945.5 Dependency

945.5.1 When Dependency Is Required

A. Life cases - Dependency of the child upon the employee is required when:

1. The employee's annuity is to be increased under the O/M by including a child, a grandchild or a spouse who has a child in care; or

2. A spouse under full retirement age (FRA) files for a full spouse annuity on the basis of a child or a grandchild in care.

B. Survivor cases - Dependency of a child upon the deceased employee is required for entitlement to a child's insurance annuity. Dependency must be established at the time of the employee's death unless the employee had a disability freeze that continued until the time when (s)he would have met the conditions for an age or disability benefit under the SS Act if his/her. Railroad service had been covered as wages under that act. If the deceased employee had a disability freeze that continued until (s)he would have become entitled to a social security benefit or died, the dependency requirements may be met at the following points:

1. At the beginning of the period of disability; or

2. At the time the employee would have become entitled to a social security benefit (as explained above).

The dependency requirement must be met even if the child was previously determined to be dependent upon the employee for the purpose of increasing the employee's O/M or qualifying a spouse for an annuity.

945.5.2 When Dependency Requirement Must Be Met

The point in time at which a child must be dependent upon the employee varies according to the type of claim as shown in the following table.

CHILD'S STATUS	TYPE OF CLAIM	POINT IN TIME DEPENDENCY MUST EXIST
Natural child, equitably adopted child, stepchild, deemed child, illegitimate.	IPI child in Employee's O/M	

	1. No DF or DIB involved	When employee's annuity can be increased under by including child.
	2. DF or DIB involved.	When latest DF period begins, or when employee last meets DIB requirements, OR when child is otherwise eligible to be included under DIB-O/M.
	Spouse with Child in Care	
	1. Full spouse annuity under RR Act.	Beginning date of spouse annuity.
	2. Inclusion under O/M.	When employee's annuity can be increased under O/M by including child.
	Child of Deceased Employee	
	1. Child's Insurance Annuity.	At the time of the employee's death, unless employee because entitled to a disability freeze that continued until the time when he or she would have met the conditions for an age or disability benefit under the Social Security Act if his or her RR service had been covered as wages under the Act. If the deceased employee had a disability freeze that continued until he or she would have become entitled to a social security benefit or died, the dependency requirements may be met at the following points:

		• At the beginning of the period of disability; or • At the time the employee <u>would</u> have become entitled to a social security benefit.
Grandchild (except a legally adopted grandchild.)	Any type of claim.	During the entire 1-year** prior to month in which: 1. Employee became entitled to the O/M or died; or 2. Period of disability began which continued to what would be social security entitlement or death.
Legally Adoped Child	<u>IPI Child in Employee's O/M</u> 1. Adopted before month of employee's O/M entitlement. 2. Adopted any time after employee's O/M entitlement.	 When employee's annuity can be increased under O/M or DIB-O/M by including child. When employee's annuity can be increased under O/M or DIB-O/M by including child.
	<u>Spouse With Child in Care</u> 1. Full spouse annuity under RR Act. 2. Inclusion under O/M.	 Beginning date of spouse annuity. When employee's annuity can be increased under O/M by including child.
	<u>Child of Deceased Employee</u>	

	Child's insurance annuity.	At the time of the employee's death.

** A child born during the 1-year period is deemed to meet the 1-year requirement.

945.5.3 Child's Dependency Upon Natural or Legally Adoptive Parent

A. Life cases - A legally adopted child (including a grandchild) who is adopted by the employee during his lifetime is deemed dependent for payment of RR formula annuities, and, as such, can qualify a spouse for a full spouse annuity if the "in care" requirement is met. However, if an adopted child is to be included in the computation of the employee's annuity under the O/M, the following requirements must be met:

1. Months after 9-1972 - A child will be deemed dependent upon the employee when the employee is his natural parent. A legally adopted child will be deemed dependent unless the child was adopted after the point at which the employee would have been entitled to an age or disability social security benefit if his/her railroad service had been covered as wages under that act. If the child is adopted by someone else during the employee's lifetime, dependency is established by "living with" or if the employee is contributing to the child's support.

2. Months after 1-1968 and prior to 10-1972 - A child will be deemed dependent upon the employee as for months after 9-l972 unless subsequently adopted by someone other than the employee.

3. Months after 8-l960 and prior to 2-1968

   a. Male employees - The rules for establishing dependency are the same as for months after l-l968 and prior to 10-1972.

   b. Female employees - A child will be deemed dependent upon the employee when the employee is his natural mother or legally adoptive mother if the employee is currently insured under the SS Act or partially insured under the RR Act. If the employee is not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon her only if:

      - The employee contributes one-half of the child's support; or

      - The employee is living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.

