

Railroad Retirement Board

§ 222.41

(3) The widow(er) was previously married to the employee for at least nine months.

§ 222.36 Relationship as grandchild or stepgrandchild.

A claimant will have the relationship of grandchild or stepgrandchild of an employee, or the grandchild or stepgrandchild of an employee's spouse, and be considered a child for annuity purposes if the requirements in both paragraph (a) and either paragraph (b) or (c) of this section are met.

(a) The claimant is the natural child, adopted child, or stepchild of a child of an employee, or of a child of the employee's spouse as defined in this subpart;

(b) The claimant's natural or adoptive parents are deceased or are disabled, as defined in section 223(d) of the Social Security Act, in the month in which—

(1) The employee, who is entitled to an age and service or disability annuity, under the Railroad Retirement Act, would also be entitled to an age benefit under section 202(a) of the Social Security Act or a disability benefit under section 223 of the Social Security Act, if his or her railroad compensation were considered wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if the employee has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (b)(1) of this section or until he or she dies.

(c) The claimant was legally adopted in the United States by the employee's widow(er) after the employee's death, and the claimant's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the claimant's support at the time the employee died.

NOTE: A grandchild or stepgrandchild does not have the relationship of "child" for lump-sum payment purposes (see § 222.44).

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

§ 222.40 When determinations of relationship are made for parent, grandchild, brother or sister.

(a) *Parent.* The claimant's relationship as a parent of the employee is determined when the claimant applies for an annuity or for lump-sum payments.

(b) *Grandchild.* The claimant's relationship as a grandchild, rather than as a child, of the employee is determined when the claimant applies for lump-sum payments.

(c) *Brother or sister.* The claimant's relationship as a brother or sister of the employee is determined when the claimant applies for lump-sum payments.

§ 222.41 Determination of relationship and support for parent.

(a) *Annuity claimant.* For purposes of applying for an annuity, a claimant is considered the employee's parent when the claimant—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under the law of the State in which the employee had a permanent home when the employee died; or

(2) Is a person who legally adopted the employee before the employee became 16 years old; or

(3) Is a stepparent who married the employee's natural or adoptive parent before the employee became 16 years old (the marriage must be valid under the law of the State in which the employee had a permanent home when the employee died); and

(4) Was receiving at least one-half support from the employee (see §§ 222.42 and 222.43 of this part) either when the employee died or at the beginning of the period of disability, if the employee had a period of disability.

(b) *Lump-sum payment claimant.* For purposes of applying for lump-sum payments, a claimant is considered the employee's parent when he or she—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under applicable State law; or

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(2) Legally adopted the employee, if thereby recognized as a parent under applicable State law; but

(3) The claimant need not have received one-half support from the employee.

§ 222.42 When employee is contributing to support.

(a) An employee is contributing to the support of a person if the employee gives cash, goods, or services to help support such person. Support includes food, clothing, housing, routine medical care, and other ordinary and necessary living expenses. The value of any goods which the employee contributes shall be based upon the replacement cost of those goods at the time they are contributed. If the employee provides services that would otherwise require monetary payment, the cash value of the employee's services may be considered a contribution to support.

(b) The employee is contributing to the support of a person if that person receives an allotment, allowance, or benefit based upon the employee's military pay, veteran's pension or compensation, social security earnings, or railroad compensation.

(c) Contributions must be made regularly and must be large enough to meet an important part of the person's ordinary and necessary living expenses. If the employee provides only occasional gifts or donations for special purposes, they will not be considered contributions for support. Although the employee's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, will be disregarded unless during these interruptions someone else assumes responsibility for support of the person on a regular basis.

§ 222.43 How the one-half support determination is made.

(a) *Amount of contributions.* The employee provides one-half support to a person if the employee makes regular contributions to that person's support, and the amount of the contributions is equal to or in excess of one-half of the person's ordinary and necessary living

expenses. Ordinary and necessary living expenses are the costs for food, clothing, housing, routine medical care, and similar necessities. A contribution may be in cash, goods, or services (see § 222.42 of this part). For example, an employee pays rent and utilities amounting to \$6,000 per year on an apartment in which his mother resides. In addition, the employee's mother receives \$3,600 per year in social security benefits which she uses to pay for her food, clothing and medical care. The mother's total necessary living expenses are \$9,600 (\$6,000 + \$3,600). Since the employee contributes \$6,000 toward these expenses, he is contributing in excess of one-half of his mother's support.

(b) *Reasonable period of time.* The employee is not providing at least one-half of a person's support unless the employee has made contributions for a reasonable period of time. Ordinarily, the Board will consider a reasonable period of time to be the 12-month period immediately preceding the time when the one-half support requirement must be satisfied. However, if the employee provided one-half or more of the person's support for at least 3 months of the 12-month period, and was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over responsibility for providing at least one-half of the person's support on a permanent basis, three months shall be considered a reasonable period of time.

§ 222.44 Other relationship determinations for lump-sum payments.

Other claimants will be considered to have the relationships to the employee shown below for lump-sum payment purposes:

(a) *Grandchildren.* A grandchild is a separate class of beneficiary to be considered for lump-sum payments and is not a child of the employee; he or she is a child of the employee's son or daughter as determined under State law. A stepgrandchild is not included in this class of beneficiary.

(b) *Brother or Sister.* "Brother" or "Sister" means a full brother or sister or a half brother or half sister, but not a stepbrother or stepsister.