

**DECISION**

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

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FILE: B-192127

DATE: September 25, 1978

MATTER OF: Sergeant Edwin T. Peniston, USMC, Retired,  
and Gunnery Sergeant Frederick Lurrough,  
USMC, Retired

- DIGEST:
1. Under the Survivor Benefit Plan (SBP), 10 U. S. C. 1447-1455, as amended by section 1(5)(A)(ii) of Public Law 94-496, effective October 1, 1976, where a member had elected spouse coverage but reduction of retired pay for spouse coverage is terminated because the member no longer has an eligible spouse beneficiary, so long as he had an eligible spouse beneficiary on the first day of the month, full reduction of retired pay for spouse coverage is required since charges are made on an indivisible monthly basis.
  2. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, where the member had elected both spouse and children coverage and there is termination of reduction of retired pay for spouse coverage because of loss of an eligible spouse beneficiary, the previously elected child coverage is to be recomputed since the law governing the SBP requires such coverage to be determined on an actuarial basis and the loss of the eligible spouse beneficiary has increased the probability that an annuity would be payable to an elected dependent child.
  3. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, since dependent children coverage, either alone or in combination with spouse coverage is to be determined on an actuarial basis in order to maintain such basis, recomputation of children coverage is to be based on the member's age and that of the youngest child effective the day after loss of the eligible spouse beneficiary.
  4. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, after spouse coverage is terminated due to loss of eligible spouse beneficiary and the member

remarries, since reduction in retired pay for spouse coverage purposes is charged on an indivisible monthly basis, such reduction in retired pay would not resume until the first month following the date such spouse attains eligible spouse beneficiary status, unless such date is on the first of a month, then appropriate charges are to be made for that month.

5. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, where the cost of children coverage had been recomputed and charged following the loss of eligible spouse beneficiary, then upon the reacquisition of an eligible spouse beneficiary, since children coverage is to remain on an actuarial basis, and since the gain of an eligible spouse beneficiary has reduced the probability that an annuity would be payable to an elected dependent child, the cost of such coverage should be further recomputed.
6. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, since dependent children coverage, either alone or in combination with spouse coverage, is to be determined on an actuarial basis, in order to maintain such basis upon the gain of an eligible spouse beneficiary, further recomputation of children coverage is to be based on the age of the youngest child and the ages of the member and remarriage spouse on the date the spouse qualified as an eligible spouse beneficiary.
7. Under the SBP, 10 U. S. C. 1447-1455, as amended by Public Law 94-496, effective October 1, 1976, where a member reacquires an eligible spouse beneficiary, and there is further recomputation of the cost of coverage because of the existence of previously elected dependent children beneficiaries, since reduction in retired pay for coverage purposes

B-192127

is charged on an individual monthly basis, such further recomputed coverage charges would not resume until the first day of the month following change of coverage status, unless such status change occurred on the first day of the month, then appropriate charges are to be made for that month.

This action is in response to a letter dated April 27, 1978, from Lieutenant Colonel W. S. Moriarty, USMC, Disbursing Officer, Centralized Pay Division, Marine Corps Finance Center, requesting an advance decision on a series of questions concerning the proper method of computing and effecting reduction in retired pay for coverage purposes under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455, as amended by section 1 (5) (A) (ii) of Public Law 94-496, October 14, 1976, 90 Stat. 2375. Particular references are made to the cases of Master Sergeant Edwin T. Peniston, USMC, Retired, and Gunnery Sergeant Frederick Burrough, USMC, Retired. The request was forwarded to this Office by letter from the Office of the Commandant of the Marine Corps (FDD), dated June 6, 1978, and has been assigned Control No. DO-MC-1293 by the Department of Defense Military Pay and Allowance Committee.

The submission states that Sergeant Peniston was transferred to the retired list on December 1, 1966. On March 10, 1973, he elected to participate in the SBP under the provisions of subsection 3(b) of Public Law 92-425, 86 Stat. 706, 711, to provide an annuity on a reduced base amount of \$375 for his spouse, Florence, and dependent child, Teresa. As a result of that election, his retired pay was reduced in the amount of \$15 for spouse coverage and \$3.32 for child coverage effective June 1, 1973.

