

MAINE STATE LEGISLATURE

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November 7, 1978

To: Kenneth A. Moore, Supervisor, Bureau of
Veterans Affairs

From: Kay R. H. Evans, Assistant Attorney General

Re: Veterans' Dependents Educational Benefits under
Title 37-A, § 50 J through L

Your memo of October 27, 1978, asks the following question:

Is the natural child of a totally disabled
veteran, whose natural parents divorced
and was subsequently adopted by her step-
parent, entitled to the benefits avail-
able to qualifying children of such
veterans under 37-A M.R.S.A. §§ 50 J
through L?

The statute in question does not define the term "child" in any
way relevant to the question asked but simply provides that

For the purposes of administering this sub-
chapter, an orphan of a veteran shall be
defined as a child. . . whose father or mother. . .
is living and determined as to have a total
disability. . . 1/

The statute provides certain educational benefits to those
qualifying under its terms. Such statutes, being remedial in
nature, are to be liberally construed.

The Maine adoption statute, 19 M.R.S.A. § 531, et seq.,
provides, in § 535, that

1/ There are statute age and disability criteria which
your memo indicates are met in this situation.

By such decree (of adoption) the natural parents are divested of all legal rights in respect to such child and he is freed from all legal obligations of obedience and maintenance in respect to them. He is, for the custody of the person and right of obedience and maintenance, to all intents and purposes the child of his adopters. . . ; but he shall not by reason of adoption lose his right to inherit from his natural parents or kindred.

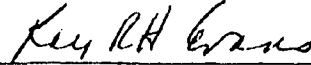
Adoption and its effects are wholly the creation of and governed by statute. Where, as in Maine, a decree of adoption does not sever all legal relations between the natural parent(s) and the adopted child, the reason has been given that in an adoption the child does not specifically consent, if she/he consents to the adoption at all, to the severance of those relations. Sorenson v. Churchill, 212 N.W. 488 (S.D. 1927). This reason would seem to be borne out by the Maine statute which, while it expressly divests the natural parents of all legal rights in respect of a child adopted by others, also expressly terminates not the rights of the child in respect of the natural parents, but the child's obligations toward them. In the light of this, it does not seem likely that the Legislature intended the right to inherit from the natural parents to be the only such right which survives the child's adoption. The Legislature's intent with respect to other such rights of the child is to be implied.

Because of the general import of the statute that not all legal relations between the natural parent and the child are severed by adoption, because of the reason stated in the above case for regarding such relations as continuing where not explicitly severed, because the rights of the child with respect to the natural parents are not terminated by the statute, and because of the nature of the statute itself and the attendant rule of liberal construction, in my opinion the individual in question qualifies as a child of a disabled veteran for the benefits in question.^{2/}

This conclusion is buttressed by the opinion in the analogous case of LaBove v. Metropolitan Life Insurance Company, 64 F. Supp. 808 (D.C. N.J. 1958), affirmed 264 F.2d 234 (3rd Cir., 1959), where the court found that the natural

^{2/} If a situation arose where a child could claim eligibility for such benefits under both a natural and an adopted parent, the cases indicate that such child could be held to an election of benefits.

child of a deceased father, adopted by her step-father, did not qualify as a "child" for the purposes of receiving the proceeds of an insurance policy on her natural father's life, for the reason that under the New Jersey adoption statute in force at the time of his death, all legal relations between natural parent and child ceased on the adoption of the child.



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