

4.7.1 When Dependency Required

A. Life Cases - Dependency of a child upon the employee is required when:

1. The employee's annuity is to be increased under the O/M by including a child, a grandchild or a spouse who has a child in her/her care; or
2. A spouse under age 65 files for a full spouse annuity on the basis of a child or a grandchild in her/his care.

Dependency upon a natural or legally adopting parent is usually deemed for a legitimate or legitimated child or such a parent. If dependency is deemed, an indication that a child is actually dependent on someone other than the employee is immaterial.

B. Survivor Cases - Dependency of a child upon the deceased employee is required for entitlement to a CIA. Dependency must be established at the time of the employee's death unless the employee has a period of disability freeze (DF) that continued until he met the conditions for entitlement to an RIB or DIB or until his death. If the deceased employee had a period of disability freeze (DF) that continued until he became entitled to an RIB or DIB or died, the dependency requirements can be met at the following points:

- At the beginning of the period of disability (DF), or
- At the time the employee became entitled to a DIB, or
- At the time the employee became entitled to an RIB.

The dependency requirement must be met even if the child was previously determined to be dependent upon the employee for the purpose of increasing the employee's O/M or qualifying a spouse for an annuity.

4.7.2 When Dependency Requirement Must Be Met

The point in time at which a child must be dependent upon the employee varies according to the type of claim. See RCM 4.7.15.

4.7.3 Child's Dependency Upon Natural Or Legally Adoptive Parent (Employee)

A. Life Cases - A legally adopted child (including a grandchild) who is adopted by the employee during his lifetime is deemed dependent for payment of RR formula annuities, and as such can qualify a spouse for a full spouse annuity if the "in care" requirement is met. However, if an adopted child is to be included in the

computation of the employee's annuity under the O/M, the following requirements must be met.

1. Months After 9-1972 - Deem a child dependent upon the employee when the employee is his natural parent. Deem a legally adopted child dependent upon the employee when the employee is his legally adoptive parent. This is true even when the child is living with and chiefly supported by his stepfather. A child will not be removed from the employee's O/M computation if he is subsequently adopted by someone other than the employee.
2. Months After 1-1968 and Prior to 10-1972. - A child is deemed dependent upon the employee as for months after 9-1972 unless subsequently adopted by someone other than the employee.
3. Months After 8-1960 and Prior to 2-1968
 - a. Male Employees - The rules for establishing dependency are the same as for months after 1-1968 and prior to 10-1972.
 - b. Female Employee - Deem a child dependent upon the employee when the employee is his natural mother or legally adoptive mother if insured under the RR Act. If the employee is not currently insured under the SS Act or partially insured under The RR Act, the child is dependent upon her only if:
 - The employee contributes one-half of the child's support; or
 - The employee is living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.
4. Months Prior to 9-1960
 - a. Male Employee - A child is dependent upon his natural or legally adopting father (employee) if:
 - Such father is living with or contributing to the child's support; or
 - The child is the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

NOTE: In those States in which adoption by another person during the natural father's lifetime does not cut off inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such a case, the

child is dependent upon his natural father ONLY if the he is living with or receiving contributions for support from such father.

- b. Female Employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

B. Survivor Cases

1. Months After 9-1972 - Deem a natural child dependent upon the deceased employee when the employee was his natural parent. Deem a legally adopted child dependent upon the deceased employee when the employee was his legally adoptive parent. The child's benefits or annuity will not be terminated if he is subsequently adopted.
2. Months After 1-1968 and Prior to 10-1970 - A child is deemed dependent upon the deceased employee as for months after 9-1972 unless he is adopted by someone other than a stepparent, grandparent, aunt, uncle, brother or sister. If a child is adopted by someone other than one of these "close" relatives, his annuity must be terminated. However, he can qualify as an IPI, if another family member is being paid under the O/M.
3. Months After 8-1960 and Prior to 2-1968
 - a. Male Employees - The rules for establishing dependency are the same as for months after 1-1968 and prior to 10-1972.
 - b. Female Employees - Deem a child dependent upon the deceased employee when the employee was his natural mother or legally adoptive mother if the employee was currently insured under the SS Act or partially insured under the RR Act. If the employee was not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon her only if:
 - The employee contributed one-half of the child's support; or
 - The employee was living with or contributing to the child's support AND the child's natural or adopting father is neither living with nor contributing to the child's support.
4. Months Prior to 9-1960
 - a. Male Employee - A child is dependent upon his natural or legally adopting father (employee) if:
 - Such Father was living with or contributing to the child's support;
 - or

- The child was the employee's legitimate or legally adopted child, has not been adopted by someone else, AND is not living with AND receiving more than one-half of his support from his stepfather.

NOTE: In those States in which adoption by another person during the natural father's lifetime does not cut off inheritance rights between the child and such father, the child may qualify on the insured status of the natural father. However, in such case, the child is dependent upon his natural father ONLY if he is living with or receiving contributions for support from such father.

- b. Female Employee - The rules for establishing dependency are the same as for months prior to 2-1968 and after 8-1960.

4.7.4 Child Legally Adopted By Employee's Widow(er)

Deem the child dependent upon the deceased employee if:

- The child was living in the employee's household at the time of the employee's death; and
- At the time of the employee's death, the child was not receiving regular and substantial contributions for his support from any public or private welfare organization which furnishes assistance or services for children, or from any person other than the employee or spouse.

NOTE: The above rules apply both to children adopted within two years of the employee's death and to children adopted more than two years after the employee's death when adoption proceedings were initiated before the employee's death.

4.7.5 Child's Dependency Upon Equitably Adopting Parent

Do not deem a child's dependency upon an equitably adopting parent as in the case of a legally adopting parent. Establish dependency upon an equitably adopting parent in accordance with A or B below.

A. Equitably Adopting Father - He must either:

- Be living with the equitably adopted child; or
- Be contributing to the equitably adopted child's support.

B. Equitably Adopting Mother

1. Months After 1-1968 - She must either:

- Be living with the equitably adopted child; or

- Be contributing to the equitably adopted child's support.
2. Months Prior to 2-1968 - She must either:
- Be contributing one-half of the equitably adopted child's support; or
 - Be living with or contributing to the equitably adopted child's support AND the natural or adopting (including equitably adopting) father is neither living with nor contributing to the child's support.

4.7.6 Child's Dependency Upon Stepparent

Do not deem a child's dependency upon a stepparent. Establish dependency upon a stepparent in accordance with A, B or C below.

- A. Stepfather (Prior to July 1, 1996) - He must either:
- Be living with the stepchild; or
 - Be contributing one-half of the stepchild's support.
- B. Stepmother (Prior to July 1, 1996)
1. Months After 1-1968 - She must either:
- Be living with the stepchild; or
 - Be contributing one-half of the stepchild's support.
2. Months Prior to 2-1968 - She must either:
- Be contributing one-half of the stepchild's support; or
 - Be living with or contributing to the stepchild's support AND the natural or adopting father is neither living with nor contributing to the stepchild's support.
- C. Stepparents Effective July 1, 1996
- The employee must be contributing at least one-half support to the stepchild. "Living-with" is no longer an option for meeting dependency.

4.7.7 Illegitimate Child's Dependency Upon Parent

Apply the following rules when an illegitimate child cannot be deemed a child of the employee under the 2-1968 amendments to the RR Act.

- A. Father

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under State law.
2. Prior to 6-29-76 - Determine the child's dependency upon the father by the child's status under applicable State law (see RCM 4.4.61). If the child is recognized or acknowledged by the father for inheritance purposes under applicable State law, the child is dependent if the father:
 - Is living with child; or
 - Is contributing to the child's support.

If the recognition or acknowledgement is sufficient to legitimate the child under applicable State law, deem the child dependent upon the father as for a legitimate child (see sec. 4.7.3).

B. Mother

1. Effective 6-29-76 - Dependency is deemed if the child has inheritance rights under State law.
2. Months After 1-1968 - Determine the child's dependency upon the mother by the child's status under applicable State law (see RCM 4.4.61) If the child is recognized or acknowledged by the mother for inheritance purposes under applicable State law, the child is dependent upon the mother if she:
 - Is living with the child; or
 - Is contributing to the child's support.

If the recognition or acknowledgement is sufficient to legitimate the child under applicable State law, deem the child dependent upon the mother as for a legitimate child (see sec.4.7.3).

3. Months Prior to 2-1968 - If the mother is currently insured under the SS Act or partially insured under the RR Act, deem the child dependent upon the mother regardless of the child's status under applicable State law.

If the mother is not currently insured under the SS Act or partially insured under the RR Act, the child is dependent upon the mother if she is:

- Contributing one-half of the child's support; or
- Living with or contributing to the child's support AND the child's father is neither living with nor contributing to the child's support.