4. Months prior to 9-1960

a. Male employee - A child is dependent upon his natural or legally adopting father (employee) if:

- Such father is living with or contributing to the child's support; or
- The child is the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

  NOTE: In those states in which adoption by another person during the natural father's lifetime does not cut off inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such a case, the child is dependent upon his natural father ONLY if he is living with or receiving contributions for support from such father.

b. Female employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

B. Survivor cases

1. Months after 9-1972 - A natural child will be deemed dependent upon the deceased employee when the employee was his natural parent. A legally adopted child will be deemed dependent upon the deceased employee when the employee was his legally adoptive parent. The child's benefits or annuity will not be terminated if he is subsequently adopted.

2. Months after 1-1968 and prior to 10-1972 - A child will be deemed dependent upon the deceased employee as for months after 9-1972 unless he is adopted by someone other than a stepparent, grandparent, aunt, uncle, brother or sister. If a child is adopted by someone other than one of these "close" relatives, his annuity must be terminated. However, he can qualify as an IPI, if another family member is being paid under the O/M.

3. Months after 8-1960 and prior to 2-1968

   a. Male employees - The rules for establishing dependency are the same as for months after 1-1968 and prior to 10-1972.

   b. Female employees - A child will be deemed dependent upon the deceased employee when the employee was his natural mother or legally adoptive mother if the employee was currently insured under the SS Act or partially insured under the RR Act. If the employee was not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon her only if:

- The employee contributed one-half of the child's support; or
- The employee was living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.

4. Months prior to 9-1960

a. Male employee - A child is dependent upon his natural or legally adopting father (employee) if:

- Such father was living with or contributing to the child's support; or
- The child was the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

NOTE: In those states in which adoption by another person during the natural father's lifetime does not eliminate inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such a case, the child is dependent upon his natural father ONLY if he is living with or receiving contributions for support from such father.

b. Female employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

945.5.4 Child Legally Adopted by Employee's Widow(er)

Effective 1-1-91 (for applications filed after 12-31-90), a child will be deemed to have been dependent upon the deceased employee if:

A. The child was living with the employee at the time of the employee's death; or

B. The child received at least one-half support from the employee in the year prior to the employee's death.

NOTE 1: The above rules apply both to children adopted within 2 years of the employee's death and to children adopted more than 2 years after the employee's death when adoption proceedings were initiated before the employee's death.

NOTE 2: Prior to 1-1-91, the following requirements applied: the employee instituted proceedings to adopt the child before the employee's death; and the child was living in the employee's household at the time of death; and at the time

of his 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.

945.5.5 Child's Dependency Upon Equitably Adopting Parent

A child's dependency upon an equitably adopting parent will not be deemed as in the case of a legally adopting parent, but rather dependency will be established in accordance with A or B below.

A. Equitably adopting father - He must either:

1. Be living with the equitably adopted child; or

2. Be contributing to the equitably adopted child's support.

B. Equitably adopting mother

1. Months after 1-1968 - She must either:

a. Be living with the equitably adopted child; or

b. Be contributing to the equitably adopted child's support.

2. Months prior to 2-1968 She must either:

a. Be contributing one-half of the equitably adopted child's support; or

b. Be living with or contributing to the equitably adopted child's support AND the natural or adopting (including equitably adopting) father is neither living with nor contributing to the child's support.

Please have adopting parent complete Form G-139, *Statement Regarding Contributions and Support of Children,* and submit with their application.

945.5.6 Child's Dependency Upon Stepparent

A child's dependency upon a stepparent may not be deemed. Dependency must be established in accordance with A, B or C below.

A. Stepfather - He must either:

1. Be living with the stepchild; or

2. Be contributing one-half of the stepchild's support.

B. Stepmother

1. Months after l-1968 - She must either:

a. Be living with the stepchild; or

b. Be contributing one-half of the stepchild's support.

2. Months prior to 2-1968 - She must either:

a. Be contributing one-half of the stepchild's support; or

b. Be living with or contributing to the stepchild's support AND the natural or adopting father is neither living with nor contributing to the stepchild's support.

C. Stepparents Effective July 1, 1996

The employee must be contributing at least one-half support to the stepchild. "Living-with" is no longer an option for meeting dependency.

945.5.7 Illegitimate Child's Dependency Upon Parent

The following rules will be applied when an illegitimate child cannot be deemed a child of the employee under the February l968 amendments to the RR Act:

A. Father

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under state law.

2. Prior to 6-29-76 - The child's dependency upon the father is determined by the child's status under applicable state law. If the child is recognized or acknowledged by the father for inheritance purposes under applicable state law, the child is dependent if the father:

a. Is living with the child; or

b. Is contributing to the child's support.

B. Mother

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under state law.

2. Months after January l968 - The child's dependency upon the mother is determined by the child's status under applicable state law. If the child is recognized or acknowledged by the mother for inheritance purposes under applicable state law, the child is dependent upon the mother if she:

a. Is living with the child; or

b. Is contributing to the child's support.

