

PART C - APPLICATION BY WIDOW ON DEATH OF AN EX- SERVICEMEN

INTRODUCTION

C.1 Applications for widows benefit will be received from wives of ex-servicemen and enquiry is to be made to the war pensions division as to whether the widow has entitlement to a war pension following her husband's death.

Surviving Spouses Pension

C.2 A surviving spouses pension may be payable to the widow of an ex-service person where the cause of death is considered to be attributable to war service. It can also be paid in cases where the ex-service person was in receipt of, or could have been granted, a 70% war disablement pension. Surviving spouses pension is not income tested and will not be treated as income when assessing entitlement to widows benefit [i.e. both a surviving spouses pension and widows benefit may be paid at the same time].

Death of a Veterans Pensioner

C.3 If the deceased ex-serviceman was in receipt of a veterans pension, the widow will be entitled to a lump sum payment less any overpaid pension. The lump sum will be paid to the widow automatically by the division administering the veterans pension, and no formal application is required.

Action to be taken

C.4 There are several different war pensions payable and it is not necessary to describe them in this section.

C.5 In all cases where a widow's husband was in receipt of some type of war pension or there is reason to believe he may have entitlement to a war pension, enquiries are to be made as to any assistance payable to the widow. Staff on the war pensions division will be able to advise how any war pension payable will affect entitlement to widows benefit; generally speaking however, if a war pension is not income tested then it will not affect entitlement to a widows benefit.

PART D TREATMENT OF EARNINGS

Earnings are Income

D.1 Earnings from employment are income within the meaning of the Social Security Act, and must be taken into account when determining the rate of benefit that shall be paid to the beneficiary.

Annual income

D.2 The rates of widows benefit are set out in the Third Schedule to the Act, and in every case, the maximum amount of benefit available must be reduced where the annual income of the beneficiary exceeds certain limits.

Treatment of Earnings at Grant and Renewal of Benefit

D.3 The instructions contained in Part E of the Miscellaneous Provisions Manual are to be followed in the treatment of earnings against widows benefit.

Child Care Cost - Special Exemption

D.4 It should not be overlooked that when calculating the earnings of a widows beneficiary there is a special exemption which is set out in the first clause of the Third Schedule to the Act. In terms of the proviso the amount of personal earnings of a beneficiary may be reduced by up to \$20 a week, where the beneficiary's child or children are placed in a day care centre, or other approved placement while she is employed.

PART E - REVIEWS

Review of Benefit

E.1 There are several circumstances which will result in the need to review the beneficiary's entitlement to continuing benefit payment. In most cases the course of action to be taken is given in instructions in other manuals and reference to the particular manual will be given.

Payment for absence from New Zealand

E.2 Refer to part Q of the Miscellaneous Provisions Manual

Admission of a widow to Hospital

E.3 Refer to part T of the Miscellaneous Provisions Manual

Imprisonment of a Beneficiary

E.4 Refer to part P of the Miscellaneous Provisions Manual

Death of a Beneficiary

E.5 Section 61 DA (c) of the Act provides that payment of benefit shall cease on the date of death of the beneficiary, or such later date as the Director-General determines being not later than the end of the pay period in which the beneficiary dies.

E.6 There is no authority to pay benefit beyond the end of the pay period of death and any payment made beyond the date will constitute an overpayment.

E.7 Notwithstanding the above, if a beneficiary in receipt of a widows benefit dies leaving a child not entitled to a lump sum payment under section 82 of the Accident Compensation Act 1982, the benefit is to continue for the two fortnightly instalments following the date of death in terms of section 61DB of the Social Security Act (Refer Part B4 of the Miscellaneous Provisions Manual).

Beneficiary Attains Age 60

E.8 When a beneficiary attains age 60 years, an application for national superannuation should be invited.

Remarriage of Widow

E.9 A widow who remarries can no longer be regarded as a widow, and there is no further entitlement to benefit. Payment of benefit may however be confirmed to the end of the two-weekly pay period following the two weekly pay period in which the marriage occurred provided:

- (i) the beneficiary informs the department of her marriage within a reasonable period of time (defined as up to two weeks following the event)
- (ii) the benefit payment is unable to be withdrawn by the direct credit withdrawal facility.

In any other case, the benefit is to be cancelled from the date of marriage, any overpayment established and recovery arranged.

Relationship in the nature of a Marriage (Section 63(b))

E.10 Same as in para E9 above

Widow requests cancellation of benefit

E.11 Payment of benefit should be suspended immediately and the beneficiary asked the reason why she requires cancellation. If the reason for cancellation is full-time employment the commencement date and the employer's name and address are to be obtained. If the reason is marriage or a relationship in the nature of marriage, the commencement date and the partner's name are to be obtained. The beneficiary is then to be required to put the information in writing.

The date of cancellation will depend on the circumstances outlined in previous paragraphs. If the beneficiary fails to reply to the request, sufficient information should be held on the file to determine the date on which the benefit is to be cancelled. If not, the benefit is to be cancelled from the date of suspension.

Last Child Leaves the Care of the Beneficiary

E.12 Where the widow qualifies for widows benefit only because she has dependent children, the benefit ceases from the expiry of eight weeks following the end of the four-weekly pay period in which the child left the beneficiary's care, in terms of Section 27 of the Act. Eligibility as a widow without children should be assessed and where appropriate widows benefit will be continued under the other provisions in section 21. Section 27 applies to the benefit only and does not apply to family support. Family support ceases at the end of the four weekly pay period following the four weekly pay period in which entitlement to family benefit ceases.

E.13 This instruction applies notwithstanding that the person with whom the child or children are now residing may apply for and be granted a benefit from the date the child or children came into their care.