4.7.8 Deemed Child's Dependency Upon Parent

- A. Child of Invalid Ceremonial Marriage - For months after 1-1968, deem the dependency of such a child upon his natural parent as for a legitimate child (see sec. 4.7.3). Since the dependency of such a child is deemed, it is not necessary to determine whether the child has inheritance rights under applicable State law.
- B. Illegitimate Child Deemed a Child for Months After 1-1968 - Deem the dependency of such a child upon the parent as for a legitimate child upon the parent as for a legitimate child (see sec. 4.7.3).

4.7.15 When To Develop Dependency

The following table summarizes dependency tests for months after 12-1972.

CHILD'S STATUS	DEEPENDENCY TEST
Legally adopted child	Deemed unless child adopted by someone else during employee's lifetime.
Legally adopted by employee's widow(er)	Established by "Living with" and child's receipt of support only from employer or spouse.
Equitably adopted child	Established by "Living with" or contributing to child's support.
Stepchild	Established by "Living with" or contributing one-half of child's support prior to July 1, 1996. Effective July 1, 1996, "living-with" is no longer an option for meeting dependency. Dependency <u>can only</u> be established by one-half support.
Illegitimate child with inheritance rights	Established by "Living with" or contributing to child's support. Effective 6-29-76 dependency is deemed.
Grandchild*	Established by "Living with" and contributing one-half of child's support.

*NOTE: In establishing the dependency of a grandchild on the employee, the grandchild must have:

- Begun living with the employee before the grandchild attained age 18;
- Lived with the employee for the entire year, specified below; and

- Received at least one-half support from the employee for the entire year specified below.

The grandchild must have been living with and receiving at least one-half support from the employee for the entire year before:

- The month in which the employee met the conditions for entitlement to an RIB or DIB under the SS Act or the month in which he died; or
- The month in which the employee's period of disability began which continued until he met the conditions for entitlement to an RIB under the SS Act or until his death.

If the grandchild was born during this one year period, the dependency requirements are deemed to be met if the grandchild lived with the employee in the U.S. and received at least one-half support from the employee for substantially the entire period between the date of his birth and the earliest of the above mentioned dates.

4.7.16 Determining Whether Child Is "Living With"

"Living with" means that the child and parent share a common roof under conditions which indicate more than mere coincidence of residence. It also means that the parent has the right to exercise, or is exercising, parental responsibility and authority.

Periodic or temporary separation does not prevent a finding of "Living with" if the circumstances indicate that the child and parent have shared and again intend to share a common roof or resume common residence when conditions permit. Thus, a parent in the Armed Forces who shares a common roof with the child until induction is deemed to be "Living with" the child. However, if the child is in the Armed Forces or committed to a correctional institution, do not consider him to be "Living with" his parent since the parent does not have the right to exercise parental control.

4.7.17 Contributions To Child's Support

- A. General - "Contributions to support" means regular and substantial contributions in cash or kind. The amount of contributions must be a material factor in the reasonable cost of the child's support. Whether contributions to the child's support are voluntary or compulsory does not matter. Therefore, a court order for support is not significant; consider only contributions actually made without regard to the amount the court order specifies.

Benefits to a child based on the employee's insured status are contributions by the employee.

Gifts or donations at special times or for special purposes usually are not contributions, nor are funds set aside for the child's future use contributions. Donations are contributions only if they are given for the child's support and are large enough to provide some of the usual necessities.

- B. Determining One-half Support - Consider contributions in both cash and kind when determining whether a parent contributes at least one-half of the total cost of the child's support.

In most cases, both the stepparent and the natural parent use their earnings for the benefit of each member of the household. If this is done, deem the contribution of each parent to the child's support to be in proportion to the earnings of each parent.

However, if there is evidence that some of the earnings of a parent are earmarked for a special purpose not in connection with the household, reduce such parent's contribution by the amount so earmarked.

- C. Limited Interruption Rule - "Contributions to support" can be established even though the normal pattern of contributions is disturbed by a temporary interruption (i.e., does not involve an assumption of support by someone else on a permanent and continuing basis). However, the evidence must prove that the interruption is involuntary (i.e., due to ill health, disability, unemployment, etc.) and that contributions would have been continued had conditions permitted.

4.7.18 Statement Regarding Support

When applicable (see sec. 4.7.15), obtain a sworn statement from the applicant or other person having knowledge of the facts regarding contributions to the child's support. The statement should furnish the following information:

- Name of person who is contributing to the support of the child and relationship to the child;
- How often cash payments are made by such person for the support of the child;
- The usual amount of each payment;
- The period of time over which the payments are made;
- The amount and date of the last payment;
- A description of any contributions made in a form other than cash and their cash value;
- The name of the person to whom payments are made for the child's support.

In addition, if the pooled fund method can be used in determining if the one-half support requirement is met, secure the amount and source of income of each member of the single family residing in the household. (See Section 4.7.51 for an explanation of the "Pooled Fund Method of Determining Support" and when this method can be used.)

4.7.25 Support

- A. General - Support is the maintenance of a person necessary for his well-being. It includes such things as food, clothing, shelter, current medical needs, etc. Support of a person can be shown by contributions in cash, kind, or services.
- B. One-Half Support - One-half support means that the applicant is receiving regular contributions in cash, kind, or services from the employee and the contributions equal or exceed 50% of the applicant's income from all sources. If applicable, use Form G-134a to test for one-half support according to the instructions in RCM Part 11.

4.7.26 Standards For Determining Support

The standards discussed in this chapter are merely guides for determining whether the one-half support requirement is met. When applicable, these guides are intended to simplify development, but do not use them to establish entitlement which would not exist on a factual basis.

Do not consider the standards hard and fast rules; if the circumstances of the individual case make their application unrealistic, disregard them. For example, if the employee's income is so low or the applicant's income from other sources is so high that a finding of support would be unreasonable, do not follow the guides.

The standards discussed in Sections 4.7.40 - 4.7.79 apply to all support determinations. However, in addition, there are special rules to determine the support of husbands and widowers (Sections 4.7.28 - 4.7.32 and divorced women (Section 4.7.85).

4.7.27 When Proof Of Support Is Required

In retirement or survivor cases, certain beneficiaries must submit proof of support to meet an exception to the public service pension offset provision; proof is also required in certain cases of child dependency.

- A. Life Cases - Proof of support is required for a husband's annuity prior to 3-1-77. It is also required in certain cases involving a divorced wife to be included under the O/M prior to 10-4-72.
- B. Survivor Case - Proof of support is required for a widower's annuity prior to 3-1-77 and a parent's annuity. It is also required to pay a windfall or an employee annuity restored amount to a widower.

4.7.28 Determining Support When Husband And Wife Living Together

In addition to the normal rules for determining support (Sections 4.7.40 - 4.7.79), assume that the husband and wife share equally, in terms of support, in all income

received in the household regardless of their individual income. Unless there is evidence to the contrary, compute the applicant's support as follows:

- Ascertain the total individual incomes of husband and wife from all sources (see Sections 4.7.29, 4.7.31 and 4.7.32); and
- Exclude from this total the amount not used for the support of either party (e.g., extraordinary expenses, etc.); and
- Divide the balance equally between the husband and wife.

This prorated share is the support received by the applicant. When his individual income is one-half or less of this amount, he is receiving one-half of his support from the employee. Use Form G-134a when making one-half support determinations (per RCM Part 11 instructions). If public assistance is involved, see Section 4.7.66.

4.7.29 Source Of Income For Support When Husband And Wife Living Together

In the absence of evidence to the contrary, assume that the husband and wife have an equal share in all outside income. As used here, outside income includes income from jointly owned property, income from roomers and/or boarders, withdrawals from joint savings accounts, contributions from third parties, servicemen's dependents' allowances, etc. It does not include income received through their individual efforts, such as income from services, pensions, royalties, income from individually owned property, etc.

4.7.30 Determining Support When Husband And Wife Living Apart

Determine the husband's individual income exclusive of his wife's contributions. When the amount contributed by the wife equals or exceeds the husband's individual income, he is receiving one-half of his support from his wife.

4.7.31 Determining Support When Applicant Alleges That His/Her Own Income Is Not Used For Support Purposes

If the applicant alleges that his/her own income is not used for his/her own support, it must be determined what the income is actually used for. If the income was available for support purposes but the applicant chose to use it otherwise, it must still be considered in the support picture. Document the file as to the applicant's income and how the monies were used and make a support determination considering all the case facts.

If the income is used for a predetermined situation (e.g. alimony or child support) document the file to verify this. If it cannot be verified, the income cannot be excluded when determining support.

4.7.32 Effect Of State Community Property Statutes On Support Determinations

Disregard State community property statutes in determining the source of income of either the wife or husband. Even though the earnings of one party could, under State law, become the common property of both parties, attribute such earnings solely to the party receiving the income.

