

## 940.5 General

### 940.5.1 Scope of Chapter

This chapter covers the various types of parent-child relationships and how they may be established. It also contains information on establishing other family relationships which may be necessary to award benefits under the RR Act.

The chapter is oriented to establishing the relationship of a child to the employee parent, but unless otherwise indicated the same conditions apply in establishing the relationship of a parent to the employee child.

### 940.5.2 When Proof of Relationship (POR) Is Required

- A. Recurring payment or O/M inclusion - An applicant for a recurring payment as the child, grandchild or parent of the employee must prove such relationship. Likewise, such relationship must be established to qualify a child for inclusion in the O/M.
- B. Nonrecurring payment - Proof of relationship is always required when the applicant's share of a lump-sum is more than \$25.00. POR is also required when the share is less than \$25.00 and the relationship is questionable.

When children, grandchildren or siblings of a deceased employee share in a nonrecurring payment, consider POR of each verified if at least one applicant:

1. Has established relationship to the deceased employee by regular documentary evidence; and
2. Has listed in the application (or in another writing) the names and relationships of the remaining applicants entitled to share the payment, and the relationships so stated are the same as those alleged by such remaining applicants.

However, if any claimed relationship is questioned, each person whose relationship is questionable must furnish regular documentary POR.

If the employee died before 10-1-58, the old order of precedence for nonrecurring payments applies. Under that order, children and grandchildren and other lineal descendants may share in a nonrecurring payment in those proportions provided by applicable state law. In such a case, examiners will consider POR verified for each such entitled survivor if one entitled child (or grandchild if no child survived) fulfills the above requirements and no relationship is questionable.

- C. Multiple payees - Cases may occur in which one or more apparently eligible survivors do not file applications or answer inquiries. Their failure to do either will not in itself prevent verification of relationships. Examiners will allow 30 days for the person to furnish the required information or document, after which final action will be taken on the claim.

Should an applicant fail to list the names and relationships of all the other apparently eligible survivors, ask him to explain the omission. If the information was omitted in error and he does not challenge the relationship of the survivors in question, such omission will not prevent verification of relationships.

If the survivor whose relationship is questioned has not filed, see whether he wishes to file; if so, obtain documentary POR along with the application. If he does not wish to file, secure his statement giving the reason he does not.

## 940.10 Natural Child

### 940.10.1 Defined

The term "natural legitimate child" includes:

- A. A child of a valid ceremonial or common-law marriage;
- B. A child of a voidable marriage not judicially declared void;
- C. A child held legitimate under a void marriage statute;
- D. A posthumous child (a child of the employee born alive after the employee's death);
- E. A child legitimated under applicable state law;
- F. Any child who is legitimate under state law even though there has been no marriage or act of legitimacy;
- G. Any child who is deemed to be a "child" under the Railroad Retirement Act as defined in FOM-I-940.35.

### 940.10.2 Preferred Proofs

The preferred evidence of a natural parent-child relationship is:

- A. A certified copy of a civil or church record of birth;
- B. A proof of age of the child when the proof shows that the employee is one of the parents. Sometimes this proof will show only the mother's name; in such a case, if the father is the employee, the relationship is established if the child's surname

is the same as the employee's and other evidence establishes a marital relationship between the employee and the child's mother before the child's birth.

- C. A short form birth certificate (i.e., one that does not have space for showing the names of the parents) when the child's given name and surname are shown on the certificate. This includes a short form certificate based on a hospital birth record or a church baptismal record. The child's surname shown must be the same as that of the employee at the time the child was born.
- D. Any of the proofs in subsections B and C above will also establish the relationship of a child of a void marriage considered legitimated under a void marriage statute.

Note that information from SSA's MBR or NUMIDENT cannot be used as proof of relationship.

### 940.10.3 Secondary Proofs

Records originating after the death of an employee are always of doubtful value unless based upon evidence predating the death of the employee. Newspaper or magazine clippings are never acceptable as evidence. If no documentary evidence is obtainable, the applicant must:

- A. Furnish a written statement giving the reason why documentary evidence is not obtainable; and
- B. Submit affidavits from two disinterested persons showing:
  1. The names of the child and the natural parent;
  2. A statement of the affiant's knowledge that the child is the natural child of the parent;
  3. The basis of the affiant's knowledge.

### 940.10.4 Lord Mansfield Rule

In many states, the Lord Mansfield Rule bars the mother of the child and her legal husband at the time the child is conceived or born from giving testimony which might prove the child to be illegitimate. Do not accept evidence submitted by the parents which tends to prove a child illegitimate if the evidence is not acceptable under applicable state law. In such states, if the only available evidence is the testimony of the mother or her legal husband, the presumption of the child's legitimacy is not rebutted.

In some states, a married woman can testify concerning the non-access of her husband in proceedings seeking to establish the paternity of her child. This does not, however,

affect the application of the Lord Mansfield Rule when making a determination. If the Lord Mansfield Rule applies in those states in proceedings relating to property rights, do not accept such statements.