Payment of benefit (excluding family support) made beyond the expiry of the eight weeks at an incorrect rate constitutes an overpayment and is to be recovered.

Youngest Child Reaching 16 Years of Age

E.14 Persons in receipt of widows benefit in respect of children are to be sent a special letter six months before the only or youngest child reaches 16 years of age, outlining the impending reduction or cancellation of the benefit and income exemption. The purpose of this letter is to give the widow prior notice of the changes that will result in her benefit being reduced or cancelled to enable her to make provision, if she so desires to meet the sudden reduction in income.

E.15 The persons to whom letters are to be sent will be identified on the expiry list, printed six pay periods before the last child attains 16 years.

E.16 The following is a specimen of the letter to be sent:

"It is noted that your child _____ will attain the age of 16 years on _____ and as this may affect your widows benefit, I am taking this opportunity of advising you in advance of the position so that you can, if you so desire, re-arrange your affairs to meet the change in circumstances.

Should you have no children for whom widows benefit is payable continuing at school after _____, the widows benefit will be

(a) reduced to the rate of _____ a year from _____.

(b) Cancelled

In addition the income exemption will be reduced from \$3,120 gross a year to \$2,600 a year.

Should you wish to discuss this matter please contact this office.

Child Dies

E.17 Section 27 of the Act provides the authority to continue the widows benefit for a further eight weeks beyond the end of the pay period in which the child dies, notwithstanding that in terms of Section 35(3) family benefit is withdrawn from the end of the pay period in which death occurs.

E.18 Where the child is the sole or last surviving dependent child of a beneficiary and there is no continuing entitlement to widows benefit as a woman alone in terms of Section 21 of the Act, benefit is to cease from the expiry of eight weeks following the end of the pay period in which the child dies.

However this provision applies to the benefit only and does not apply to family support. Family support ceases at the end of the four weekly pay period following the four weekly pay period in which entitlement to family benefit ceases.

E.19 If the basic benefit has continued beyond the expiry of the eight weeks, an overpayment is to be established and written off in terms of section 86 (aA) considered. The provisions of Section 86(9A) should not be applied in any case where the circumstances indicate a deliberate delay in notification.

OTHER REFERENCES

Part B Supplementary Services Manual 'Special Needs Grants'
Part C Supplementary Services Manual 'Accommodation Benefit'
Part D Miscellaneous Provisions Manual 'Conjugal Status"
Part E Supplementary Services Manual 'Advance Payment of Benefit'
Part I Supplementary Services Manual 'Disability Allowance'
Part J Supplementary Services Manual 'Special Benefit'
Part K Supplementary Services Manual 'Home Help Scheme'
Part P Supplementary Services Manual 'Handicapped Childs Allowance'
Part W Supplementary Services Manual 'Training Incentive Allowance'
Circular Memoranda 1986/64 and 1986/203 'Transition to Work Allowance'

PART F ESTATES

Estates

F.1 Section 73 of Social Security Act authorises the Director-General to withhold or reduce benefit where the beneficiary is entitled to claim under the Family Protection Act 1955 or Maori Affairs Act 1953 for provision from the estate of a relative.

In normal circumstances when considering entitlement to widows benefit it will be obvious where reasonable provision for the applicant and any children has been made from the estate.

Should, however, there be some question as to whether or not adequate provision has been made full details of the assets and liabilities in the estate and a copy of the will should be obtained.

F.2 The 'will' should make it clear whether or not the beneficiary has forgone any part of the estate or its assets which have been left to her. If the beneficiary or applicant has forgone or gifted assets of an income producing nature then an income forgone charge in terms of section 74(d) may be imposed.

F.3 If an estate has been divided up or put in trust and it is not considered that the beneficiary or applicant has received a reasonable proportion of the estate for her proper maintenance and support then the beneficiary is entitled to claim under the Family Protection Act for a greater proportion of the estate. When considering whether or not the beneficiary should be requested to take such action then the beneficiary's share should be compared with that which she would have received had her husband died intestate. If the amount received by the wife is substantially less than what she would have received under the laws of intestate then the beneficiary or applicant should be advised to take proceedings under the Family Protection Act. There are of course many cases where this action may already have been commenced so care will need to be taken when writing to the beneficiary.

Note: No action under section 73 need be considered where the applicant has a life interest in the estate and receives the total income therefrom.

F.4 Distribution of Intestate Estates

Briefly the law provides for the estate to be distributed amongst the near relatives as follows

Surviving Relatives	Distribution
spouse (no children or parents)	Spouse takes the whole estate
Spouse & children	Spouse takes personal chattels, the first \$90,000

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with interest at 11% from the date of death and 1/3 of the remainder. The children take the remaining 2/3 on statutory trusts.

Spouse & parents (no children)

Spouse takes personal chattels, the first \$90,000 as above plus 2/3 of the remainder. The parents take the remaining 1/3 if only one parent survives the 1/2 share passes to that parent absolutely.

Children only

All goes to children (on statutory trusts)

Parents only

The parents share equally or, if only one, that parent takes the whole share.

NB There are other provisions for more remote relatives, and occasionally where not even remote relatives survive, the estate will pass to the Crown.

F.5 UNDERTAKING TO REFUND TO BE OBTAINED

If a grant of benefit is made subject to family protection proceedings being taken or if such proceedings are in prospect, whether required by this department or not, the widow is to complete an undertaking to refund such amount of benefit already paid as may be determined by the Director-General on the settlement of her claim. On settlement of the claim the widows benefit should be reassessed from the date any additional assets are received. In the event of interest or income being received for the period from date of the husband's death to date of settlement then a retrospective review from date benefit was granted will need to be carried out.