

Sec. 3307.49. (A) As used in this section, "physically or mentally incompetent" means incapable of earning a living because of a physically or mentally disabling condition. Physical or mental incompetency may be determined by a court or by a doctor of medicine or osteopathic medicine appointed by the state teachers retirement board.

(B) For the purposes of this section:

(1) To qualify as a "surviving spouse," the spouse of a deceased member of the state teachers retirement system must be one of the following:

- (a) Age sixty-two or any age if the deceased member had ten or more years of Ohio service credit;
- (b) Caring for a dependent child;
- (c) Adjudged physically or mentally incompetent;
- (d) Any age if the deceased member was eligible for a service retirement allowance as provided in section 3307.38 of the Revised Code and the surviving spouse elects to receive a benefit under division (C)(1) of this section.

(2)(a) To qualify as a "dependent child," the child of a deceased member must meet all of the following:

- (i) Be unmarried;
- (ii) Be under age eighteen, or under age twenty-two if 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 further determined by board policy, or any age if adjudged physically or mentally incompetent;

(iii) Have been domiciled in the member's household at the time of his THE MEMBER'S death unless the deceased member contributed to one-half or more of the child's support during the twelve-month period prior to the member's death.

(b) If a court hearing for an interlocutory decree for adoption was held prior to the member's death, a child who meets the conditions of division (B)(2)(a) of this section qualifies as a dependent child if a final decree of adoption adjudging the member's spouse as the adoptive parent is made subsequent to the member's death.

(3) To qualify as a "dependent parent," the parent of a deceased member must be age sixty-five or older and have received at least one-half of his THE PARENTS support from the member during the twelve-month period immediately preceding the member's death.

(4) A person is a "qualified dependent" if he THE PERSON qualifies as a surviving spouse, dependent child, or dependent parent.

(C) In lieu of accepting the payment of the accumulated account of a member who dies before service retirement, a beneficiary, as determined in section 3307.48 of the Revised Code, may elect to forfeit the accumulated account and to substitute benefits under this division.

(1) If a deceased member was eligible for a service retirement allowance as provided in section 3307.38 or 3307.39 of the Revised Code, a

surviving spouse, a qualified dependent designated as the member's sole beneficiary pursuant to division (B) of section 3307.48 of the Revised Code, or an individual designated as the member's sole beneficiary pursuant to division (B) of section 3307.48 of the Revised Code who received one-half or more of his support from the member during the twelve-month period preceding the member's death 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 THE MEMBER retired on the last day of the month of death and had he THE MEMBER at that time selected such joint-survivor plan. Payment shall begin with the month subsequent to the member's death.

(2) If a 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 benefit as provided in section 3307.43 or 3307.431 of the Revised Code, a surviving spouse or other qualified dependent beneficiary may elect to receive monthly benefits as provided in division (C)(2) of this section. The surviving spouse or other qualified dependent beneficiary shall elect one of the following methods of calculating benefits elected under division (C)(2) of this section, which shall remain in effect without regard to any change in the number of qualified dependents:

(a) Number of qualified dependents	Annual benefit as a per cent of member's final average salary	Monthly benefit shall not be less than
1	25%	\$ 96
2	40	186
3	50	236
4	55	236
5 or more	60	236

(b) Years of service	Annual benefit as a per cent of member's final average salary
20	29%
21	33
22	37
23	41
24	45
25	48
26	51
27	54
28	57
29	60

(D) If a benefit is calculated pursuant to division (C)(2)(a) of this section, benefits to a surviving spouse shall be paid in the amount determined for the first qualifying dependent in division (C)(2)(a) of this section, but shall not be less than one hundred six dollars per month if the deceased member had ten or more years of Ohio service credit. All other qualifying dependents shall share equally in the benefit or remaining portion thereof.

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If a benefit is calculated pursuant to division (C)(2)(b) of this section and is payable to more than one qualified dependent, the benefit shall be apportioned equally among the qualified dependents, except that if there is a surviving spouse, the portion of the benefit allocated to the surviving spouse shall be as follows:

Number of dependents	Spouse's share of total benefit
2	62.5%
3	50.0%
4	45.45%
5 or more	41.67%

(E) Benefits payable under division (C)(2) of this section shall begin or resume on the first day of the month following the day a person becomes a qualified dependent and terminate or be suspended on the first day of the month following the day he ceases to be a qualified dependent.