### **940.10.5 State Law on Applicability of Lord Mansfield Rule**

If the state of the employee's domicile follows the Lord Mansfield Rule, do not accept the testimony of the child's mother or the person who is her legal husband when the child is conceived or born as evidence disproving the child's legitimacy.

To determine if a state follows the Lord Mansfield Rule see [RCM 4.4.15](#).

## **940.15 Legally Adopted Child**

### **940.15.1 Defined**

A child who is legally adopted by the employee under applicable State adoption law is a "child" of the employee. Legal adoption is distinguished from equitable adoption by the fact that the contemplated adoption is completed under applicable State adoption law and the proceedings are not defective.

### **940.15.2 Child Legally Adopted by Employee's Widow(er)**

In survivor cases, a child adopted after the employee's death by the widow(er) under certain conditions is deemed to be the employee's child.

- A. Child adopted within 2 years after employee's death - Effective 1-1-91 (for applications filed after 12-31-90), deem a child who is legally adopted by the employee's widow(er) within 2 years after the day the employee died to be a child of the employee if:
1. Such child was living with the employee at the time of the employee's death; or
  2. Such child received at least one-half of his/her support from the employee in the year prior to the employee's death.

**NOTE:** Prior to 1-1-91, the following requirements applied: the child must have been living with the employee at the time of his death, and at the time of the employee's death, the child is not receiving regular and substantial contributions for his support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

- B. Child adopted more than 2 years after employee's death - Effective 1-1-91 (for applications filed after 12-31-90), deem a child who is legally adopted by the

employee's widow(er) anytime after the employee's death to be a child of the employee if:

- The employee instituted proceedings to adopt the child before death; and
- Such child was living with the employee at the time of the employee's death; or
- Such child received at least one-half of his/her support from the employee in the year prior to the employee's death.

NOTE: Prior to 1-1-91, the following requirements applied: the employee instituted proceedings to adopt the child before death, and the child was living in the employee's household at the time of death; and at the time of death, the child is not receiving support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

- C. Development when child legally adopted by employee's widow(er) more than 2 years after death - Develop in accordance with the following section. However, in addition, it is necessary to establish whether proceedings to adopt the child are instituted by the employee before death.

Consider adoption proceedings to be instituted by the employee before death if the employee takes some specific action toward the child's legal adoption. The specific action may include arrangements for the adoption with approved adoption agencies or other qualified persons, as well as initial court proceedings for the adoption. Of course, development should cover all possibilities that the employee instituted adoption proceedings before death and should not be confined to only the above examples. Evidence of action to adopt a child may be on adoption certificates, contracts, affidavits, etc., or it may be necessary to contact appropriate officials for verification.

### 940.15.3 Proofs

- A. Preferred proof - The preferred POR of a legally adopted child to the adopting parent is:
1. A copy of the decree or order of adoption, certified by the custodian of the record; or
  2. A properly certified photocopy of the above.
- B. Other acceptable proof - In a number of states the record of adoption is sealed and cannot be obtained without a court order. In such an event, accept the following types of evidence as proof of adoption:

1. An official notice received by the adopting parents at the time of adoption stating that the adoption has been completed; or
  2. A birth certificate issued as a result of an adoption proceeding.
- C. Adoption established by birth certificate - When a birth certificate or a certified copy of the record of birth is used as proof of adoption, it is not necessary that the date of adoption be shown if:
1. The certificate is issued before the requested ABD; or
  2. In the case of a child to be included in the O/M after 8-1958, the certificate is issued before the effective date of the O/M (before 9-1958, the certificate must have been issued more than 3 years before the effective date of the O/M); or
  3. In a survivor case, the certificate is issued before the death of the employee.

Be sure to record the date the amended birth certificate was issued in item 8(d) when preparing Form G-91. A certificate that does not meet these requirements must be accompanied by a statement from the official having custody of the records which indicates the date the record is changed to reflect the adopting parent's names.

## 940.20 Equitably Adopted Child

### 940.20.1 Defined

Sometimes a child cannot qualify as a legally adopted child because:

- A. The adoption proceedings are defective under state law; or
- B. A contemplated adoption is never completed.

Such a child may qualify as an equitably adopted child for inheriting intestate personal property from the "adopting" parent; he may, therefore, qualify for O/M purposes, become entitled to a CIA, or entitled to an RLS based on the creditable earnings of his "adopting" parent. Under the theory of equitable adoption, most states grant relief to a child who is the subject of a contract to adopt and has performed as a child for such a length of time that failure to permit the child to take property as if he were legally adopted would operate as a fraud upon the child.

Equitable adoption applies only if the question of the child's entitlement to benefits is involved. It does not qualify an equitably adopting parent as a parent under the act.

