

CHAPTER 8**Coverage and Benefits****SECTIONS**

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§ 801. Scope of coverage; Verification of employment; Old age benefits.

(1) All employees, wherever employed by an employer incorporated or doing business in the Federated States of Micronesia, shall be covered unless both the employer and the employee are currently subject to any other recognized Social Security System. The administrator of the Social Security System, or his designees, shall cause at least two unannounced employment site checks to be conducted upon every non-government employee actually engaged in an employer-employee relationship that will allow him to be covered and eligible for benefits under this subtitle. The two employment site checks shall be conducted within a month of each other and both shall be conducted within the first six months of the employee's first contribution payment to the Social Security System. For the purposes of this subtitle, any elected official in any Government unit or body in the Federated States of Micronesia is deemed to be an employee employed by a Federated States of Micronesia employer. The governmental unit or body to which such person is elected is subject to the provisions in this subtitle relating to the duty and obligations of the Federated States of Micronesia employer.

- (2) Every person who:
- (a) is fully insured;
 - (b) has attained age 60; and
 - (c) has filed a complete application with the Social Security Administrator for old age insurance shall

be entitled to an old age insurance benefit subject to the earnings test as defined and applied in this subtitle.

(3) Old age insurance benefit payments shall be paid for each month commencing with the month for which both paragraphs (2)(a) and (2)(b) of this section are satisfied and shall end with the month preceding the month in which the applicant dies.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, retroactive payments shall be limited to the 12 months immediately preceding the month in which the individual entitled to benefits has submitted an application.

(5) In an application for benefits under this section, whether individually or as a dependent, the applicant has the burden to come forward with evidence and to take all steps necessary to file a completed application. The Social Security Administration has the right to deny an application for benefits solely on the basis of non-compliance with the application process, or the failure of the applicant to produce reasonably available documents or information.

Source: PL 2-74 § 301; PL 5-120 § 6; PL 12-76 § 3; PL 14-37 § 3; PL 15-73 § 4.

Case annotation: Social security benefits are not subject to probate, as the Social Security Board, not the court, has initial jurisdiction over applications for social security benefits, whether by a surviving spouse or surviving children. The procedure for such applications is set forth in the Social Security Act. *In re Estate of Manas*, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

§ 802. Surviving spouse benefits.

- (1) Every surviving spouse who:
 - (a) was married to an individual who died fully insured; and
 - (b) files an application

shall be entitled to a surviving spouse insurance benefit, subject to the earnings test as defined in this subtitle.

(2) Surviving spouse benefit payments shall be paid for each month commencing with the month of death of the fully insured spouse and ending with the month preceding the month in which the surviving spouse dies or remarries.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, retroactive payments shall be limited to the 12 months immediately preceding the month in which the surviving spouse has submitted an application.

Source: PL 2-74 § 302; PL 12-76 § 4.

§ 803. Dependent's benefits.

- (1) Every surviving child who:
 - (a) was dependent upon an individual who died fully insured or currently insured; and
 - (b) has filed a complete application with the Social Security Administrator for survivor's insurance;

shall be entitled to a surviving child's insurance benefit, subject to the earnings test as defined in this subtitle.

(2) A surviving child's insurance benefit shall be paid for each month beginning with the month of death of the individual who died fully insured or currently insured and shall end with the month preceding the month which contains the first to occur of the following events:

(a) attainment of age 22 in the case of a surviving child who is a *bona fide* student; or

(b) ceasing to be disabled after attainment of age 18 in the case of a surviving child who was disabled before attainment of age 22; or

(c) attainment of age 18 in the case of any surviving child not described in preceding paragraphs (a) and (b) of this subsection, except that benefits shall be payable during the disability of a surviving child who was disabled before the attainment of age 22 regardless of the child's age; or

(d) marriage; or

(e) adoption.

(3) A surviving child shall be deemed to have been dependent upon his parent or adopting parent unless that parent or adopting parent was not living in the same household with or contributing to the support of such child prior to his death. The child's insurance benefit shall be paid to the individual upon whom the child is currently dependent, except such benefit shall be subject to the earnings test as defined in this subtitle.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, retroactive payments shall be limited to the 12 months immediately preceding the month in which the surviving child or the surviving child's guardian has submitted an application.

Source: PL 2-74 § 303; PL 9-56 § 1; PL 12-76 § 5; PL 15-73 § 5.

§ 803A. Disability benefits.

(1) Every person who:

(a) is both currently and fully insured;

(b) is disabled and has been disabled for at least three full calendar months; and

(c) has filed a complete application with the Social Security Administrator for disability insurance shall be entitled to a disability insurance benefit, subject to the earnings test as defined in this subtitle.

