DECISION

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

FILE: B-207626 DATE: April 13, 1983

MATTER OF: Survivor Benefit Plan - Incapacitated Annuitants

DIGEST:

1. Under the Survivor Benefit Plan, 10 U.S.C. 1447 et seq., eligible beneficiaries include a deceased service member's "dependent child," a term defined by statute as including one who is incapable of supporting himself because of mental or physical incapacity incurred before his twenty-second birthday while pursuing a full-time course of study. Given this definition, a military officer's daughter who suffered a mental breakdown at the age of 19 during the summer vacation following the successful completion of her first year of college, and who was thus rendered incapable of self-support, may properly be considered a "dependent child" eligible for an annuity under the Plan.

2. A deceased military officer's daughter, considered eligible for a Survivor Benefit Plan annuity on the basis of mental illness making her incapable of self-support, then recovered from her illness to the extent that she was able to support herself for 6 months through gainful employment. She subsequently suffered a relapse requiring rehospitalization. The annuity may properly be suspended during the 6-month period of employment. It may be reinstated during the following period when she was again incapable of self-support because of the original disabling condition, since the applicable laws governing military survivor annuity plans do not preclude reinstatement in

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appropriate circumstances. 44 Comp. Gen. 551 (1965) modified.

3. It is necessary that a good acquittance be obtained when payments are made to persons under Federal law. When amounts due a minor are involved, a good acquittance results through payment to the minor's natural guardian without formal court appointment, provided that the laws of the State of domicile authorize that procedure as a means of obtaining acquittance. However, payments may not be made to one claiming to act as natural guardian and custodian of a payee, when the payee is in fact an adult suffering from mental illness.

4. Under the rules of agency, a known mental incapacity of the principal may operate to vitiate the agent's authority even in the absence of a formal adjudication of incompetency. Hence, Survivor Benefit Plan annuity payments may not be made to an agent designated in a power of attorney which was signed by an annuitant known to be suffering from mental illness but not adjudged incompetent, since in the circumstances the validity of the power of attorney is too doubtful to serve as a proper basis for a payment from appropriated funds.

5. Survivor Benefit Plan annuity payments in the case of an adult beneficiary known to be suffering from mental illness, but not adjudged incompetent, may be made directly to the beneficiary if by psychiatric opinion the beneficiary is considered sufficiently competent to manage the amounts due and to use the annuity properly for personal maintenance. Otherwise, the

amounts due should remain unpaid and credited on account until a guardian authorized to receive payment is appointed by a court.

Background

This action is in response to a request for an advance decision from an accounting and finance officer of the United States Air Force concerning the propriety of approving a voucher in the amount of $13,676.56 in favor of Laura J. (last name omitted). The voucher covers Survivor Benefit Plan annuity payments due her for the period from January 1, 1978, through December 31, 1981, if it may properly be concluded that during that time she was a "dependent child" incapable of self-support because of mental illness. The request was assigned submission number DO-AF-1397 by the Department of Defense Military Pay and Allowance Committee.

We conclude that the annuity payments in question may properly be approved, subject to certain conditions and limitations.

Laura J. was born in August 1956, and she entered college as a full-time student in the fall of 1974 when she was 18 years old. In August 1975, during the summer vacation following the completion of her freshman year at college, she suffered a mental breakdown and was hospitalized for 3 months. She returned to college as a part-time student in January 1976 while continuing to receive outpatient psychiatric care. However, recurring debilitating episodes of mental illness requiring rehospitalization repeatedly interrupted her attendance at school, and eventually in January 1980 she discontinued her studies completely without having finished the sophomore year of college. In July 1980 she secured full-time employment in a retail store but was discharged after 3 weeks because of erratic behavior. Shortly thereafter her condition worsened to the extent that hospitalization was again required. In July 1981, following her recovery, she obtained full-time employment as an office clerk on a 6-month probationary basis. Her employment was terminated at the end of that 6-month period because the behavioral symptoms of her illness had begun to reoccur. Her condition continued

to deteriorate until hospitalization was again required in February 1982. The attending psychiatrists have diagnosed her condition as "severe affective illness" manifested by anxiety and depression, and by periods of complete inability to function except to satisfy "her basic needs for rest and eating." At times the psychiatrists have been "guardedly positive" about her prognosis and have expressed the opinion that she had recovered to the point of being capable of self-support. At other times they have been less optimistic, and have expressed the opinion that she was not only incapable of self-support but also unable "to function even at marginal levels during periods as an out-patient."

