

Sec. 3307.49. In lieu of accepting the payment of the accumulated account of a member who dies before service retirement, a survivor, if designated as a sole beneficiary, may elect to forfeit the accumulated account and to substitute certain other benefits either under division (A) or division (B) of this section.

(A) If the deceased member was eligible for a service retirement allowance as provided in section 3307.38 of the Revised Code, a surviving spouse or other sole dependent beneficiary may elect to receive a monthly benefit computed as the joint-survivor allowance designated as option 1 in section 3307.50 of the Revised Code, which the member would have received had he retired on the last day of the month of death and had he at that time selected such joint-survivor plan. Payment shall begin with the month subsequent to the member's death.

(B) If the deceased member had completed at least one and one-half years of credit for Ohio service, with at least one-quarter year of OHIO contributing service credit within the two AND ONE-HALF years prior to the date of death, or was receiving at the time of death a disability retirement allowance as provided in section 3307.43 of the Revised Code, certain designated beneficiaries may elect to receive monthly benefits, provided they meet the following requirements:

(1) (a) A widow sixty-two years of age, or a widower sixty-five years of age, [~~married to the member at least three years,~~] and not remarried subsequent to the member's death, shall be

paid ninety dollars per month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that the benefit payable under this paragraph shall not be less than seventy-five dollars per month. Such benefit shall be payable the month subsequent to the death of the member, or thereafter upon attainment of the age requirement by the beneficiary. Such benefit shall terminate upon the remarriage or death of such beneficiary. Such spouse may qualify for this benefit in addition to any payments received as provided by division (B) (3) of this section, but such spouse shall not receive the benefit provided by this paragraph while receiving benefits under division (B) (2) or (3) of this section.

(b) A widow or widower of a member who dies on or after [the effective date of this section] AUGUST 27, 1970, regardless of age, [~~married to the member at least three years,~~] and not remarried after the member's death, adjudged physically or mentally incompetent by a court having jurisdiction, or by a physician appointed by the state teachers retirement board, shall receive the benefit provided in division (B) (1) (a) of this section. Benefits shall begin the first day of the month after the filing of an application by or on behalf of the applicant. Benefits shall terminate upon the beneficiary's remarriage or death, or when a court having jurisdiction or a physician appointed by the board determines that such widow or widower is no longer physically or mentally incompetent.

(2) A widow, or a dependent widower, fifty or more years of age, [~~married to the member at least three years,~~] and not remarried subsequent to the member's death, shall be paid one hundred dollars per month, if the deceased member had fifteen or more years of Ohio service credit at the time of death. If a member with ten or more years of Ohio service credit dies after the effective date of this section AUGUST 27, 1970, a beneficiary meeting the other requirements of this subdivision shall qualify for this benefit. For the purposes of this section, a widower is a "dependent" only if he received at least one-half of his support from the member during the twelve-month period immediately prior to the time of the member's death. Such benefit shall be payable the month subsequent to the death of the member, or thereafter upon attainment of age fifty by the beneficiary. Such benefit shall terminate upon the remarriage or death of such beneficiary. Such widow or dependent widower may qualify for this benefit in addition to any payments received as provided by division (B) (3) of this section, but such widow or dependent widower shall not receive the benefit provided by this paragraph while receiving benefits under division (B) (3) of this section.

(3) A widow, or a dependent widower, who has the care of and who pays at least fifty per cent of the support of dependent children shall be paid as follows:

(a) Having one such child, one hundred eighty dollars per

Effective December 31, 1971

month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that the benefit payable under this paragraph shall not be less than one hundred fifty dollars per month.

(b) Having two or more such children, two hundred thirty dollars per month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that the benefit payable under this division shall not be less than one hundred fifty dollars per month. Benefits payable under subdivisions (3) (a) and (b) of this division shall commence with the month subsequent to the death of the member. Such benefits shall terminate upon the death or remarriage of the beneficiary; or when such children are no longer in the care of the beneficiary by reason of the following: (1) adoption, (2) active military service, (3) loss of dependency of all of the deceased member's children, (4) relinquishment of fifty per cent or more of their financial support to an institutional authority or other person or persons. After all but one child have ceased being dependent children, the benefit shall be as provided under subdivision (3) (a) of this division.

