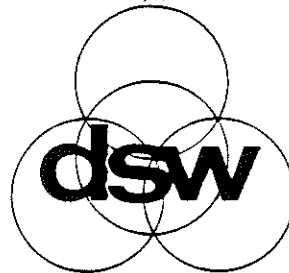


Widows Benefit



Policy Manual

Reprinted June 1990

WIDOWS BENEFIT MANUAL

LIST OF CONTENTS

<u>PARTS</u>		<u>PAGES</u>
PART A	QUALIFICATION FOR BENEFIT	1
PART B	COMMENCEMENT OF BENEFIT	7 - 8
PART C	APPLICATION BY WIDOW ON DEATH OF A WAR PENSIONER	9
PART D	TREATMENT OF EARNINGS	11
PART E	REVIEWS	11A- 14
PART F	ESTATES	15 - 16

Reprinted June 1990
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PART A QUALIFICATIONS FOR BENEFIT

LEGISLATION	A.1
WIDOWHOOD QUALIFICATION	A.2
PERIOD OF MARRIAGE	A.3
DEFINITION OF A WIDOW	A.4
DEFINITION OF A CHILD	A.8
WHETHER THE APPLICANT IS MOTHER OF A CHILD	A.10
RESIDENTIAL QUALIFICATIONS	A.13
WIDOWERS	A.21

PART B COMMENCEMENT OF BENEFIT

LEGISLATION	B.1
DETERMINING COMMENCEMENT DATE	B.2
CRITERIA FOR WAIVING THE STAND DOWN	B.6
CASH ASSETS TEST	B.7
USE OF SPECIAL NEEDS GRANT	B.10
WIDOW IN EMPLOYMENT AT DATE OF HUSBAND'S DEATH	B.11
WIFE INCLUDED IN HUSBAND'S BENEFIT AT DATE OF DEATH	B.12
RETROSPECTION	B.13
ASSISTANCE PRIOR TO GRANT	B.14
VERIFICATION OF HUSBANDS ESTATE	B.16

PART C APPLICATION BY WIDOW ON DEATH OF A WAR PENSIONER

INTRODUCTION	C.1
SURVIVING SPOUSES PENSION	C.2
DEATH OF A VETERANS PENSIONER	C.3
ACTION TO BE TAKEN	C.4

PART D TREATMENT OF EARNINGS

EARNINGS ARE INCOME	D.1
ANNUAL INCOME	D.2
TREATMENT OF EARNINGS AT GRANT AND RENEWAL OF BENEFIT	D.3
CHILD CARE COSTS - SPECIAL EXEMPTION	D.4

PART E REVIEWS

REVIEW OF BENEFIT	E.1
PAYMENT FOR ABSENCE FROM NEW ZEALAND	E.2
ADMISSION OF A WIDOW TO HOSPITAL	E.3
IMPRISONMENT OF A BENEFICIARY	E.4
DEATH OF A BENEFICIARY	E.5
BENEFICIARY ATTAINS 60 YEARS	E.8
REMARRIAGE OF BENEFICIARY	E.9
RELATIONSHIP IN THE NATURE OF A MARRIAGE (SECTION 63(b))	E.10
WIDOW REQUESTS CANCELLATION OF BENEFIT	E.11
LAST CHILD LEAVES THE CARE OF THE BENEFICIARY	E.12
YOUNGEST CHILD REACHING 16 YEARS OF AGE	E.14
CHILD DIES	E.17

PART F ESTATES

ESTATES
DISTRIBUTION OF INTESTATE ESTATES
UNDERTAKING OF REFUND TO BE OBTAINED

F.1
F.4
F.5

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cm 1990/153

WIDOWS BENEFIT

PART A - QUALIFICATIONS FOR BENEFIT

Legislation

A.1 The qualifications for widows benefit are set out in section 21 of the Social Security Act 1964.

S.21 Widows benefits - (1) subject to the provisions of this part of this Act, -

(a) Every widow who is the mother of one or more dependent children, and

(b) Every widow (not being a widow to whom paragraph (a) of this subsection applies) who satisfies the following conditions, namely :

(i) that she has had one or more children; and

(ii) that the duration of her marriage (or, if she was married more than once, the aggregate of the periods of the duration of her marriages) was not less than 15 years, or, in the alternative, that the aggregate of the periods of the duration of her marriage or marriages and any subsequent period during which she had the care and control of at least one of her children under 16 years of age was not less than 15 years; and

(c) Every widow who, on the expiration of not less than 5 years after the date of her marriage, become a widow after she had attained the age of 50 years; and

(d) Every widow (not being a widow to whom paragraph (c) of this subsection applies) who satisfies all of the following conditions, namely :

(i) that she is not less than 50 years of age;

(ii) that she became a widow after she had attained the age of 40 years;

(iii) That the duration of her marriage (or, if she was married more than once, the aggregate of the periods of the duration of her marriages) was not less than 10 years; and

(iv) That not less than 15 years have elapsed since the date of her marriage or, if she was married more than once, the date of her first marriage, -

Shall be entitled to receive a widows benefit under this part of this Act.