Laura's father was a retired military officer. In December 1972 he elected to participate in the Survivor Benefit Plan with spouse and dependent child coverage. He died shortly thereafter, and the Air Force commenced payment of an annuity under the Plan to his widow, i.e., to Laura's mother. The mother's entitlement to the annuity ended in January 1978 when she remarried. Uncertainty then arose concerning Laura's eligibility to succeed to the annuity under 10 U.S.C. 1450 as the officer's "dependent child" on the basis of her mental illness. Three specific questions about the matter are presented in the submission.

Eligibility to Receive Annuity

The first question is:

> "a. Is Laura eligible to receive a Survivor Benefit Plan annuity, based on the illness that occurred during the summer break of 1975 after she completed the spring 1975 semester, even though she was not attending school at the time the illness occurred?"

The Survivor Benefit Plan, 10 U.S.C. 1447 et seq., is an income maintenance program for the dependents of deceased service members. Eligible beneficiaries include a member's "dependent child." That term is defined by 10 U.S.C. 1447(5)(B), insofar as is here pertinent, as a person who is:

"* * * incapable of supporting himself because of a mental or physical incapacity existing before his eighteenth birthday or incurred on or after that birthday, but before his twenty-second birthday, while pursuing * * * a full-time course of study or training; * * *

* * * * *

"* * * A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if he shows to the satisfaction of the Secretary of Defense that he has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim. * * *"

Implementing regulations issued by the Secretary of Defense are contained in paragraph 102.i. of Department of Defense Directive 1332.27 (Encl 1), which states:

"* * * Students will continue to be considered as such during the interims between school years but not for periods longer than 150 days. Students must provide bona fide evidence of intent to continue study or training in the same or a different school during the school semester or other period into which the school year is divided. * * *"

In the present case, evidence has been furnished in the form of school records and medical statements verifying that Laura was a successful full-time college student during the 1974-75 school year, and that she was thereafter prevented from returning to college within 150 days as a full-time student for the fall 1975 semester by the onset of mental illness during the interim summer vacation. Further, evidence has been furnished verifying that she subsequently attempted to continue her studies while she was a psychiatric outpatient. In our view this evidence tends to

preclude any conjecture that she might have intended to discontinue college attendance at the end of her freshman year. Hence, under the applicable laws and regulations, we would have no objection to a determination that Laura is eligible to receive a Survivor Benefit Plan annuity as a "dependent child" incapable of supporting herself because of mental incapacity incurred before her twenty-second birthday while she was pursuing a full-time course of study. Question "a" is therefore answered affirmatively.

Termination of Annuity During Periods of Self-Support

The second question is:

> "b. It appears Laura's illness improves and then relapses. If question a is answered affirmatively, is the Survivor Benefit Plan annuity payable for periods in which she is self-supporting? Does the eligibility terminate when she becomes self-supporting regardless of future relapses?"

In Matter of Elrod, B-207764, February 8, 1983, we held that payments made under military survivor annuity plans on the basis of a beneficiary's mental or physical incapacity may properly be suspended if evidence exists demonstrating that the beneficiary has become independently capable of earning amounts sufficient for his own personal needs through substantial and sustainable gainful employment. We said that in any given case the determination of whether the beneficiary had become capable of self-support would have to depend upon a full consideration of the individual facts of that particular case.

In the Elrod decision, we also noted that while provisions of law governing the administration of military survivor annuity plans did not specifically authorize the reinstatement of a suspended annuity, neither did those provisions expressly preclude a disabled beneficiary from seeking reinstatement of his annuity following a period of suspension. We said that in light of the beneficial purposes for which the plans were established and the current national policy of encouraging employment of the handicapped, it may be that reinstatement should be allowed in an appropriate case. We therefore indicated that if an

appropriate case were presented, we would consider the circumstances with a view towards modifying our earlier decision in 44 Comp. Gen. 551 (1965), in which it was held that if a survivor annuity paid to a handicapped beneficiary under the Retired Serviceman's Family Protection Plan (10 U.S.C. 1431-1446) was suspended it could not be reinstated in the absence of specific statutory authority.

In the present case, our view is that because of mental illness Laura was incapable of self-support through substantial and sustainable gainful employment during the period from January 1978 to July 1981. In particular, we note that the records of the case reflect that while a psychiatrist in March 1980 expressed the opinion that she was then capable of self-support, when she was able to obtain gainful employment in July 1980 she was actually unable to sustain that employment beyond a brief 3-week period because of mental instability. Hence, we would have no objection to the issuance of annuity payments for Laura's benefit covering the period from January 1978 to July 1981. See 44 Comp. Gen. 551, cited above, answers to questions other than that regarding reinstatement of an annuity after suspension.

However, during the prolonged 6-month period beginning in July 1981, Laura had recovered to the extent that she was apparently able to lead a normal life and to earn amounts sufficient for her personal needs through sustained employment. Our view is that she was then no longer incapable of self-support because of mental illness, and that payment of an annuity covering the period of her 6 months of gainful employment could properly be suspended unless evidence is furnished showing that her earnings were insufficient to take care of her ordinary living expenses. Compare Matter of Elrod, cited above.

