The Comptroller General
of the United States

Washington, D.C. 20548

Scott
PUT-II

Decision

Matter of: Survivor Benefit Plan - Incapacitated Annuitants

File: B-226018

Date: March 18, 1987

DIGEST

1. Survivor Benefit Plan annuitants should not be considered incompetent, and in need of a court-appointed guardian to manage their annuity payments, solely because they may have a physical handicap or disability. Thus, there is no basis for objecting to benefit payments being sent directly to an annuitant solely because of her impaired vision, since that alone would not render her incompetent to manage her personal financial affairs. 65 Comp. Gen. 621 (1986) clarified.

2. While Alzheimer's disease can cause or lead to mental incompetence, persons diagnosed as having this disease may nevertheless remain competent to manage their personal financial affairs responsibly. There is no basis for objecting to Survivor Benefit Plan payments being made directly to an annuitant who has this disease, unless it is established that the annuitant is actually incompetent, either in competency proceedings in a state court, or otherwise in a statement of professional opinion of a physician or psychologist that the annuitant is incompetent to manage responsibly the amounts due. 62 Comp. Gen. 302, 307-308 (1983) clarified.

3. Survivor Benefit Plan annuitants are not precluded from accepting assistance from other persons in completing and filing annuity application forms. There is consequently no basis for objection to the son of a retired Army colonel's widow filing an annuity application form on her behalf as her agent under a power of attorney, with the request that benefit payments be made directly to her, provided that she is not mentally incompetent. 65 Comp. Gen. 621 (1986), clarified.

DECISION

The issue presented is whether Survivor Benefit Plan annuitants with physical or psychological problems require

court-appointed guardians or trustees to receive and manage their benefit payments. We conclude that this is required only if the annuitant is mentally incompetent or if there is a medical determination that the annuitant is unable to manage his or her personal financial affairs.

BACKGROUND

The circumstances giving rise to this issue relate to a specific case recently brought to our attention involving the widow of a retired Army colonel. He had elected to receive military retired pay at a reduced rate in order to provide an annuity for his wife if she survived him. The colonel died in 1986, and she then became entitled to the survivor's annuity under the Survivor Benefit Plan.

The widow's son sent an application for the annuity to the Army Finance and Accounting Center on her behalf, based on a durable power of attorney she had given to him. Although he signed the application form as her agent, he did not request that the annuity be paid to him on the basis of the agency relationship. Rather, he requested that the payments be sent directly to a bank for deposit in an account held solely by his mother.

Officials of the Army Finance and Accounting Center advised the son that they could not honor his mother's power of attorney. They advised that the annuity could only be paid directly to his mother upon her personal application. They further advised that as an exception, if his mother were physically or mentally incapacitated, then the annuity payments could only be made to a guardian appointed by a court of competent jurisdiction. They referred to our decision B-221545 of June 3, 1986, published at 65 Comp. Gen. 621, as the basis for this advice.

In correspondence which has been forwarded here, the son explains that his mother has experienced a deterioration of her vision over a period of several years, and that as a result it had become difficult for her to write and to sign her name. Because of this, she had executed a power of attorney appointing him as her agent and attorney-in-fact, to authorize him to transact business on her behalf. The son also states: "Although my mother may suffer from Alzheimer's disease, I cannot say and do not feel she is 'mentally incompetent.'" He adds that it would not be in her best interest to have her declared mentally incompetent solely to begin payments which are due her upon her husband's death. No

other information concerning her mental competency is contained in the record before us. He concludes that the Army's requirements are oppressive and he has requested our review of the matter.

ANALYSIS AND CONCLUSION

The Survivor Benefit Plan, 10 U.S.C. §§ 1447-1455, is an income maintenance program for the surviving dependents of retired service members. Congress established the Survivor Benefit Plan in 1972, through the 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 replace eventually the then current survivor annuity program contained in the Retired Serviceman's Family Protection Plan, 10 U.S.C. §§ 1431-1446.

Provisions of statute governing the administration of these two military annuity programs prohibit annuitants from assigning their benefits to others. See 10 U.S.C. §§ 1440 and 1450(i). Neither program, however, contains any provision prescribing procedures for making benefit payments to or on behalf of annuitants who are mentally incompetent.

Our decisions on the general subject of benefit payments due to incompetent annuitants have been predicated on the fundamental principle that the accounting officers of the uniformed services have a duty to obtain a good acquittance when payments are made by their direction under federal law. Court-appointed guardians act under judicial supervision and have a requirement to provide financial accounting statements periodically to the court, but these safeguards do not apply to personally designated agents or trustees. Hence, we have concluded that in the absence of a federal statute authorizing a different procedure, it is appropriate for the accounting officers of the uniformed services to insist on a court-approved guardianship before payment of a military survivor's annuity is made on behalf of an incompetent annuitant, to assure that a good acquittance is obtained. See 65 Comp. Gen. 621, supra; 62 Comp. Gen. 302, 307-308 (1983); and 51 Comp. Gen. 437 (1972).

In those decisions, however, we did not say nor did we mean to imply that a Survivor Benefit Plan annuitant is precluded from accepting assistance from other persons in filling out an annuity application form, or that a court-appointed guardian is required for every annuitant with a physical or mental infirmity. In particular, we do not consider that

persons are incapable of managing their personal financial affairs solely because they may have a physical handicap or disability. Thus, in the present case we would have no basis for objecting to benefit payments being sent directly to the annuitant solely because of her impaired vision, since that alone would not render her incompetent to manage her personal financial affairs. 65 Comp. Gen. 621, supra, clarified.

Moreover, we have recognized that Survivor Benefit Plan annuitants may be capable of managing their personal financial affairs even though they have been diagnosed as having a problem or disorder of a psychological nature. In 62 Comp. Gen. 302, supra, at pages 307-308, we expressed the view that in such situations benefit payments may be made directly to the annuitant, unless the annuitant is hospitalized because of mental illness or is not considered by psychiatric opinion to be capable of managing his or her personal affairs. We have reviewed the rationale of that decision and have concluded, in light of the principle that persons are presumed to be competent to manage their affairs unless shown otherwise, that a burden should not be placed on annuitants suspected of having psychological problems to provide statements of psychiatric opinion attesting to their competence. Hence, we will not object to Survivor Benefit Plan payments being made directly to an annuitant who may be suspected of having a psychological disorder, in the absence of an actual determination of incompetency made either by a state court, or by a physician or psychologist. Our decision in 62 Comp. Gen. 302, supra, is so clarified.

The correpondence of record in the present case indicates that the annuitant may suffer from Alzheimer's disease. We note that while Alzheimer's disease can cause or lead to mental incompetence, persons diagnosed as having this disease may nevertheless remain competent to manage their personal financial affairs responsibly for extended periods. Hence, in the absence of a determination of incompetence made either by a state court, or by a physician or psychologist, that she is presently incompetent to manage her personal financial affairs responsibly, we would have no basis for objecting to the issuance of benefit payments directly to her. Further, unless there is a determination of incompetency, we would have no basis for objecting to the annuitant's son acting as her agent under a power of attorney to assist her in completing and filing the annuity application form. 65 Comp. Gen. 621, supra, clarified.

for Milton J. Socolar
Comptroller General
of the United States