3. Months prior to February l968 - If the mother is currently insured under the SS Act or partially insured under the RR Act, the child will be deemed dependent upon the mother regardless of the child's status under applicable state law.

   If the mother is not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon the mother if she is:

   a. Contributing one-half of the child's support; or

   b. Living with or contributing to the child's support AND the child's father is neither living with nor contributing to the child's support.

945.5.8 Deemed Child's Dependency Upon Parent

A. Child of invalid ceremonial marriage - For months after January l968, the dependency of such a child upon the natural parent is deemed as for a legitimate child. It is, therefore, not necessary to determine whether the child has inheritance rights under applicable state law.

B. Illegitimate child deemed a child for months after January 1968 - The dependency of such a child upon the parent is deemed as for a legitimate child.

945.5.9 Determining Whether Child Is "Living With"

"Living with" is defined as meaning 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 prevent a finding of "living with" if the circumstances indicate that the child and parent have shared and again intend to share a common roof or resume common residence when conditions permit. Thus, a parent who shares a common roof with the child until induction into the armed forces is deemed to be "living with" the child. 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.

945.5.10 Grandchild Dependency Requirements

A. Dependency - In addition to meeting the relationship requirements in FOM-I-940.30.3, the grandchild must also have been dependent on the employee. Note that the child must have the necessary relationship to the employee at the time used for establishing dependency. To be dependent, a grandchild must have:

   1. Begun living with the employee before (s)he attained age l8; and

2. Lived with the employee in the U.S. throughout the year specified in B. below; and

3. Received at least one-half support from the employee throughout that same year.

B. Time requirement - living with and one-half support - The grandchild must have been living with and receiving one-half support from the employee for the entire year before:

1. The month in which the employee would have met the requirements for a social security benefit if covered or the month in which the employee died; or

2. The month in which the employee's period of disability began which continued until (s)he would have met the conditions for entitlement to a social security benefit if covered or until his/her death; or

3. In the case of a grandchild adopted by an RIB or DIB beneficiary only, the month before the application is filed for the child.

If the grandchild was born during this 1-year period, the dependency requirements are deemed to be met if the grandchild lived with the employee in the U.S. and received at least one-half support from the employee for substantially the entire period between the date of his birth and the earliest of the above mentioned dates.

C. No natural or adopting parent living with and contributing to the support of the child - in cases involving adoption of a grandchild or step-grandchild by the deceased employee's surviving spouse, the grandchild, in addition to meeting the relationship tests in FOM-I- 940.30.1, must not have been receiving regular contributions towards his support from his natural or adopting parent or stepparent who was living in the employee's household at the time the employee died. The parent must have been both contributing to the support of the child and living in the employee's household for benefits to be precluded. A parent who is living in the employee's household but not contributing to the child's support will not bar the child's entitlement.

Likewise, regular contributions from a parent not living in the employee's household will not bar the child's entitlement. However, such contributions must be considered in determining whether the child was receiving at least one-half of his support from the employee.

945.10 Support

945.10.1 Support Defined

A. General - Support is the maintenance of a person necessary for his well being. It includes such things as food, clothing, shelter, current medical needs, etc. Support of a person can be shown by contributions in cash, kind or services.

B. One-half support - One-half support means that the applicant is receiving at least 50% of his support from the employee in the form of regular contributions in case, kind or services.

945.10.2 When Proof of Support Is Required

A. Life cases - A husband must have met the requirement of receiving at least one-half of his support from his wife:

1. To receive a male spouse annuity beginning before 3-1-77, or to be included in the retirement O/M computation as a male spouse before 3-1-77. Effective 3-1-77, one-half support is no longer a requirement for payment of a male spouse annuity or for inclusion in the retirement O/M computation; or

2. To be exempt from reduction for a public service pension (PSP), if he is eligible for the PSP before 7-1-83; or

3. To receive payment of a RIB/DIB vested dual benefit, before spouse vested dual benefits were eliminated beginning 8-13-81.

   A spouse or divorced spouse who is receiving one-half support, and is eligible for a PSP before 7-1-83, may be exempt from reduction for the PSP beginning 12-1-82. See FOM-I-120.

B. Survivor cases - Proof of support is required for a parent's annuity and for certain cases of child dependency.

Effective July 1, 1996, all stepchildren must meet the dependency requirement of one-half support. Prior to July 1, 1996, a stepchild was deemed dependent if the child was living-with the employee.

A widower must have been receiving one-half support from the employee at the time of her death or at the time her retirement annuity began for his annuity to begin before 3-1-77; after February 1977 a widower does not have to prove one-half support except for payment of a vested dual benefit (if payable before 8-13-81) or employee annuity restored amount. In addition, a widow or a widower who is eligible for a PSP before 7-1-83 may have to prove one-half support to be exempt from reduction for the PSP. See FOM-I-120.