Benefits to a qualified dependent shall terminate upon marriage, remarriage, abandonment, adoption, or during active military service, except that benefits terminated under this division due to a first remarriage shall resume if either of the following occurs:

- (1) The remarriage ceases within two years due to divorce, annulment, dissolution, or death;
- (2) Regardless of its duration, the remarriage ceases due to divorce, annulment, dissolution, or death and the dependent attains or has attained age ~~sixty-two~~ FIFTY-FIVE.

IF BENEFITS TO A QUALIFIED DEPENDENT HAVE BEEN TERMINATED UNDER THIS DIVISION DUE TO A FIRST REMARRIAGE AND, REGARDLESS OF ITS DURATION, THE REMARRIAGE HAS CEASED DUE TO DIVORCE, ANNULMENT, DISSOLUTION, OR DEATH AND IF THE DEPENDENT HAD ATTAINED AGE FIFTY-FIVE BUT NOT YET ATTAINED AGE SIXTY-TWO BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT, THE BENEFITS TERMINATED UNDER THIS DIVISION SHALL RESUME ON THE FIRST DAY OF THE MONTH IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT.

If the surviving spouse of a deceased member remarries ON OR after ~~attaining~~ the EFFECTIVE DATE OF THIS AMENDMENT AND AT THE TIME OF THE REMARRIAGE HAS ATTAINED ~~age of sixty-two~~ FIFTY-FIVE, the benefits provided by this division shall continue. THE BENEFITS PROVIDED BY THIS DIVISION ALSO SHALL CONTINUE TO A DECEASED MEMBER'S SURVIVING SPOUSE WHO REMARRIED PRIOR TO THE EFFECTIVE DATE OF THIS AMENDMENT AND HAD ATTAINED AGE SIXTY-TWO AT THE TIME OF REMARRIAGE. IF THE BENEFITS OF A DECEASED MEMBER'S SURVIVING SPOUSE WERE TERMINATED UNDER THIS DIVISION DUE TO A REMARRIAGE OCCURRING ON OR AFTER FEBRUARY 15, 1995, AND IF AT THE TIME OF REMARRIAGE THE SURVIVING SPOUSE HAD ATTAINED AGE FIFTY-FIVE, THE BENEFITS TERMINATED UNDER THIS DIVISION SHALL RESUME ON THE FIRST DAY OF THE MONTH IMMEDIATELY

DIATELY FOLLOWING THE EFFECTIVE DATE OF THIS AMENDMENT. Upon the death of any subsequent spouse who was a member of the public employees retirement system, state teachers retirement system, or school employees retirement system, the surviving spouse of such member may elect to continue receiving benefits under this division, or to receive survivor's benefits, based upon the subsequent spouse's membership in one or more of the systems, for which such surviving spouse is eligible under this section or section 145.45 or 3309.45 of the Revised Code. If the surviving spouse elects to continue receiving benefits under this division, such election shall not preclude the payment of benefits under this division to any other qualified dependent.

(F) The beneficiary of a member who is also a member of the public employees retirement system, or the school employees retirement system, must forfeit the member's accumulated contributions in those systems, if ~~he~~ THE BENEFICIARY elects to receive a benefit under division (C) of this section. Such benefit shall be exclusively governed by section 3307.41 of the Revised Code.

(G) If the benefits due and paid under division (C) of this section are in a total amount less than the member's accumulated account that was transferred from the teachers' savings fund, school employees retirement fund, and public employees retirement fund, to the survivors' benefit fund, then the difference between the total amount of the benefits paid shall be paid to the beneficiary under section 3307.48 of the Revised Code.

(H) On and after March 29, 1988:

(1) Regardless of age, if the surviving spouse of a deceased member who died prior to March 29, 1988, with ten or more years of Ohio service credit has elected to receive monthly benefits under division (C)(2) of this section, the surviving spouse shall receive the benefits.

(2) Benefits to a surviving spouse that were terminated prior to March 29, 1988, due to a first remarriage shall resume, regardless of the duration of the remarriage, if the remarriage has ceased due to divorce, annulment, dissolution, or death and the surviving spouse attains or has attained age sixty-two.

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