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**DECISION**



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

**FILE:** B-207764

**DATE:** February 8, 1983

**MATTER OF:** Sydna Jean Elrod

**DIGEST:**

1. The adult daughter of a deceased Navy officer received a Survivor Benefit Plan annuity under 10 U.S.C. 1447(5)(B)(iii) based on a determination that she was incapable of self-support because of physical incapacity. She was quadraplegic as the result of childhood polio. Despite this disability, she later secured full-time Government employment in a grade GS-5 position. This does not warrant suspension of the annuity on the basis that she is no longer incapable of self-support, even though a grade GS-5 salary would normally be sufficient to cover the living expenses of a physically fit person, since that salary is not sufficient for her own personal needs.
2. In view of the current national policy concerning employment of the handicapped, as reflected in law and executive proclamation, military survivor annuity plans should not be applied in a manner that would discourage handicapped beneficiaries from seeking employment, or would result in the permanent termination without notice of the annuity of one who is attempting to become self-sufficient through gainful employment. Procedures should be established to implement that policy. Further, if an annuity is suspended because the beneficiary is determined to be capable of self-support, but the original disabling condition causes a reoccurring loss of self-sufficiency, we will consider whether the annuity

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may be reinstated in an appropriate case.

This action is in response to a request for a decision from the Disbursing Officer, Navy Finance Center, on the question of whether the Survivor Benefit Plan annuity that Sydna Jean Elrod has been receiving as the result of her physical disability should be suspended because she has secured full-time gainful employment. The request was approved by the Department of Defense Military Pay and Allowance Committee and was assigned submission number DO-N-1399.

We conclude that Ms. Elrod's Survivor Benefit Plan annuity may not be suspended in the circumstances presented.

Ms. Elrod was born in 1946. When she was 4 years old she contracted polio and was permanently disabled. Although she has partial use of her right hand, she cannot stand or walk, nor can she operate hand rims on a wheelchair. Hence, military physicians have diagnosed her as quadraplegic. Despite this handicap, she was able to attend college when she was a young adult. Later in December 1980 when she was 34 years old, she successfully completed a 10-month course in computer programming sponsored for the severely disabled by an agency of the State of Maryland. Then in May 1981 she secured full-time employment on a probationary basis with the Social Security Administration in Baltimore as a computer programmer, grade GS-5.

Ms. Elrod's father was an officer of the United States Navy. When he retired from active service in 1973, he elected to participate in the Survivor Benefit Plan, thus choosing to receive retired pay at a reduced rate in order to provide an annuity for his dependent daughter if she survived him. The Navy commenced payment of an annuity to her following his death in October 1979. The annuity was suspended on December 30, 1981, after she advised Navy officials of her full-time employment with the Social Security Administration, and it then no longer appeared to those officials that she was incapable of self-support.

Ms. Elrod subsequently questioned the propriety of the Navy's suspension of her annuity. Essentially, she acknowledged that most persons holding full-time grade GS-5

positions with the Government can be regarded as capable of self-support, since the gross yearly salary of more than \$13,000 that is attached to a grade GS-5 position would be sufficient to cover ordinary and necessary living expenses. However, she pointed out that her own ordinary living expenses, because of her physical disability, included additional necessary expenditures for the purchase and maintenance of motorized wheelchairs and other essential equipment, for extra medical care and part-time medical attendants, for suitable living quarters exceeding the minimum standard requirements of physically fit persons, for transportation by taxicab or customized van, etc. She suggested that the net pay of a grade GS-5 Government employee was insufficient to cover her own ordinary living expenses, if these additional costs of living were taken into account, and she provided some cost figures to demonstrate this. She suggested that in the circumstances she was not actually capable of self-support, and that her Survivor Benefit Plan annuity therefore should not have been suspended. She also asked why the first notice she received of the suspension had been in the form of a letter from her bank advising her that her account was overdrawn.

In requesting a decision in the matter, the Disbursing Officer indicates that Ms. Elrod's continued eligibility for the annuity under 10 U.S.C. 1447(5)(B)(iii) appears doubtful, notwithstanding the facts she presents, because of the principles set forth in our decisions 44 Comp. Gen. 551 (1965), and 53 Comp. Gen. 918 (1974).

The Survivor Benefit Plan, 10 U.S.C. 1447 et seq., is an income maintenance program for the dependents of deceased service members. Eligible dependents include a member's child who is more than eighteen years old but "incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday \* \* \*." See 10 U.S.C. 1447(5)(B)(iii).