945.10.3 Contributions to Child's Support

A. General - "Contributions to support" means regular and substantial contributions in cash or kind. The amount of contributions must be a material factor in the reasonable cost of the child's support. Whether contributions to the child's support are voluntary or compulsory does not matter. Therefore, a court order for support is not significant; only contributions actually made (without regard to the amount the court order specifies) will be considered.

   Benefits to a child based on the employee's insured status are contributions by the employee.

   Gifts or donations at special times or for special purposes usually are not contributions, nor are funds set aside for the child's future use 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.

B. Determining one-half support - Contributions in both cash and kind will be considered when determining whether a parent contributes at least one-half of the total cost of the child's support.

C. Limited interruption rule - "Contributions to support' can be established even though the normal pattern of contributions is disturbed by a temporary interruption (i.e., does not involve an assumption of support by someone else on a permanent and continuing basis). However, the evidence must prove that the interruption is involuntary (i.e., due to ill health, disability, unemployment, etc.) and that contributions would have been continued had conditions permitted.

945.10.4 Statement Regarding Support

When applicable obtain a sworn statement from the applicant or other person having knowledge of the facts regarding contributions to the child's support. The statement should furnish the following information:

A. Name of person who is contributing to the support of the child and relationship to the child;

B. How often cash payments are made by such person for the support of the child;

C. The usual amount of each payment;

D. The period of time over which the payments are made;

E. The amount and date of the last payment;

F. A description of any contributions made in a form other than cash and their cash value;

G. The name of the person to whom payments are made for the child's support.

In addition, if the pooled fund method can be used in determining if the one-half support requirement is met, secure the amount and source of income of each member of the single family residing in the household. (See FOM-I-945.10.7 for an explanation of the "Pooled Fund Method of Determining Support" and when this method can be used.)

945.10.5 Time Frame for Determining Support

An applicant must be receiving at least one-half support from the employee at the time the employee's annuity began under the RR Act, or at the time of the employee's death. In a life case, if support is established for annuity purposes, it is also established for O/M purposes.

Although "the time the retirement annuity began under the RR Act, or at the time of the employee's death" refers to the date on which those events occurred, the facts relating to the applicant's total support for a reasonable period before such date are considered in determining whether the support requirement is met. The three following sections illustrate the application of this principle.

A. Twelve months as a reasonable period - An applicant meets the support requirement at the appropriate time if, during the 12-month period preceding that time, the employee contributed regularly and without a permanent break at least one-half the applicant's whole support. Where there is a change in the support pattern, the period to be considered in determining support begins with the change in circumstances unless unfortunate circumstances are present.

B. Three months as a reasonable period - unfortunate circumstances involved - The applicant is receiving at least one-half support if:

   1. The employee contributes at least one-half of the applicant's whole support for at least 3 months of the support year; and

   2. Unfortunate circumstances such as illness, unemployment, etc., prevent the employee from making further contributions; and

   3. The applicant's income during the rest of the year (excluding initial or supplemental public assistance grants first received after the employee stopped contributing) is reduced 25% or more.

C. Other reasonable periods - The applicant meets the support requirement at the appropriate time if the employee, during a reasonable period just before that time, contributes at least one-half of the applicant's support. The brevity of such a period does not preclude a finding of support if the employee plainly showed intent to provide at least one-half of the applicant's support on a continuing and permanent basis.

When the applicant receives wages and/or SE income during part of the year before the employee's annuity began or before the employee's death but not in the period just before the employee's ABD or death, have the applicant state whether the employment was permanent or temporary, or regular or seasonal in nature. If the applicant could reasonably be expected to return to regular employment at the time of or shortly after the employee's ABD or death, the reasonable period rule usually will not apply.

D. Deemed support rule - Effective 1-1-82, the applicant is deemed to have been receiving at least one-half support from the employee if the employee provided the applicant with room and board, and the applicant's income from other sources was not more than $128.50 a month ($96 a month for support periods 1979 through 1981). This rule may be used only to find one-half support, not to deny it.

945.10.6 Income

Any payment received by the applicant in cash, kind or services (including any proceeds from property) is income to the applicant. Also consider the amount of unpaid debts contracted by the applicant for current support during the period for which support is being determined. The following sections list the types of income that should be considered when support is being developed.

A. Employment - For support purposes, the applicant's net income from employment is his gross pay minus any expenses incurred in furthering his employer's business.

B. Investment and similar income - If the applicant is the sole owner of income producing property such as stocks and bonds, real estate investments, bank deposits, etc., the current earnings (dividends, interest, etc.) are income to the applicant. If the property is jointly owned, the income will be allocated equally to the joint owners.