## 940.20.2 Requirements

For equitable adoption to occur there must be:

- A. An express or implied (in some states) contract to adopt the child; and
- B. A legal consideration for the adopting parent's promise to adopt; and
- C. In some states, a promise to give the child inheritance rights in the adopting parent's personal property; and
- D. Surrender of the child to the adopting parent; and
- E. Performance by the child under the contract; and
- F. Sufficient lapse of time so that the child could have been legally adopted under applicable State law prior to the time the child is included under the O/M in a life case, or prior to the employee's death in a survivor case.

## 940.20.3 Developing Equitable Adoption

When adoption is alleged but there is no formal legal adoption, obtain proof of equitable adoption. Such proof should consist of:

- A. The original or transcribed copy of any written contract or agreement; and
- B. Form G-118 completed by the applicant (regardless of whether or not a written contract or agreement exists); and
- C. A second Form G-118 completed by a responsible person who has knowledge of the facts, preferably a natural parent (regardless of whether a written contract or agreement exists).

However, if affidavits executed by the applicant and another responsible person containing substantially the same information called for on the G-118 and G-118a are in file, accept the affidavits in lieu of a G-118 and G-118a.

## 940.25 Stepchild

### 940.25.1 Defined

A stepchild of the employee (or employee annuitant) is a child whose relationship is created by the employee's marriage to the child's natural or adoptive parent after the child's birth. The marriage which creates the relationship need not be valid provided there is a marriage ceremony and the marriage is invalid only because of a legal impediment.

A child conceived before the marriage of his mother to the employee who is not the child's natural father, and born after the marriage, is also considered to be the stepchild of the employee.

### 940.25.2 Life Cases

The marriage of the employee annuitant and the child's parent must take place 1 year before the child otherwise qualifies for O/M purposes as a stepchild or the spouse otherwise qualifies for a full annuity on the basis of the child. The month in which the first anniversary date occurs is the first month the stepchild may be taken into account under the O/M or may qualify the spouse for a full annuity.

(A child conceived and born to one of the parties after the marriage is not the step-child of the other party; this child would be a "natural legitimate child" of the employee. A child adopted by the spouse after the marriage (but not adopted by the employee) is not the stepchild of the employee; such child holds no entitlement.)

Death of a spouse does not end the parent-stepchild relationship, but divorce does. Therefore, a stepchild cannot be included in the O/M award of an employee divorced from the child's natural parent. If the divorce occurs after such entitlement, the child's inclusion in the O/M ends the month after the month in which the divorce between the employee and the natural parent becomes final.

If a child is adopted in a state where adoption eliminates inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

### 940.25.3 Survivor Cases

The marriage of the employee and the child's parent must take place 9 months (3 months if death is accidental or the employee died while on active duty in the armed forces) before the day on which the employee died. Prior to February 1968, a marriage must have taken place at least 1 year before the day on which the employee died.

If a child is adopted in a state where adoption eliminates inheritance rights between the parent and child, a person who later marries the child's natural mother is not the child's stepfather.

Death of a spouse does not end the parent-stepchild relationship, but divorce does. When a parent-stepchild relationship is terminated by divorce, the remarriage of the child's natural parent and former stepparent re-establishes the parent-stepchild relationship as of the date of the remarriage. Thus, in order for such a child to qualify for a CIA as a stepchild, such remarriage must take place 9 months (3 months if death is accidental or the employee died while on active duty in the armed forces) before the day of the employee's death.



## 940.25.4 Proofs

To establish the relationship of a stepchild to an employee, secure:

- A. Proof of the relationship of the stepchild to his natural parent. This will usually be one of the forms of documentary evidence as described in FOM-I-915.

Accept a short form birth certificate as proof if the child's given name and surname are shown on the certificate and the surname is the same as that of the blood parent at the time of birth of the child, and if none of the information furnished casts doubt on the existence of the relationship.

If no documentary evidence is obtainable, have the applicant:

1. furnish a written statement giving the reasons why documentary evidence is not obtainable; and
2. submit affidavits from two disinterested persons showing:
  - a. the names of the child and the natural parent;
  - b. a statement of the affiant's knowledge that the child is the natural child of the parent;
  - c. the basis of the affiant's knowledge.

- B. Proof of marriage of the child's parent to the employee.

## 940.30 Grandchild and Step-grandchild

### 940.30.1 Defined

- A. Grandchild - A child is the grandchild of the employee or his spouse if the child is the natural child or legally adopted child of a parent who is the child of the employee or the employee's spouse. A great-grandchild cannot be entitled under this provision.
- B. Step-grandchild - A step-grandchild is a child who has only a grandchild relationship to the employee or his spouse. If the child is a grandchild of the employee or his spouse and the step-grandchild of the other party, the child is a grandchild rather than a step-grandchild. Following are examples of step-grandchild relationships:
1. A stepchild of the employee's natural child;
  2. A stepchild of the employee's stepchild;
  3. A stepchild of the employee's spouse's natural child;

4. A stepchild of the employee's spouse's stepchild;
5. A natural child of the employee's stepchild;
6. A natural child of the employee's spouse's stepchild.

