section 1 of the General Poor Law of 1925 (M.S.A. 16.121), which in part defines a 'poor person' as a person who has some means but is eligible to receive relief or assistance granted under the provisions of the Social Welfare Act?"

The statute referred to is Act 146 of the Public Acts of 1925 as amended, usually referred to as the Responsible Relative Law¹, which at Section 1 in pertinent part provides as follows:

"The words 'poor person' as used in this act shall be construed to mean one who has no property, exempt or otherwise, and who is unable, because of physical or mental disabilities or age, to earn a livelihood, or a person who has some means but is eligible to receive relief or assistance granted under the provisions of the social welfare act. . . ."

It is stated in the request for opinion that this definition has caused problems of interpretation which are typified by the following examples:

"(1) A daughter who no longer lives with her parents (either divorced or has illegitimate children) may require public assistance because she has one or more minor children living in her home. She could provide for her own needs but having a child or children, she must depend upon the receipt of aid to dependent children assistance to provide for her family. The question arises as to the liability of her parent or parents for her support under the provisions of Section 2 and 3 of the General Poor Law of 1925 (Michigan Statutes Annotated 16.122-23 and subsequent sections). If the question posed is answered

¹ C.L. '48 and C.L.S. '61 §§ 401.1 *et seq.*; M.S.A. 1960 Rev. §§ 16.121 *et seq.*

in the affirmative then the parent or parents of such a daughter may be held liable (at least in part) for her support by order of the Probate Court since she would then be a poor person within the meaning of the statute."

It is stated that for purposes of the hypothesis the daughter in example (1) is able-bodied but unemployed. In many such cases, you say, the daughter is unemployed because it is necessary that she remain at home to care for her children. In some cases her parents want her to return to live in their home but she refuses. In other cases the daughter is married, but the family qualifies for ADC because she has a child or children who were born illegitimate prior to said marriage or are by a prior marriage, and because her present husband is unemployed.

"(2) One of the parents of an emancipated son or daughter, who has other children living in the home becomes eligible for aid to dependent children. The question then arises as to whether or not the emancipated son or daughter is liable for the support of that parent by order of the Probate Court under the provisions of the General Poor Law and would be held liable if the question posed is answered in the affirmative."

In further elucidation of the second example, you advise that the "other children living in the home" are living in the home of the remarried mother of an emancipated son aged 25, himself married and raising a family, and living in another city.

The basis for obtaining contribution from responsible relatives is set forth at Section 2 of the Responsible Relative Law as follows:

"The husband, wife, father, mother and children of any poor person, being of sufficient ability, shall jointly or severally relieve, maintain and support the poor person and the husband, father and mother of a dependent child, being of sufficient ability, shall jointly or severally relieve, maintain and support the dependent child, in such manner as shall be approved by the county department of social welfare of the county in which the poor person is settled or is living."²

The 1957 amendment to this section removed the liability of grandparents to support grandchildren.

Section 3 of the Responsible Relative Law, part of what is referred to as the General Poor Law in example designated (2) immediately hereinabove, provides in pertinent part as follows:

"Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of the county department of social welfare where such poor person may be settled, by the social welfare board or by the director or by the supervisor of social aid, to apply with the advice and assistance of the prosecuting attorney to the probate court of the county where such poor person or relative may dwell or such poor person has his or her legal settlement, for an order to compel such relief; . . ."³

² C.L.S. '61 § 401.2; M.S.A. 1960 Rev. § 16.122.

³ C.L.S. '61 § 401.3; M.S.A. 1960 Rev. § 16.123.

Section 4 of the Responsible Relative Law provides that the Court shall proceed in a summary way to hear proofs and shall order the responsible relatives appearing to be of sufficient ability and appearing to owe a duty of support under the act, to maintain the poor person specifying the sum and method of payment.⁴ Section 5 provides that the terms of the order shall direct the relative or relatives to perform the duty in the following order:

“ . . . The husband or wife shall be first required to maintain the poor person, if of sufficient ability; if there is no husband or wife, or he or she is not of sufficient ability, then the father of the poor person; if there is no father or he is not of sufficient ability, then the children, if they are able to do so; if there are no children, or they are not of sufficient ability, then the mother, if she is able to do so.”⁵

There is at present no statutory or other basis for liability of a grandparent to support a grandchild, there being no longer any statutory duty on the grandparents' part to do so.

