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Chicago 11, Illinois

JUL 15 1959

Director of Retirement Claims

L59-308

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Associate General Counsel

Computing SSA Family Rate in Certain Election Cases

In answer to your request of July 9, 1959, my opinion is that in the case in which an employee's annuity has been increased pursuant to an election filed by a wife aged 62-64, the "SS minimum" of section 3(e) of the Railroad Retirement Act should be determined as being 110% of the "minimum" payable immediately before the recently enacted amendments of Public Law 86-28 (86th Congress) become effective.

The only change made by the recently enacted amendments on the calculation of the "social security minimum" provision of section 3(e) was to provide for its being, for any month, "110 per centum of" the amount, or "110 per centum of" the additional amount which would have been payable to all persons for such month under the Social Security Act, instead of just "the amount" or "the additional amount", and to provide, in determining this minimum, for "deeming * * * women entitled to spouses' annuities pursuant to elections made under subsection (b) of section 2 to be entitled to wife's insurance benefits determined under section 202(q) of the Social Security Act".

In the particular cases to which your request relates the "minimum" has already been calculated and paid as if the wife had elected, and became entitled to, a wife's insurance benefit under section 202(q) of the Social Security Act on the basis of her husband's railroad employment. This was done pursuant to Associate General Counsel's opinion L-56-490 (and as amplified by opinions L-58-20 and L-59-97) for calculating the "social security minimum", when the wife voluntarily requests, by applying that minimum to the husband's annuity as if the wife were entitled to a wife's reduced benefit under section 202(q) of the Social Security Act.

The effect of the recent amendments to the Railroad Retirement Act in providing for calculation of the "social security minimum", when the wife elects the reduced spouse's annuity, as if the wife were entitled to a reduced wife's benefit under section 202(q) of the Social Security Act, is simply to add the requirement that the calculation be made on that basis, when the wife has elected the newly provided for reduced annuity, instead of allowing that application on a voluntary basis as was the situation before. Moreover, to recompute the "minimum" on the basis

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of the wife's attained age when she becomes entitled to the wife's reduced annuity under the Railroad Retirement Act would, of course, not take proper account of the fact that the wife (through additional payments to the husband) has, in effect, been drawing a reduced benefit throughout that time. Obviously the addition to section 3(e) of the Railroad Retirement Act of this provision relating to section 202(q) of the Social Security Act was not intended to have this effect. It is my opinion, therefore, that the "social security minimum" amount in the cases covered by your memorandum is to be 110% of the amount of the "minimum" otherwise calculated without regard to the amendments.

In apportioning this "minimum" amount between the employee and his spouse (who has elected the reduced spouse's annuity), I see no reason for not just increasing "proportionately" the amount of employee's regular railroad retirement annuity and the amount of the wife's reduced spouse's annuity as spelled out in section 3(e).

David B. Schreiber
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