4.7.40 When Employee Must Have Supported The Applicant

An applicant must have been receiving at least one-half support from the employee in the appropriate month. For the rules that apply to each of the following classes of applicants, refer to:

- Children - RCM secs. 1.5.22 and 1.5.24; and 2.4.42;
- Parents - RCM sec. 2.5.21; or
- Spouse - RCM secs. 1.3.2(E), 1.3.155, 1.3.185, and 1.3.188;
- Widowers - RCM sec. 2.2.15.

Although the month the support requirement is to be met means the month in which such event(s) occurred, consider the facts relating to the applicant's total support for a reasonable period before such month in determining whether the support requirement is met. The following three sections illustrate the application of this principle.

4.7.41 Twelve Months As A Reasonable Period

An applicant meets the support requirement at the applicable time if during the 12-month period preceding that time the employee contributed regularly and without a permanent break at least one-half the applicant's whole support. When there is a change in the support pattern, the period to be considered in determining the support begins with the change in circumstances unless unfortunate circumstances are present.

Consider changes caused by seasonal employment to be temporary, not permanent. Therefore the 12 month period must be considered in any case not involving adverse circumstances.

When the employee did not contribute anything during the 12-month period, it is unrealistic to find support.

4.7.42 Three Months As A Reasonable Period - Unfortunate Circumstances Involved

The applicant is receiving at least one-half support if:

- The employee contributes at least one-half of the applicant's whole support for at least 3 months of the support year; and
- Unfortunate circumstances such as illness, unemployment, etc., prevent the employee from making further contributions; and
- The applicant's income during the rest of the year (excluding initial or supplemental public assistance grants first received after the employee stopped contributing) is reduced 25% or more.

Count the 3 months either consecutively or intermittently. However, this rule does not apply if there is a clear assumption of the burden of furnishing more than one-half support by the applicant or by another person after the employee is forced to stop supporting the applicant. Do not consider the initial receipt of, or increase of, public assistance or other relief after the employee stopped contributing as an assumption of support by the agency furnishing the support.

A temporary lessening of contributions does not prevent a finding of support. If the employee's contributions are gradually reduced because of unfortunate circumstances, deem these circumstances to have happened at the point when the employee contributes one-half of the applicant's whole support. Disregard the date of last contribution.

4.7.43 Other Reasonable Periods

The applicant meets the support requirement at the applicable time if the employee, during a reasonable period just before the applicable time, contributes at least one-half of the applicant's support.

A period however short is reasonable. The test is whether the employee plainly showed an intent to provide at least one-half of the applicant's support on a continuing and permanent basis. Evaluate the employee's intent and actions based on that intent to determine what is a reasonable period in each case. Even a month or less may be reasonable depending on all the facts.

When the applicant receives wages and/or SE income during part of the year before the employee's annuity began or before the employee's death but not in the period just before the employee's ABD or death, have the applicant state whether the employment was permanent or temporary, or regular or seasonal in nature. If the applicant could reasonably be expected to return to regular employment at the time of, or shortly after, the employee's ABD or death, the reasonable period rule usually will not apply. In such cases, use the 12-month period if the employee contributes at least one-half of the applicant's support during that part of the year in which the applicant is employed or self-employed.

4.7.50 Determination Of Income

Any payment received by the applicant in cash, kind, or services (including any proceeds from property), is income to the applicant. Also include the amount of unpaid debts contracted by the applicant for current support during the period for which support is being determined.

4.7.51 Pooled Fund Method Of Determining Support

A. General - When the pooled fund method is used to establish support, it is assumed that each member of the family shares equally in the income received by the family for support. This method can be used to determine whether the dependency requirement is met for purposes of qualifying:

- A parent of a deceased employee for an insurance annuity
- A grandchild of a deceased employee for an insurance annuity (if the dependency requirement is met, as well as all other requirements, such a grandchild can qualify the (widow(er) for an annuity if the child is in the widower's care);
- A grandchild as an IPI in the employee's O/M computation or for Medicare;
- A grandchild who can qualify the employee's wife under age 65 for an unreduced spouse's annuity based on having the grandchild in her care or, effective 5-1-83, can qualify the employee's husband for an unreduced spouse's annuity based on having the grandchild in his care;
- A grandchild, who can then qualify for Medicare as a disabled child of the employee, whether or not the employee's annuity is under the O/M;
- The husband of a retired employee for a spouse annuity prior to 3-1-77; or
- The widower of a deceased employee for a widower's annuity prior to 3-1-77 and/or for a RIB/DIB windfall prior to 8-13-81.

Although the pooled fund method can be used to establish dependency on the employee, the other requirements for benefits must also be met.

The pooled fund method cannot be used to establish support when:

- Separate family groups are living in the same household; or
- A father is under a court order to support his minor children, but the order does not provide for payments to the mother; or
- There is evidence indicating that the income for support is not shared equally,

The pooled fund method should not be used when it would disprove support for an applicant (alleged dependent) by a narrow margin.

When the pooled fund method cannot be used and the \$170.10 rule does not apply (see sec, 4.7.77), an actual comparison of the applicant's income and the employee's net contributions must be made (see sec. 4.7.18).

- B. Applicant and Employee Living in Employee's Home - Where possible, an applicant's support will be computed under the pooled fund method. In applying the pooled fund rule, no distinction is made for the age of the members of the household in figuring their support. This is because it is generally not possible to demonstrate that young people or elderly persons may not use as much food, living space, utilities, etc., as the others members of the household. Support is computed on Form G-134a by dividing the total funds coming into the family by the number of members in the household. The result constitutes the amount of each member's support.

EXAMPLE 1: The employee died in 1-1968, and in February his mother filed an application for parent's benefits. In the year preceding the employee's death, his mother had lived with him, his wife, and two minor children. Development established that the employee's earnings of \$6,000 were used as support of the family as was his mother's income of \$1,000 (\$480 from a pension and \$520 given by another son). The total funds available for the support of the household were \$7,000. Since there were five members of the household, the annual "cost" of support for each was \$1,400. The mother was not receiving one-half of her support from the employee since her income from other sources (\$1,000) exceeded one-half of her support (\$700).

When more than one member of a household contributed to the support of the household; the proportion of one member's contributions to any other members is the same as the proportion of his contributions (less his own support) to the total income.

EXAMPLE 2: In the year preceding the employee's death, his mother lived with him, his wife, and his minor child. Development established that his income of \$3,450, his wife's income of \$1,950 and his mother's income of \$400 were all used for support of the family. The total funds available for support were \$5,800 and since there were four members of the household, the cost of support of each was \$1,450. The mother's income of \$400 is considered being used entirely for her own support. The balance of her support, \$1,050, came from the contributions of the employee and his wife.

	Employee	Wife
Income available for support	\$3,450	\$1,950

Cost of own support	- 1,450	- 1,450
Balance available for support of other members of the household	\$2,000	\$ 500

The employee's proportionate contribution to other members of the household is determined by dividing \$2,000 (his support for them) by \$2,500 (support for them contributed by employee and wife). The employee's contribution to this mother's support may be found by multiplying the resulting fraction of 4/5 by \$1,050. \$840 exceeds \$725 (one-half of the mother's total support). Therefore, the one-half support rule would be met for purposes of qualifying the mother for an annuity.

- C. Employee Living in Applicant's Home - The pooled fund method cannot be used because it cannot be assumed that the income of the household was pooled. Instead, compute the employee's net contribution to the support of the applicant and compare that amount with the applicant's income from other sources.

4.7.52 Income From Employment

For support purposes, the applicant's net income from employment is the amount of pay remaining after deducting expenses incurred in furthering his employer's business.

4.7.53 Income From Property

- A. Personal Service Not Involved - When the applicant or the employee is the sole owner of property not involving personal service (e.g., bank deposits, stocks and bonds, real estate investment, etc.), the income is his. If the property is owned jointly, allocate the income equally to the joint owners. Do not attempt to allocate the income from property on any other basis.

Do not look behind the legal title unless the issue is raised. If it is alleged that the "property," although jointly owned, was acquired through the efforts of only one person, consider all the income as that person's if the facts support such a finding.

- B. Operation of Business - Income from properties such as farms, boarding houses, or other business enterprises involving the use of real or personal property is derived principally from the operation of a business and only in a small part from the use of the property. If the applicant or employee has income from such a source, assume, in the absence of information to the contrary, that he is operating a business. In such case, all the net income from the operation of the business is his income. When the applicant and the employee are joint owners, assume they are joint operators of the business and allocate the net income from such self-employment equally to both. Generally, allegations of partnership made in connection with a claim or inquiry are acceptable. If income is derived from a

partnership, allocate such income in accordance with the terms of the partnership agreement.

When the applicant is the sole operator of a business in which the employee or another person performs substantial work, the applicant's net income is reduced by the corresponding cash value that such work produces. (See sec. 4.7.75.)

