

410.5 General

This chapter contains specific information regarding disabled widow(er)'s insurance annuities (DWIA). General information applicable to ALL types of widow(er) annuities, such as the definition of a legal widow(er), de facto widow(er), surviving divorced spouse or remarried widow(er) can be found in FOM-I-405. Therefore, various sections of this chapter are cross-referenced to the more detailed information in FOM-I-405.

410.10 Eligibility and Entitlement Requirements

410.10.1 Eligibility Requirements

In addition to being the widow(er), the surviving divorced spouse or remarried widow(er) of a deceased employee who died completely insured for survivor benefits under the 1974 Act (see FOM1 230.15), an applicant must meet the following requirements.

- A. Age - The widow(er), including a surviving divorced spouse or remarried widow(er), must have attained age 50 but not have attained age 60. However, a widow(er) who has already attained age 60 can qualify for a DWIA for the months she is under age 60 in the retroactive period. (Refer to FOM1 405.10.1 for age attainment concept.)

NOTE: When a widow(er) who would not currently be entitled to an employee restored amount is within a few months of attaining age 60 when (s)he can qualify for a DWIA, the widow(er) has the option of filing for a WIA at age 60 and for early Medicare or filing for a DWIA to begin before age 60. Since the age reduction amount on a legal or de facto widow(er)'s annuity based on age is substantially less than the age reduction on the annuity based on disability, the widow(er) may want to wait and file as an aged widow(er) to take advantage of a higher annuity rate. Advise the widow(er) that if she files for the WIA and early Medicare and is rated disabled, Medicare coverage will not begin until 24 months after the WIA beginning date.

- B. Marriage - The widow(er) must meet the marriage requirements for an aged WIA as explained in FOM-I-405.5
- C. Disability - To satisfy the disability requirement, the widow(er) must have a permanent physical or mental impairment or condition that begins before the end of the "prescribed period" and is such as to be disabling for work in any substantial gainful employment. DSUBD will release an RL-121f (Disability Allowance Notice) in all initial disability allowances. Please see DCM 11 RL-121f Disability Allowance Notice for additional information about this letter.

1. A permanent impairment or condition is one that:
 - a. Can be expected to result in death; or

- b. Has lasted at least 12 months; or
- c. Can be expected to last for a continuous period of not less than 12 months.

NOTE: In order to qualify for Medicare and for SSEB tax status, the impairment must meet SSA's criteria. While a survivor may become entitled to a disability annuity under the Railroad Retirement Act based solely on drug or alcohol addiction, such cases do not meet SSA's criteria. Therefore, in such cases, if the application was filed January 1, 2008 or later, the widow would not be entitled to early Medicare or SSEB status. For a more detailed explanation, see DCM 4.8.4

2. Determining "Prescribed Period" of Disability Onset - In order for a disabled widow(er) to qualify for a DWIA, the disability must have begun before the end of the "prescribed period."

- a. When Period Begins - The widow(er)'s prescribed period of disability onset begins with the latest of the following:
 - The month the employee died; or
 - The last month of entitlement to a WCIA based on the same employee's earnings record; or
 - The last month of previous entitlement to a DWIA based on the same employee's earnings record.
- b. When Period Ends - The widow(er)'s prescribed period of disability ends with the earliest of the following:
 - The month before the month the widow(er) attains age 60; or
 - The close of the 84th month (7 years) following the month in which the period began.

EXAMPLE 1: The employee died 8-14-74 when the widow was 51 years old. The prescribed period begins 8-1974 (the month the employee died) and ends 8-31-81 (the close of the 84th month following the month the period began). She qualifies if her disability began any time before 9-1-81. She need not have had to apply for the disability annuity before the end of the prescribed period.

EXAMPLE 2: The widow, age 40, became entitled to a WCIA when the employee died in 3-1972. Her last child attained age 18 in 7-1980. Her prescribed period begins 6-1980 (the last month of entitlement to a WCIA) and ends 6-30-87 (the close of the 84th month following the month in which the period began).

It is not necessary for the precise date of onset to be established in many cases involving disabled widow(er)s since the claimant need only to have become disabled before the end of the prescribed period. However, if the widow(er)'s disability did not begin before the end of the prescribed period, (s)he is not eligible for an annuity as a disabled widow(er), but (s)he may qualify at age 60 for a regular WIA.

3. Regular employment means the regular performance in the usual and customary manner of the substantial and material duties of any regular and gainful employment, which is substantial and not trifling, with any employer.

