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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 "A QUALIFIED SPOUSE IS THE surviving spouse," the spouse of a deceased member of the state teachers retirement system must be WHO IS 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 QUALIFIED 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 A QUALIFIED child," IS the child of a deceased member must meet all WHO IS BOTH of the following:

- (i) Be unmarried (a) UNMARRIED;
- (ii) Be under (b) 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 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 "A QUALIFIED PARENT IS A dependent parent," the parent of a deceased member must be WHO IS age sixty-five or older and have received at least one-half of the parent's support from the member during the twelve-month period immediately preceding the member's death.

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

(C) ~~In~~ EXCEPT AS PROVIDED IN DIVISION (G)(1) OF THIS SECTION, 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.

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(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 WAS A QUALIFIED CHILD OR DEPENDENT PARENT OF THE MEMBER OR received one-half or more of 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 the member retired on the last day of the month of death and had 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 SURVIVOR may elect to receive monthly benefits as provided in division (C)(2) of this section. The surviving spouse or other qualified dependent beneficiary SURVIVOR shall elect one of the following methods of calculating benefits elected under division (C)(2) of this section, which shall, EXCEPT AS PROVIDED IN DIVISION (G)(1) OF THIS SECTION, remain in effect without regard to any change in the number of qualified dependents SURVIVORS:

(a) Number of qualified dependents SURVIVORS	Annual benefit as a per cent of member's final average salary	OR Monthly benefit shall not be less than or
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

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(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 SURVIVOR 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 SURVIVORS shall share equally in the benefit or remaining portion thereof.

If a benefit is calculated pursuant to division (C)(2)(b) of this section and is payable to more than one qualified dependent SURVIVOR, the benefit shall be apportioned equally among the qualified dependents SURVIVORS, 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 SURVIVORS	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 SURVIVOR and terminate or be suspended on the first day of the month following the day he THE PERSON ceases to be a qualified dependent SURVIVOR.

Benefits to a qualified dependent SURVIVOR shall terminate upon A FIRST 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 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 the effective date of this amendment and at the time of the remarriage has attained age 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 16, 1906, 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 following the

effective date of this amendment. Upon BENEFITS TO A DECEASED MEMBER'S SURVIVING SPOUSE THAT WERE TERMINATED UNDER A FORMER VERSION OF THIS SECTION THAT REQUIRED TERMINATION DUE TO REMARRIAGE AND WERE NOT RESUMED PRIOR TO THE EFFECTIVE DATE OF THIS AMENDMENT SHALL RESUME ON THE FIRST DAY OF THE MONTH IMMEDIATELY FOLLOWING RECEIPT BY THE BOARD OF AN APPLICATION ON A FORM PROVIDED BY THE BOARD.

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 SURVIVOR.

(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 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)(1) REGARDLESS OF WHETHER THE MEMBER IS SURVIVED BY A SPOUSE OR DESIGNATED BENEFICIARY, IF THE STATE TEACHERS RETIREMENT SYSTEM RECEIVES NOTICE THAT A DECEASED MEMBER DESCRIBED IN DIVISION (C)(1) OR (2) OF THIS SECTION HAS ONE OR MORE QUALIFIED CHILDREN, ALL PERSONS WHO ARE QUALIFIED SURVIVORS UNDER DIVISION (C)(2) OF THIS SECTION SHALL RECEIVE MONTHLY BENEFITS AS PROVIDED IN DIVISION (C)(2) OF THIS SECTION.

IF, AFTER DETERMINING THE MONTHLY BENEFITS TO BE PAID UNDER DIVISION (C)(2) OF THIS SECTION, THE SYSTEM RECEIVES NOTICE THAT THERE IS A QUALIFIED SURVIVOR WHO WAS NOT CONSIDERED WHEN THE DETERMINATION WAS MADE, THE SYSTEM SHALL, NOTWITHSTANDING SECTION 3307.711 OF THE REVISED CODE, RECALCULATE THE MONTHLY BENEFITS WITH THAT QUALIFIED SURVIVOR INCLUDED, EVEN IF THE BENEFITS TO QUALIFIED SURVIVORS ALREADY RECEIVING BENEFITS ARE REDUCED AS A RESULT. THE BENEFITS SHALL BE CALCULATED AS IF THE QUALIFIED SURVIVOR WHO IS THE SUBJECT OF THE NOTICE BECAME ELIGIBLE ON THE DATE THE NOTICE WAS RECEIVED AND SHALL BE PAID TO QUALIFIED SURVIVORS EFFECTIVE ON THE FIRST DAY OF THE FIRST MONTH FOLLOWING THE SYSTEM'S RECEIPT OF THE NOTICE.

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IF THE RETIREMENT SYSTEM DID NOT RECEIVE NOTICE THAT A DECEASED MEMBER HAS ONE OR MORE QUALIFIED CHILDREN PRIOR TO MAKING PAYMENT UNDER SECTION 3307.48 OF THE REVISED CODE TO A BENEFICIARY AS DETERMINED BY THE RETIREMENT SYSTEM, THE PAYMENT IS A FULL DISCHARGE AND RELEASE OF THE SYSTEM FROM ANY FUTURE CLAIMS UNDER THIS SECTION OR SECTION 3307.48 OF THE REVISED CODE.

(2) IF BENEFITS UNDER DIVISION (C)(2) OF THIS SECTION TO ALL PERSONS, OR TO ALL PERSONS OTHER THAN A SURVIVING SPOUSE OR SOLE BENEFICIARY, TERMINATE, THERE ARE NO CHILDREN UNDER THE AGE OF TWENTY-TWO YEARS, AND THE SURVIVING SPOUSE OR BENEFICIARY QUALIFIES FOR BENEFITS UNDER DIVISION (C)(1) OF THIS SECTION, THE SURVIVING SPOUSE OR BENEFICIARY MAY

ELECT TO RECEIVE BENEFITS UNDER DIVISION (C)(1) OF THIS SECTION. THE BENEFIT SHALL BE CALCULATED BASED ON THE AGE OF THE SPOUSE OR BENEFICIARY AT THE TIME OF THE MEMBER'S DEATH AND IS EFFECTIVE ON THE FIRST DAY OF THE MONTH FOLLOWING RECEIPT BY THE BOARD OF AN APPLICATION FOR BENEFITS UNDER DIVISION (C)(1) OF THIS SECTION.

(H) 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 20, 1988:~~

~~(1) Regardless of age, if the surviving spouse of a deceased member who died prior to March 20, 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 20, 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.~~

SECTION 8. As used in this section, "member" means a member of the Public Employees Retirement System, School Employees Retirement System, or State Teachers Retirement System.

The amendments to sections 145.43, 145.45, 3307.48, 3307.49, 3309.44, and 3309.45 of the Revised Code by this act shall apply with regard to members whose deaths occur on or after the effective date of this act.

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