

1975 S.C. Op. Atty. Gen. 124 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4047, 1975 WL 22344

Office of the Attorney General

State of South Carolina

Opinion No. 4047

July 9, 1975

***1 There is no fixed income level for the homestead exemption when determining if the applicant is permanently and totally disabled.**

S. C. Assistant Comptroller General

Section 65–1522.1 provides in part that:

‘The first ten thousand dollars of the fair market value of the dwelling place of persons shall be exempt from county, school and special assessment real estate property taxes when such persons * * * have been classified as totally and permanently disabled by a State or federal agency having the function of so classifying persons * * *. Any person claiming to be totally and permanently disabled, but who has not been so classified by one of such agencies, may apply to the State Agency of Vocational Rehabilitation. The agency shall make an evaluation of such person using its own standards. * * *.’

As evident by the above, the statute sets no monetary ceiling as to earning capacity or income and it is therefore necessary to determine the degree of the disability of each person upon the facts relative thereto.

Our Supreme Court, in the case of *Stewart v. Pioneer Pyramid Life Insurance Co.*, 177 S. C. 132, 180 S. E. 889, considered the term as it relates to insurance contracts and stated:

‘We have held that ‘what amounts to a total disability is a relative matter, and depends largely upon the circumstances of each case, and upon the occupation and employment in which the person insured is engaged’ (*McCutchen v. Insurance Co.*, 153 S. C. 401, 151 S. E. 67, 80); that the phrase is not to be literally construed, but that a person is ‘deemed totally disabled when he is no longer able to do his accustomed task, and such work as he has only been trained to do, and upon which he must depend for a living’ (*Taylor v. Insurance Co.*, 106 S. C. 356, 91 S. E. 326, 327.’

Judge Wyche, in the case of *Sloan v. United States*, 19 F. Supp. 777, quotes from the case of *Carter v. United States*, 49 F. 2d 221, as follows:

‘The mere fact that a claimant may have worked for substantial periods during the time when he claims to have been permanently and totally disabled is not conclusive against him. The question is not whether he worked, but whether he was able to follow continuously some substantially gainful occupation without material injury to his health. Of course, the fact that a man does work is evidence to be considered by the jury as tending to negative the claim of disability; but the fact that he works when physically unable to do so ought not defeat his right to recover if the jury finds that such disability in fact existed.’

Based upon the quoted authority, it is the opinion of this office that there is no fixed income level for use in determining whether a person is permanently and totally disabled. Each case must be resolved upon its relative merits by the agency that made or is making the certification of disability.

Joe L. Allen, Jr.

Assistant Attorney General

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