Both medical and non-medical factors are considered in determining whether a widow(er) meets the above definition. The disability programs section uses the prescribed standards that have been developed for total and permanent employee disability determinations.

D. Waiting Period

1. Widow(er) - The 1983 Railroad Retirement Act amendments added a waiting period requirement for all disabled widow(er)s who file an application 9-1-83 or later. The annuity may not begin until the railroad retirement disability waiting period has expired. The waiting period for a legal or de facto widow(er) begins the first day of the month after the month in which disability began, and continues for 5 calendar months. If the disability began the first day of the month, the waiting period still begins the first day of the following month.

EXAMPLE: A widow became disabled on 10-1-83. The railroad retirement waiting period begins 11-1-83, and ends 3-31-84.

2. Surviving divorced spouse or remarried widow(er) - The waiting period requirement has always applied to disabled surviving divorced spouses and remarried widow(er)s. These applicants must meet the waiting period requirement as defined in the Social Security Act (SSA). The SSA waiting period differs from the railroad retirement waiting period when disability begins on the first day of the month. Under the SSA, that first month of disability onset is counted in the waiting period; under the RRA, it is not.

EXAMPLE: A surviving divorced spouse became disabled on 10-1-83. The SSA waiting period begins 10-1-83, and ends 2-29-84.

3. Beginning date of waiting period - The waiting period (both RR and SS provisions) can begin no earlier than the later of the following dates:

- The first day of the 17th month before the month in which the application is filed. This allows for the 5-month waiting period and the 12-month application retroactivity; or
- The first day of the 5th month before the month in which the prescribed period (explained in preceding section (C2.)) began.

Months before the employee's death, months before the disabled widow(er) attains age 50, or months before the termination of a previous mother's or father's annuity may be included in the waiting period if the applicant was disabled in those months and the disability was continuous. Therefore, a DWIA may begin at age 50 or in the month of the employee's death if the applicant became disabled more than 5 months prior to that month.

4. Waiting period not required - A waiting period (both RR and SS provisions) may not be required when an applicant becomes disabled again after a previous disability annuity termination. A waiting period is not required if the applicant becomes disabled again within 84 months of the month the previous disability annuity terminated. See FOM-I-410.50.

This rule applies even when a widow(er) was previously entitled before 9-1-83, when no waiting period was required.

If the applicant does not become reentitled within 84 months, the annuity may not begin until the end of the waiting period.

- E. One-Half Support - A widower must have been receiving one-half of his support from the employee at the time of her death or at the time her retirement annuity began for the annuity to begin before 3-1-77; after 3-1-77 a widower does not have to prove half-support except for payment of a vested dual benefit or employee annuity restored amount. There is no time limit for filing proof of one-half support.
- F. Living-With - Living-with is required only when the widow(er) is a "deemed" widow(er). Refer to FOM-I-405.05.2 and FOM-I- 405.10.1D.
- G. Marital Status - A widow(er) who married after the marriage to the employee terminated, and such marriage is subsequently terminated by death or divorce may qualify for an annuity beginning October 1, 1981.

Beginning 1-1-84, a former disabled widow(er) or disabled surviving divorced spouse annuitant may be reentitled although she is married. Refer to FOM-I-410.10.2 for information regarding the effect of remarriage on a widow(er)'s entitlement and eligibility.

- H. SS Entitlement - The entitlement of a surviving divorced spouse or remarried widow(er) to any social security benefit which is greater than the employee's

death primary insurance amount (PIA), prevents eligibility to a widow(er)'s insurance annuity under the RR Act. However, if the social security benefit is smaller than the employee's PIA, but larger than the surviving divorced spouse's or remarried widow(er)'s age reduced rate, and the possibility of an age 62 or FRA adjusted reduction factor (ARF) exists that could increase the annuity rate above zero, the surviving divorced spouse or remarried widow(er) will be entitled to a zero annuity rate. Headquarters will process a constructive award and enter a call-up for the ARF.

- I. Application - In order to establish entitlement to a DWIA, a widow(er) who meets the above eligibility requirements must file an annuity application.

410.10.2 Effect of Remarriage on Entitlement

A. Remarriage occurs before entitlement to an annuity

1. Effective 1-1-84 and later.

A disabled widow(er) or a disabled surviving divorced spouse may qualify for an annuity if (s)he remarries:

- a. After age 50 and his/her disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage;
- b. More than once after the employee's death provided the last marriage occurred after (s)he attained age 50 and the disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage; or
- c. Before age 50 provided the marriage terminates. (The annuity cannot begin until the marriage terminates.)

