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PLM-11
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DECISION



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

FILE: B-192223

DATE: December 19, 1978

MATTER OF: Mrs. Mary J. MacNaughton

[Recoupment of Overpayments of a Survivor Benefit Plan (SBP) Annuity]

DIGEST: Recovery of overpayments of a Survivor Benefit Plan (SBP) annuity caused by a subsequent determination of eligibility by the Veterans Administration of the same beneficiary for Dependency and Indemnity Compensation (DIC) may be effected by withholding the amount of overpayment from the premium refund due upon recalculation of the SBP annuity. Setoff is specifically authorized by 10 U.S.C. § 1453 (1976), and consistent with established practice and previous Comptroller General decisions.

This action is in response to a request from the Chief, Accounting and Finance Division, Air Force Accounting and Finance Center, for a decision as to the permissible methods for recoupment of overpayments of a Survivor Benefit Plan (SBP) annuity, 10 U.S.C. § 1447 et seq. (1976), made to a beneficiary who is declared eligible to receive Dependency and Indemnity Compensation (DIC) from the Veterans Administration (VA) as provided in 38 U.S.C. § 411 (1976). The matter was assigned submission No. DO-AF-1295 by the Department of Defense Military Pay and Allowance Committee.

AGC 4118
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Both the SBP and the DIC programs provide income to families of deceased service members. Under the SBP, however, the amount paid as a monthly annuity must be reduced by the amount the same beneficiary receives monthly from the VA in the form of DIC payments. 10 U.S.C. 1450(c).

Because the SBP is in the nature of an insurance plan, the eligible beneficiary and the amount to be paid are easily and quickly determinable, and payments of the annuity commence shortly after the participant's death. DIC payments on the other hand, are usually subject to several months delay, while eligibility and the amount to be paid are being determined. During this period, the full amount of the SBP annuity is paid by the service to the beneficiary pending VA's determination of eligibility to receive DIC. If it is subsequently determined

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that the beneficiary is also entitled to DIC payments, the result is that the SBP annuity has been overpaid. The amounts so overpaid must be refunded by the beneficiary.

An additional feature of the SBP is that the reduction of the monthly annuity payment because of DIC eligibility will result in a lump-sum refund to the annuitant of a portion of the premiums paid by the deceased member. 10 U.S.C. 1450(e).

To expedite the payment of SBP annuities and the collection of overpayments, the Department of Defense and the VA have agreed that, 1) the services will pay full SBP annuities immediately without awaiting VA determination of DIC eligibility, 2) collection of any overpayments will be made by withholding from future SBP payments, or in the event that the spouse will no longer receive SBP payments because the DIC amount will exceed the SBP annuity, from future DIC payments, and 3) SBP recipients will be requested to sign waiver forms acknowledging and agreeing to repayment by deduction from DIC. See memorandum of March 11, 1974, Assistant Secretary of Defense, Comptroller, Office of Systems and Policy Information. The waiver form provided for in the agreement appears to be necessary for collection of the overpayments of SBP annuities from DIC since DIC is generally exempt from the claims of creditors including the United States. 38 U.S.C. § 3101 (1976).

Mrs. Mary J. MacNaughton, the widow in this case signed such a waiver. She has \$4,375.50 refund of premiums due her because of DIC eligibility. Additionally, she was overpaid \$1,825.20 during the first 4 months of the SBP annuity, while DIC eligibility was being determined. Her net refund would be \$2,550.30 if overpayments were deducted before disbursement to Mrs. MacNaughton. The question presented is whether the annuity overpayments may be set off against the premium refund and only the net amount refunded to Mrs. MacNaughton, or must the full premium refund be made and the annuity overpayments be collected by VA from DIC payments.

It appears to have been the unquestioned practice of the services to use setoff of the premium refund to reduce the indebtedness of SBP beneficiaries in cases where the SBP overpayments exceeded the refund due. 54 Comp. Gen. 249 (1974);

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B-184649, February 2, 1976. Apparently this procedure is based on the specific statutory authority provided by 10 U.S.C. § 1453 (1976) to create a right of setoff with respect to SBP overpayments. It reads in pertinent part as follows:

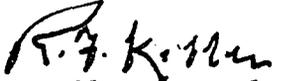
"In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. * * *"

An overpayment occasioned by the later award of DIC to the SBP beneficiary would cause prior SBP payments to be erroneous within the meaning of 10 U.S.C. § 1453. B-184649, February 2, 1976. The fact that the payments were made with the understanding that at some future date they might be subject to collection, does not prevent such payments from being erroneous upon the retroactive award DIC by the VA.

Under 10 U.S.C. § 1453 such erroneous payments may be deducted from "future payments", which would include the monthly annuity payments and the refund of premiums paid by the deceased member.

Therefore, there is no reason why the services must submit to the longer and more complicated collection process of DIC withholding to the extent the overpayment may be collected from the refund of premiums due. The fact that the signed waiver authorizes only DIC deductions is not determinative, as there is no need for a signed waiver where setoff is expressly permitted by statute.

Accordingly, the voucher, which is being returned, may be paid as submitted, with set off for the SBP annuity overpayments and refund to the widow of the net amount due.


Deputy Comptroller General
of the United States