

**Summary of Proposed Rule Change  
For  
Arkansas Teacher Retirement System**

**Survivor Benefits (Rule 11-1)**

**Substantive changes:**

The repealed language removes any determination by ATRS that a child is "dependent" and allows the requirements in the statutory language in § 24-7-710 (c)(2)(B)(ii) and (c)(3) to control.

**Non-substantive changes:**

None

## **SURVIVOR BENEFITS**

A.C.A. §§ 24-7-710, 713

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### **RULES AND REGULATIONS (as amended by Act 1324 of 2009)**

If an active member with five (5) or more years of actual and reciprocal service, including credited service for the year immediately preceding his or her death, dies while in active service before retirement, survivor benefits as provided in A.C.A. § 24-7-710, plus the monthly stipend under A.C.A. § 24-7-713, shall be paid to the following qualifying dependents.

A member shall also be considered active for the purpose of survivor benefits if:

- (1) The member has at least ten (10) days of service credit in each prior quarter of the fiscal year from the time the fiscal year began or the member was employed by an ATRS employer, whichever occurs last, provided however, the member must have at least one quarter with ten (10) days of service; and,
- (2) The member has at least ten (10) days of service in the quarter of the member's death, or, ten (10) working days have not elapsed in the quarter of the member's death.

#### **1. SPOUSE**

- A. The member's surviving spouse, who was married to the member for at least two (2) years immediately prior to the member's death, shall receive a surviving spouse benefit.
- B. If at the member's death there are no dependent children eligible to receive a dependent child annuity, a surviving spouse who qualifies to receive a surviving spouse annuity may file with the System a waiver of any rights to the spouse annuity.

If the surviving spouse files a waiver of the spouse annuity, the deceased member's residue beneficiary(ies) will receive a single distribution of the member's residue amount, if any.

- C. The spouse annuity shall begin under the following schedule:
  - i. If the member was not eligible for early, regular, or deferred retirement at the time of his/her death, the spouse annuity will begin the date the member would have been eligible to receive retirement benefits and is payable for the spouse's lifetime, regardless of remarriage.

- ii. However, if the member had either satisfied the age and service requirements provided in A.C.A. §§ 24-7-701 or 702 or attained age sixty (60) and was eligible for deferred retirement under A.C.A. § 24-7-707, then the spouse annuity commences the month following the member's death and is payable for the spouse's lifetime, regardless of remarriage.
- iii. If the surviving spouse is eligible to receive the survivor annuity upon the member's death but would receive a reduction due to the member being less than 60 years of age, the spouse may defer receipt of the annuity until the member would have been entitled to an unreduced benefit at age 60 under A.C.A. § 24-7-707.

## 2. DEPENDENT CHILDREN

- A. Effective July 1, 2011, upon the death of an active member, the dependent children shall each receive a surviving child annuity upon the member's death. The surviving child annuity shall be equal to 20% of the member's highest salary year in covered employment. If the member's highest salary year occurs in the year the member died, the System shall calculate the dependent child annuity(ies) on the basis of the full year of salary. Each child's annuity shall begin the month following the member's death and be payable until the annuity terminates.

Surviving children will receive a COLA the July 1 following the annuity commencement date if he/she has received at least 12 monthly benefit payments prior to the COLA implementation date. The cost of living adjustment shall be simple unless the Board elects to compound the COLA for that period.

- B. However, if a member has more than three (3) dependent children eligible under this section, then the aggregate annuity payable shall not exceed 60% of the member's highest salary year and shall be divided equally among the surviving dependent children.
- C. A member's "child" eligible to receive a child annuity is a "child" under any of the following:
  - i. A natural child of the member; or
  - ii. A child that has been made a child of the member by adoption or other court action prior to the member's death; or
  - iii. ~~A child under the permanent care of the member at the time of the death of the member, which permanent care status shall be determined under Rule 2D of this policy.~~

~~D.~~ To be a "dependent child" under these rules, the child must:

- ~~i.~~ Meet requirements and qualify for survivor benefits under Social Security;
- ~~ii.~~ Have been claimed as a dependent by the deceased member on his or her federal income tax for the immediately preceding calendar year; and
- ~~iii.~~ Have lived in the same household for at least two (2) years immediately preceding death of the member, unless the child is under two years of age.