2. Before 1-1-84.

A disabled widow(er) or a disabled surviving divorced spouse could qualify for an annuity if (s)he remarried only if the marriage terminated.

B. Remarriage occurs after entitlement to an annuity

1. Effective 1-1-84 and later.

A disabled widow(er) or a disabled surviving divorced spouse may continue to receive an annuity consisting of only a tier I component if (s)he remarries after age 50 and his/her disability began prior to the remarriage and (s)he met the disability requirements at the time of remarriage.

If the disabled widow(er) or a disabled surviving divorced spouse recovers and her disability annuity ends before age 60,

- (s)he may be entitled to an annuity at age 60 if (s)he remarried after her annuity beginning date.
- If (s)he remarried after the disability onset date but before her annuity beginning date, (s)he may be entitled to an annuity at age 60 only if the marriage terminates.

Note: A new application is required whenever there is a break in entitlement.

2. Before 1-1-84.

- a. If a disabled widow(er) remarried before age 60, the annuity terminated unless she married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RRA or the SSA.
- b. If a disabled surviving divorced spouse remarried at any age, the annuity terminated unless she married an individual entitled to a widow(er)'s, mother's, father's, parent's or disabled child's benefit under the RRA or the SSA.
- c. If the conditions in a. or b. were not met, the annuity terminated. (S)he could not become reentitled unless the marriage terminated.

C. Action required upon notice of a widow(er)'s remarriage –

- Use FAST/ST to terminate the annuity of a widow(er). The suspension/termination code is 44.
- The effective date is the month of remarriage.
- Do not terminate a remarried widow(er) or a surviving divorced spouse annuity.
- After the widow(er)'s annuity has been terminated, send an e-G-115 to SBD per current procedure. As a heading use WIDOW TO RW CONVERSION - HANDLE IMMEDIATELY

Refer to FOM1 405.30.3 for additional information about developing when a widow(er) has remarried.

410.15 Amount Of A Disabled Widow(er)'s Insurance Annuity

This section contains basic information about the components of a disabled widow(er)'s insurance annuity. For more detailed information, refer to FOM- I, Article 10, Computations.

410.15.1 Tier I

A. Gross tier I - A disabled widow(er)'s tier I before reduction for other benefits is computed as follows:

1. For months after December 1983 a disabled widow(er)'s tier I is equal to the lesser of:
 - 100% of the employee's death PIA reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began; or
 - 100% share of the maximum family benefit reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began.

EXCEPTION: A disabled surviving divorced spouse always receives 100% of the employee's death PIA. His/her tier I is reduced only for months between 60 and 65. No reduction for months under age 60 regardless of when the annuity began.

2. For months before January 1984 a disabled widow(er)'s tier I is equal to the lesser of:
 - 100% of the employee's death PIA reduced for all months the widow(er) is under FRA when the DWIA initially begins; or
 - 100% share of the maximum family benefit reduced for all months the widow(er) is under FRA when the DWIA initially begins.

EXCEPTION: A disabled surviving divorced spouse always receives 100% of the employee's death PIA because his/her annuity is not included in the family maximum. A disabled surviving divorced spouse's tier I is reduced for all months (s)he is under FRA when the DWIA initially begins.

- If the disabled widow(er) is entitled to a disability benefit based on her own earnings record, (s)he may be entitled to the tier 1 age adjusted rate. If this provision applies, only the amount of the widow(er)'s tier 1 which exceeds the amount of the disability annuity is reduced for early retirement. This provision applies if the following conditions are met:
 - The widow(er)'s annuity is age reduced; and,
 - The widow(er) is entitled to a disability insurance benefit (DIB) under the SS Act and the date of entitlement is the same as, or earlier than, the OBD; and,

- The DIB PIA is less than the death PIA (increased for DRC's) or the widow(er)'s share of the maximum, if applicable; and,
- The widow(er)'s tier 1 is not reduced by an additional amount (i.e., PSP or EE tier 1) which, when added to the SS DIB, exceeds the death PIA; and,
- The OBD is 1/1978 or later

