DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221945 DATE: August 4, 1986

MATTER OF: Department of Defense Military Pay and Allowance Committee Action Number 561

DIGEST:

1. Eligible beneficiaries under the Survivor Benefit Plan, an income maintenance program for the surviving dependents of deceased service members, include Plan participants' children between 18 and 22 years old who are full-time students. Children over 18 years old who are not attending school may become eligible for an annuity at any time until they reach the age of 22 by undertaking a full-time course of study, since the Congress in establishing the Plan indicated that children aged anywhere between 18 and 22 years old who are students should be regarded as eligible dependents for purposes of annuity coverage.

2. If a Survivor Benefit Plan participant's child who is between 18 and 22 years old becomes a full-time student and thus becomes eligible for an annuity under the Plan, any resulting adjustment that may be necessary in the participant's cost for beneficiary coverage should be made effective on the first day of the month after the child has resumed school attendance, as costs for benefit coverage generally are assessed on a monthly basis and should be predicated on the beneficiary status in being on the first day of a month, for that month.

3. As a general rule, a valid marriage entered into by a Survivor Benefit Plan participant's child terminates

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> the child's annuity eligibility for all time, because a valid marriage operates to end a child's dependence upon its parents, and the relationship of dependency cannot be renewed by a subsequent divorce. Nevertheless, if the marriage is ended not by an ordinary divorce but rather by an annulment, or there is otherwise a judicial decree rendered by a court of competent jurisdiction declaring the marriage void, then there would be a proper basis for concluding the marriage was invalid, and the child's annuity coverage could be reinstated.

The Department of Defense Military Pay and Allowance Committee presents several questions concerning the reinstatement of annuity eligibity under the Survivor Benefit Plan in situations involving child beneficiaries who have lost their eligibility for an annuity either because of school nonattendance or because of marriage.[1/] In response to those questions we conclude, generally, that a Plan participant's children who are over 18 years old may become eligible for an annuity at any time until they reach the age of 22 by undertaking a full-time course of study, since the Congress in establishing the Plan indicated that children anywhere between 18 and 22 years old who are "bona fide" students should be regarded as dependent upon their parents for purposes of annuity coverage. We also conclude that, as a general rule, a valid marriage entered into by a Plan participant's child terminates the child's annuity eligibility for all time, because a valid marriage operates to end a child's dependence upon its parents and the relationship of dependency cannot be renewed by a subsequent divorce.

1/ This action is in response to a request for a decision received from the Principal Deputy Assistant Secretary of Defense (Comptroller). The questions are contained in Department of Defense Military Pay and Allowance Committee Action Number 561, which was forwarded with the request for a decision.

Background

In 1972 the Congress established the Survivor Benefit Plan, 10 U.S.C. §§ 1447-1455, as an income maintenance program for the families of deceased service members.[2] It was designed to provide a more comprehensive system of survivor protection, and eventually to replace, the then current military survivor annuity program contained in the Retired Serviceman's Family Protection Plan, 10 U.S.C. §§ 1431-1446. Eligible beneficiaries under these military annuity programs established under statute include the "dependent child" of a program participant. Under the Survivor Benefit Plan this term is defined as follows:

> "(5) 'Dependent child' means a person who is--
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> "(A) unmarried;
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> "(B)(i) under 18 years of age; (ii) at least 18, but under 22, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution; or (iii) incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing such a full-time course of study or training; * * *"
> 10 U.S.C. § 1447(5).

This is similar to the definition of a "dependent child" contained in the Retired Serviceman's Family Protection Plan.[3]

In 1983 we expressed the view that, with respect to dependent children receiving annuities on the basis of a mental or physical incapacity, in situations where eligibility for an annuity has been suspended under the military

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[2] Public Law 92-425, September 21, 1972, 86 Stat. 706.

[3] See 10 U.S.C. § 1435(2).

survivor annuity programs because the beneficiary has become capable of self-support, the annuity may properly be reinstated at a later date if the beneficiary again becomes incapable of self-support due to the original disabling condition.[4]/ The Department of Defense Military Pay and Allowance Committee indicates that other questions have now arisen under the Survivor Benefit Plan concerning the reinstatement of benefit coverage or an annuity in situations involving child beneficiaries who have lost eligibility under the Plan either because of nonattendance at school, or because of marriage.

