Survivor's Pensions for Separated Spouses, Former Spouses and Former Common-law Partners

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This policy replaces the following PPM policy: Article 47(1)&(3) - Survivors' Pensions for Separated Spouses, Former Spouses and Former Common-Law Partners.

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Purpose

The purpose of this policy is to provide direction with respect to determining whether a separated spouse, former spouse or former common-law partner is eligible to receive a pension under the *Pension Act*.

Policy

General

1. In accordance with subsection 47(1) of the *Pension Act*, a separated spouse, former spouse or former common-law partner may be eligible to receive a pension if there was a separation, judicial separation, or divorce pursuant to a written agreement, including a court order, where alimony, maintenance, support or an allowance was awarded.
2. When a person who has been in receipt of a portion of a pension under subsection 42(1) becomes a survivor, a pension may be awarded under subsection 47(1) of the *Pension Act*.
3. An award under subsection 47(1) may also be considered, where an applicant provides concrete evidence that the member was making regular uniform monthly payments, or paying the rent, taxes, food, clothing, medical insurance or prescriptions, etc. The Department may accept this evidence as the provision of maintenance or support.
4. The provision in a court order or separation agreement for the payment of a lump sum for future maintenance or alimony will bring the case within the provisions of subsection 47(1). To determine the monthly value of that settlement, the lump sum will be converted to a monthly annuity for life from the date of that settlement. The calculation of the annuity is done by the Benefits Adjudicator, using the Canada Life tables to establish life expectancy of the applicant.
5. In accordance with subsection 47(3), a separated spouse, former spouse or former common-law partner may be eligible to receive a pension, even if alimony, maintenance, support or an allowance was not

awarded in a separation, judicial separation, or divorce pursuant to a written agreement, including a court order, or in the absence of a separation agreement if the individual:
    a. had the right to be maintained; and
    b. meets the requirement of being in a dependent condition.
6. The following criteria may be used in determining if the applicant would have been entitled to an award of alimony, support, maintenance or an alimentary or other allowance:
    a. the condition, means, needs and other circumstances of each spouse, including:
        i. the length of time the spouses cohabited;
        ii. the functions performed by each spouse during cohabitation; and
        iii. any order, agreement, or arrangement relating to support of either spouse.
    b. recognition of any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
    c. apportionment between the spouses of any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
    d. alleviation of any economic hardship of the spouses arising from the breakdown of the marriage; and
    e. insofar as practicable, promotion of economic self-sufficiency of each spouse within a reasonable period of time.
7. The criteria in 5 and 6 may be used to determine if the applicant would have been entitled to support on the day of the application for a survivor pension under subsection 47(3), despite what the applicant's entitlement to support may have been at the date of separation, divorce or the pensioner's death.
8. The following are examples of evidence that would assist in determining the "right to be maintained" and the requirement of being "in a dependent condition":
    a. any legal documents such as divorce judgement, interim order, final order, separation agreement, minutes of settlement, affidavits, etc.; and
    b. a description of the circumstances of the spouses/partners during and after the breakdown of the marriage/relationship that includes:
        i. information about the length of their marriage/relationship;
        ii. the functions performed by each spouse/partner;
        iii. their financial relationship; and
        iv. the applicant's current situation.
    c. financial statement setting out the applicant's financial situation.

References

Pension Act, subsection 3(1), 47(1) and 47(3)

Definition of Survivor for the Purposes of Disability and Death Benefits

Dependent Condition