



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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1067

FILE: B-184533

DATE: MAR 26 1976

MATTER OF: Mrs.

DIGEST: Overpayment resulting from erroneous annuity payment made under section 4 of Public Law 92-425 which provides for a minimum income guarantee for certain widows of former retired members of the uniformed services may not be considered for waiver pursuant to 10 U.S.C. 1453 since that section by its terms is applicable only to subchapter II of chapter 73 of title 10, United States Code, and section 3 of Public Law 92-425. See B-181954, May 21, 1975.

This action is in response to a letter with enclosures, from the Commanding Officer, United States Army Finance Support Agency (now United States Army Finance and Accounting Center) file reference FINCM-T (Retired) (Deceased), recommending waiver of recovery of \$1,516.71, representing annuity payments erroneously paid under section 4 of the act of September 21, 1972, Public Law 92-425, 86 Stat. 706, 712, to Mrs. widow of the late , who dies September 26, 1964.

10 VSC
1448 NITE
(Suppl II)
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According to the submission, Mrs. applied for a minimum income annuity under the provisions of section 4 of Public Law 92-425, supra. Under this provision, the annuity to which a surviving spouse is entitled is an amount equal to the difference between her annual income as determined by the Veterans Administration (VA) and \$1,400.

In this respect, information submitted by the VA to the Army indicates that Mrs. was entitled to receive a section 4 annuity at the annual rate of \$244, or \$20.33 monthly for the period September 21, 1972, through December 31, 1972, and annuity payments were properly paid for such period.

The submission further indicates that Mrs. expected income for VA purposes for the calendar year 1973 would be \$1,412, and therefore she was not entitled to annuity payments during that year. No payments were made for the period January through March 1973. However, due to a clerical error, an annuity was paid for the period April 1, 1973, through April 30, 1974, at the maximum

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rate allowable under the minimum income provisions, or \$116.67 monthly. The total overpayment resulting from the error was \$1,516.71.

From the record it appears that the Finance and Accounting Center advised Mrs. that an examination of her annuity account showed that she had been overpaid in the sum of \$1,516.71 and explained to her the nature and cause of the overpayment. She was also informed that if she was unable to remit the full amount within 30 days, the debt could be liquidated by monthly payments of not less than \$20.

The Legal Assistance Office, Fort Lewis, Washington, by letter dated June 5, 1974, indicated that Mrs. was 72 years old, in failing health, and financially unable to pay the indebtedness. The Finance and Accounting Center, by letter dated July 12, 1974, informed Mrs. that upon submission of a complete financial statement, including average monthly income, her case would be considered for submission to this Office for waiver of the indebtedness.

On the basis of the information obtained and under the circumstances of the overpayment to Mrs., the Commanding Officer of the Army Finance and Accounting Center recommends that recovery of the amount in question be waived, citing 10 U.S.C. 1453 as authorizing waiver in her case.

In decision B-181954, May 21, 1975, which also involved overpayments of section 4 benefits, we carefully examined the legislative history of Public Law 92-425, supra, to determine whether the provisions of 10 U.S.C. 1453 were applicable to section 4 of the act. Following a detailed analysis of the matter, it was held that the waiver provisions of 10 U.S.C. 1453 were not for application to debts arising under section 4 of Public Law 92-425.

In view of the similarities between the two cases, we must conclude that waiver under authority of 10 U.S.C. 1453 may not be granted in Mrs. case.

With regard to the above, the following statement was made in our May 21, 1975 decision, supra:

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"* * * it appears that any action in this case should be taken under the provisions of the Federal Claims Collection Act of 1966, 31 U.S.C. 951-953 (1970). In this regard, we note 4 CFR 104.3, promulgated pursuant to the above-cited authority, provides that the head of an agency or his designee may terminate collection activity when a determination of the debtor's inability to pay is made based on the criteria set forth therein. Under the circumstances, we would not object to such action in this case."

We believe that such action would be equally appropriate in
Mrs. case.

R.F.KELLER

Deputy

Comptroller General
of the United States