On July 25, 1977, Sergeant Peniston informed the Finance Center that he received a divorce from his spouse, Florence, on July 7, 1976, and that he married a new spouse, Helen, on August 6, 1976. He requested that Helen be substituted for Florence on his SBP election form.

Based on that notice and request, the Finance Center retroactively refunded the cost of spouse coverage from October 1, 1976, the effective date of Public Law 94-496, supra, and the charge against

B-192127

his retired pay for the monthly SBP cost for coverage of the new spouse, Helen, was begun on August 1, 1977, since she was not a parent or issue of that marriage prior to that time. In addition to that action, and while no costs for child coverage were recomputed on the basis of "child only" coverage during the interim period, the cost of child coverage was thereafter recomputed on the basis of "spouse and child" coverage from August 1, 1977, using dates of birth for the member, his new spouse and child as of that date.

The facts in the case of Gunnery Sergeant Burrough are, that following a period in which he was in the Fleet Marine Corps Reserve, he was transferred to the retired list on July 1, 1968. On March 17, 1974, he elected to participate in the SBP under the provisions of subsection 3(b) of Public Law 92-425, supra, to provide an annuity based on his full monthly retired pay for his spouse, Eva, and 3 dependent children. As a result of that election, his retired pay was reduced in the amount of \$8.27 for spouse coverage and \$3.11 for children coverage effective April 1, 1974.

By correspondence received at the Finance Center on October 11, 1977, Sergeant Burrough advised that he had received a divorce from his wife, Eva, on December 3, 1976, and requested that his SBP coverage be adjusted in accordance with Public Law 94-496, supra.

Based on that notice and request, the monthly SBP cost of coverage for his former spouse, was retroactively refunded from December 1, 1976. Unlike the Peniston case, however, the SBP cost for children coverage was recomputed on the basis of "children only" coverage, with the increased monthly cost of \$15.50 being deducted from his retired pay effective December 1, 1976.

The actions taken in those cases seem to be inconsistent. It is indicated that on further analysis, it is doubtful whether the dates used for effecting changes in retired pay reductions in the cases described are correct, in view of the amendment to 10 U.S.C. 1452(a) by Public Law 94-496, supra, and our decision B-189037, September 30, 1977 (56 Comp. Gen. 1022).

Question a. asks in effect:

B-192127

When there is no longer an eligible spouse beneficiary because of death or divorce of the spouse, what is the correct effective date for terminating the reduction in retired pay for spouse coverage?

As it relates to this question, 10 U.S.C. 1452(a), as amended by Public Law 94-496, supra, provides in pertinent part:

"(a) \* \* \* the retired or retainer pay of a person to whom section 1448 of this title applies who has a spouse \* \* \* shall be reduced each month by an amount equal to 2-1/2 percent of the first \$300 of the base amount plus 10 percent of the remainder of the base amount \* \* \*. The reduction in retired or retainer pay prescribed by the first sentence of this subsection shall not be applicable during any month in which there is no eligible spouse beneficiary." (Underscoring supplied.)

Prior to the insertion of the underscoring sentence by Public Law 94-496, supra, the basic concept of reducing retired pay for SBP coverage other than for children coverage was, "once in, always in," since the law did not provide for termination of such reduction in pay in the event an elected beneficiary predeceased the member. The underscoring sentence of subsection 1452(a) removed that restriction by permitting such termination for "any month in which there is no eligible spouse beneficiary."

Charges for SBP coverage are assessed on a monthly basis and for the whole month, there being no legal authority for subdividing a month. It is our view that the existence of an elected beneficiary on the first day of that month governs the coverage costs to be charged for the whole month. Thus, if a member had initially elected spouse coverage, so long as he had an eligible spouse beneficiary on the first day of a month, then for SBP coverage charge purposes, the full reduction in retired pay for that coverage would be required for that month.