4.7.54 Rental Property Income

To determine the net income from rental property, first determine the gross income from the property and then deduct all regular expenses. Regular expenses include fuel, water, electricity, gas, taxes, mortgage payments, interest on mortgage, repairs (including improvements), labor costs, etc. Do not deduct accelerated mortgage payments or depreciation. Accelerated mortgage payments do not constitute a regular expense since they are not essential to the maintenance or retention of the property. Depreciation is not deductible because it is not an out-of-pocket expense and money is still available for support.

When the applicant and/or the employee did a substantial amount of work which has some bearing on the net income from the property (e.g., janitorial services in multiple-unit buildings), determine the value of the work and allocate it on the basis of the percentage of work done. (The cash value of work is what it would cost to hire similar labor to do similar tasks in the same length of time.) When little or no work is needed to produce income, i.e., the work has no material bearing on the amount of net income, disregard the work. Do not undertake development of work unless substantial work is alleged.

4.7.55 Farming Operations Income

- A. General - Farm income has two sources, produce sold and produce consumed. Produce includes crops, poultry, cattle, hogs, dairy products, eggs, etc. Many farms also have vegetable gardens the produce of which may constitute a material source of support.

Frequently and especially in rural areas there will be a garden even though no actual farming operations are involved. In these cases, the produce is generally eaten rather than sold. Since the produce may be a material source of support, determine the value of such produce used or sold.

- B. Farm Produce Sold - To determine the net value of farm produce sold, deduct the direct expenses from the gross sales. Gross sales are derived from the applicant's statement showing the farm produce sold, the quantity, and the price received. Also have the applicant itemize all the direct expenses (s)he incurred in producing the farm products, e.g., hired labor, fertilizer, seed, stock feed, etc. When the farm was leased rather than owner-operated, the rent is a deductible item. Taxes, insurance, mortgage payments, and interest on mortgage are also deductible.

- C. Farm Produce Used - Have the applicant show each farm product raised and used, the quantity, and what it would have sold for. Also, have the applicant list his direct expenses. Determine the net value of the produce used by deducting the direct expenses from the estimated gross value.
- D. Farm Subsidy Programs - There are a number of farm subsidy programs which provide the farmer with subsidies in various forms. The nature of these subsidies may change from year to year and may differ in various localities. Have the applicant state whether (s)he is a recipient under a farm subsidy program and if so to what extent.

4.7.56 Proceeds From Sales Of Assets, And Funds From Insurance Policies

Unless there is evidence to the contrary, consider such proceeds and funds as income and use them in the support computation. If the proceeds and funds are not used for support, do not consider them when determining support.

4.7.57 Alimony Payments

Alimony payments received from any source are considered as income and must be included in the support computation.

4.7.65 Allowances And Allotments To Dependents Of Servicemen

- A. Allowances - A dependency allowance may be payable to the spouse, child or parent of an enlisted serviceman. Such an allowance includes money deducted from the pay of serviceman plus money contributed by the government; it varies depending upon the enlisted man's grade. It may also vary in accordance with the wishes of the serviceman when two or more classes of dependents are involved, e.g., spouse and parent.

All of the allowance, including the government's contribution, is a contribution by the serviceman.

- B. Allotments - An allotment is a deduction wholly from the serviceman's pay. Under Department of Defense regulations, all servicemen, including officers, may make allotments from their pay for their families or relatives; or for such other purposes as savings, insurance, etc. The serviceman can begin or end the allotment as he wishes. An allotment to the applicant is a contribution toward support.
- C. Development of Allowances and Allotments - When an applicant alleges that the employee was contributing by means of an allowance or allotment, request the applicant to submit evidence showing the amount and beginning date of the payments. Preferred evidence in this case is a notice from the service Department as to the allowance or allotment. When it is not possible to secure pertinent facts upon which to base a determination, contact the applicable

department. However, if the applicant's other income is greater than the alleged contributions from the employee, such corroboration is not necessary.

4.7.66 Public Assistance Or Other Aid

Public assistance or other aid is income to the recipient in all cases. However, such income does not prevent the applicant's entitlement when it is initially received or increased after unfortunate circumstances forced a reduction or termination of the employee's contributions.

Old-age assistance is paid without any restrictions on its use by the recipient. When the employee receives such assistance, consider any part of it used by him (or his legal representative) to support another person as the employee's contributions to that other person's support. When the employee was acting as payee for an individual who qualified for the assistance, consider the payments as funds of the person qualified for the assistance.

A similar rule applies to payments by State agencies under assistance titles of the Social Security Act or under State or local laws when there is no restriction as to how the payment may be used. If there is a restriction, do not consider the payment the recipient's own funds unless it was based on his individual needs. If the support of other individuals was considered, the recipient is, in effect, acting as a payee on their behalf and any amounts used for the support of such individuals cannot be considered as a contribution by the recipient.

In any case in which the receipt of assistance would affect the support determination, forward the claim to the division of operations planning.

4.7.67 Federal Benefits

Monthly benefits paid under the RR Act and those of other Federal agencies are income to the applicant. Lump sums paid under the RR Act and those of other Federal agencies are also income to the applicant if used for the applicant's support.

4.7.75 Contributions As Income

- A. General - A contribution to an applicant by the employee or some other person is income to the applicant. A contribution may be cash, in kind, or work done. A one-time cash contribution to the applicant received during the support period must be considered as income if the contribution was available for support (regardless of how the contribution was actually used).
- B. Contribution in Kind - A gift or other one-time contribution in kind must be considered as income to the applicant if the contribution was available for support purposes and part of the regular contributions. The cash value of regular contributions in kind is the cost of the items if bought in the open market when the contributions are made. If depreciable assets are involved, do not prorate

their cost from year to year. Treat their total cost as income in the support period if they constitute part of regular contributions; otherwise, exclude them from the support computation.

- C. Contribution of Work - The cash value of work that the employee or other person does for the applicant or vice versa is what it would cost to hire similar labor to do similar tasks in the same length of time.

This rule applies to work for which labor would usually be hired, such as repairs or improvements in the home. It does not apply to routine household tasks ordinarily expected of members of the household; these tasks do not have a cash value in determining support.

Substantial work by the employee or another person on a farm or in a business operated by the applicant has a cash value corresponding to the amount of net income produced by the work. For example, when the employee or another person did 1/3 of the necessary work, 1/3 of the farm or business net income from personal services is his contribution to the applicant. Likewise, when the applicant performs services for the employee or another person on a farm or in a business, the cash value of such service constitutes income to the applicant. To this extent, deem the applicant to be providing his own support.

4.7.76 Room And Board

- A. General - Consider the value of room and board furnished either to, or by, the applicant when determining the ratio of the employee's contributions to the applicant's support.

When the contributor is living with and receiving room and/or board from the applicant, the contributor's net contribution to the support of the household is his gross contribution minus the value of room and/or board. When one person in the household is paying room and/or board for another person in the same household, deduct the value of that person's room and/or board also.

- B. Value of Room and Board - Develop and use the actual cost of room and board when:
- There is a written record of the items of such costs; or
 - The applicant or person furnishing room and board can furnish a full itemization of such costs based upon personal knowledge or upon personal knowledge and records; or
 - The existence of entitlement depends upon the amount of such costs; or
 - It becomes necessary to compute the household expenses to determine the amount of contributions.

In other cases, a reasonable estimate of costs can be used. However, to be acceptable, the estimate must be realistic taking into consideration the applicant's apparent standard of living as evidenced by the income received in the household as well as any partial cost records and other facts which the applicant or person furnishing room and board knows. When the applicant or person furnishing room and board has cost records or personal knowledge of only part, estimate the difference. When the full or partial estimate is not realistic, undertake complete development of the actual costs.

In the rare case in which a reasonable estimate cannot be secured and actual cost development is impossible, assume, in the absence of evidence to the contrary, that room and board (effective 1-1-85) is worth \$170.10 a month. The value of the board only is \$87.10 a month and of the room only \$83.00 a month. Therefore, if one person occupies two rooms, the assumed value is \$166.00 a month. If more than one person occupies a single room, divide the assumed value of the room by the number of people who occupy it. The assumed value of board would be added to this figure. (Do not use the assumed value in any case in which the applicant lives outside the continental limits of the U.S.)

For support periods ending in 1984, the assumed value of room and board is \$146.45 a month (\$77.95 for board and \$67.50 for room); for 1982 and 1983, it is \$128.50 (\$74.20 for board and \$54.30 for room); for 1979 through 1981, it is \$96.00 (\$54.00 for board and \$42.00 for room); for 1972 through 1978, it is \$50.00 (\$37.50 for board and \$12.50 for room); for 1968 through 1971, it is \$40.00 (30.00 for board and \$10.00 for room); and for 1952 through 1967, the figure is \$30.00 (\$22.50 for board and \$7.50 for room). For support periods ending before 1952, the assumed value of room and board is \$15.00 a month (\$11.25 for board and \$3.75 for room).

