



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Annis K. Thompson - Claim for Retired Serviceman's Family Protection Plan Annuity

File: B-255512

Date: May 4, 1994

DIGEST

Where payment of a Retired Serviceman's Family Protection Plan annuity on behalf of a mentally incapacitated adult is to be made to a court-appointed guardian, the time period for filing a claim for the annuity was satisfied through filing by the adult's custodian pending the guardian's appointment.

DECISION

We have been asked whether the Barring Act bars the claim of Annis K. Thompson, adult daughter of Lieutenant Colonel Rex M. Thompson, USAF (Retired) (Deceased), for a Retired Serviceman's Family Protection Plan (RSFPP) annuity. The claim is not barred and may be paid if otherwise proper.

When Colonel Thompson retired from the Air Force in 1968, he elected child-only coverage under the RSFPP. His daughter, Annis Thompson, was born with Down's Syndrome and has lived at the Mexia State School in Texas since 1964. From the record it appears that Annis Thompson is incapable of self-support and therefore would be entitled to an RSFPP annuity as an incapacitated adult.

Colonel Thompson's widow, who is Annis Thompson's stepmother, submitted an annuity application for herself soon after his death in August 1986, but was informed that Colonel Thompson had elected child-only coverage. The Defense Finance and Accounting Service (DFAS), Denver Center, requested information about Annis Thompson at that time, but received no response.

Pursuant to a request from Rex M. Thompson, Jr., Annis' brother, a case manager at the Mexia State School wrote to DFAS on March 15, 1991, to ask whether Annis Thompson was eligible for any benefits due to her father's military service. The case manager was advised that a legal guardian would have to be appointed in order for Annis to receive the annuity Colonel Thompson had elected. The school submitted an application apparently signed by Annis herself, but DFAS

rejected it because it was not signed by a legally appointed guardian.

Subsequently, Mr. Thompson, after being informed of the guardian requirement, contacted DFAS and was advised that if he was appointed guardian the money due on behalf of Annis would be released to him. In December 1991 Mr. Thompson initiated proceedings to be appointed guardian. In September 1992 DFAS received letters of guardianship issued by a Texas court showing that Mr. Thompson had been appointed Annis' legal guardian on July 21, 1992, and that he qualified as guardian as of September 4, 1992. DFAS then denied Annis Thompson's annuity claim on the grounds that it had not been filed within 6 years of Colonel Thompson's death and therefore was barred under the Barring Act.

The RSFPP, 10 U.S.C. §§ 1431-1446, is an income maintenance program for dependents of deceased military members. Eligible beneficiaries include a member's "dependent child." That term is defined to include a child who is incapable of self-support in adulthood due to a mental defect existing before his or her eighteenth birthday. 10 U.S.C. § 1435(2).

Under the Barring Act, 31 U.S.C. § 3702(b), the Comptroller General has the authority to settle a claim against the government when the claim is received within 6 years of accrual. After 6 years the claim is barred from consideration.¹ However, in B-166927, July 25, 1969, we said that when the custodian of a minor presents a claim on behalf of the minor, the filing requirement may be met even if the custodian has not established entitlement to receive the amount due on behalf of the minor.

We think a similar construction of the law is applicable here. The state school where Annis Thompson resides contacted DFAS on her behalf less than 5 years after her claim accrued, and provided DFAS an annuity application.²

¹Filing with the agency involved in a claim is now the equivalent of filing with the General Accounting Office (GAO). Prior to 1989, regulations required that claims be filed with GAO within 6 years of accrual. In 1989 the regulations were amended to allow filing with the agency involved. As an interim measure we allowed claims filed with an agency before 1989 if they were not already time-barred when the regulations were amended.

²At the time that the Mexia State School contacted DFAS, payment of an annuity on behalf of an annuitant such as Annis Thompson was to be made only to a legally appointed guardian. See 62 Comp. Gen. 302 (1983). Upon the enactment
(continued...)

Additionally, Mr. Thompson, who eventually was appointed Annis' legal guardian, spoke to DFAS officials concerning the matter. It is our view that the claim-filing requirement was satisfied by the timely actions of Annis' custodian and her brother, who in fact was later appointed her legal guardian and thus was authorized to perfect her claim. See B-166927, supra.

Accordingly, the claim for an RSFPP annuity on behalf of Annis Thompson is not time-barred and may be allowed if otherwise proper.

for

Sayman Efron
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²(...continued)

of Pub. L. No. 102-190, § 654, 105 Stat. 1389-1390 (1991), relevant regulations were amended to allow payment to a representative payee determined by the Secretary concerned to be responsible for the care of the annuitant. See Department of Defense Military Retired Pay Manual paragraphs 80503 and 90503c. However, while these regulations were made retroactive to the date the law was enacted, they were not issued until after the events here took place.