



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

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B-174780

June 25, 1973

The Honorable Caspar W. Weinberger  
Secretary of Health, Education, and Welfare

Dear Mr. Secretary:

This refers to letter dated March 27, 1973, from the Acting Assistant Secretary for Administration and Management requesting a decision on the payment of an annuity under the Retired Serviceman's Family Protection Plan (RSFPP), 10 U.S.C. 1431-1446, under the circumstances described below.

It is stated that a commissioned officer of the Public Health Service, who apparently had elected to receive reduced retired pay in order to provide an annuity for his incompetent daughter, executed a trust agreement for the benefit of the daughter, who has been hospitalized at the Maryland Springfield State Hospital since June 1, 1951. Since under the rule of our decision B-174780, January 26, 1972, 51 Comp. Gen. 437, which is cited in the Assistant Secretary's letter, it is not permissible to pay the annuity to the trustee and there has been no legal guardian appointed for her estate, question is raised as to whether payment may be made to the Superintendent of the institution as the person who has care, custody, and control of the daughter, as provided by the regulations issued in implementation of the RSFPP.

Section 1435, title 10, U.S. Code, provides that only the spouse or the children as described in that section are eligible to be made beneficiaries of, or to receive payments under, an annuity elected under the Plan. The regulations authorized by section 1444 to be prescribed to carry out the Plan, DOD Directive 1332.17, December 18, 1968, provide in section 504a that annuities for a child or children will be paid to the child's guardian, or if there is no guardian to the person who has care, custody, and control of the child or children. 32 CFR 48.504.

Article 59, section 2, Annotated Code of Maryland, provides, in pertinent part, that it is the policy of the State that persons affected by or afflicted with mental illness or mental retardation who have financial resources sufficient to pay the cost of their care and treatment shall do so. Sections 39 to 47 of Article 59

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provide for determination of the cost of care, enforcement of payment therefor and disposition of any assets remaining in the possession of a public facility for one year following death or escape of a patient. Payments of costs as well as remaining assets which cannot be distributed are credited to the general funds of the State. We are aware of no provision of law authorizing the Superintendent of a public facility of Maryland to receive and account for moneys due inmates who are not under guardianship. The authority to receive the funds of patients is limited generally to the cost of their care in the institution chargeable against the inmate. Compare 13 Comp. Gen. 97 (1933) and 44 Comp. Gen. 390 (1965).

Article 93A, section 207, Annotated Code of Maryland, lists in order the persons entitled to priority for appointment as guardian for a minor or disabled person. Among those listed is, a person or corporation nominated by a person who, or institution, organization, or public agency which, is caring for him. Article 59, subsection 44(b), authorizes the Department of Mental Hygiene of the State of Maryland to institute whatever proceedings it finds necessary to require payment of charges established and uncollected. Hence, it would appear that the appropriate officer of the State may nominate a guardian for an inmate of a public facility.

Should appointment be made by the court of the trustee named in the trust agreement, or some other person representing the State facility, as guardian of the officer's daughter, payment from the annuity accruing to her of the cost of her care in the State facility would be proper.

Sincerely yours,

Paul G. Dembling

Acting  
Comptroller General  
of the United States