### 940.30.2 When Proof Is Required

A grandchild or a step-grandchild may qualify for benefits or qualify the employee's spouse for benefits effective 1-1-73. In those instances, the relationship of a grandchild to the employee or the employee's spouse must be established. A great grandchild cannot be entitled under this provision.

A. Life cases - A grandchild or step grandchild who meets the eligibility requirements can:

1. Qualify a spouse under age 65 for an unreduced spouse's annuity; and
2. Be included in the O/M.

These benefits cannot be paid prior to 1-1-73.

B. Survivor cases

1. Monthly benefits - A grandchild or step grandchild who meets the eligibility requirements can:

- a. Qualify for a CIA; and
- b. Qualify a widow(er) under age 65 for a WCIA.

These benefits cannot be paid prior to 1-1-73.

2. Non-recurring payments - A grandchild may qualify for the accrued annuities due but unpaid at death or for the RLS in some instances. If these benefits are paid, retroactivity is not limited to 1-1-73. The following rules will be applied to establish a grandchild's relationship when paying the RLS or an annuity due but unpaid at death to a grandchild:

- a. Establish the relationship between a deceased employee and his grandchild by first establishing the relationship of the grandchild to its parent and then establishing the relationship of that parent to the deceased employee.
- b. The instructions in FOM-I-940.5.2B regarding submission of POR for children in non-recurring payment cases also apply to grandchildren.

### 940.30.3 Relationship Requirements

To establish the relationship of a grandchild to the employee or the employee's spouse for the purpose of paying monthly benefits, it is necessary to establish both of the relationships discussed in A and B below.

- A. Grandchild to his or her parent - In order to determine the relationship between the grandchild and his or her parent, it is only necessary to establish the fact of biological relationship, legal adoption or step-relationship through a marriage to the biological or legally adopting parent. If step-relationship is involved, the marriage to the child's parent must be a valid or voidable marriage, and such marriage must not have ended in divorce or annulment. A void marriage will not serve to create a step-relationship, and the deemed marriage provision cannot apply to a "stepchild" (through deemed marriage) of the grandchild's parent.
- B. Employee or employee's spouse to the grandchild's parent - In determining the relationship of the grandchild's parent or stepparent as a child of the employee or the employee's spouse, all of the provisions of state laws on inheritance, child (or stepchild) of a deemed marriage and deemed child are applicable. If the relationship to the employee's spouse must be established, consider the spouse as the "insured individual" in applying those provisions. Note that it is not necessary to establish the dependency of the grandchild's parent on the employee or the employee's spouse. However, factors that are normally considered "dependency" factors attach as a condition to relationship in some cases.

### 940.30.4 Proofs

- A. Grandchild and parent - The evidence necessary to establish a grandchild's relationship to his parent depends on whether the child is a stepchild or not.
1. Natural or adopted child of parent
    - a. Child's birth certificate showing the name of the employee's or the employee's spouse's child as the parent. If the name of the parent is not shown on the birth certificate, develop sufficient documentary evidence to establish biological paternity or maternity.
    - b. Amended birth certificate of a legally adopted child showing the name of the employee's or the employee's spouse's child as the parent and the adoption decree, if it is offered.

To establish a legal adoption if an amended birth certificate has not been issued or if the adoption decree is not offered, secure:

- (1). A copy of the court record from the court which granted the adoption; or

- (2). A copy of the official notice received by the adopting parents; or
- (3). A copy of the record of the state's attorney or the child welfare division regarding the adoption.

2. Stepchild of parent

- a. The child's birth certificate showing the names of the child's parents; and
- b. Proof of the marriage which created the step-relationship; and
- c. A statement from the person who is filing on behalf of the child that the marriage which created the step-relationship did not end in divorce or annulment.

B. Grandchild's parent and employee or spouse - The evidence necessary to establish the relationship of the grandchild's parent to the employee or the employee's spouse should be developed as any other parent-child relationship cited in this chapter.

C. Proof of death - For the following situations, proof of death as described in FOM-I-920 should be secured:

- 1. Natural child of employee's or employee's spouse's daughter - The natural mother's death must be established. If the evidence establishes the identity of the child's natural father, his death must also be established. Otherwise, a thorough and exhaustive attempt must be made to determine his identity through contact with the person filing on behalf of the child, the employee or his spouse, or any other readily available person who might reasonably be expected to have that knowledge. Also, other possible sources of evidence (such as church, school, court and hospital records) should be checked. All efforts to identify the natural father should be documented and submitted to HQ.

If the identity of the father is established, but his whereabouts are unknown, document and submit all information about the last known whereabouts of the individual and the father's social security account number. The examiner will use this information to determine if the natural father is deceased or disabled.

