Definition of Survivor for the Purposes of Disability and Death Benefits

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Purpose

The purpose of this policy is to provide direction with respect to determining whether an individual is the survivor of a member or Veteran for the purposes of providing benefit entitlement under the *Pension Act* and/or the *Veterans Well-being Act* (*VWA*).

Policy

Definitions

1. “Common-law partner” refers to a person who is cohabiting with the member or Veteran, in a conjugal relationship, having so cohabited for a period of at least one year. For further detail, refer to the policy entitled Establishment of a Common-Law Partnership.
2. “Spouse” refers to a person who is married to, and residing with a member or Veteran.

General

3. A survivor is defined as a person who, at the time of the member’s or Veteran’s death, was a spouse or common-law partner.
4. The term “survivor” excludes surviving separated spouses, surviving former (divorced) spouses, and surviving former common-law partners.
5. Under the *Pension Act*, a separated spouse, former spouse, or former common-law partner may be eligible for a pension if the person was awarded alimony, support or maintenance or was entitled to an allowance under the terms of a written agreement with the member or Veteran.
6. For purposes of the *Pension Act*, the meaning of the term “was maintaining or was being maintained by the member” excludes cases where maintenance was provided as a result of judicial separation or

separation.

7. For purposes of the *Pension Act*, if the member/Veteran did not apply for additional pension on behalf of the spouse prior to death, the Department may determine that the surviving spouse was "entitled to be maintained", if the spouse, at the time of the member's or Veteran's death:
    a. was living with the member or Veteran; or
    b. was maintaining or being maintained by the member or Veteran for reasons other than judicial separation (e.g., member/Veteran or spouse lived apart for health reasons).
8. Unlike the *Pension* Act, the Veterans Well-being Act does not provide for the payment of Pain and Suffering Compensation or a death benefit to a person in lieu of a survivor.

Couples Living Apart

9. In cases where a member or Veteran and spouse/common-law partner were living apart at the time of the member's or Veteran's death, they may be deemed to have been residing together if they were living apart by reason of:
    a. injury or disease and/or one or both of them having to reside in a health care facility;
    b. circumstances of a temporary nature; or
    c. other circumstances not within the control of the member, Veteran, or spouse/common-law partner.
10. "Circumstances of a temporary nature" might include circumstances where the member or Veteran and spouse or common-law partner were separated only because of family or work-related responsibilities.
11. "Other circumstances not within the control of the member, Veteran, spouse, or common-law partner" may include periods of deployment.

Recent Marriage

12. If a member or Veteran, to whom or in respect of whom a disability or death benefit is payable, dies within one year after the date of the marriage, the benefit cannot be paid to the surviving spouse unless;
    a. it is determined that given the member's or Veteran's state of health at the time of the marriage, he/she was expected to survive for at least one year after the date of the marriage; or
    b. at the time of the member's or Veteran's death, the spouse had been cohabiting with the member or Veteran in a conjugal relationship for at least one year.
13. For purposes of paragraph 12 b) above, a "conjugal relationship" can be a combination of common-law partnership and marriage, e.g., couple lived common-law for six months and were married for six months prior to the member's of Veteran's death.

References

Pension Act, section 47; subsections 3(1), 3(3), 45(1)

Veterans Well-being Act, subsections 2(1), 2(2), 2(3) and 2(4)

Survivor's Pensions for Separated Spouses, Former Spouses and Former Common-law Partners

Establishment of a Common-Law Partnership