



Decision

Matter of: Steven T. Rij - Claim for Retroactive Payment of Retired Serviceman's Family Protection Plan Annuity

File: B-255963

Date: June 14, 1994

DIGEST

Payment of a Retired Serviceman's Family Protection Plan annuity on behalf of an incapacitated adult was suspended because a legal guardian had not been appointed. When a guardian was appointed 10 years later, the annuity was properly reinstated with retroactive payment for 6 years prior to the appointment of the guardian; payment for earlier periods is barred under 31 U.S.C. § 3702(b).

DECISION

We have been asked whether the Barring Act, 31 U.S.C. § 3702(b), bars the claim filed by the guardian of Steven T. Rij, adult son of Master Sergeant Theodore Rij, Jr. (Retired) (Deceased), for payment of a Retired Serviceman's Family Protection Plan (RSFPP) annuity from a suspended account. The suspension was due to noncompliance with certain procedural requirements. When requirements were deemed met on June 8, 1993, 10 years after the initial suspension, payment was made for 6 years, but was determined to be time-barred for the prior 4 years. We conclude that the 6-year filing requirement of the Barring Act was properly applied by the Air Force, and payment for earlier periods is barred.

Master Sergeant Rij elected RSFPP coverage for his children when he retired from the Air Force in 1964. His son Steven, who is mentally retarded, was 11 when Master Sergeant Rij died in 1969. At that time Master Sergeant Rij's widow applied for an annuity as custodian of her children Katharyn, whose eligibility later ended, and Steven, who was eligible for continuing payment in adulthood. Mrs. Rij

¹The 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."
(continued...)

later submitted a doctor's certificate dated August 1, 1974, indicating that Steven was retarded, would not improve, and would probably never be gainfully employed.

On December 15, 1975, the Air Force sent Mrs. Rij a letter asking for more information about Steven's condition. The letter said that if Steven's doctor would provide more information regarding the nature and extent of Steven's condition along with further verification that Steven's prognosis was guarded and his recovery unlikely, and that he was incapable of self-support, the generally required recertification of his condition every 2 years would not be necessary. Mrs. Rij provided this information in January 1976.

Steven turned 18 in February 1976. Payments were temporarily suspended in May 1978 due to lack of a certificate of continuing eligibility. In this respect, before Steven's eighteenth birthday his annuity properly was paid to his mother as his custodian, but when Steven turned 18 it became necessary for the Air Force to ensure that his annuity was paid to a legally appointed guardian, in order that a good acquittance be obtained for the money paid on his behalf. 62 Comp. Gen. 302 (1983).² Mrs. Rij submitted the certificate, along with a doctor's certificate, in January 1979, indicating that she was the legal guardian or custodian of an incapacitated child, and the annuity was reinstated with payment retroactive to the date of suspension.

In February 1982 the Air Force informed Mrs. Rij that payment was being suspended pending receipt of a certificate of continuing eligibility, a doctor's certificate, and guardianship papers indicating that Mrs. Rij in fact had been appointed Steven's legal guardian. Mrs. Rij submitted an eligibility certificate and doctor's certificate dated March 1, 1982, but did not respond regarding guardianship.

¹(...continued)

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).

²After the enactment 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, Steven Rij's annuity had been suspended for more than 8 years when the regulations became effective.

Payment of the annuity was suspended after July 1, 1983. The record indicates that the Air Force contacted Mrs. Rij several times regarding the requirement that payment of an annuity on behalf of a mentally incapacitated adult may only be made to a legally appointed guardian. Finally, the Air Force called and wrote to her on May 12, 1992, and when the Air Force did not receive a response at that time, contacted Steven's sister, Katharyn Parrish, on July 7, 1992. Mrs. Parrish was appointed Steven's legal guardian on June 9, 1993.

The Air Force then reinstated the annuity, including retroactive payment for 6 years prior to the appointment, and informed Mrs. Parrish that payment for the period from July 1983 until June 1987 was barred under 31 U.S.C. § 3702(b). Mrs. Parrish has claimed payment for that period. 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 by GAO or the agency concerned within 6 years of accrual.³ After 6 years the claim is barred from consideration. We have held that even when the claimant is unaware that he or she has a claim against the government, the Barring Act precludes consideration of the portion of the claim arising more than 6 years before it was received in this Office. Betty J. Porter, B-254399, Dec. 22, 1993.

In light of the Barring Act's limitation, the Air Force properly did not go back more than 6 years in paying the annuity retroactively. Accordingly, Steven Rij's claim for additional retroactive payment of an RSFPP annuity may be paid only for the 6-year period prior to the receipt of the claim. While it is unfortunate that a guardian was not appointed before the filing date as determined above, we have no authority to disregard the Barring Act or overlook the time limitation it imposes. See Betty J. Porter, supra.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

³Prior to June 15, 1989, only filing with the GAO satisfied the Barring Act.