If the child's father is identified, but his whereabouts are unknown or, for any other reason proof of death cannot be obtained, it cannot be assumed that the father is deceased, unless death may be presumed.

If after a thorough and exhaustive attempt is made the father's identity cannot be determined, it may be assumed he was deceased at the applicable time; this determination must be made by a claims examiner.

2. Natural child of employee's or employee's spouse's son - The natural father's death must be established. Since the natural mother's name is shown on the child's birth certificate, there should be no difficulty in determining the natural mother's identity. Since the natural mother's identity is known, her death must also be established. If the mother's whereabouts cannot be determined, develop according to (l) above.
3. Legally adopted child of employee's or employee's spouse's son or daughter - The death of both adopting parents must be established. It is not material whether the child's natural parents are deceased. If one of the adopting parents adopted the natural child of his other spouse, the death of both the natural parent and the adopting parent must be established. In the rare case in which an individual alone adopted the child, without being joined by his spouse in the adoption, only the death of the adopting parent need be established.
4. Stepchild of employee's or employee's spouse's son or daughter - The stepparent (i.e., the employee or spouse's child) need not be deceased. The evidence must identify the natural or adopting parent to whom the employee's or his spouse's child was married, and the death of that parent must be established. Also the death of the other natural or adopting parent must be established if the identity of this individual is known; if the identity or whereabouts of this other parent is not known, handle in accordance with (l). above.

D. Proof of disability of grandchild's parent

1. Disability under SS Act established - If SSA is paying grandchild's parent a DIB, secure copy of SSA's award letter or similar evidence to establish proof of disability.
2. Disability under SS Act not established - If disability is alleged and either no application has been filed, SSA denied the DIB application for lack of insured status, or SSA denied the DIB application prior to the month:
  - The employee met the conditions for entitlement to an RIB or DIB under the SS Act, or died; or
  - The employee's period of disability began which continued until he met the conditions for an RIB or DIB or until his death, secure the following:
    - a. A statement from the grandchild's parent who claims to be disabled;

- b. A letter or report from the allegedly disabled parent's personal physician; and
- c. Medical evidence used to support a disability claim at SSA, VA, Welfare, etc., when such can be obtained.

## 940.35 Deemed Child

### 940.35.1 Defined

A deemed child is one who would not be considered a child under state law but who may be considered a child for purposes of the RR Act. The child may meet the definition of a child under the RR Act if the facts indicate that (s)he:

- A. Is the offspring of the employee; and
- B. Is the child of an invalid marriage of the parents,  
or
- C. Is an illegitimate child of the employee (under certain conditions).

### 940.35.2 Natural Child of the Employee

A child will be deemed to be the "child" of an insured employee if the employee is the child's natural parent, and the employee and the child's other parent went through a marriage ceremony resulting in a purported marriage between them which would be a valid marriage except for the existence of a legal impediment. In this situation it is unnecessary to determine whether the child has inheritance rights under state law. The phrase "legal impediment" includes:

- A. A prior undissolved marriage or an impediment otherwise arising out of a prior marriage or its dissolution; or
- B. A defect in the procedure followed in connection with the purported marriage.

### 940.35.3 Stepchild of the Employee

Effective 9-1-60, a child is deemed to be the stepchild if his natural or adopting father or mother went through a marriage ceremony with the employee (who is not his natural or adopting parent) resulting in a purported marriage between them which would have been a valid marriage except for the existence of a legal impediment.

### **940.35.4 Proof of Relationship of Child of Invalid Ceremonial Marriage**

Documentary evidence of marriage is always required in this type of case regardless of whether the marriage occurred before or after the child's birth. The following paragraphs contain general guidelines for securing evidence in male employee cases:

- A. When the mother of the child has no legal husband, any pertinent evidence may be used to establish the relationship of the child to the employee. The following are sufficient proofs of relationship (in addition to proof of marriage) if they show the employee as father:
  - 1. Birth certificate;
  - 2. Hospital record;
  - 3. School record.
- B. If the mother is legally married to someone else when the child is conceived, but she and the employee are living together at that time as husband and wife, this tends to establish the child's relationship to the employee.
- C. When a child is allegedly born to an employee who is not living with the mother when the child is conceived, and the mother of the child has a legal husband other than the employee, the evidence must clearly show that the employee is the child's father.

## **940.40 Illegitimate Child**

### **940.40.1 General**

An employee's illegitimate child (one born out of wedlock) may have the status of a child and meet the definition of a child for benefit purposes if the child is:

- A. Legitimated under applicable state law (such a child is treated the same as one born in wedlock); or
- B. Recognized or acknowledged under applicable state law for the purpose of inheriting intestate personal property. Effective February 1968, an illegitimate child may usually be deemed to be a "child" of the employee regardless of the child's status under applicable state law.