C. Business - Net earnings from the operation of a business (including commercial farms) are income for support purposes. When the employee and the applicant are joint owners, the net income will be allocated equally to both.

D. Rental property - Income from rental property is equal to the gross income minus all regular expenses. Accelerated mortgage payments and depreciation are not regular expenses.

E. Farming - The net value of farm or garden produce used (market value less expenses of production) is income for support purposes.

F. Sales of assets - Proceeds from the sale of assets are considered income only if and to the extent used for support purposes.

G. Funds from insurance policies - Funds from policies of which the applicant is either owner or beneficiary are considered income only if and to the extent used for support purposes.

H. Federal benefits - Monthly benefits paid under the RR Act and those of other Federal agencies are income to the applicant. Lump-sums paid under the RR Act and those of other Federal agencies are also income to the applicant if used for the applicant's support.

I. Public assistance or other public aid - Public assistance or other aid is income to the recipient in all cases. However, such income does not prevent the applicant's entitlement when it is initially received or increased after unfortunate circumstances forced a reduction or termination of the employee's contributions.

J. Room and board - Room and board furnished to the applicant by the employee or some other person is income and must be considered in the support computation.

K. Contributions - A contribution to an applicant by the employee or some other person is income to the applicant. A contribution may be in cash, in kind, or work done.

1. Contributions in kind - In order for a one-time contribution in kind to constitute income for support, it must be used for support. The cash value of regular contributions in kind is the cost of the items if bought in the open market when the contributions were made.

2. Contributions of work - The cash value of work that the employee or other person does for the applicant, or vice versa, is what it would cost to hire similar labor to do similar tasks in the same length of time.

   This rule applies to work for which labor would usually be hired, such as repairs or improvements in the home. It does not apply to routine household tasks ordinarily expected of members of the household; these tasks do not have a cash value in determining support.

3. Housing - If the applicant occupies a rent-free house provided by the employee or some other person, consider the fair rental value as income to the applicant if the contributor owns the property and pays the maintenance costs. (Maintenance costs do not include ordinary utilities.)

945.10.7 Pooled Fund Method of Computing Support

The pooled fund method of computing support is based on the assumption that, where all income coming into a household is pooled for the support of the household, each member shares equally in the funds used for support. The pooled fund method cannot be used to establish support when:

A. Separate family groups are living in the same household; or

B. A father is under a court order to support his minor children, but the order does not provide for payments to the mother; or

C. There is evidence indicating that the income for support is not shared equally.

If using the pooled fund method results in disproving one-half support by a narrow margin, the method will not be used; further development will be initiated to determine the amounts of actual contributions by the employee and living expenses of the alleged dependent.

When the pooled fund method is used to establish support, it is assumed that each member of the family shares equally in the income received by the family for support. This method can be used to determine whether the dependency requirement is met for purposes of qualifying a husband, parent or grandchild for a monthly benefit.

945.10.8 Grandchildren-Special Support Rules

A grandchild or step-grandchild, as defined in FOM-I-940.30.1, may qualify for benefits or qualify the employee's wife for benefits effective January 1, 1973. In addition to meeting the relationship requirements, except for a grandchild adopted by an O/M recipient (see FOM-I-945.10.9), the grandchild or step-grandchild must meet the dependency requirements and fulfill the requirements in A or B below.

A. The child's natural or adoptive parents must be either deceased or disabled:

   1. In the month in which the employee met the conditions for entitlement to the O/M, or died; or

   2. In the month in which the employee's period of disability began which continued until he met the conditions for entitlement to the O/M or until his death.

B. The child was legally adopted anytime after the employee died by the employee's surviving spouse in an adoption decree by a court of competent jurisdiction within the U.S. (including Puerto Rico, the Virgin Islands, Guam and American Samoa), and the child's natural or adopting parent or stepparent was not living in the employee's household and making regular contributions.

945.10.9 Requirements for Eligibility of Grandchild Adopted by an O/M Recipient

An adopted grandchild of the employee or spouse who does not meet the dependency requirements for any of the 1-year periods shown in FOM-I-945.5.2 may still be eligible to be included in the O/M or make the employee's wife eligible to be included in the O/M if:

A. The adoption was by an O/M recipient, and

B. The dependency requirements in FOM-I-945.5.10 are met for the 1-year period immediately prior to the month in which the child's application is filed. This is the alternative period of dependency test. Under this test, the child must meet all of the following requirements:

1. (S)he must not be a step-grandchild as defined in FOM-I-940.30.1; and

2. (S)he must have been legally adopted by the employee in an adoption decreed by a court of competent jurisdiction in the U.S. (including Puerto Rico, the Virgin Islands, Guam and American Samoa); and

3. (S)he must not have attained the age of l8 before (s)he began living with the employee; and

4. (S)he must have been both living with the employee in the U.S. (including the territories in number 2, above) and receiving one-half support from the employee for the entire 1-year period immediately before the month in which the child's application is filed.

