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Definition of Dependent Child 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 dependent child of a member or Veteran for the purposes of providing disability pension entitlement under the *Pension Act* and/or Pain and Suffering Compensation and/or death benefit under the *Veterans Well-being Act* (VWA).

Policy

General

1. Dependent children are eligible for benefits only after the member or Veteran's death.
2. "Dependent child", in reference to a member or Veteran, means:
    a. his/her natural or adopted child; or
    b. a child of his/her spouse or common-law partner, who is ordinarily residing in the member's or Veteran's household, at the time of the member's or Veteran's death; or
    c. an unborn child who is subsequently born alive.
3. In either circumstances, at the time of the member's or Veteran's death, the dependent child must meet the age/education/incapacity criteria set out in section 34 of the *Pension* Act or subsection 2(1) of the *Veterans Well-being Act*, in order to be eligible for disability benefits and/or the death benefit.
4. For the purposes of this policy, a reference to a child of a spouse or common-law partner excludes a biological child or adopted child of the member or Veteran. In general, a biological child or adopted child does not have to meet the same requirements of a child of a spouse or common-law partner, with respect to residing in the member's or Veteran's household at the time of the member's or Veteran's death.

5. For purposes, of this policy, the term “ordinarily residing in the member’s or Veteran’s household” refers to a dependent child of a spouse or common-law partner who, at the time of the member’s or Veteran’s death, was living in the member’s or Veteran’s household at least 50% of the time. This consideration would take into account family situations where the biological parents have joint custody, and the children spend their time equally between the two households. If there is doubt about the residency, documents, such as joint custody agreements and statements from the parents or dependent child could be considered. The amount of time spent with a parent would also include visitation.
6. A child who meets the definitions of “dependent child” may be eligible for Pain and Suffering Compensation with respect to a deceased member or Veteran, under section 55 and 56 of the *Veterans Well-being Act*.
7. A child who meets the definition of “dependent child” may be eligible for a death benefit with respect to a deceased member, under section 57 of the *Veterans Well-being Act*.
8. As a partner is not considered to be common-law by VAC until they have cohabited with the member or Veteran in a conjugal relationship for at least one year, the child of that partner would not be eligible for Pain and Suffering Compensation/death benefit unless that one year cohabitation requirement had been met prior to the member’s or Veteran’s death.
9. A child of a separated spouse, former spouse or former common-law partner who continued to reside with the member or Veteran after the separation, divorce or cessation of cohabitation is not considered a dependent child unless that child had been formally adopted by the member or Veteran prior to the member’s or Veteran’s death. This, however, does not apply to biological children.
10. There may be circumstances where the member or Veteran and his/her spouse or common-law partner were living apart for one of the reasons set out in subsection 2(2) of the *Veterans Well-being Act*. If that is the case, then the child of the spouse or common-law partner would be treated in the same manner as his/her parent, as far as determining residency. Please refer to the policy entitled Definition of Survivor for the Purposes of Disability and Death Benefits for further details.
11. If it is determined that the member/Veteran was not expected to survive for at least one year after the date of marriage, the child of the Veteran’s or member’s spouse would not be considered a “dependent child” for the purposes of this policy.
12. Subsequent application by, or on behalf of, a dependent child require a new application.

Dependent Child

13. Child under the age of 18:
    a. In the case of a spouse’s or common-law partner’s child who was under the age of 18 at the time of member’s or Veteran’s death, benefits may be paid for the child, if he or she was ordinarily residing in the member’s or Veteran’s household at the time of death.
14. Child between the age of 18 and 25:
    a. If the dependent child is 18 years of age or older, but under the age of 25 years, evidence must be provided that he or she is following a course of instruction approved by the Minister.
    b. In the case of a spouse’s or common-law partner’s child who was between the ages of 18 and 25 and attending a course of instruction approved by the Minister at the time of the member’s or Veteran’s death, benefits may be paid to that child if, were it not for attending school, the child would have been ordinarily residing in the member’s or Veteran’s household.

