



Legal Opinion L-2003-14
October 10, 2003

U.S. Railroad Retirement Board
844 North Rush Street
Chicago Illinois, 60611-2092

Phone: (312) 751-7139
TTY: (312) 751-4701
Web: <http://www.rrb.gov>

TO : Robert E. Bergeron
Assistant to the Labor Member

FROM : Marguerite P. Dadabo
Assistant General Counsel

SUBJECT : Marriage of Disabled Child Survivor Annuitant

This is in response to your request for a formal legal opinion regarding whether the provision of the Social Security Act, which allows for an exception to the general rule that a disabled child beneficiary's entitlement terminates when he/she marries, also exists for individuals entitled to a disabled child's annuity under the Railroad Retirement Act (RRA). As explained below, it is our opinion that such exception does not apply to an individual entitled to a survivor annuity under the RRA as the disabled child of a deceased railroad worker.

The facts of the case brought to your attention are outlined below. Ruth is the child of a deceased railroad worker and has been entitled to a disabled child's annuity under the RRA since 1978. Ruth married John on July 29, 2000. The Railroad Retirement Board (RRB) became aware of the marriage two years later and terminated her annuity. Consequently, the couple's monthly income was reduced by more than \$900.00 and an overpayment in excess of \$20,000.00 was assessed. A debt specialist recently waived recovery of the overpayment, finding that Ruth was without fault in causing the overpayment and that recovery of the overpayment would be contrary to the purpose of the Railroad Retirement Act. Reportedly, John receives Supplemental Social Security Income, as well as a disability benefit under the Social Security Act.

The statutory provision which required the termination of Ruth's disabled child's annuity is found in subparagraph (7) of subsection 5(d) of the RRA (45 U.S.C. § 231d(d)(7)), which provides that the entitlement of a child of a deceased employee to an annuity shall end, *inter alia*, on the last day of the month preceding the month in which he or she marries. A similar provision is found in subparagraph (1)(D) of subsection 202(d) of the Social Security Act. See 42 U.S.C. § 402(d)(1)(D). However, section 202(d) of the Social Security Act also includes an exception to the general rule that a disabled child beneficiary's entitlement ends upon marriage. The exception is found in subparagraph (5) of subsection 202(d), which provides that, in the case of a child who has attained the age of eighteen and who marries a person also entitled to specific benefits under the Social Security Act, then such child's entitlement to benefits shall not be terminated by reason of such marriage.

The marriage exception noted above was added to the Social Security Act in 1958. The exception was not incorporated into the Railroad Retirement Act of 1937, except insofar as the "overall social security minimum" of section 3(e) applied. See Legal Opinions L-58-479 and L-64-244. Therefore, the introduction of the exception did not have any direct effect on the eligibility or entitlement of a disabled child to an annuity under the RRA. The method of computation of survivor annuities was changed to a tier basis with the enactment of the RRA of 1974. As the overall social security minimum no longer applies to survivor annuity calculations, the marriage exception no longer comes into play when computing a survivor annuity under the RRA. A review of the legislative history failed to reveal why Congress did not include such an exception in the RRA. However, the Supreme Court has held that terminating a disabled child's benefit upon the marriage of such child is unquestionably valid. See Califano v. Jobst, 434 U.S.



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47, 54, 54 L.Ed. 2d, 228, 235, 97 S.Ct. 95 (1977) involving the termination of a disabled child's social security benefit upon her marriage to a permanently disabled individual not entitled to benefits under the Social Security Act.

Subparagraph (7) of subsection 5(d) of the RRA specifically provides that a disabled child's annuity terminates upon marriage. No exception to this provision is found in the statute. The statutory language is unequivocal in that a disabled child's entitlement to a survivor annuity terminates upon marriage. Consequently, until Congress amends the RRA to provide otherwise, an individual's entitlement to a disabled child's survivor annuity under the RRA ends on the last day of the month preceding the month in which he or she marries.

You also inquired as to the impact of the termination of the disabled child's annuity on the treatment of the case for financial interchange purposes. As noted above, the marriage of a disabled child beneficiary to another disabled beneficiary is not a terminating event under the Social Security Act. Accordingly, the disabled child's marriage would not impact the treatment of the case under section 7(c)(2) of the Railroad Retirement Act.

cc: Director of Administration
Director of Programs
Director of Hearings and Appeals