The alternative dependency test for grandchildren does not affect cases where the child is adopted after the employee's death by his surviving spouse. A step-grandchild of the employee or spouse (who is not the grandchild of the other) does not qualify under this provision.

An adopted child born during the 1-year period is deemed to meet the living with and one-half support requirement if he lived with and received at least one-half support from the employee for substantially all of the period from the date of his birth to the month in which the child's application is filed.

NOTE: Unlike the grandchild definition and dependency requirements in sections 945.10.8 and 945.5.10, respectively:

- There are no conditions requiring the grandchild's parents to be either deceased or disabled; and

- There are no conditions regarding partial support by the grandchild's parent who lives in the same household. Of course, if the grandchild's parent is contributing one-half support of more, then the grandchild could not be dependent upon the employee.

945.10.10 Development of Proof of Death or Disability of Grandchild's Natural or Adopting Parents

In all cases except those in which a grandchild could qualify as an employee's adopted child, the grandchild's parents must be either deceased or disabled. In the applicable cases, when the death or disability of the grandchild's natural or adopting parent cannot be proved, the claim for the grandchild must be denied. The natural or adopting parents will generally be identified in the evidence obtained.

A. Proof of death

1. Natural child of employee's or 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, an attempt must be made to ascertain 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. In addition, other possible sources of evidence (such as hospital, church, court or school records) should be checked. All efforts to identify the natural father should be documented and submitted for the file.

   If the child's father is identified but his whereabouts are unknown or, for any reason, proof of death cannot be obtained, an assumption cannot be made that the father is deceased, except where death can be presumed.

2. Natural child of employee or employee's spouse's son - The natural father's death must be established. In addition, there should be no difficulty in identifying the child's natural mother since this information is almost always shown on the child's birth certificate. If this document is not available, the identity of the child's mother should be established following the same general guidelines for identifying the natural father described in l. above.

3. Legally adopted child of employee or employee's spouse's son or daughter - The death of both adopting parents must be established. If neither adopting parent is also the child's natural parent, it is not material whether the child's natural parents are deceased. If one parent adopted his spouse's natural child, the death of both the adopting parent and the natural parent must be established. In the rate case in which an individual alone adopted the child without being joined by his spouse, if any, in the adoption, only the death of the adopting parent need be established.

4. Stepchild of employee or employee's spouse's son or daughter - The stepparent need not be deceased. The evidence must identify the natural or adopting parent to whom the employee or employee's spouse's child was married, and the death of that parent must be established. In addition, the death of the child's other natural or adopting parent (if any) must also be established if this person is identified by the evidence in file. An attempt must be made to ascertain the other parent's identity and death following the same procedure outlined in 1 above.

B. Proof of disability - The grandchild's parent must have been disabled within the meaning of the SS Act as of the month in which:

- The employee met the conditions for entitlement to the O/M; or

- The employee began a period of disability which continued until he met the conditions for entitlement to the O/M or until his death; or
- The employee died.

1. When disability under the SS Act has been established - If disability is alleged and SSA is paying a DIB to the grandchild's parent, a copy of the award letter or similar evidence of SSA's award will be sufficient proof of disability.

2. When disability under the SS Act has not been established - If disability is alleged and either no application for a DIB was ever filed, or SSA denied the DIB application for lack of insured status, obtain:

   a. A statement from the grandchild's parent who claims to be disabled; and

   b. A complete Form G-251; and

   c. The contact representative's personal observations report; and

   d. A letter or other report from the allegedly disabled person's personal physician; and

   e. Medical evidence used to support a disability claim at SSA, VA, Welfare, etc., when such can be obtained.

945.10.11 Special Support Rules - Divorced Woman

Prior to 10-5-72 a divorced woman (a divorced wife, surviving divorced wife, and surviving divorced mother) could be included in the O/M if she would qualify for a monthly benefit under the SS Act even though she was not eligible for an annuity under the RR Act. One condition of eligibility under the SS Act was that she received at least one-half of her total support from the employee.

Effective 10-5-72, a divorced woman cannot be initially included in the O/M. However, such individuals who are on the benefit payment rolls will continue to be included until the O/M is no longer applicable, the annuity of the employee or eligible survivor is terminated or the person could no longer qualify for a benefit under the SS Act.

A divorced wife or husband who is entitled to an RR Act annuity may be included in the O/M beginning 10-1-81. There is no support requirement for entitlement.

945.15 Care

945.15.1 "Child in Care"

"Child in care" means that the applicant exercises parental control and responsibility for the welfare and care of a child under age 18 (or 16) or a mentally incompetent child age 18 (or 16) or over, or performs personal services for a mentally competent child age 18 (or 16) or over who is disabled. The applicant may be exercising parental responsibility or performing personal services either alone or jointly with a spouse or other household member.