It is also our view that in this case the circumstances of Laura's subsequent loss of employment and self-sufficiency, due to the original disabling condition, warrant reinstatement of the annuity effective on the date she became unemployed. Our decision in 44 Comp. Gen. 551, cited above, involved the Retired Serviceman's Family Protection Plan and not the more recently enacted Survivor Benefit Plan. However, to the extent that the conclusion stated with regard to reinstatement of survivor benefits might be

considered applicable to the Survivor Benefit Plan that decision will not be followed. Further, to the extent that Retired Serviceman's Family Protection Plan benefits may be involved in other cases that decision will no longer be followed.

Our view is that the reinstated annuity may properly be continued until a determination is made that Laura has again recovered to the point of being capable of self-support, under the procedures and policies described in Matter of Elrod, cited above. In this particular case we find that a psychiatric opinion concerning her recovery, by itself, would not be a proper basis to support such a determination of self-sufficiency. Suspension of the annuity would be warranted if on the basis of sufficient competent information it may be concluded that she has recovered and is able to obtain gainful employment that is sustainable at wages sufficient to cover ordinary living expenses.

Guardianship Requirements

The third question presented in the submission is:

> "c. If the Survivor Benefit Plan annuity is payable, should a guardian be appointed or may we accept a Custodianship Certificate signed by [Laura's mother]? Or may the annuity be paid directly to Laura?"

It is indicated that this question has arisen because the issue of Laura's legal competency has never been adjudicated by a court of the State of her domicile. Hence, a court has never had the occasion to consider whether a guardian should be appointed to manage her affairs. The reason for this is that Laura herself has apparently on occasion voiced objection to being made the respondent in proposed competency proceedings. Also, Laura's mother consulted private legal counsel about competency proceedings and was apparently advised that it would be difficult if not impossible for her to obtain legal guardianship under the laws of the State of domicile unless the proceedings were initiated at a time when Laura was physically confined in a hospital for treatment of mental illness.

In lieu of a court guardianship order, Laura's mother has filed a Custodianship Certificate, AFAFC Form 0-428, with the Air Force Accounting and Finance Center indicating that Laura is of age but that she was in the process of applying for guardianship, but claiming payment as custodian of any monies due Laura. It also appears that at an earlier time Laura signed a power of attorney form authorizing her mother to receive and negotiate checks payable to her order, but Finance Center officials declined to accept that power of attorney.

It is necessary that a good acquittance be obtained by the Government when payments are made to persons under Federal law. We have held that when amounts due to a minor are involved, a good acquittance results through payment to the minor's natural guardian without formal court appointment, provided that the applicable laws of the State of domicile regarding payments to minors authorize that procedure as a means of obtaining acquittance and the matter is otherwise free from doubt. See 47 Comp. Gen. 209 (1967). However, in this case Laura's mother cannot properly be considered as natural guardian and custodian of a minor, since Laura has attained the age of majority. Hence, our view is that annuity payments due to Laura may not properly be made to her mother on the basis of the Custodianship Certificate.

Concerning the power of attorney form that was signed by Laura and submitted to the Finance Center by her mother, generally a competent adult may appoint another to act on his behalf as his agent and attorney in fact through the execution of letters or powers of attorney, but third parties have an obligation to ascertain the extent of the agent's authority, and to be aware that a known mental incapacity of the principal may operate to vitiate the agent's authority even in the absence of a formal adjudication of incompetency. 2A C.J.S. Agency sec. 141.a., 150 et seq. In the circumstances presented here it is our view that Laura's known mental incapacity made her power of attorney of too doubtful validity to serve as a proper basis for payments from appropriated funds to an agent designated by her, and that the Finance Center officials therefore acted correctly in declining to accept her power of attorney.

Consequently, it is our view that the concerned accounting and finance officials should now make inquiry to ascertain the state of Laura's present mental capacity. It may be that she is sufficiently competent at the present time to manage responsibly amounts due her and to use the annuity properly for her own maintenance. In that case a good acquittance will be obtained by issuing payment directly to Laura as a competent adult. On the other hand, if Laura is now hospitalized because of mental illness, or if she is not considered by psychiatric opinion to be capable of managing her personal finances, then the amounts due should remain credited to her account, until either she recovers sufficient competency to personally receive payment, or a guardian authorized to receive payment under applicable State law is appointed by a court.

The three questions presented are answered accordingly. The voucher enclosed with the submission may not be approved for payment as is, but is being returned for further processing consistent with the views expressed in this decision.

for Milton J. Socolar
Comptroller General
of the United States