B. Tier I benefit reductions - The tier I is reduced for all of the following:

- The amount of any SS benefit to which the disabled widow(er) is entitled.
- The net tier I amount of any RR retirement annuity to which the disabled widow(er) is entitled if the reduction for the employee tier I is first applied on an award with a final voucher date of 10-1-88 or later, or the case is reopened 10-1-88 or later.
- The tier I amount before age reduction of any RR retirement annuity the disabled widow(er) is entitled to through 9-30-88, and the net tier I of any RR retirement annuity the disabled widow(er) is entitled to 10-1-88 or later, if the reduction for the employee tier I is first applied on an award vouchered prior to 10-1-88.
- The amount of any public service pension payable to:
 1. Non-dependent disabled widowers who filed for an annuity after 11-30-77.
 2. Non-dependent disabled widows who become eligible for a public service pension after 11-30-82.
 3. Non-dependent disabled surviving divorced wives married to the employee for at least 20 years who become eligible for a public service pension after 11-30-82.
 4. Non-dependent disabled surviving divorced spouses married to an employee less than 20 years and all non-dependent surviving divorced husbands regardless of when they become eligible for the public service pension.
 5. Non-dependent disabled remarried widow(er)s who becomes eligible for a public service pension after 11-30-82.
 6. Dependent disabled widow(er)s who becomes eligible for a public service pension after 6-30-83.

7. Dependent disabled remarried widow(er)s who becomes eligible for a public service pension after 6-30-83.
8. Dependent disabled surviving divorced spouses who become eligible for a public service pension after 6-30-83.

Note: For months prior to 12-1-82, the tier I of a dependent surviving divorced wife who was married to the employee for less than 20 years and any surviving divorced husband is subject to reduction for a public service pension. However, beginning 12-1-82 any reduction is removed providing the survivor submits proof of dependency.

The tier I of annuitants subject to a PSP reduction is reduced by 100% of the PSP if they first became eligible for the PSP before 7-1-83. That reduction was changed to 66 2/3% of the PSP, effective 12-1-84. Annuitants who became eligible for a PSP 7-1-83 or later are subject to a tier I reduction of 66 2/3% of the PSP.

Refer to FOM-I-405.35 or FOM-I-120.40 for additional information on public service pension reduction.

410.15.2 Tier II

Only a disabled widow(er) is entitled to a tier II. Remarried widow(er)s or surviving divorced spouses are not eligible for a tier II. Once a legal or de facto widow(er) has remarried (s)he is no longer eligible for a tier II regardless whether the marriage subsequently terminates.

EXCEPTION: If a widow(er) remarries and the marriage is subsequently annulled, a tier II may be payable if the marriage was void or voidable, and where applicable, no alimony has been awarded.

A disabled widow(er)'s tier II is equal to 30% of the widow(er)'s tier I amount after reduction for age and public service pension when the annuity is awarded before 10-1-86 and the employee died or retired before 10-1-81. In all other cases the tier II is equal to 50% of the employee annuity tier II amount computed as of the DWIA beginning date. When the DWIA tier II is based on the employee annuity tier II, a reduction for age similar to that made in tier I is required.

A disabled widow(er) who is eligible for a tier II may receive an additional amount in tier II when a spouse minimum guarantee applies or when the disabled widow(er) is entitled to an RR annuity based on her own work and qualifies for an employee restored amount.

Effective February 1, 2002, a disabled widow(er) who is paid under the 1981 Amendments may receive an additional tier II amount called the "Widow(er)'s Initial Minimum Amount", (WIMA). The WIMA guaranty provides that the widow(er)'s annuity

will be calculated using 100 percent of the tier II that would have been used to compute the annuity for the deceased employee on the survivor OBD.

410.15.3 Vested Dual Benefit

Only an unremarried widow(er) can be entitled to a vested dual benefit (VDB). Remarried widow(er)s or surviving divorced spouses are not eligible for a VDB. Once a legal or de facto widow(er) remarries (s)he no longer can qualify for a VDB regardless of whether the marriage subsequently terminates.

EXCEPTION: If a widow(er) remarries and the marriage is subsequently annulled, a VDB may again be payable.

The VDB is basically a guarantee for certain widow(er)s meeting the requirements listed in FOM-I-405.75. It guarantees that the DWIA will not be reduced below the rate that would have been paid if the 1974 Railroad Retirement Act (RRA) was not enacted. No new VDBs can be awarded for a disabled widow(er) after August 12, 1981, because of the 1981 amendments to the RRA.

