



**Legal Opinion L-2001-12**  
**August 20, 2001**

U.S. Railroad Retirement Board    Phone: (312) 751-7139  
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**TO** : Bob Bergeron  
Assistant to the Labor Member

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Family Group – Survivor Annuity Calculations

This is in response to your memorandum dated July 26, 2001, wherein you inquire about the possibility of a young widow with two minor children waiving her annuity entitlement for selected periods of time. The proposed waiver would be for the purpose of excluding the mother from the family group during those periods of time when her earnings would result in a decrease in the amount payable to the family group.

The provisions governing the waiver of an annuity are found in section 11 of the Railroad Retirement Act (45 U.S.C. § 231j), which states as follows:

Any person awarded an annuity under this Act may decline to accept all or any part of such annuity by a waiver signed and filed with the Board. Such a waiver may be revoked in writing at any time, but no payment of the annuity waived shall be made covering the period during which such waiver was in effect. Such a waiver will have no effect on entitlement to, or the amount of, any other annuity or benefit. [Emphasis added].

In accordance with the specific terms of section 11 of the Act, while a young widow may waive acceptance of her annuity for a selected period of time, such waiver will have no effect on the amount payable to any other family members. Consequently, a young widow's waiver of her annuity will not entitle her children to a recomputation of their annuity rates, excluding the young widow from the family group.

I have also considered whether the young mother may enter a cycle of canceling her application, upon being subject to excess earnings, and then reapply by filing a new application when she is not subject to a reduction for her excess earnings. However, a review of the Board's regulations indicates the cancellation of an application will not provide the desired result. When a person cancels an application the effect is the same as though an application was never filed. See 20 CFR 217.27. Consequently, all annuity payments made based upon the application being cancelled must be repaid or recovered. See 20 CFR 217.26(b)(3).

In summary, while the young widow may waive acceptance of her annuity, section 11 of the Act bars the recomputation of the annuity rates of the other family members as a result of the waiver. Cancellation of the young widow's application would allow for the recomputation of the annuity rates of the other family members, but Board regulations provide that all annuity payments made to the young widow would have to be recovered or repaid.

cc: Bob Eggert, District Manager  
Chicago, Illinois