

**DECISION**



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

FILE: B-184860

DATE: AUG 27 1976

col 406  
99602

MATTER OF: Department of Defense Military Pay and Allowance  
Committee Action No. 519 - Survivor Benefit Plan

**DIGEST:**

1. When member provided Survivor Benefit Plan coverage for widow or widower and dependent children and widow or widower becomes ineligible for annuity, the dependent children are entitled to the full annuity as provided by the member even though the annuity of the widow or widower had been reduced by the amount of Dependency and Indemnity Compensation received.
2. Widow or widower of member who elected coverage under Survivor Benefit Plan is entitled to refund of deductions made from retired pay if the annuity is reduced based upon receipt of Dependency and Indemnity Compensation. Such refund, however, should be computed on the basis of reductions in retired pay caused by coverage of spouse and no refund may be made based upon the reductions in retired pay caused by member's election of coverage for dependent children.

This action is in response to a letter from the Assistant Secretary of Defense (Comptroller) requesting a decision concerning the amount of an annuity payable under the Survivor Benefit Plan (SBP) 10 U.S.C. 1447-1455, to dependent children in the circumstances described in Department of Defense Military Pay and Allowance Committee Action No. 519, enclosed with the submission.

The question presented is:

"If an eligible spouse with dependent children is receiving a Survivor Benefit Plan (SBP) annuity which is reduced because of Dependency and Indemnity Compensation (DIC) entitlement and such spouse becomes ineligible to receive such annuity

PUBLISHED DECISION  
55 Comp. Gen. ....

because of remarriage or death, are the dependent children of such spouse entitled to receive in equal shares the full amount of the annuity before DIC reduction or are they entitled to receive the reduced annuity the spouse was receiving prior to his or her becoming ineligible?"

The discussion contained in the Committee Action states that the question presented relates to those situations where specific coverage for a spouse and dependent children was elected by the retiree and the additional cost for dependent children was paid by the retiree.

Payments to beneficiaries under the SBP are authorized by 10 U.S.C. 1450(a), clause (1) of which provides for payment to the surviving widow or widower and clause (2) of which provides that an SBP annuity shall be paid to the surviving dependent children in equal shares if the eligible widow or widower is dead, dies, or otherwise becomes ineligible. It may be noted that the annuity payment provision of 10 U.S.C. 1450 contains no limitation on the amount of the annuity payable to the surviving dependent children. On the other hand, 10 U.S.C. 1450(c) specifically requires that where the spouse is entitled to Dependency and Indemnity Compensation (DIC), such spouse may be paid an annuity, but only in the amount that the annuity otherwise payable would exceed the DIC to which the spouse is entitled.

In connection with restrictions on annuity payments 10 U.S.C. 1450(e) provides that, when the annuity payable is reduced or eliminated because of entitlement to DIC, a computation is made of the amount which should have been deducted from retired or retainer pay to provide the recalculated annuity and the spouse is refunded the difference between the amount deducted prior to the recomputation and the amount that should have been deducted to provide such annuity. In 54 Comp. Gen. 838 (1975) we held that the spouse who receives a refund under 10 U.S.C. 1450(e) permanently loses his or her entitlement to that portion of the annuity which is represented by the amount refunded.

In the discussion which accompanied the submission it is indicated that based on the language of 10 U.S.C. 1450(e) and

the interpretation given that section in 54 Comp. Gen. 838, there is a basis for concluding that the surviving dependent children in the situation presented are entitled to share equally in only the reduced annuity as recalculated under section 1450(c).

Section 1452(a) of title 10, United States Code, prescribes the formula by which it is determined how much retired or retainer pay is to be reduced when a member elects to provide an annuity for a spouse. In addition, that section delegates to the Secretary of Defense the authority to issue regulations prescribing the amount to be deducted from retired or retainer pay when a member elects an annuity for a dependent child or children.

The legislative history of section 1452(a) indicates that Congress intended the method of computing the amount to be deducted for dependent children's coverage to be different from that used in the case of coverage for a spouse. The Committee on Armed Services, United States Senate, in a report to accompany S. 3905 on "Establishing a Survivor Benefit Plan for Members of the Armed Forces in Retirement, and for Other Purposes" (Report No. 92-1089) stated (p. 25):

"While the committee agrees that the legislation should provide a benefit to dependent children, it also believes that it should be accomplished on the basis of a self-financing plan. Specifically, the committee recommends that the basic plan in the bill apply to the spouse. For a slight additional charge (above the charge for spouse coverage), the member could cover the spouse and dependent children. If the spouse were to become ineligible, benefits would then flow to the children. If there were no spouse, the member could cover dependent children. The cost of dependent children's coverage, in both cases, would be based on the actuarial cost of providing benefits and would terminate when the children no longer are eligible for benefits."

In the same report it is stated (p. 28) that only the DIC payable on behalf of the spouse, not DIC payable for dependent children, may be used as an offset.

B-184860

It thus appears that when a member wishes to provide for an annuity under the SBP for his spouse and dependent children the deduction for such annuity consists of two elements; one portion for the annuity for the spouse and another portion for the annuity for the surviving dependent children. In addition, Congress has provided that the cost of providing coverage for dependent children terminates when the children are no longer eligible for such annuity. However the cost of the annuity for the spouse continues.

We conclude from the above that the annuity for the surviving dependent children is separate and apart from that payable to the widow or widower. Accordingly, the provision in 10 U.S.C. 1450(c) reducing the annuity of a widow or widower on account of DIC entitlement should not be considered as reducing the annuity payable to dependent children. Further annuities paid to dependent children are not reduced on account of their entitlement to DIC since no provision is made for such reduction. As indicated in the cited legislative history, the children's annuity is to be paid for by the member in amounts sufficient to cover the benefit provided.

Thus in the stated circumstances the surviving dependent children are entitled to receive, in equal shares, the full amount of the annuity originally provided for.

In connection with the answers to the question presented it is noted that, in recalculating the amount to be refunded to the spouse under 10 U.S.C. 1450(e) because the annuity is reduced by the amount of DIC entitlement, only that portion of the retired pay deduction applicable to the spouse's annuity is for consideration. No refund should be made based on the additional cost paid in order to provide an annuity for surviving dependent children.

If refunds were made to spouses based upon the amount deducted from retired pay for coverage of dependent children, we do not believe such refunds should be recomputed and recovered at this time since there was some uncertainty with respect to the proper method of computing refunds. However, dependent children who are or who become entitled to annuities are entitled to annuities based upon the coverage selected by the member without regard to DIC payment to themselves or to the member's widow or widower. Accounts

B-184860

not paid on that basis should be adjusted and past or future annuities of dependent children paid on the basis of this decision.

H. F. Keller

Acting Comptroller General  
of the United States