(2) Disability insurance benefits shall be paid for each month, beginning with the month of the waiting period and ending with the month preceding the month in which the disabled individual dies or recovers from his disability.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, retroactive payments shall not be made for more than the 24 months immediately preceding the month in which the disabled individual has submitted an application.

(4) For persons disabled on or before January 1, 2010, that person to be eligible must only be fully insured to qualify for disability benefits, if they comply with the rest of this section.

Source: PL 12-76 § 6; PL 15-73 § 6.

§ 804. Amount of retirement and disability insurance benefits.

(1) An insured eligible individual shall be paid a monthly old age benefit for life, except for any month of disqualification as provided by this subtitle, in an amount calculated upon an annual basis as follows:

(a) For benefit payments that begin prior to January 1, 2007; 16.5 percent of the first \$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of cumulative covered earnings in excess of \$40,000.

(b) For benefit payments that begin on or after January 1, 2007 but before January 1, 2011; 16.5 percent of the first \$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500.

(c) For benefit payments that begin on or after January 1, 2011:

(i) For individuals who are 65 and over; 16.5% of the first \$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500.

(ii) For individuals who turn 60 after January 1, 2011, such individual from ages 60 to 64 will receive 50% of the total of all the described benefits in this subsection, 16.5% of the first \$10,000 of cumulative covered earnings, plus three percent of cumulative covered earnings in excess of \$10,000 but not in excess of the next \$30,000, plus two percent of the cumulative covered earnings in excess of \$40,000 but not in excess of the next \$262,500, plus one percent of cumulative covered earnings in excess of \$302,500. These payments in this subsection only, shall be made without reduction pursuant to the earnings test in section 603(7) of this subtitle.

(iii) For individuals under age 60, benefit payments would be calculated the same as subsection (i) of this subsection.

(d) Earnings for covered employment after commencement of payments for retirement or disability insurance benefits shall be included in benefit calculations upon subsequent application for benefits, but such earnings shall be applicable for benefits for months after the calendar year in which such earnings occurred. For the purpose of this section cumulative covered earnings includes earnings on which contributions have been paid by the individual to the Trust Territory Social Security System.

(e) In the event, benefits have been received under section 804(1)(c)(ii), such benefits shall be automatically adjusted when the individual reaches age 65.

(f) For purposes of interpreting this section “benefit payments begin on” is defined to mean the date, whether retroactive or current when a benefit payment is paid for a specific month. A benefit payment may begin prior to the application date, subject to retroactive payment limitations defined in this Act.

(2) An insured, eligible individual shall be paid a minimum monthly benefit of \$75 if the benefit amount calculated in accordance with subsection (1) of this section is less than \$75 monthly. Effective on January 1, 2011, the minimum monthly benefit shall be \$100. The minimum monthly benefit is calculated per insured worker, not per

recipient.

(3) An individual who is currently and fully insured and who has been under a disability for three full calendar months and the onset of disability occurred on or after January 01, 2011, or an individual who was fully insured and the onset of disability occurred prior to this bill becoming law shall be paid a monthly benefit for life or until recovery from the disability, except for any month of disqualification as provided by this subtitle in an amount calculated in accordance with the preceding subsections of this section, and for an individual with an onset of disability on or after January 1, 2011, he or she will receive benefits as if he or she retired at age 65, but with existing quarters of coverage. Further, the amount of the benefit as so determined shall, if the individual is receiving a periodic workmen's compensation benefit, be reduced each month by the excess of the sum of the workmen's compensation benefit for that month, and the benefit payable under this Act over 80 percent of one-twelfth of the highest annual covered wages in the period consisting of the year in which the disability occurred and the preceding five years. If a workmen's compensation benefit was payable in periodic benefits but was commuted to a lump sum, for purposes of this subsection it will be considered that the periodic benefit originally available was paid in each month that it would have been paid if the commutation had not occurred.

Source: PL 2-74 § 304; PL 5-120 § 7; PL 7-118 § 2; PL 9-56 § 2; PL 14-37 § 4; PL 14-86 § 2; PL 15-73 § 7; PL 16-10 § 2.

Editor's note: Amendments to this section made by PL 7-118 § 2 became effective July 1, 1993 pursuant to PL 7-118 § 3.

Case annotation: Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 377 (App. 2003).

§ 805. Reemployment after retirement.

In the event an individual who is receiving retirement insurance benefits returns to covered employment, the benefit shall be recomputed at the end of the calendar year and paid as provided in this subtitle beginning with the year after the calendar year the earnings were made.

Source: PL 2-74 § 305.

§ 806. Amount of survivor insurance benefits.

(1) The surviving spouse of a fully insured worker eligible in accordance with section 802 of this chapter shall be paid a monthly benefit or disability in an amount equal to 60 percent of the retirement or disability insurance benefit calculated for the deceased spouse at the date of death. For a fully insured worker who dies after January 1, 2011, the benefit will be calculated as if he or she retired at age 65, but with existing quarters of coverage.