Suspension of Eligibility Due to School Nonattendance

The first 3 questions presented are:

> "When Survivor Benefit Plan (SBP) coverage is terminated for a dependent child, age 18-22, for school nonattendance, may that coverage be reinstated if the child resumes school attendance?
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> "Would the child have to resume school attendance before the member participant died to be eligible for the annuity?
>
> "Would an annuity to a dependent child which had been suspended because of school nonattendance be reinstated if a child resumed school attendance?"

The Survivor Benefit Plan does not preclude an otherwise qualified dependent child between 18 and 22 years of age from seeking reinstatement of either benefit coverage

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4/ See 62 Comp. Gen. 302, 305-306 (1983). Among the factors supporting that conclusion was the established national policy concerning employment of handicapped persons, under which the incapacitated dependent children of Plan participants cannot properly be dissuaded from seeking gainful employment, with the goal of becoming self-sufficient, through the threat of a permanent termination of their annuity coverage if they attempt to work, as discussed in 62 Comp. Gen. 193 (1983).

(if the sponsoring Plan participant is alive) or a survivor's annuity (if the Plan participant has died), following a period of suspension of eligibility due to school nonattendance. Moreover, in view of the express observation of the Congress contained in the legislative history of the Survivor Benefit Plan that participants' children anywhere between the ages of 18 and 22 years who are "bona fide" students should be regarded as dependent upon their parents for purposes of annuity coverage, we have no basis to object to the reinstatement of benefit coverage or an annuity in the case of a child under the age of 22 whose eligibility was suspended because of school nonattendance but who subsequently became a full-time student.[5/] Further, we are unaware of any basis for disallowing payment of an annuity because the sponsoring Plan participant died before the dependent child aged 18-22 resumed a full-time course of study.[6/] Hence, the first 3 questions are answered "yes," "no," and "yes," respectively.

The next question is:

> "Which effective date presented in the DISCUSSION below should be used to adjust cost if coverage is reinstated?"

When service members elect to participate in the Survivor Benefit Plan, they thereby choose to receive retired pay at a reduced rate in order to provide an annuity for their surviving dependents, and this represents the "cost" of coverage. See 10 U.S.C. § 1452. The reduction in retired pay must be adjusted or discontinued, however, during any month in which there is no eligible beneficiary in the classes or a particular class of dependents for which

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5/ Compare 62 Comp. Gen., supra, at page 305; and see also S. Rep. No. 1089, 92 Cong., 2d Sess. 50, reprinted in 1972 U.S. Code Cong. & Ad. News 3288, 3313. We also note that under the Retired Serviceman's Family Protection Plan, an "eligible child * * * might become ineligible at age 18 and again become eligible by furnishing proof of pursuit of a full time course of study * * *." See 32 C.F.R. § 48.504(b)(3).

6/ Compare also 32 C.F.R. § 48.504(b)(3), quoted above (footnote 5).

coverage has been elected. 10 U.S.C. § 1452. The question here evidently relates to the situation in which the Plan participant is alive, and the reduction in retired pay is adjusted or discontinued for a time due to the school non-attendance of an otherwise eligible child beneficiary between the age of 18 and 22. The discussion in the Committee Action contains the following comments concerning that situation:

> "If coverage may be reinstated and cost had previously been adjusted or discontinued based on the child's school status, the Committee recommends three possibilities for adjusting cost:
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> "a. Collect cost retroactive to the effective date that cost was originally suspended.
>
> "b. Collect cost retroactive to the first day of the month after child resumed school attendance.
>
> "c. Collect cost retroactive for any periods during cost suspension where the child attended school full-time."

In our view the proper method for adjusting cost in the situation described would be under alternative "b," to "(c)ollect cost retroactive to the first day of the month after child resumed school attendance," consistent with the general principles applicable when there is a reinstatement of an eligible beneficiary. See 57 Comp. Gen. 847 (1978), as modified by 59 Comp. Gen. 569 (1980).

The fourth question is so answered.

Suspension of Eligibility Due to Marriage

The next question presented by the Committee is:

> "May a child who loses SBP eligibility for annuity due to marriage regain eligibility upon termination of that marriage through divorce, annulment or death of the spouse?"

