



Federal Employee Survivor Benefits for Children with Special Needs

The Voice® is the e-mail newsletter of the [Special Needs Alliance](#). This installment was written by [Sandra L. Smith, CELA](#), a partner with the firm of [Oast & Taylor](#) in Virginia Beach, Virginia. She is certified as an elder law attorney (CELA) by the National Elder Law Foundation and is a 20-year veteran of the U.S. Air Force.

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Federal employees may be able to provide government survivor benefits for their children with special needs. Federal employees, non-elected, non-military people working in federal agencies, in executive branch departments, the military, and the U.S. Postal Service.

Two Different Retirement Systems

There are two different retirement systems covering federal employees, depending on the date they became employed. The current system is the Federal Employees Retirement System (FERS), for employees who started employment after 1983. The older system is the Civil Service Retirement System (CSRS), for employees who started employment before 1984 (unless such employees elected to convert to FERS when the transition to the newer system took place). FERS and CSRS are both managed by an agency called the Office of Personnel Management (OPM).

Eligibility for a Child's Survivor Benefit

Both FERS and CSRS provide a cash survivor benefit (referred to as an "annuity") to unmarried dependent children (the "annuitants") when a federal employee or retired federal employee dies, (as opposed to the Childhood Disability Benefit (CDB) under Social Security that is paid to a dependent child when the parent insured under Social Security becomes disabled, retires, or dies). The annuitants are entitled to monthly benefits until they reach age 18, marry, or die, whichever comes first. However, there are exceptions. If a dependent child is a full-time student at a recognized school, he or she can continue receiving benefits until age 22. Further, unmarried dependent children with a disability are entitled to receive recurring monthly benefits during adulthood if they are incapable of self-support because of a physical or mental disability that began before age 18. Such monthly benefits stop if the annuitant marries, dies, or recovers from the disability and becomes capable of self-support.

Federal employee survivor benefits are automatically provided under the law, and the employee does not have to elect the benefit at retirement. Additionally, there is no reduction in the retiree's own retirement annuity in order to provide for the survivor benefit. This differs from the military Survivor Benefit Program, in which the military retiree's monthly retirement benefit is decreased in order to provide a survivor benefit for a spouse and/or children.

Amount of Benefits

The amount of the survivor benefit for children is established by a formula under federal law. It is a specific dollar amount that depends on the circumstances of the family, and it is subject to annual cost-of-living adjustments. The OPM website includes an example showing the amounts a child might receive if the federal employee parent died in 2014. If the child had a living parent who was married to the employee or retiree, the benefit payable to the child would be the lesser of two amounts: \$502 per month per child or \$1,506 per month divided by the number of eligible children. If the child did not have a living parent who was married to the employee or retiree, the benefit payable to the child would be a bit larger: the lesser of \$602 per month per child or \$1,807 per month divided by the number of eligible children. These 2014 amounts have since been increased by cost-of-living adjustments.

The amount of the survivor benefit also depends on whether the deceased parent was a FERS or CSRS employee.

Relationship to Social Security

CSRS employees do not pay into the Social Security system. Accordingly, the children of deceased CSRS employees receive the full survivor benefit described above without any offset or coordination with Social Security.

FERS employees, however, do pay into the Social Security system. As a result, their children are entitled to Social Security survivor and dependents benefits, and their children with special needs may be entitled to Social Security CDB benefits. Because of this, FERS survivor benefit payments are subject to a Social Security offset. The FERS survivor benefit payment is determined by combining the benefit for all eligible children reduced by the Social Security benefits payable for such eligible children (or that would be payable upon application) for the same month. As a result, the FERS children's survivor benefit may be reduced to zero.

Although the children of FERS employees may not receive a federal employee children's survivor benefit because of the Social Security offset, a FERS employee's child with special needs could receive the Social Security CDB benefit. Accordingly, such child of a FERS

employee could receive 50% of the Social Security benefit amount for a parent who is retired or has a disability, and 75% of a deceased parent's Social Security benefit amount. In many cases a FERS employee's child's CDB could be much higher than the maximum benefit a CSRS employee.

Supplemental Security Income

Children with disabilities who meet income and asset requirements are usually eligible for monthly Supplemental Security Income (SSI) benefits at age 18. The maximum Federal Benefit Rate (FBR) for SSI in 20 is \$794 for a single beneficiary (although the FBR is often subsidized by individual states to reach a higher level). SSI is intended to be used to pay for food and shelter. The SSI program subtracts all but \$20 of most other sources of income from the SSI maximum to determine the monthly amount of the actual benefit.

Because the maximum federal employee benefit for surviving children may be less than the SSI payment for an individual, children with special needs who receive such a survivor's benefit often apply for SSI as well, to bring their combined benefit up to the maximum SSI benefit. The SSI payment will then be reduced dollar-for-dollar by the federal employee annuity in excess of the \$20 unearned income disregard. Thus, if a child of a federal employee receives both a survivor's annuity and SSI, his or her maximum total monthly income in 2021 will be \$811 (\$794 FBR, minus annuity plus \$20 disregard) plus any applicable state supplement.

Unfortunately, the annuity cannot be paid directly into a special needs trust (SNT) to avoid being considered income by SSI. Such income protection would require legislation, like the Disabled Military Child Protection Act, which specifically granted that ability for military survivor benefits.

Transition to Adulthood

To avoid a disruption in benefits to children with special needs who have been receiving federal employee survivor benefits as minors, a letter requesting continued payments because of incapacity for self-support should be sent to OPM at least 90 days before a child turns 18. It should include a signed physician statement with the child's name, survivor claim number, and information concerning the individual's disability (including the date it started, details regarding the disability and its probable length), educational history, and employment history (if any). The physician's name, address, and phone number should also be part of the package.

Medical Benefits

There are several healthcare benefits to consider when a federal employee has children with special needs. Children receiving SSI automatically qualify for Medicaid (in most, but not all, states), and they may be eligible for Medicaid waiver services. The waiver services vary by state and may cover residential support, in-home services, and other support. After they receive Social Security CDB for two years, children with special needs will also qualify for Medicare.

In addition to Medicaid and Medicare, which are programs generally available to the public, the children of federal employees may be eligible for the Federal Employees Health Benefits program (FEHB). The FEHB offers private health insurance contracted through OPM to federal employees and their dependents. The employee can elect their choice of coverage, but such choices can differ depending on where the employee or dependent resides, and they are priced accordingly. For a child to be covered after the parent's death, the federal employee must have elected "Self and Family" coverage during his or her lifetime.

The FEHB program is available to children of federal employees under age 26, as well as to their children over age 26 who are incapable of self-support because of physical or mental disability that occurred before reaching that age. The disability must be expected to last for at least 12 months.

The parent's employing office determines whether his or her child is eligible for continued FEHB coverage under the disability provisions. A child is automatically deemed incapable of self-support if he or she is receiving Social Security CDB or a CSRS/FERS child's disability benefit. Otherwise, the parent's employing office must be presented with a detailed medical certificate from the child's doctor indicating that the child has a qualifying condition. Such conditions include but are not limited to severe autism, intellectual disabilities with IQ less than 70, chronic renal or hepatic failure, advanced muscular dystrophy, and cancer that is untreatable or that has metastasized. In certain cases, approval will be temporary, requiring renewal of the medical certificate.

Conclusion

Federal employees who have children with special needs should consult a special needs attorney to ensure that they understand the nuances of the complex federal benefit programs available to them. For additional details, visit the OPM and FEHB websites.

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