Entitlement to a spouse annuity or widow(er)'s annuity is based on having a child under age 18 or a child who became disabled prior to age 22 in his/her care.. Payment of surviving divorced spouse or remarried widow's annuity and O/M entitlement, however, are based on having a child under age 16 or a child who became disabled prior to age 22 in his/her care.

NOTE: For the period 9-81 to 7-92, the tier I portion of a spouse or widow(er)'s annuity was terminated if the child was over age 16 but under age 18. Per Board Order 92-263, eligibility for Tier 1 was restored in cases in which the child attained age 16 later than 7-92. Per Board Order 93-108, tier I was restored retroactive to 1-1-1986 in cases previously terminated. These are called "Nancy Johnson" cases.

References in this chapter may apply to a child at age 18 or age 16, depending on the spouse's or widow(er)'s eligibility requirements.

A. When required -- "Child in care" is an eligibility requirement for:

1. A spouse under FRA who applies for a full spouse annuity on the basis of a child of the employee; or

2. A spouse to be included in the computation of the employee's O/M on the basis of his child; or

3. A widow(er) (including divorced and remarried) under age 60 who applies for a widow(er)'s current insurance annuity.

B. Parental responsibility -- Parental control and responsibility over a child under age 18 (or 16) or an incompetent child age 18 (or 16) or over may be exercised directly when the applicant lives with the child. When the applicant does not live with the child, parental control and responsibility may be exercised indirectly by giving instructions to the child's custodian and ensuring that those instructions re followed. The applicant must:

1. Supervise the child's activities;

2. Participate in important decisions about the child's physical and mental needs;

3. Measurably control the child's upbringing and development;

4. Influence the training and development of the child.

If the development and training of a mentally incompetent child who is not living with the applicant is exclusively controlled by the custodian, even though paid for by the applicant, the child is not in the applicant's care.

C. Personal services -- The personal service required for "child in care" when the mentally competent child is age 18 (or 16) or over must be performed regularly and in addition to any routine household service which may be rendered for any adult member of the household. Thus, personal services are services of a special nature such as nursing care, feeding or dressing. However, the concept of personal services is not necessarily limited to such actual physical or personal care. The direction or supervision of the activities of a mentally competent child who is unable to manage his own funds or is able to do so only with considerable help would constitute personal services. Also, when the applicant's presence is required by the nature of the child's disability, (s)he will be considered to be performing personal services.

945.15.2 Applicant and Child Living Together Regularly

A. Child under age 18 (or 16) or mentally incompetent -- Examiners will assume that an applicant living with such a child has the child in care for each month they live together. This includes the month they began or ended living together regularly, if they lived together for at least 1 full day of the beginning or ending month, unless a spouse annuitant or O/M beneficiary is required to have the child in care for every day of the first month.

Do not assume that the child is in the applicant's care if there is evidence to the contrary or the applicant is mentally incompetent. Instead, obtain the applicant's statement about the exercise of parental control and responsibility. Obtain a statement from another person who lives in the household or has knowledge of the circumstances only if there is doubt on whether the applicant's statement is true.

B. Disabled mentally competent child -- If the applicant regularly lives with such a child age 18 (or 16) or over, the child is in the applicant's care only if the applicant performs personal services for the child. If it is established that the applicant has the child in care, the applicant is considered to have the child in care for the month they began or ended living together regularly, provided they lived together for at least 1 full day of such month. However, a spouse annuitant or O/M beneficiary may be required to have the child in care for every day of the first month.

Obtain a statement from the applicant and from the disabled adult child about the nature and frequency of the personal services performed and whether and to

what extent the applicant's presence is required because of the child's disability. If there is any question, obtain a statement from another person who lives in the household or has knowledge of the circumstances.

945.15.3 Applicant and Child Living Together Temporarily

A. Child under age 18 (or 16) or mentally incompetent - When the applicant is temporarily living with such a child, the child is in the applicant's care only if:

1. The child is in the applicant's care while they are apart; or

2. The child is with the applicant for a period of at least 30 consecutive days (except where the child is in the armed forces) and the applicant exercises parental control and responsibility. The child is considered to be in the applicant's care for the month the period began or ended if the child was in the applicant's care for at least 1 full day of such month. However, a spouse annuitant or O/M beneficiary may be required to have the child in care for every day of the first month.

   The child is not in the applicant's care during periods they are living together when the child is on active duty status in the armed forces. This is true even if the child is in a period of furlough that exceeds 30 days.

B. Disabled mentally competent child - If the applicant and disabled mentally competent child are only living together temporarily, the applicant has the child in care only if he or she is performing personal services and the child is with the applicant for a period of at least 30 consecutive days. The child is in the care of the applicant for the month the 30-day period began or ended if the child was in his or her care for at least one full day of such month, unless a spouse annuitant or O/M beneficiary is required to have the child in care for every day of the first month.