~~E.~~D. A child identified as a dependent will remain eligible to receive a survivor annuity until he/she is no longer a dependent. A child is no longer dependent if he/she reaches the age of 18.

~~F.~~E. A child will continue to be eligible for a child survivor annuity after reaching age 18 if the child continues consecutively, without interruption as a full-time student at an accredited secondary school, postsecondary school such as a vocational technical school, college, or university. In any event, a dependent child annuity will terminate when the child reaches age 23.

- ~~i.~~ A full-time student is defined as one carrying 12 semester hours or 8 trimester hours in college, four (4) hours per day in a secondary or postsecondary school, or other verifiable indices from an accredited institution that the dependent child is engaged in full time curriculum or field of study.
- ~~ii.~~ If a child who is receiving a dependent child annuity is age 18 or older but becomes temporarily physically or mentally incapacitated, the Board may continue paying benefits upon receipt of a doctor's certification that the child is temporarily physically or mentally incapacitated, and is unable to attend school for the period of one semester or term. At the beginning of the next semester or term, if the child does not reenter school full-time, the dependent child annuity will terminate.
- ~~iii.~~ Certification of attendance in an accredited school may be reported by the dependent child in the absence of a parent or legal guardian after the dependent child reaches age 18.

~~G.~~E. A deceased member's dependent child who is dependent due to having been adjudged physically or mentally incapacitated by a court or legal

tribunal continues to be eligible to receive a dependent child annuity as long as the incapacity exists, regardless of age.

HG. A child annuity shall not be adjusted from its initial monthly amount when other dependent annuities terminate except for COLAs.

H. A dependent child annuity will be paid as separate payments to each child monthly, rather than one lump-sum check payable to the spouse or custodian. Deposit accounts designated to receive survivor annuity payments to a child under age 18 must qualify as custodial accounts in accordance with the Uniform Transfers to Minors Act.

### **3. GENERAL RULES REGARDING SURVIVOR ANNUITIES**

- A. Survivors are required to produce sufficient proof of eligibility under these provisions prior to receiving benefit payments.
- B. If at the time of an active member's death, a surviving spouse is listed on the death certificate, the System will search for the surviving spouse for up to one year. If after one year, ATRS has not located or been contacted by the surviving spouse, ATRS will refund the member's residue amount, if any, to the member's remaining residue beneficiaries surviving the member.
- C. If the member dies before receipt of the first disability retirement check but after receiving final approval for disability retirement, the benefits will be paid under the disability retirement option selected by the member.
- D. If the member dies after the disability application is received by the System but before disability retirement is approved, then the System shall consider the member to have died in "active" service and survivor benefits under A.C.A. § 24-7-710 shall be paid.
- E. For the purposes of determining survivor benefits, the member's salary shall be the salary that the member would have received in the fiscal year in which he/she died had the member lived through the end of the fiscal year.
- F. Salary payments made after the death of a member that were earned prior to death are subject to System deductions and shall be reported in total salary and days of service in the employer's quarterly report. Payments made by an employer after the death of an active member that are made as a mere gratuity and were not earned by the member shall not be included in the member's salary reported to the System and are not subject to contributions.

For purposes of survivor benefits, a member will be considered active for an additional fiscal year following the last fiscal year that actual service was rendered to a covered employer.

- G. If survivor benefits are payable by more than one reciprocal system to eligible survivors of a deceased member, the survivors shall not receive more as a percentage of the deceased member's final pay or as a minimum dollar amount than the largest amount payable by a single, reciprocal system. The System will prorate minimum benefits payable with any other reciprocal systems that have a minimum benefit provision in its plan. Each reciprocal system shall pay only its proportionate share of the minimum amount based on the ratio of service in its system to the total service in all reciprocal systems.
- H. When the member elects to transfer from ATRS to APERS under the provisions of Act 793 of 1977, APERS' law governs the survivors' eligibility for a payment of residue or survivor benefits upon the member's death

Amended: June 15, 2004  
February 7, 2006  
April 26, 2007  
December 18, 2009  
July 1, 2011 (Emergency)

Adopted: August 8, 2011

Effective: November 11, 2011

**Approved by Board: August 6, 2012**

**Amended:**

**Effective:**

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