Incapacitated Children

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This policy replaces the following PPM policy: Article 34(1)(a) - Incapacitated Children.

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Purpose

The purpose of this policy is to provide the parameters for the payment of a pension for incapacitated children.

Policy

General

1. Pension can be paid when the child described in paragraph 34(1)(a) of the *Pension Act* is “incapacitated from earning a livelihood” by reason of a physical or mental infirmity that occurred before the child was 21 years of age.
2. The focus is on the infirmity and its link to the child’s inability to maintain himself or herself or earn a livelihood; not on the level of resources which the child may have. The main consideration should be whether the infirmity renders the child incapable of earning enough to provide for the basic necessities of life.
3. The Department should not consider the resources of parents or trust monies of incapacitated children when making pension decisions under paragraph 34(1)(a).
4. In addition, monies received from a province to maintain the child must be disregarded when determining eligibility for pension.
5. For the purposes of this policy:
    a. A child includes a natural or adopted or foster child of the pensioner or the natural or adopted or foster child of the pensioner’s spouse or common-law partner.
    b. “Incapacitated from earning a livelihood” means the inability to work in order to provide for the basic necessities of life.

c. “Maintenance” means the provision of enough necessities to support life.

Information Needed for Adjudication

6. In order to qualify for a pension as an “incapacitated child”, the Department must determine whether or not the incapacitated child is able to earn a livelihood.
7. Factors to consider in making this determination include the information contained in the form “Application for Benefits on Behalf of an Incapacitated Child of a Veteran/Member".
8. The applicant should be asked to supply details about net income from all sources. The current full survivor rate, according to Schedule II of the *Pension Act*, as of January 1 of the review year, should be used as a benchmark for determining whether or not the applicant is earning enough to obtain the basic necessities of life.
9. The net income from any working environment should be considered, including “sheltered workshop” environments and similar circumstances.
10. In cases where a marital separation has occurred between the Veteran or member and spouse/common-law partner, and the child is not residing with the Veteran or member, it must be determined whether the Veteran or member has been or continues to maintain the incapacitated child to an extent that is at least equal to the additional pension payable.

Exception for Current Recipients

11. If it is clear from the information contained on file that the existing recipient is not able to earn a livelihood, then there is no need for the recipient and/or their representative to complete the new form, as described above. Some factors to consider would be:
    a. age of 65 or greater;
    b. severe mental or physical disability (as determined on the basis of medical information submitted in support of the claim).

Future Review

12. For both existing and new clients, a review is required for cases where capacity to earn a livelihood or permanence of disability has a possibility to change. For these types of cases, a review should be conducted periodically on a case-by-case basis.

Payment of Pension

13. Where the payment of pension under 34(1)(a) is approved, the maximum amount payable shall be in accordance with the rates set out for children in Schedule I or Schedule II, in accordance with the percentage of disability the Veteran/member is entitled to, or was entitled to, at the time of death.
14. If the incapacitated child is capable of managing his/her own financial affairs, and is living independently, the Department may make the payment directly to the incapacitated child.
15. If the incapacitated child is incapable of managing his or her own financial affairs and continues to reside with the parent Veteran, member or survivor, the Department may make the payment to the Veteran, member or survivor on behalf of the incapacitated child.
16. In circumstances where the incapacitated child is not living in the Veteran’s or member’s or survivor’s household and is incapable of managing his/her financial affairs, then payment should be made to the incapacitated child c/o their legal representative (e.g. Public Trustee, Guardian ad litem, Power of Attorney, etc), in accordance with the policy entitled Administration of Benefits and the Administered

Accounts Procedures.

References

Pension Act, sections 34, 41 and 43

Administration of Benefits

Form - Application for Benefits on Behalf of an Incapacitated Child of a Veteran/Member