- C. Computing Actual Cost of Room and Board - Find out all the household expenses and prorate that total equally among members of the household. For the purpose of computing room and board when boarding house activities are not involved, household expenses include only the regular expenses for maintaining the household. These include expenditures for food, utilities, fuel, rent, water, insurance, mortgage payments, interest on mortgage, and any other expenditures recurring at annual or more frequent intervals.

However, regular expenses do not include extraordinary expenditures for repairs, improvements, furniture, or other household equipment. The reason for excluding these items when boarding house activities are not involved is that they normally are not considered when fixing the amount to be paid.

4.7.77 Room And Board Provided The Applicant By The Employee

When the employee provides the applicant's room and board, deem the applicant to be receiving at least one-half support from the employee if (s)he does not receive income from sources amounting to more than \$170.10 a month for periods ending after 1984.

(The monthly income limit for periods ending in 1984 is \$145.45; for periods ending in 1982 and 1983, \$128.50; for periods ending in 1979-1981, \$96.00; for periods in 1972-1978, \$50.00). Do not, however, use this rule to defeat a finding of one-half support.

4.7.78 Housing

- A. House Provided to the Applicant - When the applicant occupies rent-free a house provided by the employee or some other person, consider the fair rental value as income to the applicant if the contributor owns the property and pays the maintenance costs. (Maintenance costs do not include ordinary utilities.) When the amount established as the rental value is in excess of 1/4 of the applicant's other income, decrease the rental value to 1/4 of such other income or to the actual maintenance costs of the house, whichever is greater. (The reason for this is that an amount equal to 1/4 of the family income is usually allotted for housing.) When the applicant pays the maintenance costs, follow the instructions in B below.

When the contributor actually pays the rent for the housing, the amount of such rent is his contribution.

- B. Home Owned by Applicant - No income is attributable to the applicant by reason of his occupancy of a single unit dwelling (s)he owns since ordinarily the expenses of maintenance equal the fair rental value of such dwelling. However, if the dwelling contains other units from which actual income is received, follow the instructions in sec.4.7.54.

4.7.79 Payments Under Reimbursement Agreement

Payments made to the applicant by someone other than the employee with an agreement that the employee will reimburse him are contributions by the employee.

To establish these contributions, obtain affidavits from persons who know the facts showing that:

- The employee actually reimburses the contributor; or
- The employee gave security out of which reimbursement could be had; or
- The employee's estate reimbursed the contributor; or
- The contributions are a loan on the employee's credit.

4.7.80 Special Support Rules - Grandchildren

A grandchild or step-grandchild as defined in RCM sections 4.4.85 and 4.4.86, may qualify for benefits or qualify the employee's wife for benefits effective 1-01-73. Effective May 1, 1983, a grandchild or step-grandchild may also qualify a male spouse for

benefits. In addition to meeting the relationship requirements, except for a grandchild adopted by an RIB or DIB beneficiary (see section 4.7.81), the grandchild or step-grandchild must meet the dependency requirements as outlined in sections 4.7.1ff and fulfill the requirements in A or B below:

- A. The child's natural or adoptive parents must be either deceased or disabled:
1. In the month in which the employee met the conditions for entitlement to an RIB under the SS Act, or died; or
 2. In the month in which the employee's period of disability (DF) began which continued until he met the conditions for entitlement to an RIB or DIB or until his death.

See RCM Chapters 1.1. and 1.2. for conditions for entitlement to an RIB or DIB under the SS Act.

- B. The child was legally adopted anytime after the employee died, by the employee's surviving spouse in an adoption decree by a court of competent jurisdiction within the U.S. (including Puerto Rico, the Virgin Islands, Guam, and American Samoa) and the child's natural or adopting parent or stepparent was not living in the employee's household and making regular contributions.

A grandchild who meets these requirements qualifies for monthly benefits effective with the month of the employee's death if the adoption was within two years of the employee's death, or if the adoption was more than two years after the employee's death, monthly benefits are payable no earlier than January 1, 1973. If the grandchild was adopted after 1973, monthly benefits are payable 12 months retroactive from the month of adoption. If the child was adopted before 1973, monthly benefits are payable effective with:

- The month the employee died if the child was adopted within 2 years of the employee's death, or
- January 1, 1973, or later, if the child was adopted more than two years after the employee died.

The dependency requirement outlined in sec. 4.7.82 can only be met at the time of the employee's death. A child who fails to meet these requirements may still qualify as a legally adopted child. See RCM sec.4.4.26.

4.7.81 Requirements For Eligibility Of Grandchild Adopted By RIB Or DIB Beneficiary

An adopted grandchild of the employee or his spouse who does not meet the dependency requirements for any one of the one-year periods shown in RCM section 1.5.24 may still be eligible to be included in the O/M or make the employee's spouse

eligible to be included in the O/M if the adoption was by an RIB or DIB beneficiary and the dependency requirements in RCM section 1.5.24 are met for the one-year period immediately prior to the month in which the child's application is filed.

The development required to establish a grandchild relationship as outlined in RCM section 4.4.88 applies except that a step-grandchild of the employee or spouse (who is not the grandchild of the other) does not qualify under this provision. See RCM section 4.4.86.

The alternative dependency test for grandchildren does not affect cases where the child is adopted after the employee's death by his surviving spouse.

The alternative period of dependency test for a grandchild is effective for benefits payable beginning August 1, 1973 based on an application filed in July 1973 or later.

For a grandchild adopted by an RIB or DIB beneficiary under the alternative time requirement for dependency, the child must meet all of the following requirements:

- He must not be a step-grandchild, as defined in RCM sec, 4.4.86; and
- He must have been legally adopted by the employee in an adoption decreed by a court of competent jurisdiction in the U.S. (including Puerto Rico, the Virgin Islands, Guam and American Samoa); and
- He must not have attained the age of 18 before he began living with the employee; and
- He must have been both living with the employee in the U.S. (including Puerto Rico, the Virgin Islands, Guam, and American Samoa) and receiving one-half support from the employee for the entire one-year period immediately before the month in which the child's application is filed.

An adopted child born during the one-year period is deemed to meet the living with and one-half support requirement if he lived with and received at least one-half support from the employee for substantially all of the period from the date of his birth to the month in which the child's application is filed.

"Living-with" and one-half support as detailed in sec. 4.7.82b are applicable to the one-year period immediately before the month in which the child's application is filed.

Unlike the grandchild definition and dependency requirements in secs.4.7.80 and 4.7.82, respectively:

- There are no conditions requiring the grandchild's parents to be either deceased or disabled; and
- There are no conditions regarding partial support by the grandchild's parent who lives in the same household. Of course, if the grandchild's parent is contributing one-

half support, or more, then the grandchild could not be dependent upon the employee.

4.7.82 Grandchild Dependency Requirements

- A. General - In addition to meeting the relationship requirements in RCM sections 4.4.87ff, the grandchild must also have been dependent on the employee. Note that the child must have the necessary relationship to the employee at the time used for establishing dependency.
- Begun living with the employee before he or she attained age 18; and
 - Lived with the employee in the U.S. throughout the year specified in B below; and
 - Received at least one-half support from the employee throughout that same year.
- B. Time Requirement - Living With and One-Half Support - The grandchild must have been living with and receiving one-half support from the employee for the entire year before:
1. The month in which the employee met the conditions for entitlement to an DIB under the SS Act or the month in which the employee died; or
 2. The month in which the employee's period of disability began which continued until he met the conditions for entitlement to an RIB or DIB under the SS Act, or until his death; or
 3. In the case of a grandchild adopted by an RIB or DIB beneficiary only, the month before the application is filed for the child.

The periods of time above represent alternative points for meeting the living with and support requirements. For example, if living with and one-half support are not met in the month of the employee's entitlement to a DIB, the requirements may be met in the future at one of the other designated points in time. However, benefits cannot be paid until the dependency test is met.

A grandchild born during this one-year period is deemed to meet the living with and one-half support requirements if he lived with the employee in the U.S. and he received at least one-half support from the employee for substantially all of the period from the date of his birth to the month indicated in 1,2, or 3 above.

When a surviving child qualifies because he or she was legally adopted by the employee's surviving spouse after the employee's death, the child does not have the status of child prior to the employee's death. Therefore, dependency for such a child can only be established by using the 12-month period preceding the employee's death or the time between the child's birth and the employee's death,

if shorter. (The child for whom "grandchild dependency" cannot be established may still qualify as a legally adopted child. See RCM sec. 4.4.26.)

The child is considered to have been receiving at least one-half support from the employee for the year before the applicable time if the employee made contributions in cash or kind to the child's support in each of the 12 months preceding the applicable time and the total of such contributions over the entire 12-month period equaled or exceeded one-half of the child's support for the year. If the employee contributed an amount which was intended as support for more than one month, he would be considered to be contributing to the child's support for each month covered by the amount of the contribution. An annual installment which is understood by all to be necessary support for the year would be considered as a contribution for each month of the year. Also, where the employee has been contributing over a period of time and there is a break of one month in his contributions during the year, he can be considered to have contributed "continuously" throughout the year.