(2) Except in any case to which paragraph (a) of subsection (1) of this section applies, no woman shall be entitled to receive a benefit under this section, unless

(a) Both she and her husband were ordinarily resident in New Zealand for not less than 3 years immediately preceding the date of the husband's death; or

- (b) Either she or her husband, being ordinarily resident in New Zealand at the date of the husband's death, has resided continuously in New Zealand for not less than 5 years.

Interpretation

Widowhood Qualification

A.2 To help in determining whether a widow qualifies for a benefit, they can be divided into three groups. Any woman who comes within one of the following classes is entitled to apply for widows benefit :

- (a) Class A Widow with a dependent child or children
 - (i) A widow who is the mother of one or more dependent children (section 21(1)(a))
 - (ii) where such a widow ceases to have a dependent child her benefit terminates unless, in accordance with section 27(2) she will be entitled, if not less than fifteen years have elapsed from the date of her marriage, to a benefit at a lower rate as for a widow without dependent children. (See class B following)
- (b) Class B Widow who has had one or more children but has none dependent

A widow who has had children but has no child dependent on her at the time of application, provided that the duration of her marriage was not less than 15 years, or if less than 15 years, the total period of marriage and the subsequent period she had the care and control of at least one of her dependent children was not less than 15 years (section 21 (1)(b))

For example, a widow who married in 1961 lost her husband in 1968, the duration of her marriage being thus 7 years. At the time of her husband's death she had a child 6 years of age and this child remained in her care and control until it was 15 years of age. She would therefore have had 7 years duration of marriage and 9 years care and control of a dependent child, a total of 16 years, which would qualify her for a widows benefit.

- (c) Class C Widows who have never had a child, or widows who have had a child but do not qualify as Class B widows.
 - (i) A widow who, not less than 5 years after the date of her marriage became a widow after she reached the age of 50 years (section 21 (1)(c))

- (ii) A widow who is not less than 50 years of age and became a widow after she reached 40 years. In addition she must have been married for a period of at least ten years, and at least fifteen years must have expired since the date of marriage (section 21(1)(d))

Period of marriage

A.3 If the applicant has been married more than once the aggregate of the periods of marriage (whether the earlier marriage (s) is/are terminated by death or dissolution of marriage) will be taken into account when determining the period of marriage for the purposes of the Act.

Definition of a widow

A.4 Subsection 21 (2A) of the Social Security Act states as follows.

For the purposes of this section:

'Husband' includes a man with whom a woman has or had entered into a marriage within the meaning of this subsection.

'Marriage' includes a relationship in the nature of marriage notwithstanding that the two parties to the relationship are or were not legally married to each other.

'Widow' includes a woman whose husband within the meaning of this subsection, has died."

A.5 A widow is therefore defined as a woman who has survived a man to whom she was married (including a defacto marriage) and who was his wife at the time of his death and who has not since remarried nor is living in relationship in the nature of marriage with another man.

A.6 A defacto marriage exists only while the relationship in the nature of a marriage continues. When the relationship ceases it is no longer a "marriage". A woman can only become a widow for the purposes of benefit eligibility if her defacto partner dies while the relationship is continuing.

A de jure marriage is different in that it continues to exist after the parties have separated and ceases when a final order dissolving the marriage is granted. A woman can become a widow after separation provided her spouse dies before a dissolution of marriage occurs.

In the context of Section 21, a relationship in the nature of marriage entered into by a widow extinguishes any subsequent eligibility for widows benefit unless the partner in that (second) relationship dies. Similarly, if a couple separate and the wife forms a new relationship which then ceases, the death of the first husband does not make the wife a widow.

A.7 Generally, the widow's claim of the defacto relationship and the length of such a relationship is to be accepted unless the Director considers it is necessary to obtain confirmation of the relationship from relatives or referees. Confirmation could be provided by entry of the deceased's name on the child or children's birth records, or in writing by a referee or relative nominated by the applicant.

Definition of Child

A.8 In order to qualify for a widows benefit in terms of section 21(1)(a) the widow must be the mother of a dependent child.

A.9 For the purposes of granting widows benefit the term 'child' does not include any child born out of New Zealand, (section 21(3)(b)), unless at least one of the following conditions is satisfied.