410.20 Evidence And Development

410.20.1 Evidence Requirements

Evidence	When Required
Application	Obtain Form AA-17 except when WCIA is being converted to DWIA and there is continuous entitlement; in this situation, only a Form AA-17b is required.
Application for Determination of Widow(er) Disability (Form AA-17b)	Always.
Medical evidence	Always.
Widow(er)'s SS account number	Always. Request widow(er) to secure one unless she resides outside the U.S.
Vocational Report (Form G-251)	Always.
Proof of employee's death	Always.
Proof of widow(er)'s Age.	Always.
Proof of marriage to employee	Always.

Prior service (Form AA-15)	Only when less than 120 months of subsequent service can be verified.
Proof of one-half support (Form G-134)	Required from a widower when dependency is claimed and widower is eligible, or may be eligible in the future, for an employee annuity. Also required to prove dependency for exemption from public service pension reduction.
Application for substitution	When a representative payee is to of payee (Form AA-5) be selected.
Widow(er)'s employment history	Always.
Proof of employee's age	In "A" cases POA is required only if the employee's DOB has not been previously verified Effective 03-01-2004 POA of deceased employee is required in all "D" cases when a survivor recurring application is filed.
Proof of termination of prior marriage	If there is reasonable doubt about whether a prior marriage of either widow(er) or employee was ended.
Proof of child's legal adoption	Only when widow(er) seeks to meet marriage requirement on that basis.
Proof of guardianship	If the guardian or other legal representative is selected as representative payee.
Proof of military service	Only when the employee's M/S after 1936 would be creditable under either the Railroad Retirement Act or the Social Security Act.
Public service pension	Required when indicated by response information (Form G-208) on Form AA-17. Also secure when a disabled widow(er) annuitant becomes entitled to a remarried widow(er)'s annuity with no break in entitlement, unless the widow(er) has been continuously entitled to an annuity based on the employee's record since before 12-1-77.
Proof of divorce from employee	Always from a surviving divorced spouse.

Proof of remarriage(s)	<p>Always from:</p> <ul style="list-style-type: none"> • Widow(er) who remarries after attaining age 60. • Surviving divorced spouse when annuity is not terminated by remarriage. • Beginning 1-1-84, a disabled widow(er) or a disabled surviving divorced spouse who is eligible for an annuity after remarriage.
Proof of termination of subsequent marriages	<p>Widow(er) who remarries before age 60.</p> <p>Surviving divorced spouse for entitlement or reentitlement. Beginning 1-1-84, however, only required for initial entitlement.</p>
Check list (Form G-659a)	<p>Always. Forward original to HQ; retain copy for field office file.</p>

410.20.2 Development of Medical Evidence

- A. From applicant sources (refer to Article 13);
1. Request the widow(er) to secure completed Form G-250 from her personal physician.
 2. Secure hospital records, if applicable.
 3. Develop onset date if earliest date widow(er) can qualify for the DWIA (i.e., month widow(er) attains age 50) is after the end of the prescribed period.
- B. If adequate evidence cannot be obtained from applicant sources, and applicant's disability is based on an obvious condition, describe the condition in the remarks section of the disability application. Do not schedule a physical examination unless other than obvious disabling conditions are present.
- C. If medical evidence from the above sources is not adequate or available, schedule appropriate medical examination as indicated in FOM-I, Article 13.

410.20.3 Developing From a Disabled Widow(er) Who Has Remarried

Certain disabled widow(er)s can qualify for an annuity after remarriage.

Refer to FOM1 410.10.2 for instructions on development action needed when a disabled widow(er) or disabled surviving divorced spouse remarries.

Refer to FOM1 405.30.3 for instructions on development action needed when a widow(er) remarries.

410.25 Annuity Beginning Date

The beginning date of a disabled widow(er) annuity (DWIA) is explained in FOM-I-111.20 FOM-I-111.51 and FOM-I-112.9.5.

410.30 Annuity Conversions Involving Disabled Widow(er)s

410.30.1 WCIA Converts to DWIA

A WCIA may be converted to a DWIA on the first day of the month the widow(er) age 50-59 meets all the following conditions:

- Is disabled within the meaning of the Railroad Retirement Act; and
- Files an application Form AA-17b; and
- Ceases to qualify for a WCIA because a minor or disabled child is no longer in the widow(er)'s care; and
- A surviving divorced wife must have been married to the employee for at least 10 years.