Children following a course of instruction

15. A “course of instruction”, for the purpose of this policy, refers to a full time educational program that the student is taking, normally at an accredited high school, college, university, or trade school.

16. “Full time” shall be defined by the calendar of the educational institution, for universities, colleges, and trade schools. Secondary school full time courses normally require a minimum of 25 hours per week.
17. Part-time courses will generally not qualify, but special circumstances may receive individual consideration.
18. If the student was on break (between semesters, on summer vacation, etc.) at the time of the member’s or Veteran’s death, a maximum break of 5 months would normally be allowable, in determining the applicant’s status as a student.
19. Students following a course of studies from “distance learning” colleges or universities will qualify, as long as they are enrolled as a full-time student, as defined by the calendar of the “distance learning” institution.
20. Students preparing for a General Education Development (GED) test may qualify as a student, for the purposes of this policy, as long as they are following a full-time course of instruction.
21. Students taking a co-op work/study program may qualify as long as it can be shown they are enrolled full-time at an accredited educational institution.
22. On-the-job-training will normally not qualify children for student status. Examples of on-the-job training include: medical internships, nurses in hospital training schools, lawyers who are articled, apprentices in the trades, etc.
23. Students who are receiving home schooling may qualify, as long as their educational program has been approved by provincial or municipal education authorities.

Incapacitated Child

24. An “incapacitated child” is a dependent child who is over the age of 18, and who is prevented by physical or mental incapacity from earning a livelihood.
25. The incapacity must have occurred before the child attained the age of 18 years or after the age of 18 years and before the age of 25 years while the child was following a course of instruction approved by the Minister.
26. In order to qualify for an award as an “incapacitated child”, the Department must determine whether or not the incapacity is considered to be permanent. It must also be determined whether or not the applicant is able to earn a living. These factors would normally be ascertained by examining the information contained in the “Application of Benefits on Behalf of an Incapacitated Child of a Veteran/Member".
27. If subsequent applications are made by, or on behalf of, an incapacitated child, and at least one year has elapsed since the previous decision, the applicant must complete a new application, including an updated medical report, to determine whether or not the disability still considered permanent in nature. The Department has the discretion to accept previous medical reports, in cases where there is little likelihood of change in medical status.
28. Payment of Pain and Suffering Compensation or death benefit to an incapacitated child of a spouse or common-law partner would only be considered if the incapacitated child was ordinarily residing with the member or Veteran at the time of the member’s or Veteran’s death.
29. Livelihood is defined as “means of support or subsistence”. The focus is on the infirmity and on its link to the incapacitated child’s ability to maintain himself or herself to earn a livelihood. The Department will not consider the resources of parents or trust monies or the income of the incapacitated child’s spouse or common-law partner or monies received from a province to maintain the child. The main consideration should be whether or not the infirmity renders the incapacitated child incapable of earning enough to provide for the basic necessities of life.
30. The applicant (or their representative) will be asked to supply information about earned income from all sources. The current full survivor rate, according to Schedule II of the *Pension Act*, as of January 1st of the year in which the Pain and Suffering Compensation/death benefit is adjudicated, should be used as a

benchmark for determining whether or not the incapacitated child is earning enough to make a livelihood for himself or herself. The Department cannot consider awarding benefits for the spouse and/or children of the incapacitated child.

Unborn Child

31. In relation to an unborn child of a deceased member or Veteran, a disability award or death benefit may be paid to such a child who is subsequently born alive. An unborn child who is subsequently born alive is deemed to have been a dependent child at the time of the member's or Veteran's death.

References

Pension Act, section 34; subsections 3(1) and 3(3)

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

Children Following a Course of Instruction

Establishment of a Common-Law Partnership

Definition of Survivor for the Purposes of Disability and Death Benefits

Incapacitated Children

Pain and Suffering Compensation Policy