### **940.40.2 Child Recognized for Inheritance Rights**

If an illegitimate child would be recognized for inheritance rights under state law as the result of acts by the father, but has not acquired a legitimate status, dependency is deemed.

### 940.40.3 Written Acknowledgement

If State law provides that a child may be legitimated or acknowledged for inheritance purposes by a statement in writing signed in the presence of a witness, there is a great variety of written statements which may suffice. For example:

- A. A soldier's application for an allotment is sufficient if the application lists the child as his child.
- B. An application for social security benefits on behalf of a child signed by the father before a witness.

### 940.45 Illegitimate Child Deemed A Child

#### 940.45.1 Life Cases

For months after August 1965, the RRB will deem a child of a male employee annuitant to be his child for O/M purposes regardless of the child's status under state law. For months after January 1968, such a child may also qualify a spouse for a full annuity. The child may be included in the O/M or qualify the spouse even though under state law (s)he is presumed to be the legitimate child of another person. However, in order for this provision to apply, it must be established that the conditions in A. or B. below are met:

The 1983 amendments to the Social Security Act removed sex-based distinctions from the law. Before the amendments, the child of a female employee could not be deemed on the basis of a court order or other satisfactory evidence; those eligibility requirements applied only to the child of a male employee. That distinction was removed for benefits payable beginning May 1, 1983.

#### A. Court Order or Written Acknowledgement

- 1. The employee is decreed by a court to be the child's parent;
- 2. The employee is ordered by a court to contribute to the child's support because the child is his son or daughter; or
- 3. The employee acknowledges in writing that the child is his son or daughter.

Prior to June 1974, to meet this part of the test the court action or written agreement must have occurred at least 1 year before the employee became entitled to an annuity or attained age 65, whichever was earlier. Effective June 1, 1974, the court order or written acknowledgement requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).



- B. Other Evidence - If the above conditions are not met, the child may still be included in the O/M or qualify the spouse if the employee annuitant:
1. Is shown to be the child's parent by other satisfactory evidence (which may include a written acknowledgement or court action that is not timely established); and
  2. Is living with the child or contributing to the child's support at the time he becomes entitled to an annuity or attains age 65, whichever is earlier.

NOTE: Effective June 1, 1974, the living with or contributions requirement need be met only at the time the child can be included in the O/M (or any month in the retroactive period for inclusion in the O/M).

### 940.45.2 Survivor Cases

Effective February 1968, we will deem the son or daughter of a male employee to be the employee's child for monthly benefits under the RR Act regardless of the child's status under state law if the requirements below are met. In determining the relationship of a "child" for payment of an RLS, do NOT apply this provision if the employee died before 2-15-68, the enactment date of the 1968 amendments. For payment of an RLS, the new definition of a child applies only when the employee died on or after 2-15-68.

An illegitimate child is deemed to be the child of the employee if the employee:

- A. Acknowledges the child in writing; or
- B. Is decreed by a court to be the child's parent; or
- C. Is ordered by a court to contribute to the child's support because he is the child's parent; or
- D. Is shown by other satisfactory evidence to be the child's parent and is living with or contributing to the support of the child at the time of death.

The child may qualify on the employee's earnings record under this provision even if under state law he is presumed to be the legitimate child of another person. This provision may be used not only to establish relationship of a child to his father, but also to his mother in those few jurisdictions where a child does not always have status with respect to his mother. Prior to May 1, 1983, a child could qualify on his mother's earnings record under this provision only if either the "court order for support" provision or "written acknowledgement" provision is met. However, the 1983 amendments to the Social Security Act removed sex-based distinctions from the law. Beginning 5-1-83, a child may also qualify on his mother's earnings record if she is decreed by a court to be the child's mother or is shown by other satisfactory evidence to be the child's mother.

This provision does not give the father or mother the status of "parent" under the act. If the parent is claiming on the earnings record of the child, the parent-child relationship must be determined under state law.

NOTE: From 9-1-65 through 1-31-68, such a child could only be included in the O/M.

### 940.45.3 Evidence to Qualify Illegitimate Child as Deemed Child

#### A. Acknowledgement in Writing

1. The writing must identify the child in question by name or otherwise and must acknowledge the child as the employee's son or daughter.
2. There is no requirement that the writing be in any special form as long as it is made before the employee's death.
3. A variety of written statements by the employee may suffice. For example:
  - a. An income tax return listing the child as his;
  - b. A soldier's application for allotment listing the child as his;
  - c. A will referring to the child as his child.
4. Definitions or precedents as to what constitutes written acknowledgement under state laws relating to legitimacy or recognition are not controlling here.

If clear and convincing evidence shows that the employee acknowledged the child in writing, the requirements are met even if the acknowledgement is no longer in existence or cannot be obtained.