- C. No Natural or Adopting Parent Living With and Contributing to the Support of the Child - In cases involving adoption of a grandchild or step-grandchild by the deceased employee's surviving spouse, the grandchild, in addition to meeting the relationship tests in RCM sec.4.4.85, must not have been receiving regular contributions towards his support from his natural or adopting parent or stepparent who was living in the employee's household at the time the employee died. The parent must have been both contributing to the support of the child and living in the employee's household for benefits to be precluded. A parent who is living in the employee's household but not contributing to the child's support will not bar the child's entitlement. Likewise, regular contributions from a parent not living in the employee's household will not bar the child's entitlement. However, such contributions must be considered in determining whether the child was receiving at least one-half of his support from the employee.

The definition of "living with" and "contributions to support" contained in RCM sections. 4.7.16 and 4.7.17, respectively, are applicable to this provision. The grandchild, or person filing on his behalf should complete a statement concerning whether or not either of the child's natural or adoptive parents or stepparents were living with the employee and making regular contributions towards the child's support at the time the employee died.

- If the applicant alleges that either of the child's parents were living with the employee and making regular contributions towards the child's support and there is no evidence to the contrary in file, the allegation may be accepted and the claim denied.
- If the applicant alleges that a parent was not living with the employee at the time of the employee's death and there was no evidence to the contrary, this allegation may also be accepted. However, contributions from that parent

should be developed if alleged because these contributions will have a bearing on the one-half support dependency requirement.

- If the applicant alleges that one or both of the child's parents was living with the employee at the time of the employee's death but that parent was not contributing towards the support of the child, the support issue must be fully developed and the reason for the parent's non-support should be determined. This development should be done at the time you are developing the one-half support requirement to establish the grandchild's dependency.

4.7.83 Development Of Proof Of Death Or Disability Or Grandchild's Natural Or Adopting Parents

In all cases except those in which a grandchild could qualify as an employee's adopted child, the grandchild's parents must be either deceased or disabled. In the applicable cases, when the death or disability or the grandchild's natural or adopting parent cannot be proved, the claim for the grandchild must be denied. The natural or adopting parents will generally be identified in the evidence obtained.

A. Proof of Death

1. Natural Child of Employee's or Spouse's Daughter - The natural mother's death must be established. If the evidence establishes the identity of the child's natural father, his death must also be established. Otherwise, an attempt must be made to ascertain his identity through contact with the person filing on behalf of the child, the employee or his spouse, or any other readily available person who might reasonably be expected to have that knowledge. In addition, other possible sources of evidence (such as hospital, church, court or school records) should be checked. All efforts to identify the natural father should be documented and submitted for the file. If the child's father cannot be identified from any of the sources, assume he was deceased at the applicable time. If the child's father is identified but his whereabouts are unknown or, for any reason, proof of death cannot be obtained, an assumption cannot be made that the father is deceased, except where death can be presumed. Use RCM sections, 4.5.21 through 4.5.26 as a guide.

Before denying the claim for the grandchild, determine the child's identified father's SS AN and teletype SSA's BDP to determine whether that parent has earnings posted for a quarter after the quarter in which:

- The employee died; or
- The employee became entitled to an annuity under the O/M; or
- The employee became disabled as defined by the SS Act and such period of disability ended in retirement or death.

If there are earnings posted or if the child's identified father died after any of the above events occurred, the claim for the grandchild can be denied.

If there are no earnings posted, ask SSA's BDP to identify the last known employer as the first step in locating the person identified as the employee's grandchild's father.

2. Natural Child of Employee's Spouse's Son - The natural father's death must be established. In addition, there should be no difficulty in identifying the child's natural mother since this information is almost always shown on the child's birth certificate. If this document is not available, the identity of the child's mother should be established following the same general guidelines for identifying the natural father in 1 above.
 3. Legally Adopted Child of Employee or Employee's Spouse's Son or Daughter - The death of both adopting parents must be established. If neither adopting parent is also the child's natural parent, it is not material whether the child's natural parents are deceased. If one parent adopted his spouse's natural child, the death of both the adopting parent and the natural parent must be established. In the rare case in which an individual alone adopted the child without being joined by his spouse, if any, in the adoption, only the death of the adopting parent need be established.
 4. Stepchild of Employee or Employee's Spouse's Son or Daughter - The stepparent need not be deceased. The evidence must identify the natural or adopting parent to whom the employee or employee's spouse's child was married, and the death of that parent must be established. In addition, the death of the child's other natural or adopting parent (if any) must also be established if this person is identified by the evidence in file. An attempt must be made to ascertain the other parent's identity and death following the same procedure outlined in 1 above. If reasonable efforts fail to identify the child's other parent, assume he or she was deceased at the applicable time.
- B. Proof of Disability - The grandchild's parent must have been disabled within the meaning of the SS Act as of the month in which:
- The employee met the conditions for entitlement to an RIB or DIB under the SS Act; or
 - The employee began a period of disability which continued until he met the conditions for entitlement to an RIB or DIB under the SS Act or until his death; or
 - The employee died.

1. When Disability Under the SS Act Has Been Established - If disability is alleged and SSA is paying a DIB to the grandchild's parent, a copy of the award letter or similar evidence of SSA's award will be sufficient proof of disability.
2. When Disability Under the SS Act Has Not Been Established - If disability is alleged and either no application for a DIB was ever filed, or SSA denied the DIB application for lack of insured status, the field will obtain:
 - A statement from the grandchild's parent who claims to be disabled; and
 - A letter or other report from the allegedly disabled person's personal physician; and
 - Medical evidence used to support a disability claim at SSA, VA, Welfare, etc., when such can be obtained.

The examiner will route the case to DB where proof of the disability will be the G-325 (Disability Decision Sheet) marked "Disabled". If DB rates the grandchild's parent not disabled, deny the claim for the grandchild on that basis.

NOTE: If is possible for the grandchild's parent's disability to qualify him as a disable child annuitant if a survivor case, or IPI if a retirement case (i.e., disabled between 18-22).

4.7.85 Special Support Rules - Divorced Woman

Prior to 10-5-72 a divorced woman (a divorced wife, surviving divorced wife, and surviving divorced mother) could be included in the O/M if she would qualify for a monthly benefit under the SS Act even though she was not eligible for an annuity under the RR Act. One condition of eligibility under the SS Act was that she received at least one-half of her total support from the employee.

Effective 10-5-72 a divorced woman cannot be initially included in the O/M. However, such individuals who are on the benefit payment rolls will continue to be included until the O/M is no longer applicable, the annuity of the employee or eligible survivor is terminated, or the person could no longer qualify for a benefit under the SS Act.

NOTE: A divorced spouse annuitant (male or female) can be included in the O/M effective 10-1-81 or later. No special support requirements must be met.

4.7.95 Child in Care

The 1981 Amendments changed the definition of "Child in Care." Under the 1981 Amendments, "Child in Care" means that the mother or father first entitled 9-1-81 or

later based on a child in care exercises parental control and responsibility for the welfare and care of a child under age 16 or a mentally incompetent child age 16 or over, or performs personal services for a mentally competent child age 16 or over who is disabled. The applicant may be exercising parental responsibility or performing personal services either alone or jointly with a spouse or other household member. Prior to 9-1-81, the age was 18.

For persons whose entitlement is based on a child in care and who were entitled to an annuity or entitled under the O/M in 8-81, there is a grace period of either 2 years from the date of enactment (8-81), or the child's attainment of age 18, whichever comes first. If the grace period applies, "child in care" will be based on the pre-1981 Amendment rules. Effective 9-83, all "Child in Care" determinations are based on age 16, regardless of when entitled.

EXCEPTION: In spouse or widow(er) annuity 1937 Act cases only, "Child in Care" is still based on age 18.

4.7.96 When "Child In Care" Is Required

"Child in Care" is an eligibility requirement for a wife or, effective 5-1-83, a husband under age 65 who applies for a full spouse annuity on the basis of a child of the employee. It is also a requirement for a spouse to be included in the computation of the employee's O/M on the basis of the employee's child.

"Child in Care" is an eligibility requirement for a widow(er) under age 60 who applies for a widow(er)'s current insurance annuity.

4.7.97 Parental Responsibility Defined

Parental control and responsibility over a child under age 16 or 18 or an incompetent child age 16 or over (or 18 or over) may be exercised directly when the applicant lives with the child.

