

4-10-83



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ms. Charlotte E. (Hargrove) Ladwig--Request for waiver of recovery of erroneous annuity payments

File: B-246752

Date: June 4, 1992

DIGEST

A retired serviceman's daughter continued to receive annuity payments under a Family Protection Plan after she was no longer eligible for them. Her request for waiver of her obligation to repay the excess amount she received is denied because she knew or should have known that she continued to receive the payments after she ceased to be eligible. Granting a waiver in this case would therefore be inconsistent with the provisions of 10 U.S.C. § 1442 governing such waivers.

DECISION

This is in response to a request by Ms. Charlotte E. (Hargrove) Ladwig for waiver of a debt to the government which arose when she continued to receive payments from a Retired Serviceman's Family Protection Plan (RSFPP) annuity after she was no longer eligible to receive them. For the reasons presented below, her request for a waiver is denied.

Ms. Ladwig is the daughter of Master Sergeant Ernest C. Hargrove, USAF (Retired) (Deceased), who elected to participate in the RSFPP to provide a survivor annuity for his children. When he died in March 1980, an annuity was established for Ms. Ladwig, who was then a high school student. The annuity provided her \$68.36 per month, to continue until she reached age 23 if she remained a full-time student. She enrolled in college in May 1981, but left in December 1981. In May 1982, she was married and, believing she was no longer eligible for the annuity payments, so notified the Air Force, asking them to stop payments. However, the annuity payments continued until February 28, 1983. The Air Force wrote to Ms. Ladwig in May 1983 informing her that unless she could confirm that she was still a full-time student, she would need to return the annuity payments sent to her for the 15-month period from December 1981 through February 1983 (a total of

\$1025.40). The Air Force received no reply and sent a follow-up letter sent in March 1984, which also went unanswered. In April 1984, the Air Force wrote to inform her they were initiating collection procedures to recover the excess payments. Eventually, in January 1991, the Air Force garnished her wages.

Ms. Ladwig asserts that (1) she was unaware of receiving any erroneous payments, (2) she did not receive the letters the Air Force sent to her in 1983 and 1984 because she had moved, and (3) she was unaware of the debt to the government until 1991, when she inquired into the reason her wages were being garnished. She applied to the Air Force for a waiver in June 1991, which the Air Force denied on the ground that the waiver request was not received within 3 years of the discovery by the Air Force in 1984 of the erroneous payments. Ms. Ladwig has appealed the Air Force's denial of her waiver to us. Our Claims Group forwarded the claim here, noting that it could not find a 3-year limitation on waiver applications under the relevant statute, and therefore questioned the basis for the Air Force's denial.

The RSFPP, 10 U.S.C. §§ 1431-46, is an income maintenance program for dependents of deceased members of the uniformed services. Act of August 8, 1953, ch. 393, 67 Stat. 501. Section 1435 provides that in order to be eligible beneficiaries, children of a member must be unmarried and under 18, or between 18 and 23 if a full-time student. Section 1442 provides for waiver of amounts paid erroneously if the recipient of such amounts is without fault and if recovery would be contrary to the purposes of the RSFPP or against equity and good conscience.

A threshold question arises in this case: did Ms. Ladwig know she received erroneous payments, or can she be held to such knowledge. We conclude she either knew or should have known. By her own assertion, she was aware she was receiving the payments, and also believed she was ineligible to continue receiving them after her marriage in May 1982, though the Air Force continued payment for 9 months beyond that time. An Air Force investigation conducted in 1984 determined that the payments in question continued until February 1983 by direct deposit to the same bank account to which earlier payments had been made, that funds so deposited were used, and that no funds were returned to the Air Force. The letters sent by Air Force to Ms. Ladwig in 1983 and 1984, which she asserts she never received, were mailed to the address Ms. Ladwig still provided as one of two current addresses in her 1991 correspondence with the Air Force and with us. The Air Force concludes, based on her continued receipt and use of the funds, that she should have questioned the continuing deposits in the account. We agree. We believe she knew or should have known of these

notices and of her debt, and conclude she should be held to such knowledge.

Our decisions have consistently held to the principle that one who knowingly receives excess payments from the government cannot expect to retain them. In Julia N. Barratt, B-197800, July 7, 1980, we denied the waiver request of a widow who had received overpayment of a Survivor Benefit Plan (SBP) annuity. The SBP has a waiver provision similar to that of the RSFPP. The widow based her request on the argument that, while she knew she was being overpaid, she had made numerous attempts to correct the matter, and only through her efforts was the error corrected. We commended Mrs. Barratt for so advising the Navy, but nonetheless denied a waiver, stating that to do so, given her knowledge that the payments were excessive, would be inconsistent with the purposes of the SBP and the provisions of the governing statute.

Since we hold Ms. Ladwig to knowledge that the payments she received beginning in December 1981 were erroneous, she does not meet the statutory requirements for waiver of erroneous annuity payments, and the issue of whether a 3-year time limitation applies to application is moot. Moreover, her knowledge of the erroneous payments negates any claim she may have asserted based on the delay from 1984 to 1990 by the Air Force in initiating final collection of the amount owed. Her request is therefore denied.



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General Counsel