Congress established the Survivor Benefit Plan in 1972, through enactment of Public Law 92-425, to provide a new and more comprehensive system of survivor protection for the dependents of service members and to eventually replace the then current survivor annuity program contained in the Retired Serviceman's Family Protection Plan, 10 U.S.C. 1431 et seq. See, generally, 53 Comp. Gen. 847, 852 (1974).

That annuity program contains a similar provision extending beneficiary eligibility to dependent children over eighteen years of age who are "incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday \* \* \*." See 10 U.S.C. 1435(2)(B).

The decisions referred to by the Disbursing Officer, 44 Comp. Gen. 551 (1965) and 53 Comp. Gen. 918 (1974), concerned the application of 10 U.S.C. 1435(2)(B) under the Retired Serviceman's Family Protection Plan. In 44 Comp. Gen. 551, at page 558, we held, "Once it has been determined that a child over 18 years of age is incapable of self-support, evidence warranting a conclusion that the child actually is capable of sustaining an earning capacity for his own personal needs would be sufficient to remove the child from the category of one incapable of self-support." We also stated that once the annuity was terminated it could not later be reinstated because we were able to find "no provision in the Retired Serviceman's Family Protection Plan for reinstatement as an eligible beneficiary." In 53 Comp. Gen. 918, at pages 920 and 921, we observed further that whether a person was capable of self-support depended upon the individual facts of the particular case and that we were therefore unable to issue guidelines on how determinations should be made for any class or type of disability.

We find that the rationale of certain of the principles expressed in those two decisions may properly be applied to the Survivor Benefit Plan. Specifically, we conclude that an annuity payable on the basis of 10 U.S.C. 1447(5)(B)(iii) may properly be suspended if evidence exists demonstrating that the beneficiary has become independently capable of earning amounts sufficient for his own personal needs through substantial and sustainable gainful employment. Also, the determination in any given case of whether a handicapped beneficiary has become capable of self-support depends upon the individual facts of that particular case.

In the case of Sydna Jean Elrod we find no basis for the suspension of her Survivor Benefit Plan annuity in December 1981 or at the present time, since the evidence of record does not demonstrate that the salary of her grade

GS-5 Government position is sufficient for her own particular personal needs. If she is able to maintain her employment and establish a career in her chosen field at a significantly higher rate of pay, then the matter of her continued eligibility for the annuity may be reconsidered.

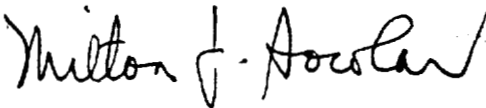
Ms. Elrod's Survivor Benefit Plan annuity should be reinstated effective December 30, 1981, and payment issued accordingly.

More generally we recognize the established national policy that handicapped persons are to be encouraged to seek gainful employment, and that administrative obstacles hindering their employment are to be eliminated. See 36 U.S.C. 155; and Presidential Proclamation 4965, September 13, 1982. See also 5 C.F.R. 203.1301(d)(4) (1982). Under that policy military survivor annuity plans should not be administered in a manner that would discourage a handicapped beneficiary from seeking employment, or would result in the permanent termination without notice of the annuity of a handicapped beneficiary who is attempting to become self-sufficient through gainful employment.

Accordingly, we find that procedures should be implemented to insure full consideration of the facts involved in case it becomes necessary to determine whether a beneficiary under the Survivor Benefit Plan or the Retired Serviceman's Family Protection Plan, should be removed from the category of being incapable of self-support because of mental or physical incapacity. At a minimum the beneficiary should be advised of information the Service has indicating that he is no longer incapable of self-support, and be given a reasonable opportunity to submit rebutting evidence. Also, if it is determined that the beneficiary is, in fact, capable of self-support advance written notice should be given prior to the suspension of the annuity, unless there is clear evidence of fraud or misrepresentation by the beneficiary.

In addition, we have reviewed the Survivor Benefit Plan and the Retired Serviceman's Family Protection Plan, and while we have found no provision in those plans specifically authorizing the reinstatement of a suspended annuity, neither have we found any provision which expressly precludes a disabled beneficiary from seeking reinstatement of

his annuity following a period of suspension. In light of the beneficial purposes for which the plans were established and the current national policy concerning the employment of the handicapped, it may be that reinstatement should be allowed in an appropriate case. If eligibility for an annuity is suspended under 10 U.S.C. 1435(2)(B) or 10 U.S.C. 1447(5)(B)(iii) because the beneficiary is determined to be capable of self-support, but it later appears that the beneficiary is no longer self-sufficient because of the original disabling condition, and it appears that reinstatement is warranted, we would consider the circumstances and determine whether the rule in 44 Comp. Gen. 551 should be modified.

*for*   
Comptroller General  
of the United States