410.30.2 Widow(er) Files AA-17b While Entitled to WCIA

A disabled widow(er)'s annuity application (Form AA-17b), filed while a widow(er) is entitled to a WCIA, is used for establishing Medicare eligibility based on disability. A WCIA will continue to be paid even if the widow(er) is disabled, as long as a minor or disabled child is in the widow(er)'s care and the WCIA rate is higher. If the disabled widow(er) is under age 60 when entitlement to a WCIA terminates, the widow(er) will need to submit a signed statement advising whether (s)he wishes to receive a reduced annuity. When a widow(er) advises that (s)he does not wish to receive a reduced annuity, the disability Medicare eligibility will terminate if (s)he is not in receipt of an annuity. A DWIA cannot be paid before the signed statement is secured. Headquarters will advise when the statement is necessary.

410.35 Work Restrictions

410.35.1 Widow(er) Under Age 60

The annual earnings test does not apply to a disabled widow(er) under age 60. However, any work performed before age 60 must be considered in determining whether the widow(er) has recovered from the disability. The work and earnings may

demonstrate that the widow(er) is able to perform regular and gainful employment and, therefore, is no longer disabled for purposes of receiving an annuity and/or Medicare. Work for an RR employer during any month, of course, precludes payment of the annuity for that month.

As soon as the widow(er) reports that (s)he is working, refer the case to headquarters for a determination of whether (s)he has recovered from the disability on which the DWIA and/or Medicare is based. Furnish headquarters with pertinent information regarding the type of work and the numbers of hours per day the widow(er) works.

410.35.2 Widow(er) Age 60 and Over

A widow or widower who was receiving an annuity based on disability prior to age 60 will continue to receive an annuity after age 60 but the annuity will have been transformed into an age annuity. Therefore, regular survivor earnings restrictions apply beginning with the month the widow(er) attains age 60 and ending with the month before attainment of the exempt age.

Exception: A disabled surviving divorced spouse or a disabled remarried widow(er) is not subject to the annual earnings test until FRA. However, like a disabled widow(er) under age 60 any work must be considered in determining whether (s)he has recovered from disability.

Refer to Article 11 for more specific earnings restriction information. Work for an RR employer during any month precludes payment of the annuity for that month.

Beginning with 1975, all earnings in the year of attainment of age 60 are considered in determining excess earnings for that year.

If the widow(er) indicates that (s)he was told by the RRB that the annual earnings test would not apply until FRA, advise Headquarters.

NOTE: Work or earnings anytime before a widow(er) attains FRA may affect entitlement to Medicare based on disability. Consequently, as soon as a disabled widow(er) who is under FRA reports that s(he) is working, refer the case to Headquarters for a determination of whether the widow(er) has recovered from the disability on which Medicare is based.

410.40 Disabled Widow(er) Previously Awarded LSDP or RLS

410.40.1 LSDP Previously Awarded

If a widow(er) receives the LSDP and later files for a DWIA which starts in the 12-month period beginning with the month of death, the LSDP award is considered erroneous if the widow(er) is rated disabled as of the sixth month prior to the month of the employee's death. The LSDP is payable if the DWIA cannot begin in the month of the employee's death solely because the 5-month waiting period has not expired. For DWIA applications filed before 9-1-83, the LSDP is considered erroneous if the DWIA

begins in the 12-month period beginning with the month of death and the widow(er) is rated disabled as of the month of the employee's death.

If the LSDP is considered erroneous, it is recovered from the DWIA award. However, a deferred LSDP can be considered if the DWIA payments made for the year after the employee's death are less than the regular LSDP amount.

An LSDP award is not considered erroneous if a widow(er) becomes disabled in a month after the employee's death or when the DWIA begins more than a year after the employee's death.

If the widow(er) claims (s)he became disabled after the month of the employee's death, we presume that (s)he was not disabled at an earlier date, unless the medical evidence clearly shows that (s)he was. When the M/E does show that (s)he was disabled in or before the month of the employee's death, instead of the month (s)he claimed, a decision on whether the LSDP was erroneous will be made in Headquarters based on the individual facts.

410.40.2 RLS Previously Awarded

If the widow(er) previously elected and was paid the RLS, (s)he cannot receive a DWIA. However, if (s)he previously received the RLS because (s)he could not qualify for an annuity (e.g., not "living-with" prior to 11-1-66, or remarried widow prior to October 1, 1981), (s)he may be eligible for a DWIA. If (s)he is now eligible, the DWIA will be awarded but any part of the RLS paid to the disabled widow(er) will have to be recovered. If the RLS was awarded to someone other than the widow(er), and no election was filed by the widow(er), a DWIA can be paid and no part of the RLS will be recovered.

