



## Ohio Administrative Code Rule 3307:1-8-01 Survivor benefits.

Effective: June 3, 2021

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(A) As used in section 3307.66 of the Revised Code and this rule:

(1) "Continuously incompetent" means a person was determined to be physically or mentally incompetent and has remained physically or mentally incompetent without any break since the determination was made.

(2) "Physical or mental incompetency" shall be determined in accordance with division (A) of section 3307.66 of the Revised Code and this rule.

(3) "Qualified child" or "qualified children" has the meaning as set forth in division (B)(2) of section 3307.66 of the Revised Code.

(4) "Qualified survivor" has the meaning as set forth in division (B)(4) of section 3307.66 of the Revised Code.

(5) "Medical review board" has the meaning as set forth in paragraph (I) of rule 3307:1-7-01 of the Administrative Code.

(B) If a member dies before service retirement and is survived by one or more qualified children who are under the age of twenty-two or who became physically or mentally incompetent prior to the attainment of age twenty-two and has remained continuously incompetent, benefits shall be payable to all survivors pursuant to division (C)(2) of section 3307.66 of the Revised Code. Any election applicable as to the calculation of benefits under that division shall be made by the beneficiary designated by the member. If no designation of beneficiaries was in effect at the time of death, any such election shall be made by the surviving spouse. If there is no surviving spouse, any such election shall be made by the youngest child.

(C) If a qualified child becomes physically or mentally incompetent while receiving survivor



benefits pursuant to section 3307.66 of the Revised Code, such benefits shall continue as long as the child is continuously incompetent, without regard to the age the child attains.

(D) If there are no other survivors who qualify under the terms of section 3307.66 of the Revised Code, a qualified survivor who becomes eligible for benefits under that section, at the age of eighteen or older, may forfeit rights to benefits under that section and the opportunity to participate in the health care program, if eligible, and take instead a refund of the account balance as provided by section 3307.562 of the Revised Code.

(E) If physical or mental incompetency of a spouse or parent of a deceased member has not been determined by a court at the time of the application for benefits under section 3307.66 of the Revised Code, physical or mental incompetency shall be determined for the purposes of division (A) of section 3307.66 of the Revised Code and this rule as follows:

(1) The determination of "physical or mental incompetency" shall be made by the chair of the medical review board by confirming that the spouse or parent has been continuously, since the member's date of death, incapable of earning a living because of a physically or mentally disabling condition. As used in paragraph (E) of this rule, "incapable of earning a living" means that the spouse or parent is incapable of earning annually at least the federal minimum wage as of January first of the current year multiplied by two thousand eighty hours, increased by fifty per cent, and rounded to the nearest thousand dollars. Each spouse or parent shall provide the retirement system with information and documentation requested by the retirement system to verify earnings. Such requested information and documentation may include copies of federal income tax returns and the most recent annual social security earnings statement. Once a spouse or parent is no longer "incapable of earning a living", the spouse or parent cannot meet the definition of qualified spouse or qualified parent for physical or mental incompetency in the future.

(F) If physical or mental incompetency of a child of a deceased member, including a child born after the date of death of a member has not been determined by a court at the time of the application for benefits under section 3307.66 of the Revised Code, a child shall be considered physically or mentally incompetent for purposes of division (A) of section 3307.66 of the Revised Code and this rule, provided that the child meets the requirements set forth in either paragraph (F)(1) or (F)(2) of this rule:



(1) Is unmarried, has been adjudged physically or mentally incompetent by the retirement system prior to January 8, 2007, has been continuously physically or mentally incompetent since the date such determination was made, and meets one of the conditions outlined in paragraph (F)(2)(a) or (F)(2)(b) of this rule. Upon the first date that the child no longer meets all of the eligibility requirements set forth in this paragraph, the child shall no longer qualify as a dependent child on the basis of physical or mental incompetency.