(c) If the beneficiary taking under paragraphs (3) (a) and (3) (b) remarries or dies, while having the care of dependent children, then benefits shall be paid such children in the amounts provided under division (B) (4) of this section.

(d) If the widower of a deceased member cannot establish dependency under this division and has the care of dependent children benefits shall be paid such children as provided under division (B) (4) of this section. Such benefits shall begin the first day of the month after the member's death and shall terminate with respect to any child upon his adoption, marriage, active military service, or when he ceases to be a dependent child. Such children shall not receive the benefits payable under this paragraph while eligible for and receiving benefits in accordance with the qualifications under division (B) (4) of this section.

(4) (a) One dependent child of the deceased member who received at least one-half of his support from the member during the twelve-month period immediately preceding the member's death shall be paid ninety dollars per month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that such benefit shall not be less than seventy-five dollars per month.

(b) If such child's guardian, elects to take under paragraph (4) (a), and there is another dependent child of the deceased

member who received at least one-half of his support from the member during the twelve-month period immediately preceding the member's death there shall be paid a total amount of one hundred fifty dollars per month. Such benefit shall be divided equally between the dependent children.

(c) If such child's guardian, elects to take under paragraph (4) (a), and there are two or more other dependent children who received at least one-half of their support from the member during the twelve-month period immediately preceding the member's death, there shall be paid a total amount of two hundred ten dollars per month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that such benefit shall not be less than one hundred fifty dollars per month. Such benefit shall be divided equally among all such dependent children.

(d) Benefits payable under this division shall commence with the month subsequent to the death of the member, or, if payable by reason of the death or remarriage of a beneficiary who received benefits under division (B) (3) of this section, commencing the month subsequent to such death or remarriage. A dependent child who was denied a monthly benefit after the remarriage of the primary beneficiary of such deceased member, and who otherwise qualifies for a monthly benefit on or after November 1, 1961, shall receive a monthly benefit, commencing on or after November 1, 1961, in the amount provided by the law in effect at the time of such marriage. Benefits shall terminate with respect to any child upon his adoption, death, marriage, active military service, or when he ceases to be a dependent child.

(5) A dependent parent sixty-five or more years of age, who received at least one-half of his support from the member during the twelve-month period immediately preceding the member's death, and who does not remarry subsequent to the member's death, shall be paid ninety dollars per month, or a monthly amount which on an annual basis shall not exceed seventy-five per cent of the member's earnings during his last twelve calendar months of employment as a teacher, whichever is the lesser; provided, that such benefit shall not be less than seventy-five dollars per month. If such parent elects to take under this paragraph and if the other parent of the member also meets the qualifications of this paragraph, the other parent shall also be paid the amount provided in this paragraph. Benefits shall commence with the month subsequent to the death of the member, or thereafter upon attainment of age sixty-five by the beneficiary. Benefits shall terminate upon the beneficiary's remarriage or death.

(6) Instead of accepting benefits under subdivisions (B) (1) to (B) (5), inclusive, beneficiaries of members who die on or after [the effective date of this section] AUGUST 27, 1970, and who meet

the eligibility requirements of division (B) of this section may elect benefits as follows:

Number of Persons Affecting the Benefit	Annual Benefit As a Per Cent of Decedent's Final Average Salary
1	25%
2	40
3	50
4	55
5 or more	60

Benefits shall begin and shall be terminated as provided in divisions (B) (1) to (B) (5), inclusive, of this section.

~~For the purposes of subdivision (B) (6), final average salary shall be determined by dividing the highest total annual compensation on which retirement contributions were made during any five years of contributions by the service credit granted during such period. If FOR THE PURPOSE OF SUBDIVISION (B) (6), IF the member had at least one and one-half years of Ohio service credit CONTRIBUTING MEMBERSHIP, but less than five years, such THE FINAL AVERAGE SALARY SHALL BE THE total annual compensation and the service credit granted during such period shall be used in determining final average salary DIVIDED BY THE TOTAL NUMBER OF YEARS, INCLUDING ANY FRACTION OF A YEAR OF CONTRIBUTING MEMBERSHIP, DURING THAT PERIOD.~~

(7) Concurrent payments shall not be made under more than one subdivision of division (B) of this section.

