



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** LaVonne M. Sanchez and Jeffrey L. Cole

**File:** B-236224

**Date:** December 23, 1991

---

### DIGEST

1. The Survivor Benefit Plan annuity created by 10 U.S.C. § 1448(d)(2) may be paid to the dependent child of a deceased retirement-eligible member of the uniformed services living with the surviving parent who is the deceased member's former spouse. The annuity may be paid for periods commencing on or after March 1, 1986.
2. Law providing Survivor Benefit Plan annuity to dependent child of retirement-eligible deceased service member, where child lives with surviving parent who is not deceased's surviving spouse, states that it applies to "claims arising on or after March 1, 1986." The referenced date only limits the time period for which a qualified dependent may make a claim, not the underlying entitlement, so that it is not relevant to the dependent's entitlement that the member died before March 1, 1986.
3. Under law providing Survivor Benefit Plan annuity to dependent child of retirement-eligible deceased member under prescribed circumstances, claim must be filed before October 1, 1988, only if death occurred between September 21, 1972, and October 1, 1985. Filing deadline is not relevant where member died after such period.

---

### DECISION

The Air Force requests an advance decision on the propriety of paying Survivor Benefit Plan (SBP) annuities to the children of two retirement-eligible Air Force members who died while on active duty.<sup>1</sup> In each case, the deceased member was the parent of a minor child who lived with the member's former spouse. For the reasons discussed below, annuities should be paid to each of the children.

---

<sup>1</sup>The Department of Defense Military Pay and Allowance Committee has assigned the number DO-AF-1492 to the request.

## BACKGROUND

Congress enacted the SBP in 1972 as an income maintenance program for the surviving dependents of retired service members. Prior to 1985 only the surviving spouse of a retirement-eligible member who died while on active duty was covered by the SBP under 10 U.S.C. § 1448(d). In 1985 the law was amended to extend SBP coverage to dependent children if the member and his spouse died as a result of a common accident. This amendment stated, in relevant part, that:

"(a) (2) The Secretary shall pay an annuity under this subchapter to the dependent child of a member . . . if the member and member's spouse die as a result of a common accident."<sup>2</sup>

"(b) PERSONS COVERED--(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the dependent children of a person who dies on active duty after September 20, 1972."<sup>3</sup>

\* \* \*

"[N]o benefit shall accrue to any person by reason of the enactment of this title for any period before [March 1, 1986]."<sup>4</sup>

The law was further amended in 1986 by repealing the common-accident requirement, thereby expanding coverage for the dependent children of deceased retirement-eligible members. The 1986 amendment provided, in pertinent part, as follows:

"(a) REPEAL OF COMMON-ACCIDENT LIMITATION.--(1) Subsection (d) (2) of section 1448 of title 10, United States Code, is amended by striking out 'if the member and the member's spouse die as a result of a common accident' and inserting in lieu thereof 'if there is no surviving spouse or if the member's surviving spouse subsequently dies.'<sup>5</sup>

---

<sup>2</sup>Public Law 99-145, § 712(a), 99 Stat. 583, 670.

<sup>3</sup>Id., § 713(b), 99 Stat. 671.

<sup>4</sup>id., § 731, 99 Stat. 678.

<sup>5</sup>Public Law 99-661, Div. A., title VI, § 642(a)(i), 100 Stat. 3816, 3886.

"(c) EFFECTIVE DATES.--The amendments made by subsection (a) shall apply only to claims arising on or after March 1, 1986."<sup>6</sup>

The purpose of the 1986 amendment was described as follows:

"The committee believes that in the absence of a spouse beneficiary, all orphan children of deceased retirement eligible active duty personnel should be treated alike. Accordingly, section 632(a)(1) would authorize the payment of survivor benefits to the surviving dependent child(ren) of a retirement eligible active duty member who dies if there is no surviving spouse or if the surviving spouse subsequently dies."<sup>7</sup>

As presently codified, 10 U.S.C. 1448(d)(2) reads as follows:

"The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies."

The Air Force has submitted two specific cases for our consideration in determining the appropriate application of this legislation. For the reasons discussed below, we find that an annuity may be paid in each case.

#### ANALYSIS

##### Claim of LaVonne Sanchez

In the first case, Air Force Master Sergeant Johnny Sanchez and Gladys Sanchez were divorced in 1975. Johnny Sanchez died on active duty on February 3, 1987. Gladys M. Sanchez has applied for an SBP annuity as guardian and conservator for their daughter LaVonne, born 2 years prior to the divorce. Master Sergeant Sanchez was qualified to receive retired pay at the time of his death. The Air Force suggests that Congress may have intended that SBP be available only to a dependent of a deceased service member who has no surviving parent and, therefore, questions LaVonne Sanchez's entitlement to an SBP annuity.

---

<sup>6</sup>Public Law 99-661, supra, § 642(c).

<sup>7</sup>H.R. Rep. No. 99-718, 99th Cong., 2d. Sess., at 210 (July 25, 1986).