As the foregoing relates to the Peniston case, he received a divorce in July 1976, prior to the October 1, 1976, effective date of Public Law 94-496, supra. See H. R. Rep. No. 94-1458

B-192127

Part 1, 94th Cong., 2d Sess. 9 (1976). Thus, October 1, 1976, became the first day of the earliest month in which he had no "eligible spouse beneficiary" for the purposes of the last sentence of 10 U.S.C. 1452(a), supra, and the Finance Center's action to refund monthly SBP costs of spouse coverage beginning with that month was correct. In the Burrough case, the divorce became effective on December 3, 1976. Since the member had an eligible spouse beneficiary on December 1, 1976, such month remained a month for which his retired pay was to be reduced for spouse coverage purposes. Therefore, January 1977 became the first month in which he had no "eligible spouse beneficiary" and the Finance Center's action to refund his SBP costs for spouse coverage for December 1977 was improper and is to be recovered.

Question b. asks in effect:

When there is no longer an eligible spouse beneficiary because of death or divorce of the spouse, should the additional cost for child coverage be recomputed on the basis of "children only" coverage? If the answer is in the affirmative, should that cost be recomputed based on the age of the member and youngest child as of the date of initial entry into the Plan, or based on their ages at some other date?

As it relates to this question, 10 U.S.C. 1452 provides in part:

"(a) Except as provided in subsection (b), the retired or retainer pay of a person to whom section 1448 of this title applies \* \* \* who has a spouse and a dependent child shall be reduced each month by an amount equal to 2-1/2 percent of the first \$300 of the base amount plus 10 percent of the remainder of the base amount. As long as there is an eligible spouse and a dependent child, that amount shall be increased by an amount prescribed under regulations of the Secretary of Defense. \* \* \*

"(b) The retired or retainer pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense."

The legislative history of these provisions recognized the existence of greater statistical variables in the dependent children aspect of a member's family regarding possible receipt of survivor benefits, than would be experienced with a spouse beneficiary. The idea was expressed generally that because of the multiplicity of factors which would govern the prospect of annuities being paid to individuals in this class of dependents, costs for such coverage were to be actuarially determined. The Secretary of Defense was vested with the authority to determine the costs and, under regulations, assess an appropriate charge.

Those regulations are contained in DOD Directive 1332.27, January 4, 1974. The actuarially determined charge is based on the cost factors applicable to the Retired Serviceman Family Protection Plan (RSFPP), as is stated in part in Chapter 5 of the Directive:

"501. Reduction in Retired Pay

\* \* \* \* \*

"b. Spouse and eligible children. The cost for providing an annuity when there is a spouse and eligible children shall be 2-1/2 % of the first \$300 of the base amount, plus 10% of the remaining base amount, plus an actuarial charge based on the difference between cost factors under RSFPP, Option 1 and 3, in effect September 20, 1972. \* \* \*

"c. Children only (no eligible spouse). The cost for providing an annuity when there are eligible children, but no eligible spouse, shall be based on the cost factors under RSFPP, Option 2, in effect September 20, 1972. \* \* \*"

When, pursuant to the 1976 amendment to the law, reduction of a member's retired pay is terminated because there no longer is an eligible spouse beneficiary, spouse coverage also terminates upon the occurrence of the event. Thus, where spouse and children coverage had been elected, upon the loss of an eligible spouse beneficiary, "children only" coverage would remain. In order to maintain the actuarial basis of the charge for that coverage, in view of the fact that the cost of such coverage is significantly higher due to the increased

B-192127

probability that an annuity would be payable to this class of dependents, recomputation of such coverage would be required. Therefore, the first part of question b is answered in the affirmative.