The Michigan Supreme Court has always recognized the liability of father for adult child. See, for example:

Stilson v. Gibbs, 53 Mich. 280, upholding the propriety of considering adult children as part of the family and saying, at page 282:

“ . . . there is always a contingent liability for the support of children who are over age, in case they become a public charge.”

Clinton v. Laning, 61 Mich. 355.

In re Beers, 148 Mich. 300.

In re Straight's Estate, 329 Mich. 319.

And see *Chesapeake & O. Ry. Co. v. Schlink*, 276 F. 2d 114, where the court found that under Michigan law, child is entitled to support from either parent.

In a recent article on family support under American poor laws, it is said that the statutory liability of parent for adult child, like other portions of the responsible relative law, goes back to 43 Eliz. 1, c.2, § 7 (1601), often referred to as the Elizabethan Poor Law.⁶

By Section 56 of the Michigan Social Welfare Act,⁷ aid to dependent children is provided under the bureau of social aid of the county department of social welfare. This section contains the following language:

“ . . . The amount of assistance which shall be granted for any dependent child shall be determined with due regard to the resources and necessary expenditures of the family . . . if the child is living with a parent . . . and with due regard to the conditions existing in each case, . . . ”

⁴ C.L.S. '61 § 401.4; M.S.A. 1960 Rev. § 16.124.

⁵ C.L.S. '61 § 401.5; M.S.A. 1960 Rev. § 16.125.

⁶ Family Responsibility Under the American Poor Laws, 54 Mich. L. Rev. 497, 607 (Feb., 1956, March, 1956).

⁷ C.L.S. '61 § 400.56; M.S.A. 1960 Rev. § 16.456.

A recommendation for the grant is forwarded to the State Department of Social Welfare for its determination as to the amount under Section 38 of the Social Welfare Act. The fund from which such grants are made is drawn upon in accordance with state and federal law.⁸

The ADC program originates in the federal law⁹ providing grants for needy family with children after approval of each state's plan by the proper federal authority. State and federal funds are the source from which each ADC grant is made to each family receiving such a grant.

The amount exacted from the responsible relative under court order is determined on the basis of the amount approved by the county department of social welfare as governing the needs of the poor person. Under Sections 4, 5 and 6 of the Responsible Relative Law¹⁰, the court may exercise considerable discretion in determining the ability of the responsible relatives to pay and in adjusting the proportionate contributions to be made by more than one relative. In most, if not all, responsible relative cases, the amount ordered by the court does not equal the amount budgeted by the county department of social welfare as governing the needs of the poor person, but amounts to a contribution towards such needs, with the balance met by ADC grant.

Under Section 56 of the Michigan Welfare Act¹¹, the resources of the *family*, including the mother of the dependent children, are taken into account in making up the budget upon which the grant is based. The mother's resources are budgeted and her needs are represented in determining eligibility for the ADC grant, which is then made to the *family*, as provided by the quoted extracts from the federal statute, rather than to the children as distinguished from or separate from the mother. No "per capita" allocation is made of the grant to individual members of the family group either by state or federal regulation. The amount per month set up for each individual's needs for food, clothing and so on are calculated in establishing the budget, as are amounts for items needed and used generally by all members of the family, such as heat and utilities.

Federal regulations require that all income and resources of the family be taken into consideration. The Michigan standard is set forth in Section 56 (e) of the Michigan Welfare Act, providing that

". . . The amount of assistance which shall be granted for any dependent child shall be determined with due regard to the resources and necessary expenditures of the *family*. . . ." (emphasis supplied)¹²

The rules and regulations of the Social Welfare Commission, particularly at Rules 17, 18 and 19, Part I-B, establishing detailed eligibility factors related to property and income, require that property as well as income of the

⁸ C.L.S. '61 § 400.38; M.S.A. 1960 Rev. § 16.438.

⁹ 42 U.S.C.A. § 601 *et seq.*, (1962 Cum. Supp.) as last amended by P.L. 87-543, substituting "aid and services to needy families with children" for "aid to dependent children."

¹⁰ Footnote 1, *supra*.