The Air Force's concern arises from the mention in the report of the House Committee on Armed Services of "orphan children" in describing the purpose of the 1986 amendment. The Air Force questions whether this reflects a congressional intent that children with surviving parents not be covered by the SBP annuity, which would preclude payment of an annuity to either LaVonne or Jeffrey, each of whom has a surviving parent. We do not believe that it does.

Unless the plain meaning of a statute clearly conflicts with its intent, we will construe a statute consistent with its plain meaning. See, e.g., 61 Comp. Gen. 461 (1982). The statute in question, as noted above, extends coverage of the SBP annuity to "dependent" child(ren), rather than solely orphans. Moreover, the report to which the Air Force refers also used the term "dependent children" and the conference report speaks only in terms of "dependent children."<sup>8</sup> In our judgment, therefore, the statute reaches dependent children, including those with a surviving parent, so long as that parent is not the member's surviving spouse. See, e.g., Amy L. Bay--Eligibility for Survivor Benefit Plan Annuity, B-233379, Feb. 9, 1990.

LaVonne was a dependent of Master Sergeant Sanchez, and her mother, Gladys Sanchez, the former wife of Sergeant Sanchez, does not qualify as a surviving spouse under this section. Consequently, LaVonne may be paid an annuity, if otherwise proper.

#### Claim of Jeffrey M. Cole

In the second case, Ms. Lela R. Cole-Cusumano, the former spouse of Air Force Master Sergeant Samuel L. Cole, claims an SBP annuity as guardian for Jeffrey L. Cole, one of their three surviving children, born on August 22, 1969. Jeffrey's circumstances are similar to LaVonne's in all material respects except that his father died on active duty on January 10, 1986. The Air Force notes that the 1986 amendment included the provision extending the SBP "only to claims arising on or after March 1, 1986."<sup>9</sup> It is suggested that Jeffrey's claim may not be cognizable because his father died before that date.

We do not agree with the Air Force's suggestion. The legislative purpose of both the 1985 and 1986 amendments was to expand SBP coverage for dependent children. The 1985

---

<sup>8</sup>See H.R. Conf. Rep. No. 1001, 99th Cong., 2d. Sess., reprinted in U.S. Cong. Code and Admin. News, 6542-43 (1986).

<sup>9</sup>Supra, note 6.

amendment (providing benefits in the case of a common accident) did not preclude the qualification of a dependent based on the death of a member prior to the effective date of the amendment, but merely limited the accrual of benefits prior to the March 1, 1986, effective date. The amendment specifically applied to the dependent children of a member who died on active duty after September 20, 1972.

The 1986 amendment repealed the common-accident requirement of the 1985 amendment by changing one clause in the 1985 provision. There is absolutely no suggestion of any intention to change the time limits on benefit eligibility under the provision established by the 1985 amendment, and we see no bases for inferring one.

Thus, Jeffrey's entitlement to an SBP annuity arises by virtue of his status as a qualifying dependent. However, because his qualification began prior to March 1, 1986, upon the death of his father, the time period for which Jeffrey may claim an SBP annuity is limited to that period falling on or after March 1, 1986. Consequently, Jeffrey may be paid an SBP annuity only for the period of his claim which falls on or after that date, if otherwise proper.

#### Additional Questions

The Air Force also inquires about the effect of an October 1, 1988, application deadline contained in the 1985 amendment.<sup>10</sup> Section (a) of the 1985 amendment added the coverage for children left parentless by a common accident. Section (b) of the amendment provided for the retroactive application of section (a) to September 1972 and required that persons qualifying for an SBP under section (a) as the result of a death occurring between September 21, 1972, and October 1, 1985, file their claims prior to October 1, 1988. The Air Force asks whether this claim filing deadline also would apply to claims under the 1986 amendment in cases where the qualifying member died during the specified period.

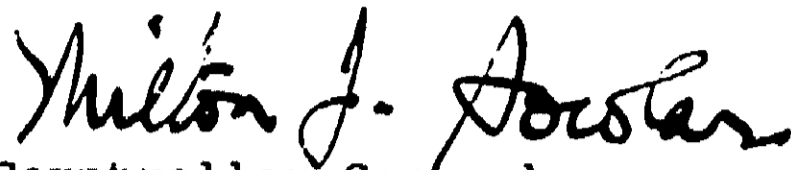
Consistent with our view of the parallel application of the 1985 and 1986 amendments, we find that the filing deadline would apply to dependent children covered by the 1986 amendment where the qualifying member died during such

---

<sup>10</sup>See Public Law 99-145, supra, § 712, 99 Stat. 671.

period. That finding is irrelevant to the facts here, however, since the entitlement of Jeffrey and LaVonne to SBP annuities accrues as the result of the deaths of qualifying members after the specified period.

Accordingly, annuities should be paid to both LaVonne M. Sanchez and Jeffrey L. Cole, consistent with this opinion.



**Acting** Comptroller General  
of the United States