- (i) The mother gave birth to the child while only temporarily absent from New Zealand; or
- (ii) Both of the child's parents were ordinarily resident in New Zealand for the three years immediately preceding the date of the husband's death; or
- (iii) one of the child's parents being ordinarily resident in New Zealand at the date of the husband's death, has resided continuously in New Zealand for not less than five years; or
- (iv) the mother, being ordinarily resident in New Zealand on the date of her application for a widows benefit under this section, has resided in New Zealand for not less than 10 years at any time before the death of her husband.

Whether the applicant is mother of the child

A.10 Where the child claimed for is not the natural or adopted child of the applicant for widows benefit, the Director-General has the authority in terms of section 21 (6) of the Act to regard the child as the applicant's child, and the applicant as the mother of that child, provided the child is being maintained by the applicant, and was at any time maintained by the applicant's husband.

Section 21(6) reads as follows:-

"(6) The Director-General may, in his discretion, for the purposes of this section, regard any child as being a child of the applicant and the applicant as being the mother of that child if that child is being maintained by the applicant and was at any time maintained by the husband of the applicant."

A.11 There are many cases where the Director-General may be required to use his discretion in terms of this sub section of the Act, an example being that of a couple who accept responsibility for the care of a child of a close relative. The child may have been maintained by the couple for some years prior to the death of the husband and in this instance the discretion contained in section 21(6) would be exercised.

A.12 In considering these cases, regard should be had to the circumstances under which the child came into the care of the applicant, from what date, and who has been financially responsible for the care of the child.

Residential Qualifications

A.13 Other than set out in Para A9 where the applicant is the mother of a dependent child, the residential qualifications for determining entitlement to widows benefit are contained in section 21 (2) of the Act. Where the applicant has had a child who is no longer dependent or where she has never had a child, it will be necessary for:

- a) Both the applicant and her husband to have been ordinarily resident in New Zealand for not less than 3 years immediately preceeding the death of her husband
- b) Either the applicant or her husband, to have resided in New Zealand continually in New Zealand for not less than 5 years. An applicant must be ordinarily resident in New Zealand at the time of application.

A.14 In terms of the Social Security (Reciprocity with Australia) Act, 1989, birth or residence in Australia of any person will be treated as if it were birth or residence in New Zealand. If the husband was resident in Australia at the time of his death or alternatively if he was resident in New Zealand at the time of his death, and had resided in Australia prior to residing in New Zealand, residence of the husband in Australia will be treated as if it had been residence in New Zealand.

A.15 In terms of the Social Security (Reciprocity with United Kingdom) Act 1983 residence of an applicant or her husband in the United Kingdom may be regarded as residence in New Zealand. Any child born in the United Kingdom may be regarded as having been born in New Zealand and if an applicant's husband died in the United Kingdom he may be regarded as having died in New Zealand.

A.16 - A3.20 Reserved.

Widowers

A.21 Widowers do not qualify for widows benefit and if they have dependent children are to be invited to apply for domestic purposes benefit in terms of section 27B(1)(f) of the Social Security Act.

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PART B - COMMENCEMENT OF BENEFITLegislation

B.1 The legislative authority for the commencement of widows benefit is contained in Section 80 of the Social Security Act and reads as follows:

"80 (1) Every widow's benefit, domestic purposes benefit, sickness benefit, invalid's benefit, independent youth benefit, and job search allowance shall commence -

- (a) Two weeks after the date on which the applicant became entitled to receive it, if the application for it is received by the Department within 6 months after the date of entitlement:
- (b) Two weeks after the day which is 6 months before the day on which the application for it is received by the Department, if it is so received 6 months or more after date of entitlement.
- (1A) Where the Director-General considers that the applicant would otherwise suffer serious hardship, the Director-General may determine that the benefit shall commence 1 week earlier than the date on which it would otherwise commence under subsection (1) of this section."

Determining commencement date

B.2 The commencement date of widows benefit is the fifteenth day after the date of the husband's death.

B.3 The 14 day wait period between the date of the husband's death (or cessation of chargeable earnings in cases where the applicant has been in paid employment) and the commencement of the benefit is referred to as the stand down.

B.4 If the applicant is transferring from another benefit onto widows benefit, then the 14 day stand down will not apply.

B.5 If the applicant is experiencing financial hardship and has no other means of financial support the benefit may commence 7 days earlier than the date specified in B.2 above. This is referred to as a waiver of one week of the stand down.

Criteria for Waiving the Stand Down

B.6 Entitlement to a waiver of one week of the stand down for people in need should be assessed with regard to the following criteria:

- (a) cash assets of the client;
- (b) consideration of the existing financial commitments of the client and whether or not it is possible for the client to adjust those commitments immediately;
- (c) whether there was prior warning about the qualifying event which would have enabled the client to adjust their circumstances in preparation for loss of income; and
- (d) whether the income of the client prior to the event was sufficient to allow the client to save in preparation for the stand down.

