

# MAINE STATE LEGISLATURE

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August 18, 1992

Claude R. Perrier  
Executive Director  
Maine State Retirement System  
State House Station 46  
Augusta, Maine 04333

Dear Mr. Perrier:

You have requested an opinion from this Department regarding the application of P. & S.L. 1991, ch. 122, "An Act Related to Ordinary Death Benefits Under the Maine State Retirement System as it Affects Terminally Ill Members." The legislation extends the improved survivor benefits provided by P.L. 1991, ch. 469, for surviving spouses of qualifying members dying after July 1, 1993, to surviving spouses of certain qualifying members receiving disability benefits who die before July 1, 1993.<sup>1/</sup> More specifically, Chapter 122 provides that the improved survivor benefits of Chapter 469 are available to a surviving spouse of a qualifying member who was receiving disability benefits on or after October 9, 1991, "due to a terminal condition as defined in the Maine Revised Statutes,

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<sup>1/</sup>P.L. 1991, ch. 469, provides that beginning July 1, 1993, the beneficiary of a member who qualifies for a service retirement benefit shall be entitled to choose, *inter alia*, what is referred to as an "Automatic Option 2" benefit, regardless of the age and the number of years of service of the member before his or her death. Prior to the enactment of Chapter 469, beneficiaries of members who did not meet the age and service requirements were limited to a survivor benefit or a refund of the member's contributions. "Automatic Option 2" is a monthly benefit that is the equivalent of the benefit that a member would have received had the member retired on the date of death and had elected to receive his or her retirement benefit.

Title 18-A, section 5-701 and who dies as a result of that terminal condition before July 1, 1993 . . . ."2/

The central issue which you have asked this Department to address is whether all of the elements used to define "terminal condition" set forth in 18-A M.R.S.A. § 5-701 are applicable in Chapter 122, and if so, whether these elements must be satisfied at the time the disability benefit is granted. For the reasons which follow, the conclusion of this Department is that language of Chapter 122 directly incorporates all the definitional provisions of 18-A M.R.S.A. § 5-701 and that a qualifying member receiving a disability benefit must meet these conditions at the time the benefit is granted in order to extend the improved survivor benefits of Chapter 469 to the member's spouse in the event the member dies as a result of the terminal condition before July 1, 1993.

Title 18-A, §§ 5-701 - 5-714, constitute the "Uniform Rights of the Terminally Ill Act" and set forth means by which individuals may have their preferences carried out with respect to the administration of life-sustaining treatment. Section 5-701, referred to in Chapter 122, provides the short title of the Act, paragraph (a), and ten definitional provisions, paragraph (b). Paragraph (b)(9) provides:

'Terminal condition' means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

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2/The operative provision of P. & S.L. 1991, ch. 122 provides, in toto:

Notwithstanding Public Law 1991, chapter 469, a qualifying member of the Maine State Retirement System who was receiving a disability retirement benefit on or after October 9, 1991 due to a terminal condition as defined in the Maine Revised Statutes, Title 18-A, section 5-701 and who dies as a result of that terminal condition before July 1, 1993 is deemed to have died after July 1, 1993 for the purposes of calculating and awarding benefits to a surviving spouse, including a surviving spouse of a qualifying member who dies before completing the age and service requirements for service retirement, as provided pursuant to Public Law 1991, chapter 469.

The terms "life-sustaining treatment" and "attending physician" are separately defined in § 5-701(b)(1) and (4), which in turn incorporate other terms which are also separately defined in § 5-701(b), notably "qualified patient" and "declaration", the later term referring to the requirements of § 5-702(a). The issue you have raised is whether the reference in Chapter 122 to the term "terminal condition" should be read to incorporate these other definitions contained in § 5-701(b) which are used to define that term. Incorporating these other definitions would result, *inter alia*, in requiring a determination as to whether the qualifying member was a "qualified patient" who had executed a "declaration" governing the withholding or withdrawal of life-sustaining treatment, and whether the "attending physician" had determined the member was in a "terminal condition."