¹¹ C.L.S. '61 § 400.56; M.S.A. 1960 Rev. § 16.456.

¹² C.L.S. '61 § 400.56; M.S.A. 1960 Rev. § 16.456.

parents, including the step parent if there is one in the family, must be taken into consideration as well as the property and income of the children.

Section 76 of the Michigan Social Welfare Act provides that the act is not to be construed to relieve responsible relatives from liability¹³, and Section 77 thereof authorizes the county welfare department to collect reimbursement from responsible relatives.¹⁴

Applying these statutes to the problem in example one, it is the opinion of the Attorney General that the mother who receives aid to dependent children is a "poor person" within the meaning of Section 1 of the Responsible Relative Law, coming within that part of the definition which defines a "poor person" as a person who has some means but is eligible to receive relief or assistance granted under the provisions of the Social Welfare Act. For purposes of establishing possession of "means," ownership of personal property even though exempt is sufficient under the language of the statute, whether or not the individual is employed.

Thus, in the example numbered (1), the daughter who requires public assistance because she has minor children, and who can provide for her own needs but must depend on the ADC grant to provide aid for herself and her children as a family, is a "poor person." The parents of such daughter may be held liable for her support under the Responsible Relative Law to the extent, and only to the extent, that the ADC budget for the grant reflects her personal needs.

The request for opinion points out that if the mother in example (1) is defined as a "poor person" so as to invoke the Responsible Relative Law, and if her parents are required by court order to contribute, then the effect is to require grandparents to support grandchildren, since the children of the mother being defined as a "poor person" will become to some extent the beneficiaries of the order made on behalf of the mother with whom they live. It is true that in a sense the needs of the mother and children are so closely related as to be indistinguishable, and also true that the grant is made to and on the basis of family needs rather than to individual members of the family.

The precise point was considered by the Circuit Court of the County of Oscoda in 1959.¹⁵

There the court pointed out that the legal duty which formerly rested upon grandparents to support needy grandchildren has been removed, and noted that the father, a person of considerable means, in appealing from the probate court order requiring monthly contribution to his daughter's support, felt that he was being compelled indirectly to support his grandchildren. The court also noted that at the root of the father's resistance was the misbehavior of the particular daughter. But though expressing understanding for the father's position, the court held that the statutory and moral duty of parents to support unfortunate, needy children, even after they become adults, must control on the basis of findings that (1) the daughter is in

¹³ C.L.S. '61 § 400.76; M.S.A. 1960 Rev. § 16.476.

¹⁴ C.L.S. '61 § 400.77; M.S.A. 1960 Rev. § 16.477.

¹⁵ *In the Matter of Shirley Harmon Hawley*, also known as Shirley M. Handy, alleged poor person.

need and receiving aid from public sources, and (2) the defendant father is financially able to provide some support.

In the *Hawley* case, the court assigned to the husband and wife a need double that of each of the children and ruled that the defendant could be held liable only for that portion of his daughter's need which her husband could not supply. This the court found to be \$25 a month under the circumstances of the *Hawley* case. The court said:

"The task of the court here is that of balancing the considerations on one side against the considerations on the other. Upon the one hand, this father must be required to comply with the reasonable demands of the statute. On the other hand, the law must not be used in such a way as indirectly to require the father to support grandchildren and an inadequate son-in-law, under the pretense of being required to support his daughter."

Therefore, on the basis of the *Hawley* case as applied to the statutes under discussion, it is my opinion that a parent or other relative receiving "ADC" as a member of a family including minor children living in his or her home, is a "poor person" within the meaning of Section 1 of the General Poor Law.

As applied to example (1), the rule in the *Hawley* case would be applied to prevent charging grandparent for grandchild indirectly, by making arithmetical determination of the individual needs of the mother, and making the order apply only to such needs as represented in the grant.

In example (2), the liability of the emancipated son would attach only after that of husband, and next the father, and would be shared with other children, by the express language of Section 5 of the Responsible Relative Law.¹⁶

Under this section, liability is determined in terms of financial ability of the relative. Since the responsibility of the emancipated son for his own wife and children is prior to that of his liability to support his mother, their needs would be deducted from his resources in determining his ability to contribute to the support of his mother.

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¹⁶ Footnote 5, *supra*.