

DECISION



DIGEST - L-Mail -

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

1242

FILE:

B-184207

DATE: JUL 31 1975

MATTER OF:

Waiver of erroneous annuity payments received -
Mrs.

DIGEST:

Overpayment resulting from erroneous annuity payment made under section 4 of Pub. L. 92-425 which provides a minimum income guarantee for certain widows of former retired members of the uniformed services may not be considered for waiver pursuant 10 U.S.C. 1453 since that section by its terms is applicable only to subchapter II of chapter 73 of title 10, U.S. Code and section 3 of Pub. L. 92-425.

This action is in response to a letter dated November 29, 1974 (file reference (Retired)(Deceased)), with enclosures, from the Commanding Officer, United States Army Finance and Accounting Center, recommending waiver of recovery of \$298.44 representing annuity payments erroneously paid under section 4 of the act of September 21, 1972, Public Law 92-425, 86 Stat. 706, 712, to Mrs. , widow of the late Sergeant First Class , who died April 18, 1969.

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7/31/75 mt

According to the submission, it appears that Mrs. applied for a minimum income annuity under provisions of section 4 of Public Law 92-425, supra. Under this provision, the annuity to which a widow is entitled is an amount equal to the difference between her annual income as determined by the Veterans Administration and \$1,400.

The submission further indicates that based on information from the Veterans Administration, Mrs. was entitled to an annuity of \$102.90, but received \$388.90 for a specific period in 1972 resulting in an overpayment of \$286. In 1974 Mrs. was entitled to no annuity payment, but received an erroneous payment of \$12.48. Thus, the total overpayment resulting from the error is \$298.48.

According to the submission, Mrs. has been advised of the overpayment and she in turn has advised the Finance and Accounting Center that she is financially unable to repay the amount in question.

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On the basis of that request and the income statement which Mrs. provided, the Commanding Officer of the United States Army Finance and Accounting Center recommends that recovery of the amount in question be waived, citing 10 U.S.C. 1453 as authorizing waiver in her case.

In decision B-181954, May 21, 1975, which also involved over-payments of section 4 benefits, we carefully examined the legislative history of Public Law 92-423, supra, to determine whether the provisions of 10 U.S.C. 1453 were applicable to that section of the act. Following a detailed analysis of the matter, it was held that the waiver provisions of 10 U.S.C. 1453 were not for application in that case.

In view of the similarities between the two cases, we must conclude that waiver under authority of 10 U.S.C. 1453 may not be granted in Mrs. case.

With regard to the above, the following statement was made in our May 21, 1975 decision, supra:

"* * * it appears that any action in this case should be taken under the provisions of the Federal Claims Collection Act of 1966, 31 U.S.C. 951-953 (1970). In this regard, we note 4 CFR 104.3, promulgated pursuant to the above-cited authority, provides that the head of an agency or his designee may terminate collection activity when a determination of the debtor's inability to pay is made based on the criteria set forth therein. Under the circumstances, we would not object to such action in this case."

We believe that such action would be equally appropriate in Mrs. case.

R.F. KELLER

Deputy] Comptroller General
of the United States