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MEMBER



*Special needs require special lawyers.*

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## BENEFITS FOR SPECIAL NEEDS CHILDREN OF CIVIL SERVICE EMPLOYEES BY SANDRA SMITH, CELA

When a civil service employee or retiree dies, survivor benefits are available for the employee's unmarried children who are dependent on the employee/retiree. Unlike Social Security that may pay a benefit to dependent children when the parent retires or becomes disabled, the civil service benefit for children is available only when the federal employee/retiree dies. The survivor benefits are automatically provided by law, and an employee does not have to elect these benefits at retirement. The civil service cash benefit is usually referred to as an "annuity," and the recipient of the annuity is often called the "annuitant."

There is no reduction in the retiree's annuity to provide this benefit for children. The survivor's benefit can continue until the child reaches age 18, marries, or dies. The benefits can continue for children between age 18 and 22 if the child is attending a recognized school. Benefits can also continue for a child over age 18 who is incapable of self-support because of a mental or physical disability that began before age 18. For a child over age 18 who is incapable of self-support, the benefit continues until the child marries, dies, or becomes capable of self-support. The child may receive the benefit even if the federal employee's spouse is also receiving a survivor benefit.

### The Amount of the Child's Benefit

For CSRS employees and retirees, the amount of the child's benefit is a specific dollar amount derived by a formula established under federal law and is revised by cost-of-living adjustments. For example, from December 1, 2011, through November 30, 2012, if the child has a living parent who was married to the eligible employee or retiree, then the benefit payable to the child is the lesser of \$486 per month per child or \$1,460 per month divided by the number of eligible children. If the child does not have a living parent

who was married to the eligible employee or retiree, then the benefit payable to the child is the lesser of \$584 per month per child or \$1,752 per month divided by the number of eligible children.

In contrast, the Social Security CDB benefit is 50% of a retired or disabled parent's benefit amount and 75% of a deceased parent's benefit amount. In many cases the child's CDB could be much higher than the maximum civil service child's benefit of \$584 per month.

The benefit available for children under FERS is quite different from the benefit under CSRS. The combined benefit of all of the children is reduced by the Social Security CDB benefits payable (or would be payable upon application) for the same month to all children based on the total earnings of the parent. In many cases this means the FERS children's benefit is reduced to zero.

Children with disabilities are usually eligible for Supplemental Security Income (SSI) at age 18 if they meet the income and asset requirements for the program. SSI provides a cash benefit for food and shelter. (The maximum federal benefit is \$698 in 2012.) Because the maximum civil service benefit could be less than the SSI benefit amount, many children with disabilities who receive the civil service annuity also apply for SSI to bring their combined benefit up to the SSI maximum amount. The SSI payment is reduced dollar-for-dollar by the civil service annuity other than \$20 of unearned income that is not counted. Therefore, if the child receives a civil service annuity and SSI, then the maximum monthly income will be \$718 (annuity + SSI up to \$698 + \$20) plus any applicable state supplement to the SSI benefit.

If a child is receiving benefits as a minor, the OPM should be sent a letter approximately 90 days prior to the child's reaching age 18, asking that benefits continue because of the incapacity for self-support. The letter should provide a physician's statement that includes the child's name, the survivor claim number, a full report of the disability, including the date it started, details regarding the disability and probable length of the disability. The statement should also include a brief educational and employment history, if any, and include the name, address, telephone number and physician's signature.

The child is the beneficiary of the survivor annuity. Therefore, as with military Survivor Benefit Plan (SBP) or CDB payments, the annuity cannot be paid directly into a special needs trust in order to avoid receipt of the monthly income by the child and the resulting offset of SSI benefits. Congress would have to amend the U.S. Code for the survivor benefit to be paid directly into a trust without the payment being considered as received by the child.

### **Medical Benefits**

Children with disabilities who are receiving SSI automatically qualify to receive Medicaid, including Medicaid waiver services. Medicaid can provide for supervision, job training and assistance in addition to health benefits. Children who are receiving CDB benefits from Social Security will also qualify for Medicare after two years from when they started receiving CDB benefits. Children of federal employees may also be eligible for coverage under the Federal Employees Health Benefits program (FEHB). FEHB

is not a federal medical plan like Medicare and Medicaid. FEHB instead offers federal employees and their dependents health insurance through private health insurance plans contracted through OPM. Plans vary depending upon where the employee or dependent lives; the employee can elect a choice of coverage benefits that are priced accordingly.

Prior to the passage of the Affordable Care Act, FEHB benefits were available for children under age 22 (age 18 to 22 if a full-time student), and for children over age 22 who were incapable of self-support because of a physical or mental disability that existed before the child reached age 22. As a result of the Affordable Care Act, benefits are now available for all children under age 26 and for children over age 26 who are incapable of self-support because of a physical or mental disability that existed before the child reached age 26. The child is considered incapable of self-support only if the child's physical or mental disability is expected to continue for at least one year and, because of the disability, the child is not capable of working at a self-supporting job. If a child contracts an incapacitating disease prior to age 26 but is capable of self-support until age 26 or later, then the child does not qualify for continued FEHB program coverage under the disability provisions.

The federal employee's employing office is responsible for determining if the child is eligible for continued coverage under the FEHB program. The child is determined to be incapable of self-support in several circumstances, including if the child is receiving CDB benefits from Social Security and/or is receiving a benefit from CSRS/FERS as a child with disabilities. The child may also have a medical certificate that describes a disability that the child had prior to reaching age 26 that appears on the list of certain medical conditions, including conditions such as advanced muscular dystrophy, severe autism, intellectual disabilities with IQ below 70, chronic neurological disease, chronic renal or hepatic failure, and cancer that has metastasized or is untreatable. The child's physician must submit a detailed medical certificate to the employing office making the disability determination. If the employing office approves the medical certificate for only a limited time, then the certificate must be renewed for coverage to continue. The employee must have elected "Self and Family" coverage during the employee's lifetime for a spouse and/or child to be eligible for continued FEHB program coverage after the employee's death.

The benefits available to special needs children of federal employees are complex, especially for employees who are also paying into the Social Security system. It is necessary to consider what cash benefits will be available to the child, how the SSI program can help, whether CDB benefits will be available to the child and how Medicaid, Medicare, and the Federal Employees Health Benefits program will interact to help with the child's medical expenses. Federal employees who have children with disabilities should work with a qualified attorney to ensure that they are fully educated on all benefits for which their children are eligible. It is critical that parents do their homework and make the appropriate decisions. Additional information on civil service benefits can be found at OPM's web site and more information on available health benefits for civil service workers and their dependents can be found at the FEHB web site.

The attorneys at Oast & Hook assist families with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

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### Ask Allie

O&H: Allie, we've heard that some veterans from Iraq and Afghanistan can benefit from interacting with horses. Please tell us about it.

Allie: Sure! The Rainier Therapeutic Riding program in Yelm, Washington, is one of many programs in which servicemembers suffering from PTSD are matched with horses that they learn to groom and eventually ride. Soldiers are referred to the program by the Warrior Transition Battalion at Joing Base Lewis-McChord outside Tachoma, Washington. Each rider starts slowly by first learning to groom the horse, leading it, then riding it. Debbi Fisher, head of the Rainier program, says that horses are ideal partners for traumatized service members because "they're kindred spirits," with similar fight-or-flight responses to perceived threats. Several of the servicemembers not only participate in the equine-assisted therapy, but also volunteer at the stables at other times. The program has been a good way for servicemembers to get their lives back. What a great program! Time to go and see if the neighborhood deer have come for their visit. See you next week!

### Distribution of This Newsletter

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