(2) Was never married and is unable to earn a living because of a mental or physical condition that was disabling prior to the date the child reached the maximum age of twenty-two and further provided the child is continuously disabled and unable to earn a living from the initial date that the child was determined to be physically or mentally incompetent. The chair of the medical review board shall confirm that the child has a mental or physical condition that incapacitated the child before the maximum age specified in this paragraph. In addition, the child shall meet one of the following conditions:

(a) A child must be incapable of earning a living. As used in paragraph (F)(2) of this rule, "incapable of earning a living" means that a child was incapable of earning at least sixteen thousand dollars a year for any year before January 1, 2008 and that the child was incapable of earning the federal minimum wage as of January first for each of the prior years and current year multiplied by two thousand eighty hours, increased by fifty per cent and rounded to the nearest thousand dollars for each year thereafter. The child shall provide the retirement system with information and documentation requested by the retirement system to verify earnings. Such requested information and documentation may include copies of federal income tax returns and of the most recent annual social security earnings statement.

(b) A child attends an adult workshop or school for the developmentally disabled operated by a county or state department of developmental disabilities. If attendance has not been continuous since the age determined in paragraph (F)(2) of this rule, additional earnings verification may be required in accordance with paragraph (F)(2)(a) of this rule.

(G) Following is the procedure for the determination of "physical or mental incompetency:"



(1) The chair of the medical review board shall determine whether a spouse, parent, or child of a member is physically or mentally incompetent for purposes of section 3307.66 of the Revised Code. Determinations may include examination by an independent medical examiner appointed by the retirement board. Determinations made by the chair may be appealed to another independent physician appointed as hearing officer in accordance with procedures specified by the retirement system. The decision of such hearing officer shall be deemed the final decision of the retirement board.

(2) The chair of the medical review board shall confirm on a schedule determined by the chair of the medical review board that a spouse, parent, or child of a member continues to be physically or mentally incompetent for purposes of section 3307.66 of the Revised Code. Failure to respond by the deadlines specified by the retirement system in requests for additional information or documents, requests to schedule medical examinations, or any other requests made by the retirement system in connection with the determination of physical or mental competency shall result in termination of eligibility for benefits provided for in section 3307.66 of the Revised Code.

(H) Following are procedures for administering the ongoing eligibility for survivor benefits paid pursuant to section 3307.66 of the Revised Code to qualified spouses, parents, and children determined to be physically or mentally incompetent:

(1) The retirement system may request information from time to time to confirm the individual continues to qualify as a physically or mentally incompetent qualified survivor.

(2) For a qualified spouse, parent, or child to act on his or her own behalf in the receipt of monthly benefits, a physician must provide a statement the individual is capable of handling his or her financial affairs.

(3) The retirement system may request a qualified spouse, parent, or child who was determined to be incompetent by a court pursuant to paragraphs (E) and (F) of this rule to have a court affirm that determination from time to time.

(I) Effective January 1, 2007, notwithstanding any provision in Chapter 3307. of the Revised Code to the contrary, the survivor of a member on a leave of absence to perform military service with



reemployment rights described in section 414(u) of the Internal Revenue Code, where the member cannot return to employment on account of his or her death, shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under Chapter 3307. of the Revised Code had the member resumed employment and then terminated employment on account of death.

(J) Under division (C)(2)(a)(iii) of section 3307.66 of the Revised Code, a member shall be considered to be contributing under this chapter or Chapter 145. or 3309. of the Revised Code at the time of death if the member had earned service credit and made contributions under this chapter or Chapter 145. or 3309. of the Revised Code in the twelve-month period prior to the member's death.

(K) The following applies only in the case of a surviving spouse who must wait until age sixty-two to qualify for monthly survivor benefits under section 3307.66 of the Revised Code:

(1) The benefits beginning date for purposes of determining the final average salary under division (C) of section 3307.501 of the Revised Code and for purposes of determining the first increase payable under division (B) of section 3307.67 of the Revised Code shall be either:

(a) The first of the month following the date of the member's death, provided the completed and notarized affidavit selecting survivor benefits is received by the retirement system not later than one year after the date of the member's death; or

(b) The first of the month following the retirement system's receipt of the completed and notarized affidavit selecting survivor benefits if the application is received by the retirement system later than one year after the date of the member's death.

(2) The months during the period the survivor spouse must wait to age sixty-two shall be included as months the spouse was receiving a benefit for purposes of division (B) of section 3307.67 of the Revised Code.