945.15.4 Applicant and Child Not Living Together

A. Child in care - If the applicant and minor or disabled child are not living together, the child is in the applicant's care only if;

1. The child customarily lives with the applicant; and

2. The child is in the applicant's care when they live together; and

3. The separation is expected to be temporary (to end within 6 months from the date it began); or

4. The applicant is exercising parental control and responsibility for a child under age 18 (or 16) or a mentally incompetent child age 18 (or 16) or over while they are separated.

B. Child not in care - An applicant does not have a child in care, even if the conditions shown above are met, if they are not living together and:

1. The applicant is mentally incompetent (regardless of whether or not (s)he is confined in an institution); or

2. A court order has removed the child from the applicant's custody and control; or

3. The child is in the armed forces; or

4. The applicant and his or her spouse are separated and the child is with the spouse; or

5. The child is under the jurisdiction of a court-appointed guardian other than the applicant; or

6. The applicant has relinquished the right to custody and control of the child to some other person or agency.

C. Development - In every case where the applicant and child are separated, regardless of the expected length of separation, obtain a statement of whether the applicant is exercising parental control and responsibility from the applicant and the person with whom the child is living. The statement should include the reason for the separation and, if it is temporary, the expected length of the separation and the date on which it will end.

945.15.5 Parent and Child Separated

A number of situations exist where the parent may have the child in care even though the two are physically separated. The following sections illustrate some circumstances under which the parent and child are separated, but parental control and responsibility are still being exercised.

A. Child away at school - When a child under age 18 (or 16) is away at school, the applicant is exercising parental control and responsibility if:

1. The applicant supervises the child's activities and participates in important decisions about the child's physical and mental needs. (Assume that this is being done in the usual boarding, military, or prep school situation in which the child is not under the exclusive control and jurisdiction of the school); and

2. The child spends an annual vacation of 30 consecutive days or more with the applicant unless it is not feasible for the child to return home during vacation, or to remain with the applicant for that length of time, during vacation; and

3. If the applicant is separated from his or her spouse, the school authorities look to the applicant when they have a question regarding the child. If the applicant has lost custody, the child is in his or her care only during the time the child spends a vacation with him or with her, if the vacation is at least 30 consecutive days.

B. Applicant's employment - When a separation of more than 6 months is caused by the applicant's employment, the applicant has a child under 18 (or 16) in care only if (s)he:

1. Supervises the child's activities; and

2. Participates in the important decisions about the child's physical and mental needs; and

3. Makes regular and substantial contributions to the child's support. (The amount of the contributions, which may be in cash or in kind, must be a material factor in the reasonable cost of the child's support.)

C. Physical illness or disability - In some cases an applicant may be separated from a child under 18 (or 16) due to the child's or the applicant's physical illness or physical disability (e.g., either one may be away at a hospital or nursing home). If the separation is expected to end with 6 months, the applicant has the child in care. If the separation is expected to last more than 6 months, the applicant is exercising parental control and responsibility (has the child in care) if the applicant supervises the child's activities and participates in the important decisions about the child's physical and mental needs.

D. Mental incompetence - An applicant does not have a child in care during a period of separation caused by the applicant's mental incompetence.

E. Court order - When a separation results from a court order removing a child under age 18 (or 16) from the applicant's custody and control, the child is not in the applicant's care. For example, this applies if a juvenile court has placed the child in a reform school.

Secure a certified copy of the court order if the applicant alleges that the child is still under his or her control despite the separation.

If the court order removes the child from the applicant's custody and control, the child is not in his or her care. However, if the order merely removes a child from the custody but not from the control of the applicant and the applicant still exercises parental responsibility, the child is in his or her care.

F. Child enrolled in Job Corps - Whether a child under age 18 (or 16) is in the applicant's care while in the Job Corps depends on whether the child is a resident or non-resident Job Corps enrollee.

1. Child is resident Job Corps enrollee - When the child is a resident of a Job Corps center, the child is not considered to be living with the applicant while at the center. By signing the consent statement, the applicant has relinquished control and custody of the child to the Job Corps. Therefore, the child is not considered to be in the applicant's care while living at the Job Corps center.

   If the child returns home during vacation periods, he or she may be found to be in the applicant's care if they are together for at least 30 consecutive days.

2. Child is non-resident Job Corps enrollee - When the child is a non-resident Job Corps enrollee and returns home to the applicant either weekends or evenings, the child is in the applicant's care if, while the child is at home, the applicant exercises parental control and responsibility.

945.15.6 Posthumous Child in Widow's Care

When the child of the employee is born after the employee's death, the widow will be deemed to have the child in her care when the child is born. If the child is born alive, the child may then become entitled to a CIA and the widow to a WCIA.