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September 24, 1973

Asa A. Gordon, Deputy Commissioner

Educational and Cultural Service

Charles R. Larouche, Assistant

Attorney General

Widow Eligibility under War Orphan Program - R.S. T. 20, Sec. 3211-3214

This replies to your memo of September 10, 1973, concerning the reference subject.

It appears from your memo that Mrs. X has applied for educational assistance under the War Orphan Program, Chapter 407, Title 20 M.R.S.A. It further appears that Mrs. X married A, who was killed in action while in the service of a military force of a country other than the United States during World War II.

Mrs. X subsequently married B, who was killed in action while in the service of a military force of the United States during World War II, and he had entered the service from Maine.

Thereafter, Mrs. X married C, a person who entered the service of a military force of the United States from Maine, and with whom Mrs. X lived in Maine for 21 years until his death from a non-service connected cause, and at the time of his death, C was not serving in a military force of the United States, nor was he under any service connected disability.

I construe your questions to ask whether or not, under any or all of the foregoing facts, Mrs. X is eligible for assistance in securing higher education under Chapter 407, Title 20, M.R.S.A. The answer to that question is negative.

The second paragraph of Section 3211 of Title 20 provides:

"For the further purpose of administering this chapter, a widow of a veteran shall be defined as a person whose husband met the residency and service requirements of this section, and the widow of any person who was killed in action or who dies from a service-connected disability as determined by the Veterans Administration, or the wife of any veteran who has a total disability, permanent in nature, resulting from a service-connected disability as determined by the Veterans Administration, or the widow of a veteran who died while a disability so evaluated was in existence."

NOT A FORMAL OPINION

The "service" requirement of the veteran is specified in the first paragraph of Section 3211 to be: "In the military or naval forces of the United States." The "residency" requirement of the veteran is also specified in the first paragraph of Section 3211 to be: "entered the service from Maine or who have resided in the State for 5 years immediately preceding application for aid under this Chapter . . ."

Mrs. X's marriage to A cannot entitle her to aid under this Chapter since veteran A did not meet the "service" requirement, in that he did not serve in a military or naval force of the United States.

Mrs. X's marriage to B cannot entitle her to aid under this Chapter because she is not the widow of veteran B, since her remarriage to C terminated her status as widow of B, and the death of C did not revive such former widowhood. In Town of Solon v. Holway, 130 Me. 415, the Law Court considered and rejected a similar contention by a woman who claimed a tax exemption as the "widow" of a civil war veteran, whom she first married, survived, and then remarried, and such second husband then died. The Court said:

"The question is as to the meaning of the word 'widow' as used in the statute. It is to be construed according to its common meaning. R.S. 1916, Chap. 1, Sec. 6, Par. 1. So interpreted, a widow is a woman whose husband is dead and who has not remarried. Webster's New International Dictionary; Commonwealth v. Powell, 51 Pa., 438; Inslee v. Rochester, 213 N.Y.S., 6; Debrot v. Marion County, 164 Ia., 208, 214. On the death of her second husband the defendant became his widow, and did not revert to her former status as the widow of Emerson Joy."

Also see Alabama Pension Commission v. Morris, 4 So.2d, 896, 897, 242 Ala. 110, where Confederate soldier's widow married another Confederate soldier entitled to a pension, but she was later divorced from him, she was not entitled to pension as second husband's "widow" after his death, nor was she entitled to pension as the widow of her first husband, since her remarriage precluded her from claiming pension as first husband's widow.

Also see: Matter of Embiricos, 184 Misc. 453, 52 N.Y.S.2d 425, 427; Trathen v. U.S., 95 F.Supp. 309, 812; Eachary v. Security Life & Trust Co., 166 S.E.2d 495, 498; People ex rel. Mosco v. Service Recognition Bd., 85 N.E.2d 357, 361, 403 Ill. 422; Petrozzino v. Monroe Calculating Mach. Co., 216 A.2d 244, 245, 90 N.J. Super. 54; State ex rel Dott v. Petro, 161 N.E.2d 428, 429; Montclair Trust Co. v. Reynolds, 55 A.2d 904, 905, 141 N.J. Eq. 276.

Mrs. X's marriage to C cannot entitle her to aid under this chapter since veteran C did not meet the "death" or "disability" requirement, in that he was not "killed in action," his death was not from a service-connected disability, and at the time of his death he was not under a service-connected disability.

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