

# Administrative Rule 103 – Divorced Members

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## BOARD OF PENSIONS ADMINISTRATIVE RULES

<b>Section:</b> 1 (Eligibility)	<b>Subject:</b> DIVORCED MEMBERS
<b>Rule Number:</b> 103	
<b>Reference:</b> Article XIII, Section 13.14 Article XVIII, Section 18.2 Article XVIII, Section 18.8	<b>Resource:</b> General Counsel
	<b>Original Date:</b> 5/87, 6/95, 1/97, 4/97, 3/98, <b>Revision Dates:</b> 4/00, 2/11

### **Pension Plan and Disability Benefits (Article XVIII, Section 18.2) - Divorced Spouses of Members**

A member's spouse, former spouse, child, or other dependent [See Article II, section 2.1 (d) (h) (ff)] may be entitled to receive a portion of the member's retirement, disability, or survivor's pension benefits if the following conditions are met:

- A domestic relations order states that the spouse, former spouse, child, or other dependent ("alternate payee") is entitled to receive part of the member's retirement pension, survivor's pension, and/or disability benefit.
- The General Counsel of the Board of Pensions approves the arrangement stipulated by the domestic relations order.
- The assignment is consistent with the provisions of the Plan.

An instructional booklet titled "Benefits and Divorce" and sample court orders for the Pension Plan and the Retirement Savings Plan are available on the Board's website. Counsel for the member and the alternate payee should be encouraged to use the forms.

### **Death Benefit Plan**

Unlike the pension and disability benefits, death benefits cannot be assigned by a court order. Death benefits are paid on the basis of the Plan terms or by beneficiary designation.

- Lump Sum Death Benefit - A former spouse can only receive a part of the Lump Sum Death Benefit if the benefit is paid to the member's estate and the estate pays the former spouse.

## **Administrative Rule 103 – Divorced Members**

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- Salary Continuation Benefit - This benefit will be paid to anyone the member designates as a beneficiary, including a former spouse or former dependent children. A member is free to change a beneficiary designation form at any time--the Board will not accept an irrevocable beneficiary designation. In many states beneficiary designations are automatically cancelled by a divorce. Any divorced member who wants the former spouse to receive the benefit should make a new election after the divorce.
- Supplemental Death Benefit - This benefit can be paid to a former spouse or former dependent child/children if so designated by the member on a beneficiary designation form. Again, the member is free to change the designated beneficiary at any time by completing a new beneficiary designation form. In many states beneficiary designations are automatically cancelled by a divorce. Any divorced member who wants the former spouse to receive the benefit should make a new election after the divorce.

### **Optional Retirement Savings**

- All or part of the member's retirement savings account can be assigned to a spouse or former spouse by court order. A member can also name his/her former spouse as the designated beneficiary to receive the account balance at the time of the member's death. In many states beneficiary designations are automatically cancelled by a divorce. Any divorced member who wants the former spouse to receive the benefit should make a new election after the divorce.

### **Termination of Pension/Disability Benefits to an Alternate Payee**

Upon the member's death, the retirement or disability payments to an alternate payee will terminate since such benefits are payable for the life of the member. However, all or part of the survivor benefit may be paid to the alternate payee if it is assigned in the domestic relations order.

If the alternate payee who is receiving part of a retiree's pension predeceases the retiree, that portion that was payable to the alternate payee will revert to the retiree.

If a member elected a joint and survivor option and then divorces, the joint and survivor option will cancel on the date of the divorce, unless the divorce documents stipulate that the pension division is to follow the terms of the joint and survivor option.

### **Medical Plan Coverage (Article XIII, Section 13.14)**

#### Free Coverage

If the member was active and participating in the Medical Plan Coverage of the Benefits Plan on the date of divorce, the former spouse and stepchildren of the member if covered under the Medical Plan on the date of the divorce, will receive 90 days of free medical coverage. If the

## **Administrative Rule 103 – Divorced Members**

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member was inactive, not participating in the Medical Plan Coverage of the Benefits Plan, or retired on the date of divorce, no free coverage is available because the free coverage was provided at the time of retirement or termination of employment.

Beginning January 1, 2011, coverage for children of the member will continue until age 26 regardless of the child's residency or support from the member. Any child, other than a stepchild of the member, who lost coverage prior to turning age 26 for any reason other than relationship, may reenroll for coverage until age 26. (This change is the result of the Federal health care reform provisions.)

### Continuation Coverage

A spouse or stepchild of the member who was covered under the Medical Plan Coverage as a dependent of an active member on the date of divorce can continue medical coverage through the Plan if they subscribe for continuation of coverage and pay the applicable subscription fees to retain medical coverage through the Plan. Coverage will terminate if payment is not received within thirty (30) days of the due date. A former stepchild can enroll for continuation coverage under the Medical Plan for the greater of 36 months or until age 26, A former spouse can continue coverage indefinitely, as long as he or she meets the eligibility criteria for the medical retiree provisions of the Benefits Plan.

The election of continued medical coverage must be postmarked before the 91st day following the divorce. An exception may be made to this rule if the former spouse was not notified of the option to continue coverage within the 90-day period following the divorce. (In this case, the former spouse or former dependent child must pay the retroactive subscription charges back to the date of divorce, or the date the free coverage period ended, if applicable.)

A divorced spouse who has maintained continuous medical coverage through the Plan is eligible to enroll in Medicare Supplement coverage upon attaining age 65, regardless of the member's status (active, inactive, retired) at that time provided that a waiver was filed at the time of divorce verifying other employer-sponsored coverage and was accepted by the Board. The divorced spouse must also be enrolled in Medicare Part A and Part B to be eligible for Medicare Supplement coverage.

The member's stepchildren will no longer be considered "eligible dependents" after the divorce and they will be removed from the member's medical coverage. The member's stepchildren are eligible to participate in the Medical Continuation Program until loss of eligibility. There may be an exception to this rule if the Board receives and approves a Qualified Medical Child Support Order (QMCSO) which requires continued medical coverage for the former dependent child/children. A QMCSO is a judgment or decree by a court that requires a health plan to provide coverage to children of a plan participant, pursuant to a state domestic relations law. Questions concerning QMCSO's should be referred to the Board's General Counsel.

If a divorced spouse remarries, there is no impact on the eligibility for medical coverage

## **Administrative Rule 103 – Divorced Members**

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through the Plan. However, it is not possible to add a new spouse and/or children to the existing (continuation) coverage.