Under the Survivor Benefit Plan and the Retired Serviceman's Family Protection Plan, as indicated, only the "unmarried" children of service members are defined as eligible child beneficiaries. This limitation was patterned after a provision of the civil service retirement laws which also restricts eligibility for a child's survivor annuity to the "unmarried" child of a deceased federal employee.7/

We have examined the legislative history of the military and civil service survivor annuity programs and have found no explanation in the congressional reports, hearings, or debates specifically detailing the reasons why only "unmarried" children were defined as eligible child beneficiaries. It appears, however, that the restriction is consistent with both common-law and statutory rules generally adopted and followed by our states concerning the relationship between parent and child. Under those rules, parents' responsibility to support their children ordinarily ceases when the children reach the age of majority, unless a child remains incapable of self-support because of physical or mental infirmity. A valid marriage contracted at any time by a child terminates the parents' responsibility to support the child, however, since the marriage creates relations inconsistent with that responsibility. The courts have generally held also that this "emancipated" status of a child who marries is unaffected by a subsequent divorce, so that the parents' responsibility of support is not renewed upon the child's divorce.8/ Hence, we conclude that as a general rule a child who lost Survivor Benefit Plan annuity eligibility due to marriage could not regain eligibility upon the termination of that marriage through divorce.

As to annulment of a marriage, while state laws vary somewhat, the general rule is that an annulment decree

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7/ See 5 U.S.C. § 8341(a)(3); S. Rep. No. 1089, supra (footnote 5), at page 50; and H.R. Rep. No. 481, 92d Cong. 1st Sess. 7 (1971). Civil service retirement and survivor annuity claims are not within our jurisdiction. See 5 U.S.C. § 8347; 41 Comp. Gen. 460 (1962); and 30 Comp. Gen. 51 (1950).

8/ See, generally, 67A C.J.S. Parent and Child §§ 8, 51, 62 (1978).

renders a purported marriage void, rather than merely terminating it as does a divorce.[9] Thus, in such a case, it appears there generally would be a proper basis for concluding that the marriage was void or invalid, and annuity eligibility therefore could be reinstated prospectively from the date of the judicial decree.

Consistent with the foregoing, it is our further view that if the marriage was valid on its face and was terminated by the spouse's death there generally would be no basis for reinstatement of annuity eligibility, in the absence of a decree of a court of competent jurisdiction declaring the marriage void or invalid.

The question is so answered.

The next question is:

> "Is the answer the same regardless of whether the marriage occurs before or after the member's retirement or member's death?"

As indicated, the Survivor Benefit Plan is an income maintenance program for the surviving dependents of deceased service members, and the Plan legislation thus recognizes dependency relationships that may continue after the Plan participant's retirement or death. Our view is, however, that a valid marriage entered into by a Plan participant's child at any time would terminate the dependency relationship of parent and child, regardless of whether the marriage occurred before or after the Plan participant's retirement or death. Hence, this question is answered "yes."

The last 2 questions are:

> "Would a child who is eligible for an SBP annuity by virtue of 10 U.S.C. § 1447(5)(B)(iii) lose that eligibility if the incapacitated child marries an individual who is also mentally or physically incapacitated?

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[9] See, generally, 54 Comp. Gen. 600, 601 (1975), and authorities there cited.

"If eligibility was terminated by marriage of the incapacitated child, would the termination of such marriage allow eligibility for coverage or annuity to be reinstated?"

We are unaware of any responsibility imposed by law upon parents to provide financial support for their married children, even if the children or the individuals they have married might be considered handicapped or disabled. Hence, our view is that if an incapacitated Survivor Benefit Plan child beneficiary entered into a valid marriage, regardless of whether the child's spouse might also be categorized as incapacitated, the child could no longer be regarded as the dependent of the Plan participant and would no longer be eligible for an annuity. Consistent with our answers to the previous questions, it is also our view that the termination of such marriage, absent an annulment or other judicial decree declaring the marriage void, generally could not serve as a basis for reinstatement of either benefit coverage or a survivor's annuity.

The questions presented in this matter are answered accordingly.

Milton J. Socolar

for Comptroller General
of the United States