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The Director of Retirement Claims

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The Associate General Counsel

Proof of "living with" where a spouse's annuity was being paid or was payable at time of the employee's death.

Your memorandum of July 2, 1953, presents the following questions:

"If, at the time of his death, an annuitant and his wife were not living together in the same household, the annuitant was not contributing to his wife's support, and he was not under court order to contribute to her support, may the payment of a wife's annuity through the month preceding the annuitant's death be considered contributions for the purpose of establishing 'living with' on the date of the annuitant's death?

"If the wife's annuity had not been awarded at the time of the annuitant's death, may the accrued benefits be considered as contributions by the annuitant?"

Section 5(1), by reference to section 216(h)(2) of the Social Security Act, provides that "a widow shall be deemed to have been living with her husband at the time of his death if . . . she was receiving regular contributions from him toward her support on such date . . .". The question, then, is whether the wife's receipt of spouse's annuities through the month in which her husband died may be considered as regular contributions "from him".

Although the spouse's annuity is provided for as an independent benefit payable only to the spouse, it derives wholly from, and is payable only on the basis of, the other spouse's employment. For it is payable only if the other spouse has been awarded an annuity (section 2(e)); its amount is entirely dependent on this other annuity (section 2(e)); its continuance is dependent on the continuance of this other annuity (section 2(g)); and, for purposes of the saving clause of the last paragraph of section 3(b), the spouse's annuity is charged against the employee and treated as if its payment were to him (section 3(b)). Moreover, the legislative history of the provisions for a spouse's annuity

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should be payment
was intended to serve as a payment to the employee. The report of the Senate Committee on Labor and Public Welfare on S. 1347 (Report No. 890, 82nd Cong., 1st Sess., p. 17) referred to the provision as having a purpose, as follows:

"5. Spouse's annuities.

"The spouse's annuity is closely related to and integrally tied up with other provisions of the committee bill, particularly the increase in retirement annuities and the proposal that beneficiaries should in no case receive less than they would have received had railroad service been covered by the Social Security Act. If the finances were adequate to permit doing all the other things that need to be done and also to increase all retirement annuities, by, say, 65 percent, one might well consider that as an alternative to providing a spouse's annuity. But since such a course is obviously out of the question, the spouse's annuity affords a means of doing substantially that in the cases of greatest need, i.e., where two adult and aged people rather than just one must live on the annuity." (Emphasis supplied.)

In the light of these provisions and their declared purpose, together with the provision requiring, for the spouse's annuity, that the payment of contributions by the employee to the wife extend only to the time of application, it is plain that the spouse's annuity provisions operate in substance as an assumption by the railroad retirement system (to the extent of the spouse's benefit) of the employee's obligation to support his wife, and payment of the spouse's annuity would operate as payment on behalf of the husband. Accordingly, if that assumption carried through the time the employee died it would, in my opinion, meet the condition, in the case of the widow, of her husband's having been contributing to her support at his death. As you have indicated, the Social Security Administration has adopted this principle in connection with like provisions of the Social Security Act (Social Security Manual, section 420).

Of course, if the spouse's annuity were not payable for the month preceding the employee's death, it could not be considered, any more than if the employee had refused or failed to make regular contributions, that he had been making such regular contributions. Obviously, however, the Board's failure to adjudicate promptly or for other reason to make

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payment later of the spouse's annuity for the month before the employee's death would not result, if the payment was legally due, from any lack of assumption of the employee's obligation by the system or from any prohibition against the system's substitution for the employee as regards his making regular contributions to his wife, and so would not result in a different conclusion in the event of such failure under the conditions specified.

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