As to the second part of question b., it was previously noted that the concept of children coverage, either alone or a combination with spouse coverage, was to be made on an actuarial basis. The basis upon which the cost of such coverage is established is in part the relationship of the ages of the member and his children at the time such coverage was initially established. We see no basis for not applying the same rule here. It is our view, therefore, that the cost should be recomputed based on the age of the member and the youngest child as of the first date following the date of the loss of the previously covered eligible spouse beneficiary, or October 1, 1976, whichever is later, using the age of the member and the youngest child as of that date.

As question b. relates to the Pension case, the date to be used for "children only" coverage recomputation would be October 1, 1976, since that is the earliest first date recognizable under the law for this purpose. Regarding the Burrough case, since the divorce was granted on December 3, 1976, the following day, December 4, 1976, became the first day of "children only" coverage; therefore, that date is to be used for recomputation purposes.

Question c. asks in effect:

After the reduction in retired pay for spouse coverage is terminated because of death or divorce of the spouse and the member remarries, what is the correct effective date for effecting the new reduction in retired pay for spouse coverage where no child is born prior to the first anniversary date of the remarriage?

In 56 Comp. Gen. 1022, *supra*, we considered the question of resumption of reduction in retired pay for spouse coverage in post-election remarriages. After analyzing section 1(5)(A)(ii) of Public Law 94-496, *supra*, we expressed the view that since that amendatory language focused squarely on the concept of eligible spouse beneficiary for termination purposes, until a spouse on remarriage qualified as an

**B-192127**

eligible spouse by satisfying the earlier of the conditions stipulated in 10 U. S. C. 1447, retired pay reductions for spouse coverage would not resume.

As previously stated, all elected coverages are paid for on a monthly basis. We do not believe that the law, as amended, intended or contemplated that a participating member would have to pay for coverage for the month where on the first day of a month there is no one in a class of potential beneficiaries who could receive the benefit. We believe that the propriety of charging for a particular coverage must be based on the beneficiary status in being on the first of any month, for that month. Therefore, in answer to question c., it is our view that reduction in retired pay for spouse coverage is not to be resumed until the first of the month following the date that the spouse upon remarriage attains eligible spouse beneficiary status, unless, of course, such date is on the first of a month, in which case appropriate charges are to be made for that month.

In the Peniston case, the first anniversary date of his remarriage was August 6, 1977, and, thus, became the date his spouse first qualified as his eligible spouse beneficiary. Since he did not have an "eligible spouse beneficiary" on August 1, 1977, spouse coverage charges were not to be assessed that month. Therefore, resumption of reduction of his retired pay for spouse coverage should have been made effective on September 1, 1977, rather than on August 1, 1977, as was done. Appropriate refund adjustment should be made in the member's account.

Question d. asks in effect:

If the member remarries and no additional child is acquired by that marriage, should the recomputed cost of child coverage be further recomputed? If the answer is in the affirmative, what is the correct combination of ages for recomputing the SBP cost?

As was stated in connection with question b., children coverage was congressionally mandated to be actuarially determined. Thus, in view of the multiplicity of variable factors which would govern receipt of benefits by members of this class and in view of the fact that the cost of "children only" coverage is significantly higher

B-192127

than it otherwise would be with the interposition of an eligible spouse beneficiary, then it is our view that there should be further recomputation at that time.

With respect to the second part of question d., it is our view that in order to maintain the actuarial basis, the cost should be recomputed based on the age of the youngest child and the ages of the member and new spouse on the date that such spouse qualified as an eligible spouse beneficiary since that is the date of the change of status discussed in question c. above.

In the Peniston case, that recomputation date would be August 6, 1977.

Question e. asks in effect:

If a member subsequently remarries and no additional child is acquired by the remarriage, what is the date for effecting the reduction in retired pay for the further recomputed cost for "spouse and child" coverage?

Since SBP costs are charged for the month of coverage based upon a member's beneficiary status on the first of a month, unless the first anniversary of the remarriage happened to occur on the first day of a month, such further recomputed costs are to be charged effective the first day of the month following such change of coverage status. In the Peniston case, that would be September 1, 1977.

*P. F. Kollar*  
Acting Comptroller General  
of the United States