



Decision

Matter of: Gary E. Presley

File: B-243410.3

Date: February 3, 1995

DIGEST

A valid marriage by a "dependent child" of a deceased service member terminates the Survivor Benefit Plan (SBP) annuity which the child was receiving notwithstanding the child became incapacitated prior to his eighteenth birthday because the SBP requires that a "dependent child" be unmarried. Nothing in the Americans with Disabilities Act has altered the above result.

DECISION

Gary E. Presley has appealed the loss of the Survivor Benefit Plan (SBP) annuity he was receiving as the dependent child annuitant of his father (U.S. Army, deceased) following his marriage.

Mr. Presley became disabled when he was 17 years of age and began receiving an annuity when his father died in 1988. He was married on February 29, 1992, at which time his eligibility as a dependent child ceased. Mr. Presley argues that his marriage should not terminate his eligibility since the SBP discriminates against individuals who are entitled to benefits as a result of mental or physical incapacity by denying them the right to make personal choices about marriage, especially in view of the passage of the American with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et. seq.*

The SBP, 10 U.S.C. § 1447 *et. seq.*, authorizes the payment of an annuity for the "dependent children" of participating service members when they die. Eligible "dependent children" are defined as including individuals more than 18 years old but "incapable of supporting [themselves] because of a mental or physical incapacity existing before [their] eighteenth birthday. . . ." 10 U.S.C. § 1447(5)(B)(iii). Under section 1447(5)(A) of the statute, only "unmarried" individuals may be considered "dependent children."

In 65 Comp. Gen. 767 (1986), we held that, based on the above statutory provisions, if an incapacitated "dependent child" entered into a valid marriage there would no longer be a right to an SBP annuity. We continue to find that this is a proper reading of the Plan's intent since there has been no change in the Plan's provisions.

The ADA declares a general policy of encouraging the elimination of discrimination against the disabled. However, nothing in the provisions of the act repeals or effects the SBP concerning the above limitation on the receipt on an annuity by a married "dependent child." In the 4 years since the passage of the ADA, no amendments have been made to the BP altering the above definition.

Accordingly, we find that the termination of Mr. Presley's SBP annuity following his marriage was proper.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel