

## CHAPTER 10

## MINIMUM INCOME WIDOW

**91001. Eligibility Criteria**

An annuity under the minimum income widow (MIW) provision of the SBP law (paragraph 90101) is payable to widows receiving a Spanish-American War (SAW) pension without regard to income. The annuity is payable to all other widows if all these conditions are met:

a. The widow is not otherwise entitled to an annuity under other provisions of the plan or to Dependency and Indemnity Compensation from the Department of Veterans Affairs (VA).

b. She is eligible for a widow's non-service-connected death pension from the VA under Title 38, U.S.C., chapter 15, subchapter III.

c. Her annual income from all sources (including amount of RSFPP annuity entitlement but excluding amount of VA pension), as determined by the VA, is less than the annual income rate in appendix 18. If the widow was previously denied an annuity because of income in excess of income limitations, entitlement may exist upon notice from the widow or from the VA that her current yearly income as determined by the Department of Veterans Affairs is less than the income limitation. The annuitant is not entitled to a monetary adjustment for periods before 1 Oct 1976.

d. She is a person who on 21 Sep 1972, was or during the period beginning on 22 Sep 1972, and ending on 20 Mar 1974, became a widow of a person who was entitled to retired or retainer pay when he died. Remarriage by the widow bars entitlement to an annuity under this provision of law unless the remarriage is terminated by an annulment. The legal staff of the service concerned coordinates on the effective date for reinstatement of the annuity. See paragraph 90712.

NOTE: DD Form 1885, Survivor Benefit Plan—Minimum Income Claim, and DD Form 1895, Request for Veterans Administration Pension and Annual Income Information, under Public Law 92-425 and Title 38, U.S.C., section 503, have been approved for use in administering the minimum income widow annuity.

**91002. Amount of Annuity**

The maximum annuity payable is shown in appendix 18. The VA determines the yearly entitlement and advises the service concerned. This amount is prorated by the retired pay activity

administering the annuitant's pay and is paid monthly.

a. The annuity of a SAW widow is reduced by the DFAS Center for any RSFPP which maybe payable.

b. The amount of the annuity is not rounded nor increased to reflect retired pay cost-of-living adjustments. However, the annual income rates (appendix 18) shall be increased by the same amount and shall have the same effective date whenever there is an increase in the limitation on annual income for the purposes of eligibility for pension benefits under Title 38, U.S.C., section 541(b).

c. There is no social security offset against the annuity.

d. The annuity is subject to federal income tax.

e. The annuity is not assignable or subject to execution, levy, attachment, or garnishment (except for alimony or child support).

**91003. Effective Date of Entitlement**

The effective date of entitlement is the date of enactment of the SBP law, 21 Sep 1972, or the date on which the requirements of law are met, whichever is later, subject to the 6-year statute of limitations.

**91004. Annuitant—Mentally or Physically Incapacitated**

a. If for any reason the MIW is mentally or physically incapable of applying for or negotiating the payment of the annuity, a court-appointed guardian may act on her behalf. If no guardian has been or will be appointed, the person having care, custody, and control of the incapacitated annuitant is authorized to act on her behalf.

b. A report of existence is required when the annuitant receives payments through foreign postal channels or through a third party if the annuitant is incapacitated. See paragraph 90911.

c. The yearly certificate of continued eligibility is not required.

**91005. Changes and Termination**

Changes in the amount of the annuity payable or termination of the annuity must be in accordance with the effective date of change or termination as shown by the VA. If termination is

due to death of the annuitant, entitlement ceases as of the first day of the month in which death occurs. Any amounts which are due and payable at the time of annuitant's death may, on receipt of a properly executed and documented claim, be paid to the widow's estate. Refer doubtful cases to the General Accounting Office for determination.

**91006. Reopened Claim**

Reestablish an annuity that has been temporarily suspended because of the widow's excessive income or net worth as of the first day of the month in which the widow meets the income level for an annuity as determined by the VA. Notification of any change in income is the widow's responsibility.

**91007. Causes of Overpayment**

a. The widow's minimum income annuity was not timely terminated when her annual income exceeded the applicable rates shown in appendix 18.

- b. Erroneous computation.
- c. Insufficient or untimely information.

**91008. Liability**

The annuitant is liable for debts caused by overpayment of the annuity. The annuity may not be used as an offset against an indebtedness incurred by the member. The debt may be liquidated by:

- a. The annuitant making direct remittance to the DFAS Center.
- b. Annuitant authorizing the VA to reduce the pension under Title 38, U. S. C., chapter 15, subchapter III, and to remit to the DFAS Center the amount collected.
- c. The DFAS Center reducing later MIW annuity payments.

**91009. Waiver of indebtedness**

The request for waiver consideration is handled under the provisions of Title 10, U. S. C., section 1453. See paragraph 90604.