Cash Assets Test

B.7 Benefit applicants will not be eligible for a waiver of one week of the stand down if they have cash assets of more than the amounts specified in B10 below.

B.8 The cash assets limits are based around the net rates of invalids benefit and so will automatically increase each year with the increase in benefit.

B.9 The cash assets limits are:

Single person: 2 x single rate of invalids benefit

Couple: 2 x married couple rate of invalids benefit plus \$156 per child

Sole parent: 2 x married couple rate of invalids benefit for a sole parent plus one child plus \$156 for each additional child

Use of Special Needs Grants

B.10 Special needs grants should not be used to circumvent the policy to allow a waiver of only one week of the stand down for those clients in need. Any applications for special needs grants during the one week in which there is no entitlement to a waiver should be assessed with regard to the criteria for the special needs grant programme.

Widow in Employment at Date of Husband's Death

B.11 Where a widow was in employment at the time of the husband's death, the rate of earnings, date of cessation and any holiday or sick pay received will be taken into account in deciding the rate of entitlement. (See Part H of the Income and Property Manual).

Wife Included in Husband's Benefit at Date of Death

B.12 The following will apply where the wife was included in her husband's benefit at the time of his death and application is lodged within six months from the date of her husband's death.

- a) If the wife's portion was less than the rate of widows benefit, grant benefit from the day following date of death.
- b) If wife's portion was equal to or greater than the rate of widows benefit, grant benefit from the day following that to which the husband's benefit was correctly paid.
- c) If the wife was included in her husband's sickness benefit and his death occurred on a Friday or Saturday, widows benefit will commence from the day following death with no adjustment being necessary in respect of sickness benefit paid to the end of the week.

Retrospection

B.13 If the application for widows benefit is received more than six months after the husband's death, the benefit will commence two weeks after the day which is six months prior to the date on which the application was lodged.

Assistance Prior to Grant

B.14 If a widow is in needy circumstances following the death of her husband and she has no funds immediately available, emergency benefit for a temporary period may be granted. This applies to widows with or without children. In general it can be accepted that where the available cash assets are limited, a grant of emergency benefit should be authorised if benefit cannot be determined immediately. These limits are only intended to be a guide and may be varied in any case where the Director considers this is warranted.

B.15 There will, of course, be cases when widows may be granted an emergency benefit to tide them over a difficult period but on settlement of the husband's estate they are ineligible for benefit. This should not deter district offices, but they are to ensure that the emergency grant ceases when there is no longer any hardship or at the end of four weeks, whichever is the earlier.

Verification of Husbands Estate

B.16 Finalisation of an estate can often occur some time after the deceased's death and a grant of widows benefit is not to be delayed pending finalisation of the husband's estate.

B.17 Following an application for widows benefit the executor of the husband's estate is to be immediately contacted and asked to supply details of the estate.

B.18 Widows benefit may be granted and entitlement reviewed following the finalisation of the estate. Contact is to be maintained with the executor of the estate to ensure the Department is aware of finalisation.

PART B - COMMENCEMENT OF BENEFIT

Date of Commencement of Grant

B.1 If the application for widows benefit is lodged within six months after the date of the husband's death and the applicant is otherwise eligible, benefit may commence from the day following the husband's date of death.

B.2 If the application is received more than six months after the husband's death, benefit eligibility commences from the day six months prior to the date on which the application was lodged.

Widow in Employment at Date of Husband's Death

B.3 Where a widow was in employment at the time of the husband's death, the rate of earnings, date of cessation and any holiday pay received will be taken into account in deciding the rate of entitlement. (See Part Q of the Income and Property Manual).

Wife Included in Husband's Benefit at Date of Death

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- c) If the wife was included in her husband's sickness benefit and his death occurred on a Friday or Saturday, widows benefit will commence from the day following death with no adjustment being necessary in respect of sickness benefit paid to the end of the week.

ASSISTANCE PRIOR TO GRANT

B.5 If a widow is in needy circumstances following the death of her husband and she has no funds immediately available, emergency benefit for a temporary period may be granted. This applies to widows with or without children. In general it can be accepted that where the available cash assets are limited, a grant of emergency benefit should be authorised if benefit cannot be determined immediately. These limits are only intended to be a guide and may be varied in any case where the Director considers this is warranted.

B.6 There will, of course, be cases when widows may be granted an emergency benefit to tide them over a difficult period but on settlement of the husband's estate they are ineligible for benefit. This should not deter district offices, but they are to ensure that the emergency grant ceases when there is no longer any hardship or at the end of four weeks, whichever is the earlier.

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