When the applicant does not live with the child, parental control and responsibility may be exercised indirectly by giving instructions to the child's custodian and ensuring that those instructions are carried out. The applicant must supervise the child's activities, participate in important decisions about the child's physical and mental needs and measurably control the child's upbringing and development. The fact that the applicant has not lost or relinquished the right to the child's care and custody and furnishes material support for the child is not sufficient. The applicant must influence the training and development of the child. Therefore, if the development and training of a mentally incompetent child who is not living with the applicant is exclusively controlled by the custodian, even though paid for by the applicant, the child is not in the applicant's care.

If a mentally competent child is age 16 or over (or 18 or over), the instructions on "parental responsibility" do not apply. This is because in the case of a mentally competent child, "parental responsibility" normally ceases at or about the time the child

attains age 16 or 18. Therefore, a finding that the claimant has a child in care based upon the exercise of parental responsibility while the child is under age 16 or 18, does not carry over when the child attains age 16 or 18. Instead, if the child is still entitled, determine whether the applicant has the child in care based on the performance of "personal services."

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

4.7.98 Personal Services Defined

The personal service required for "child in care" when the mentally competent child is age 16 or over (or 18 or over) must be performed regularly and in addition to any routine household service which may be rendered for any adult member of the household. Thus, personal services are services of a special nature such as nursing care, feeding, or dressing. However, the concept of personal services is not necessarily limited to such actual physical or personal care. The direction or supervision of the activities of a mentally competent child who is unable to manage his own funds or is able to do so only with considerable help would constitute personal services. Also, when the applicant's presence is required by the nature of the child's disability, consider him or her to be performing personal services.

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

NOTE: Review cases at the time of current handling in which a WCIA or wife's annuity was awarded before 6-1960 on the basis that she had a disabled child in care to determine whether or not personal services are being performed. If it is determined that the widow or wife cannot qualify under the personal services requirement, suspend the widow's or wife's annuity effective with the month such determination is made. Do not consider erroneous any payments made before the month in which the determination is made.

4.7.99 Applicant And Child Living Together Regularly

- A. Child Under Age 16 or 18 or Mentally Incompetent - Assume that an applicant living with a child under age 16 or 18 or a mentally incompetent child of any age has the child in care (is exercising parental control and responsibility) for each month they live together. This includes the month they began or ended living together regularly, if they lived together for at least one full day of the beginning or ending month.

Do not assume that the child is in the applicant's care if there is evidence to the contrary or the applicant is mentally incompetent. Instead, obtain the applicant's statement about the exercise of parental control and responsibility. Obtain a statement from another person who lives in the household or has knowledge of the circumstances only if there is doubt on whether the applicant's statement is true.

- B. Disabled Mentally Competent Child - If the applicant regularly lives with a disabled mentally competent child age 16 or over (or 18 or over), the child is in the applicant's care only if the applicant performs personal services for the child as shown in Section 4.7.98. If it is established that the applicant has the child in care, the applicant is considered to have the child in care for the month they began or ended living together for at least one full day of such month.

Obtain a statement from the applicant and from the disabled adult child about the nature and frequency of the personal services performed and whether and to what extent the applicant's presence is required because of the child's disability. If there is any question, obtain statements from another person who lives in the household or has knowledge of the circumstances.

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

4.7.100 Applicant And Child Living Together Temporarily

- A. Child Under Age 16 or 18 or Mentally Incompetent - When the applicant is temporarily living with a child who is under 16 or 18 or mentally incompetent, the child is in the applicant's care only if:
1. The child is in the applicant's care while they are apart (see Section 4.7.101); or
 2. The child is with the applicant for a period of at least 30 consecutive days (except where the child is in armed forces) and the applicant exercised parental control and responsibility. The child is considered to be in the applicant's care for the month the period began or ended if the child was in the applicant's care for at least one full day of such month.

The child is not in the applicant's care during periods they are living together when the child is on active duty status in the armed forces. This is true even if the child is in a period of furlough that exceeds 30 days.

See Section 4.7.99A for any necessary development action.

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

- B. Disabled Mentally Competent Child - If the applicant and disabled mentally competent child are only living together temporary, the applicant has the child in care only if he or she is performing personal services and the child is with the applicant for a period of at least 30 consecutive days. The child is in the care of the applicant for the month the 30-day period began or ended if the child was in his or her care for at least one full day of such month.

See Section 4.7.99B for necessary development action.

4.7.101 Applicant And Child Not Living Together

A. Child In Care - If the applicant and minor or disabled child are not living together, the child is in the applicant's care only if:

1. The child customarily lives with the applicant; and
2. The child is in the applicant's care when they live together; and
3. The separation is expected to temporary (to end within 6 months from the date it began); or
4. The applicant is exercising parental control and responsibility (see Sections 4.7.97 and 4.7.103 - 4.7.108) for a child under age 16 or 18 or a mentally incompetent child age 16 or over (or 18 or over) while they are separated.

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

B. Child Not In Care - An applicant does not have a child in care, even if the conditions shown above are met, if they are not living together and:

1. The applicant is mentally incompetent (regardless of whether or not(s)he is confined in an institution); or
2. A court order has removed the child from the applicant's custody and control (see Section 4.7.107); or
3. The child is in the armed forces; or
4. The applicant and his or her spouse are separated and the child is with the spouse; or
5. The child is under the jurisdiction of a court-appointed guardian other than the applicant; or
6. The applicant has relinquished the right to custody and control of the child to some other person or agency.

C. Development - In every case where the applicant and child are separated, regardless of the expected length of separation, obtain a statement of whether the applicant is exercising parental control and responsibility from the applicant and the person with whom the child is living. The statement should include the reason for the separation and, if it is temporary, the expected length of the separation and the date on which it will end.

4.7.102 Six-Month Rule In Temporary Separations

If the separation is expected to end within 6 months from the date it began, the applicant may have a child in care as shown in Section 4.7.101. However, the applicant must send notice when the temporary separation ends. If payment depends upon the child being in the applicant's care, suspend the benefits at the end of the first 6 months separation unless a notice that the separation has ended is received. (When suspending such payments, use code "16" or "56" on Form G-96 (OCR). Code "45" or "53" should only be used when terminating the applicant because the child is no longer in care and custody.) If there is any doubt as to the truthfulness of the notification that the child has returned, make full investigation to determine if they are living together.

4.7.103 Child Away At School

When a child under age 16 or 18 is away at school, the applicant is exercising parental control and responsibility (the child is in his or her care) if:

- The applicant supervises the child's activities and participates in important decisions about the child's physical and mental needs. (Assume that this is being done in the usual boarding, military, or prep school situation in which the child is not under the exclusive control and jurisdiction of the school); and
- The child spends an annual vacation of 30 consecutive days or more with the applicant unless it is not feasible for the child to return home during vacation, or to remain with the applicant for that length of time, during vacation; and
- If the applicant is separated from his or her spouse, the school authorities look to the applicant when they have a question regarding the child. If the applicant has lost custody, the child is in his or her care only during the time the child spends a vacation with his or with her, if the vacation is at least 30 consecutive days.

See Section 4.7.95 to determine whether age 16 or 18 applies in a particular case.

4.7.104 Separation Due To Applicant's Employment

When a separation of more than six months is caused by the applicant's employment, the applicant has a child under 16 or 18 see Section 4.7.95) in care only if he or she:

- Supervises the child's activities; and
- Participates in the important decisions about the child's physical and mental needs; and
- Makes regular and substantial contributions to the child's support. (The amount of the contributions, which may be in cash or in kind, must be a material factor in the reasonable cost of the child's support.)

4.7.105 Separation Caused By Physical Illness Or Disability

In some cases an applicant may be separated from a child under 16 or 18 (see Section 4.7.95) due to the child's or the applicant's physical illness or physical disability (e.g., either one may be away at the hospital or nursing home). If the separation is expected to end within 6 months, the applicant has the child in care. If the separation is expected to last more than 6 months, the applicant is exercising parental control and responsibility (has the child in care) if the applicant supervises the child's activities and participates in the important decisions about the child's physical and mental needs.

4.7.106 Separation Due To Mental Incompetence

An applicant does not have a child in care during a period of separation caused by the applicant's mental incompetence.

4.7.107 Court Order Removing Child

When a separation results from a court order removing a child under age 16 or 18 (see Section 4.7.95) from the applicant's custody and control, the child is not in the applicant's care. For example, this applies if a juvenile court has placed the child in a reform school.

Secure a certified copy of the court order if the applicant alleges that the child is still under his or her control despite the separation.

If the court order removes the child from the applicant's custody and control, the child is not in his or her care. However, if the order merely removes a child from the custody but not from the control of the applicant and the applicant still exercises parental responsibility, the child is in his or her care.

4.7.108 Separation - Child Enrolled In Job Corps

Whether a child under age 16 or 18 (see Section 4.7.95) is in the applicant's care while in the Job Corps depends on whether the child is a resident or non-resident Job Corps enrollee.

- A. Child Is Resident Job Corps Enrollee - When the child is a resident of a Job Corps center, the child is not considered to be living with the applicant while at the center. By signing the consent statement, the applicant has relinquished control and custody of the child to the Job Corps. Therefore, the child is not considered to be in the applicant's care while living at the Job Corps center.