There is a question as to whether a "written acknowledgement" must be signed by the employee. If there is evidence establishing that an unsigned writing was prepared by the employee and the child cannot otherwise qualify, HQ will determine the acceptability of such evidence.

#### B. Child's Birth Certificate [See RCM 4.4.62](#)

- C. Court Decree of Paternity - The court decree must find that the employee is the mother or father of the child. Even though it does not expressly state this, it is sufficient if the order or decree indicates that the employee is charged and either pleads guilty or is found guilty under a specific statute which is applicable only if the employee is the child's mother or father (for example, a bastardy statute). When the decree shows a finding under a statute or provision of a state Code, referred to only by number in the decree, the case will be submitted to the

Bureau of Law in the absence of a precedent or other information on the nature of the statute.

The decree must name the employee and identify the child. It is not necessary that the child be identified by name as long as it is clear that the reference is to be the child in question. Related court records (e.g., complaint, indictment, sentence, etc.) may be considered.

EXAMPLE 1: The employee is found guilty in a bastard proceeding naming him as the father of a child born on 2-10-75 to Mary Jones. The evidence shows the claimant was born 2-10-75 and is the child of the named Mary Jones.

EXAMPLE 2: The employee is found guilty in a court proceeding naming him as the father of the unborn child of Mary Jones. The claimant is born to Mary Jones 7 months later (or any date on which the child can be reasonably identified as the subject of the proceeding).

Consider a court decree of paternity issued after the death of the employee as "other evidence" of paternity which may satisfy the requirement of E below if the employee is living with the child or contributing to the child's support at the time of his death.

- D. Court Order for Support - The court order must identify the child and name the employee and direct the latter to contribute to the child's support. Even though the court order does not name the employee as the child's parent, it is sufficient if the order is issued under a statute requiring a parent to support his child. The discussion in C above as to the identity of the child and reference to a statute or code number also applies here.

Consider a court order for the child's support issued after the employee's death as "other evidence" under E below.

- E. Other Satisfactory Evidence - The evidence must identify the child in question and must establish that the employee is the biological mother or father of the child. There is no requirement that the evidence be in a specific form. Satisfactory evidence may include a court decree, court order or written acknowledgement which established paternity but does not qualify under A to D above. Statements by the employee's relatives that the employee considered the child his own may also constitute evidence.

- F. Living With or Contributions

1. "Living With" - "Living with" means that the child and parent share a common roof under conditions which indicate more than mere coincidence of residence. It also means that the parent has the right to exercise, or is exercising, parental responsibility and authority.

Periodic or temporary separation does not bar "living with" if the circumstances indicate that the child and parent have shared and again expect to share a common roof or resume common residence when conditions permit. Thus, a parent in the armed forces who shares a common roof with the child until his induction is deemed to be "living with" the child; "living with" is also deemed when the child is born while the father is in the armed forces. However, if the child is in the armed forces or committed to a correctional institution, do not consider him to be "living with" his parent, since the parent does not have the right to exercise parental control.

2. Contributions to Support - Contributing to support means substantial contributions in cash or kind. The amount of contributions must be a material factor in the reasonable cost of the child's support.
  - a. Benefits to a child on the earnings record of a living parent are contributions by that parent to support.
  - b. Gifts or donations at special times or for special purposes usually are not contributions. Donations are contributions only if they are given for the child's support and are large enough to provide some of the usual necessities.
  - c. Funds set aside for the child's future use are not contributions.
  - d. An allowance or allotment for a child by a serviceman is a contribution.
  - e. Apportionment of a living veteran's VA compensation or pension is a contribution by the veteran. Since these are cash payments out of the veteran's own funds, it is immaterial whether he has agreed to such payments.
  - f. Whether contributions or support are voluntary or compulsory does not matter. Therefore, a court order for support alone is not significant; consider only contributions actually made without regard to the amount the court order specifies.
3. Limited-Interruption Rule - Contributing to the support of the child may be found even though:
  - a. The normal patter of contributions is disturbed by a temporary interruption (i.e., it does not involve an assumption of support by someone else on a permanent and continuing bases); and
  - b. The evidence indicates that the interruption is involuntary and that contributions would continue if conditions permitted. Involuntary

means the person is unable to contribute because he is ill, disabled, unemployed, etc.

4. Existence and Relationship of Child - In order to establish dependency, the child must be in existence and have the necessary relationship to the employee at the time of his death. If the employee is living with the mother or contributing to her support during the child's period of gestation, the employee is considered to be living with the child or contributing to the child's support during this period.

#### 940.45.4 Development

- A. General - Obtain a full birth certificate showing the parent's names. Some states will not issue such a certificate because it may disclose the child's illegitimacy; if only a short form birth certificate can be obtained because of this, place a written statement to this effect in the file.

Use discretion and develop the child's relationship under state law, under the invalid ceremonial marriage provision as discussed in FOM-I-940.35.4, or under the illegitimate child provision in FOM- I-940.45.1, whichever is applicable or more expeditious, or develop under each concurrently. However, if benefits for months before 2-1968 are involved, development must be made to determine whether the child meets the inheritance tests under state law.