The fundamental tenet of statutory construction is that the plain language of the statute must govern. In Chapter 122, the Legislature explicitly defined the term "terminal condition" by referring to Title 18-A, § 5-701. There is no indication that the Legislature intended that only some of the definitions set forth in this section be applicable; if it had intended that Chapter 122 be read to refer to § 5-701(b)(9) only, it could easily have so provided. In the absence of such a provision, this Department is reluctant to imply such a limitation. Rather, it is inclined to interpret the term "terminal condition" in the context in which it appears, making full use of the definitions set forth in other parts of § 5-701(b).

Although this opinion relies on the plain language of Chapter 122, it is noteworthy that pursuant to 5 M.R.S.A. § 17103(a), which requires the Board of Trustees to report to the appropriate legislative committee on the impact of proposed legislation, prior to passage of Chapter 122, the Board reported to the Joint Standing Committee on Aging, Retirement and Veterans that by referencing § 5-701 in its entirety, the proposed legislation would appear to incorporate all the definitions contained therein, resulting in a narrowing of the group of qualified members who would be covered by the legislation as proposed. The legislation was adopted without any change to the relevant language. A copy of the report of the Board's position to the committee is attached hereto.<sup>3/</sup>

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<sup>3/</sup>At the time of the issuance of this Opinion, the complete Legislative Record for the Second Regular Session of the 115th Legislature was not available. This Department reserves the right to reconsider the Opinion in light of any legislative debate which may subsequently come to light.

Given that it is the opinion of this Department that Chapter 122 incorporates all the elements of "terminal condition" contained in § 5-701, it necessarily follows that these elements must be satisfied when the disability benefit is granted. Chapter 122 extends improved benefits to spouses of qualifying members who receive a benefit "due to a terminal condition"; the critical time is thus the time at which the benefit is granted. Thus, for example, even if a qualifying member dies before July 1, 1993, a surviving spouse is not entitled to the extended survivor benefits if it cannot be demonstrated that at the time the disability benefit was granted the attending physician was of the opinion that, without the administration of "life-sustaining treatment," death will result in a relatively short time, and that at that time, the member was a "qualified patient" in that he or she had executed a declaration as provided in § 5-702.

Finally, you seek guidance as to the interpretation and application of the phrase "within a relatively short time" utilized in § 5-701(b)(9) but not defined elsewhere. Chapter 122 extends improved benefits to spouses of qualifying members who receive a benefit due to a "terminal condition," i.e., due in part to a determination of the attending physician that death will, without the administration of life-sustaining treatment, result "within a relatively short time." However, Chapter 122 also requires that the member "dies as a result of that terminal condition" and you inquire as to whether a finding must be made that the qualifying member did in fact die within a short period of time, and if so, who should make this determination and utilizing what standards. Chapter 122 by its own terms applies to a qualifying member who dies before July 1, 1993 of the terminal condition for which the benefit was granted. Thus, if a finding is made that the disability benefit was granted due to a terminal condition, which inter alia, requires a finding that at the time the benefit was granted the attending physician made a determination that death would occur within a relatively short time, at the time of death MSRS is simply required to evaluate if the member (1) died from that condition and (2) died before July 1, 1993. The retirement system is not required to make a separate finding that a terminal condition as defined in § 5-701 existed at the time of death, but need only find that death resulted from the same condition for which a disability benefit was granted and which was previously determined to be terminal as defined in § 5-701. In short, the determination of what constitutes a "relatively short time" is made by the attending physician at the time the benefit is granted, and not by the Board after the death occurs.

I hope the foregoing answers your questions. Please feel free to reinquire if further clarification is necessary.

Sincerely,

  
MICHAEL E. CARPENTER  
Attorney General

MEC:sw

cc: Senator Dale McCormick  
Representative John Jalbert  
Chairs, Joint Standing Committee  
on Aging, Retirement and Veterans  
Representative Stephen Simonds  
Representative Charles Heino