



Legal Opinion L-2003-15
December 2, 2003

U.S. Railroad Retirement Board Phone: (312) 751-7139
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TO : Richard T. Murphy
Bureau of Hearings and Appeals

FROM : Steven A. Bartholow
General Counsel

SUBJECT : Annuity Beginning Date for a Re-entitled Child's Annuity

This is in response to a memorandum dated September 23, 2003, from the former Director of Hearings and Appeals, which requested guidance regarding the interpretation of section 216.73(b) of the Board's regulations (20 CFR 216.73(b)). The facts in this case, as set forth in the memorandum, are that the claimant was paid a child's annuity until it was terminated in May 1981, when the claimant finished high school. On March 15, 2002, the claimant, through a representative payee, filed an application for a disabled child's annuity after being awarded a benefit under the Supplemental Security Income program. In a decision dated November 22, 2002, a hearings officer determined that the claimant was disabled prior to age 22 and awarded the claimant a disabled child's annuity with an annuity beginning date of September 1, 2001, six months prior to the application date for the disabled child's annuity. The claimant has appealed that annuity beginning date, arguing that in accord with section 216.73(b) of the Board's regulations, the claimant should be paid from the date the child's insurance annuity was terminated.

Section 216.73 of the Board's regulations (20 CFR 216.73) provides in pertinent part as follows:

If an individual's entitlement to a child's annuity has ended, the individual may be re-entitled if he or she has not married and he or she applies to be re-entitled. The re-entitlement may begin with: * * *

(b) The first month the individual is disabled, if the disability began before he or she attained age 22 and continues through the time of application for benefits; * * *. **(Emphasis supplied.)**

This regulation appears to have been added to the regulations as part of a larger update of the Board's regulations in 1982. No explanation of this particular regulation was provided in the preamble. 47 FR 7636 (Feb 22, 1982). However, the phrasing of the regulation is helpful in responding to this inquiry. A child has no right to re-entitlement simply because (s)he has previously been entitled to an annuity. Rather, section 216.73 is phrased in permissive terms in that it provides that a child whose annuity entitlement has ended may become re-entitled if the child meets the eligibility requirements and if the child files an application for re-entitlement. Section 216.73 is an entitlement regulation; in fact, Part 216 is entitled, "Eligibility for An Annuity." Section 216.73 does not waive the other procedural requirements of the Railroad Retirement Act that permit payment of an annuity. In other words, section 216.73 sets forth the rule only as to what child may be re-entitled to an annuity. It is based on a statutory provision in the Railroad Retirement Act. Section 216.73 does not govern the date that payment of an annuity may begin. A separate statutory provision governs the date an annuity can begin for a claimant who has filed an application and met the requirements for eligibility and thereby has become re-entitled to an annuity.

The last sentence of section 5(c)(7) of the Railroad Retirement Act (45 U.S.C. § 231d(c)(7)) provides the statutory authority for the re-entitlement of a child annuity claimant. That sentence states as follows:



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A child whose entitlement to an annuity under paragraph (iii) of section 2(d)(1) terminated with the month preceding the month in which he or she attained age 18, or with a subsequent month, may again become entitled to such an annuity (providing no event to disqualify the child has occurred) beginning with the first month thereafter in which he or she meets the qualifications set forth in clause (B) or (C) of such paragraph (iii), if he or she has filed an application for such reentitlement. (emphasis supplied).

The statutory language set forth above makes it clear that in order for the child claimant to become re-entitled to an annuity, the claimant must file a new application for that re-entitlement. This requirement that an application be filed is reflected in section 216.73. After a child has filed a new application and met all of the eligibility requirements, the annuity beginning date for the child's annuity is then established with reference to the date that the application was filed. Section 5(a)(iii) of the Railroad Retirement Act (45 U.S.C. §231d(a)(iii)) limits the retroactivity to six months prior to the date the application was filed.

The regulation 20 CFR 216.73 (b) must be read with this limit on the retroactivity of the application in mind. In this case, there is a statutory requirement that an application be filed, and the Act also prescribes the limits of retroactivity of that application. The agency may not disregard either of these statutory requirements in applying the Board's regulations. Section 216.73(b) is a regulation that sets forth the earliest possible re-entitlement date permitted, but it does not eliminate the mandatory retroactivity requirements set forth in the Act.