When the applicant states the child is illegitimate or other information indicates illegitimacy, obtain the full birth certificate and answers to the following questions under "Remarks" on the application, or in a separate statement signed by the applicant:

1. Is the employee living with or contributing to the support of (child's name)?
2. Did the employee acknowledge in writing that this child is his son or daughter?
3. Is the employee decreed by a court to be the parent of this child?
4. Is the employee ordered by a court to contribute to this child's support?

If the answer to any of these questions is yes, develop under the following sections.

- B. Development of Court Order - Ordinarily, obtain a copy of the court decree of paternity or court order for support certified by the proper court official. However, accept an excerpt from the order or decree certified by the court official if it contains sufficient information to determine that the child qualifies (i.e., there is a finding of paternity or an order to support the claimant as a child of the

employee). Identifying information may be completed by considering other papers as explained in FOM-I-940.45.3 C. and D.

If there is any indication of a modification in a finding of paternity in the decree or the identity of the parent in the court order, the applicant should furnish a current decree or order with the certification by the proper court official as to whether the finding is vacated or changed.

Be sure the decree or order shows the date the court made its ruling.

- C. Development of Written Acknowledgement - Include in the file the written acknowledgement or a photocopy of a true and exact copy.

It is not material whether the date is shown as long as it can be determined that the employee made the acknowledgement.

If the acknowledgement is not signed, obtain evidence as to whether the employee prepared it. When the evidence shows that the acknowledgement was prepared by the employee and the child cannot otherwise qualify, submit the data to the proper adjudication unit for a determination as to the acceptability of the evidence.

In some instances the appearance of the employee's name as father on a child's birth certificate may suggest development of a written acknowledgement with the state vital statistics office.

- D. Development of Other Evidence - Since the evidence offered may be in a variety of forms, exercise judgment in evaluating it, keeping in mind that such evidence must establish biological paternity.

Consider such factors as the age of the evidence and date established, the purpose for which it was established, who furnished the information on which the evidence was based, the formality of the evidence, etc.

In addition to the child's birth certificate, obtain the mother's statement as to paternity if she is not the applicant. If the mother's whereabouts are unknown, or if she is incompetent or deceased, secure other evidence to establish paternity. This may be hospital, church, or school records; a court order or decree; or a statement from the attending physician, relative, or person who knows the child's relationship to the employee including the basis for that knowledge. It may also be evidence that the employee and the child's mother were living together when the child was conceived.

This list is not exhaustive and there may be other evidence which can establish the child's relationship to the employee.

If the birth certificate shows the employee as the child's father and this is corroborated by the applicant (mother's statement if she is not the applicant), this is ordinarily sufficient, unless there is evidence to the contrary. If the birth certificate does not show the employee as father, or shows the birth was registered after the employee's death, or if a birth registration cannot be located, develop other evidence of paternity as in the preceding paragraph.

NOTE: In addition to establishing paternity based on "other evidence" it is also necessary to establish that the child was either living with the employee or being supported by him at the time of the employee's death.

#### E. Development of Living With or Contributions

1. "Living With" - Obtain the applicant's statement as to whether the child lived with the employee at the time of the employee's death.

Additional evidence of living with is required if information obtained during the normal course of development raises some doubt as to whether the child is living with the employee; or the applicant on behalf of the child does not have personal knowledge of where the child lived at the time of the employee's death.

2. Contributions - If the child is not living with the employee at the time of the employee's death, have the applicant submit a signed statement regarding the contributions to the child's support by the employee during the year preceding the employee's death. Obtain supporting statements from the best available source with personal knowledge, or obtain corroborating evidence, such as cancelled checks, receipts, etc.

## 940.50 Siblings

### 940.50.1 General

This relationship is established for the claimant by proving that the deceased employee and the claimant have the same two parents.

### 940.50.2 Proofs

The preferred proof of a brother or sister relationship is a certified copy of a civil or church record of such brother's or sister's birth. However, any of the forms of documentary evidence shown in FOM-I-915, "Age," is acceptable if it shows the relationship claimed and if none of the information available or furnished to the RRB is inconsistent with the existence of the relationship.

Records originating after the death of an employee are always of doubtful value, unless based upon evidence predating the death of the employee.

Newspaper or magazine clippings are never acceptable as evidence.

If no documentary evidence is obtainable, the applicant must:

- A. Furnish a written statement giving the reasons why documentary evidence is not obtainable; and
- B. Submit affidavits from two disinterested persons showing:
  - 1. The names of the applicant, the applicant's parents (maiden name of the mother), and the deceased employee;
  - 2. A statement of the affiant's knowledge that the applicant was a sibling of the employee;
  - 3. The basis of the affiant's knowledge.