If the child returns home during vacation periods, he or she may be found to be in the applicant's care if they are together for at least 30 consecutive days (see Section 4.7.100).

- B. Child Is Non-Resident Job Corps Enrollee - When the child is a non-resident Job Corps enrollee and returns home to the applicant either weekends or evenings, the child is in the applicant's care if, while the child is at home, the applicant exercises parental control and responsibility.

4.7.109 Posthumous Child In Widow's Care

When the child of the employee is born after the employee's death, deem the widow to have the child in her care when the child is born. If the child is born alive, the child may then become entitled to a CIA and the widow to a WCIA.

4.7.110 Child Adopted By Grandparent, Stepparent, Uncle, Aunt, Brother, Or Sister

Submit to the bureau of law any case in which the deceased employee's last child (upon whom a widow(er)'s entitlement to a WCIA exist) continues to live with the widow(er) after adoption by a grandparent, stepparent, uncle, aunt, brother, or sister. The reason for this is to determine whether the widow(er) may still be considered to have the child in care.

4.7.120 Child Care Drop-Out Years Provision

The 1980 Social Security Act Disability Amendments provide for the crediting of dropout years based on child care in addition to dropout years computed under the 1 for 5 rule as explained in RCM Chapter 8.11.16 - 17.

Effective July 1, 1981 additional dropout years based on child care may be included in the computation of PIA's 1, 3, and 9 for disability annuitants under age 37 in the earlier of the year in which the annuity begins or the year of the disability onset and whose annuity beginning date or initial entitlement to the DIB O/M is July 1, 1980 or later.

- If the employee does not have a disability freeze his PIA #1 or PIA #3 may increase due to RR Act deeming provisions.
- If the employee does have a disability freeze his PIA #1, PIA #3, or PIA #9 may increase.

See RCM Chapter 8.11 for a detailed explanation of the 1980 Disability Amendments and how they affect PIA computations.

4.7.121 Definition Of Child Care Years

A child care year is a year, which has been selected as a benefit computation year (see Section 4.7.123), in which:

- The employee has no earnings; and

- The employee was "living with" (per Section 4.7.16) the child substantially throughout that year; and
- The child was under age 3 in the year. The child must be the child of the employee or of the employee's spouse (as defined in RCM Chapter 4.4.5-89).

4.7.122 Definition Of "Substantially Throughout The Year"

The employee will be considered to have been living with a child substantially throughout the year in which the child was alive and was under age 3, if they have been living together for a certain number of days in each calendar year.

- When a whole calendar year (i.e. 12 months) is being considered, the employee must have been living with the child for at least 9 months.
- When considering a partial calendar year (i.e., a year during which the child was born, attained age 3, or died), the period during which the child was not living with the employee cannot exceed 91 days or one-half of the period in question, whichever is less.

A summary of the required periods of "living with" for partial calendar years is shown below:

Length of Period from Child's DOB to End of Calendar Year, or From Beginning of Calendar Year Until Child Attains Age 3 or Died Before Attaining Age 3	Minimum Number of Days of " Living With" Required to Meet Test
183-365 days	Length of period minus 91 days
1-182	One-half of days in period (round fractions up to higher number)

4.7.123 Developing Child Care Years With DP&A

- A. Identifying Possible Cases - If the employee is a disability annuitant under age 37 in the earlier of his or her ABD year or disability onset year, the RASI (see RCM Chapter 9.3.13) and TRIC (see RCM Chapter 7.4, Appendix A, G-90 Instruction) program will bring specific messages on the RASI award form and Form G-90 indicating that the child care dropout provision may applicable. If the employee has indicated on his or her application that (s)he has any children (under age 18, disabled, or a student age 18 or older), develop possible child care years with DP&A as explained in B, below.

If the employee is single or (s)he does not indicate any children on his or her application, do not develop for the child care year provision unless there is reason to believe the employee has a child under age 3 in any year after 1950.

B. Developing Eligible Child Care Dropout Years With DP&A - If A, above, applies, develop for possible child care dropout years as follows:

1. Retirement Cases - Check Form G-90 on the employee's SS account number for years with no earnings after the year the employee attains age 21 but before the earlier of the ABD year of the year of the DF onset.

- (a) 1 or More Years With No Earnings - If there are one or more years with no earnings in the period described in 1, above, send Form G-563 to DP&A as explained in the instructions for that form in RCM Part 11. DP&A will determine if there are eligible computation years (as explained in RCM Chapter 8.11.17).

If DP&A indicates that there are eligible computation years, develop with the field office as explained in Section 4.7.124.

If DP&A indicates that there are no eligible computation years, the child care dropout years provision does not apply. No further action is necessary in these cases.

- (b) No Years with No Earnings - If there are no years with no earnings in the period described in 1, above, the child care dropout years provision does not apply. No further action is necessary in these cases.

2. Survivor Cases - The child care dropout provision does not affect the computation of a monthly survivor insurance annuity of a lump sum death payment. However, an accrued employee annuity may be due if creditable child care dropout years were not included in the employee annuity computation while (s)he was alive. In addition, the child care dropout provision may affect the amount of the residual lump sum if the employee's annuity rate was recomputed to apply the child care dropout year provision.

If the child care dropout message is printed on the survivor employee G-90 and the claim folder indicates that the employee had a child under 3 in his/her care after 1950, handle the case as follows:

- (a) Possible Employee Accrued Annuity - Review the claim folder to see if a child care dropout determination was made while the employee was alive. If it was previously determined that the child care dropout provision applied while the employee was alive but the

employee's annuity was not adjusted, follow the instructions in Section 4.7.126 to recompute the employee's annuity.

- (b) Residual Lump Sum - When computing a residual lump sum, you must consider the effect that the child care dropout provision had on the employee annuity computation.

If the employee's PIA #1 used to compute the regular railroad formula annuity included child care dropout years, the PIA #3 used to compute the residual lump sum must also include the child care dropout years. If a computation of PIA #3 including child care dropout provision is not in file, request a recomputation of PIA #3 including this provision as explained in RCM Part 11, G-563 instructions.

If the employee's PIA #9 used to compute the O/M annuity included child care dropout years, deduct the net O/M payable from the residual lump sum, per normal procedure. No special computations are required to compute the residual lump sum for these cases.

4.7.124 Developing Child Care Years With Field Offices

If it appears that the child care dropout provision may apply as explained in Section 4.7.120-123, send a memo to the applicable district office requesting the D/O to obtain the answers to the following questions from the employee (or the survivor beneficiary):

1. Was a child, either your own or your spouse's, living with you while the child was under age 3 _____. (The examiner should enter the eligible computation year indicated by DP&A on Form G-563, item 23.)
2. If yes, give the following information for each such child:
 - (a) Full name.
 - (b) Date of Birth.
 - (c) Relationship to you or your spouse.
 - (d) Of the year(s) shown in item 1, list the years in which the child was under age 3 and was living with you.
 - (e) Of the year(s) you listed in item 2(d), give the number of days in each year that the child lived with you.
3. Of the year(s) you listed in item 2(d), list each year in which you worked. If none, show none.

The examiner should request the D/o to obtain this information on a signed and dated statement from the employee (or the survivor beneficiary) along with any necessary proof of age and proof of relationship for each child employee's spouse, also request proof of marriage of the employee to the spouse, if not already in file.

Advise the D/O that "living with" and no earnings allegations will be accepted without proof.

4.7.125 Determining Child Care Dropout Years

When the information requested in Section 4.7.124 is received from the D/O, determine if the child care dropout provision applies by comparing the employee's statement to the requirements explained in Sections 4.7.120-123. If all requirements are met and any of the years indicated by DP&A in item 23 of Form G-563 as eligible computation years are also indicated in by the employee as years in which (s)he was living with a child under age 3, send a second Form G-563 to DP&A as explained in item 6a of that form (see RCM Part 11, G-563 Instructions).

Credit the child care dropout year(s) as explained in Section 4.7.126.

If all the requirements are not met or the employee does not indicate any of the years DP&A has shown as eligible child care years, the child care dropout provision does not apply. Notify the D/O that no further action will be taken.

4.7.126 Crediting Child Care Dropout Years

If it is determined that the child care dropout provision applies as explained in Sections 4.7.120-125, credit the years(s) by recertifying the annuity from the later of:

- The employee's ABD; or
- The DIB O/M entitlement date (if applicable); or
- July 1, 1981.

Include a short explanation of the reason for the increase in the RL-119 adjustment letter to the employee.

If the annuity rate is not affected or tolerance applies, notify Research according to RCM Chapter 9.4, G-59 Instructions

If the residual lump sum is payable, compute the RLS using the child care dropout provision as explained in Section 4.7.123 B 2 (b) under normal procedure.