(C) "Dependent child" means any unmarried child of a deceased member under age eighteen, or any other financially dependent child of a deceased member, regardless of age, adjudged physically or mentally incompetent by a court or by a physician appointed by the board. A dependent child receiving, or eligible to receive a benefit on or after the effective date of this section AUGUST 27, 1970, shall include such child under age twenty-two who is a student in and attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the full-time curriculum requirements of such institution and as determined by board policy.

"Child" as used in this section includes a legally adopted child. If a court hearing for an interlocutory decree for adoption has been held prior to the time of the member's death, the beneficiary shall qualify for the monthly benefit notwithstanding the fact that the final decree of adoption, adjudging the surviving spouse as the adoptive parent, is made subsequent to the death of the member, and such benefit shall commence with the month subsequent to the final decree. "Child" as used in this section shall

also include a child of the deceased born subsequent to the death of the member. The benefit shall commence with the month subsequent to the birth of such child.

If the validity of marriage cannot be established to the satisfaction of the board for the purpose of disbursing any amount due under this section, the board may accept a decision rendered by a court having jurisdiction in the state in which the member was domiciled at the time of death that (1) the relationship constituted a valid marriage at the time of death, or (2) the "spouse" would have the same status as a widow or widower for purposes of sharing the distribution of the member's intestate personal property.

(D) If benefits are paid under this section, the accumulated account of the deceased member shall be transferred to the survivors' benefit fund, and the estimated additional funds required for the payment of survivors' benefits shall be collected from employers based upon a rate which shall become a part of the employers contribution rate and deposited in a fund to be designated as the "survivors' benefit fund" from which such benefits shall be paid.

(E) The beneficiary of a member who is also a member of the public employees retirement system, or of the school employees retirement system, must forfeit the member's accumulated contributions in those systems and in the state teachers retirement system, if he elects to receive a survivor benefit. Total contributions and service credit in the public employees retirement system, the school employees retirement system, and the state teachers retirement system, shall be used in determining the eligibility for, and the amount of, the survivor benefit. Payment of such benefit shall be exclusively governed by section 3307.41 of the Revised Code, and in no event shall the beneficiary be permitted to draw survivor benefits separately from more than one of the systems enumerated in this section.

(F) If the survivor benefits due and paid under divisions (A) to (H), inclusive, of this section are in a total amount less than (1) the member's accumulated contributions, (2) the payments for additional credit as provided by section 3307.33 of the Revised Code, (3) the deposits for additional annuity as provided by section 3307.51 of the Revised Code, (4) the deposits for restoring service credit as provided by section 3307.28 of the Revised Code, (5) any accumulated contributions described by section 3307.70 of the Revised Code, and (6) any deposits for service credit established under section 3307.73 of the Revised Code, standing to the credit of the member at the time of his death, then the difference between the total amount of the benefits paid and the accumulated contributions, payments, and deposits subject to refund to the member in a lump sum payment immediately prior to his death, shall be paid to the beneficiary last receiving a benefit under this section or to the beneficiary's estate. If any amount due under this section is payable to a

beneficiary who has been found guilty by a court of law of feloniously contributing to the death of the member, then such payment shall not be paid to such beneficiary in the absence of court order to the contrary filed with the retirement board.

(G) The board shall formulate and adopt the necessary rules and regulations for the administration of this section and its decisions are final.

(H) The monthly benefits payable under divisions (B) (1) to (B) (5), inclusive, of this section shall be increased by six dollars for each person who becomes eligible for such benefits after October 31, 1965.

SECTION 3. Notwithstanding Chapters 145., 3307., and 3309. of the Revised Code, on the effective date of this act, the public employees retirement board, the state teachers retirement board, and the school employees retirement board shall recalculate the amount of all monthly benefits elected between June 29, 1971, and the effective date of this act pursuant to former sections 145.33, 145.34, 145.36, division (A) of section 145.45, sections 3307.38, 3307.43, division (A) of section 3307.49 and sections 3309.36, 3309.38, 3309.40, and division (A) of section 3309.45 of the Revised Code, as if this act had been in effect on June 30, 1971. Any such benefit payments made after the effective date of this act shall be for the amount calculated in accordance with this section, unless such recalculation would provide a decrease in benefits, in which case the boards shall continue to pay the benefit as elected and calculated prior to the effective date of this act.