410.45 When Entitlement To A DWIA Ends

A DWIA terminates with the month before the month in which:

- The disabled widow(er) dies.
- The disabled widow(er) remarries.

EXCEPTION: Before 1-1-84, if a widow(er) marries an individual entitled to benefits under the RR or Social Security Act as a widow(er), mother, father, parent or disabled child, the DWIA tier I may continue but (s)he must submit proof of remarriage and the new spouse's SS number and RR or SS claim number. If the surviving divorced spouse marries a disabled child beneficiary, the DWIA terminates the same month the child's disability benefit terminates, unless the disabled child dies or becomes entitled to a retirement benefit at FRA. Refer to FOM-I-410.20.3 for additional information on development when widow remarries.

If a disabled widow(er) or a disabled surviving divorced spouse annuitant marries any individual 1-1-84 or later, she may qualify as a remarried widow(er).

- Attains age 60. Technically, a DWIA terminates when the widow(er) attains age 60; however, no change is made in the computation of the widow(er)'s annuity.
- A DWIA terminates with the second month following the month in which recovery from the disability occurs. The RRB may decide that a widow(er) has recovered from disability on the basis of work ability or because of actual medical recovery. However, the annuity continues if (s)he attains age 60 on or before the last day of the third month following the month in which (s)he ceased to be disabled.

NOTE: Medicare eligibility for a widow(er) who has been determined to have recovered from disability (due to work), may continue for 24 months after the DWIA terminates providing the widow(er) has not medically recovered from her disability.

- The disabled remarried widow(er) or disabled surviving divorced spouse becomes entitled to an RIB which equals or exceeds the deceased employee's PIA.

410.50 Reentitlement After Former Disability Ceases

A widow(er) may be reentitled to a DWIA if (s)he again becomes disabled after the former DWIA terminated and (s)he meets the entitlement requirements listed below.

410.50.1 Requirements for Reentitlement

Such a widow(er), if (s)he is otherwise qualified, can become reentitled if (s)he:

- A. Files a new application for a DWIA; and
- B. Has not attained age 60; and
- C. Is under a disability that began before the end of the "prescribed period" which begins with the last month of previous entitlement to a DWIA and ends with the earliest of the following:
 - The month before the month in which (s)he attains age 60; or
 - The close of the 84th month following the last month of previous entitlement to the former DWIA.

410.50.2 Date Payment Can Begin

The current DWIA is payable beginning on the first day of the month in which (s)he is again under a disability or the first day of the 12th month before the month the application is filed, whichever is later. A waiting period is not required if the requirements for reentitlement are met.

410.50.3 Age Reduction Amount

Although payment of the current DWIA is restricted to the dates mentioned above, the annuity beginning date remains the same as when the widow(er) initially was entitled to a DWIA. The age reduction is figured based on the initial DWIA beginning date and is not adjusted until the widow(er) attains age 62. If the initial DWIA beginning date and termination date were before 1-1-84, the widow(er) is deemed to be age 60 on the later of 1-1-84 or the date of reentitlement. When the widow(er) attains age 62 the reduction will be adjusted to remove the reduction for the intervening months in which a DWIA was not paid.

410.55 Handling Previously Denied Cases

Any inquiry, protest or additional medical evidence should be forwarded to Headquarters. The denial will be reconsidered.

- A. Reconsideration finds that applicant is still not disabled. A letter will be released to the widow(er) from Headquarters advising that the appeal period is 60 days from the date of the reconsideration decision notice.
- B. Reconsideration finds applicant to be disabled. A new application is required only if:
 - The applicant is found to be disabled from a date after the date of the denial letter; or
 - The evidence or correspondence that caused the reconsideration was received 60 days or more after the denial notice.

410.60 Vested Dual Benefit Entitlement

Vested Dual benefit entitlement for a disabled widow(er) is the same as for an aged widow. Refer to FOM-I-405.75.

410.65 When Entitlement To A Vested Dual Benefit Ends

The terminating events for vested dual benefit (VDB) benefit entitlement described in FOM-I-405.80 also apply to disabled widow(er)s. In addition, a disabled widow(er)'s VDB entitlement ends with the earlier of the termination of the SS DIB or RR DWIA.