(2) Each eligible child of an insured worker shall be entitled to a monthly benefit of 15 percent of the retirement insurance benefit calculated for the deceased parent at the date of death. For a fully insured worker who dies after January 1, 2011, the benefit will be calculated as if he or she retired at age 65, but with existing quarters of coverage.

(3) If the spouse of the deceased insured worker is eligible for retirement or disability benefits based on his or her own employment coverage, and is also eligible for survivors' benefits, the spouse shall receive whatever benefit

pays the highest monthly benefit. In addition, the surviving spouse shall be entitled to receive a lump sum equal to four percent of the cumulative covered earnings upon which the lower benefit is based, less the sum of all benefits already received on the basis of those cumulative covered earnings. If the spouse elects to accept the lump sum payment, he or she shall lose credit for all quarters of coverage earned up to the date of application. If that individual returns to work, he or she shall start over again to earn quarters of coverage leading to being currently or fully insured.

(4) The monthly benefit paid to the surviving child(ren) shall be based on the higher of the two benefits that have been earned by the deceased parents if fully insured or currently insured. In addition the surviving child(ren) shall be entitled to receive a lump sum equal to two percent of the other deceased parent's cumulative covered earnings, less the sum of all benefits, if any, received by the deceased parent.

(5) The total survivors' benefit paid to the spouse and children may not exceed the retirement benefit calculated for the decedent as of the date of death except that if the surviving spouse receives benefits based on his or her own employment coverage, that amount plus the survivors' benefits for the children may exceed the amount of the deceased's retirement benefit. In no event shall the amount paid be less than the minimum established by the Social Security Administration, as set out in section 804 of title 53 of this code.

Source: PL 2-74 § 306; PL 5-120 § 8; PL 7-119 § 1, modified; PL 14-37 § 5; PL 15-73 § 8; PL 16-10 § 3.

Editor's note: Amendments to this section made by PL 7-119 § 1 became effective December 11, 1992.

§ 807. Lump sum benefits.

(1) When a worker dies and the benefits paid, including survivor benefit, have been less than four percent of his cumulative covered earnings, the survivors, heirs, or the estate of such individual shall be paid a lump sum benefit, after all rights to survivor benefits have terminated, in an amount equal to four percent of the decedent's cumulative covered earnings, reduced by the amount of any benefits paid to the insured worker and his eligible dependents. For the purpose of this section, cumulative covered earnings includes earnings on which contributions have been paid by the individual to the Trust Territory Social Security System.

(2) In the absence of a will, survivors shall be paid in the following order:

(a) spouse, if living, otherwise children in equal shares or guardian, if such children are minors;

(b) parents in equal shares; or

(c) duly appointed legal representatives of the deceased or, if none, person or persons determined to be entitled thereto under the laws and customs of the last domicile of the deceased person.

(3) Only citizens of the Federated States of Micronesia, Republic of Palau and Republic of the Marshall Islands shall be eligible for benefits under this section.

Source: PL 2-74 § 307; PL 14-37 § 6.

§ 808. Adjustments to correct for overpayments and underpayments to an individual.

(1) Whenever an error has been made with respect to insurance payments to an individual, proper adjustment shall be made, under regulations promulgated by the Board by increasing or decreasing subsequent payments to which such individual is entitled. If such individual dies before such adjustment has been completed, adjustment shall be made by increasing or decreasing subsequently paid survivor benefit payments payable with respect to the wages which were the basis of benefits of such deceased individual.

(2) No adjustment shall be made when adjustment or recovery would be against equity and good conscience.

Source: PL 2-74 § 308.

§ 809. Payment of benefits to foreign citizens outside FSM.

Unless modified by a totalization or other international agreement, benefit payments under this Act shall be paid to a beneficiary who is not a citizen or national of the Federated States of Micronesia and does not reside in the Federated States of Micronesia, as follows:

(a) Payments shall be made to citizens and nationals of the Republic of Palau, the Republic of the Marshall Islands, and the United States as if they were citizens or nationals of the Federated States of Micronesia as long as the Social Security Administration of those nations gives citizens and nationals of the Federated States of Micronesia reciprocal treatment.

(b) For applications filed after this bill becomes law, payments shall be made to citizens and nationals of other nations if they are fully insured at the time of application, in a lump sum equal to the total amount contributed to the Social Security Administration by the employee under section 901 of this subtitle while employed in the Federated States of Micronesia as of the date the employee turns age 60 or is no longer employed in the Federated States of Micronesia, or dies prior to age 60. All payments due under this section shall be payable over six months, from the date of death, or the date of turning age 60, and/or the date of filing an application for such benefits, whichever is later subject to the residency provision in paragraph (d) of this section less any monthly or periodic payments received.

(c) For applications filed prior to the date of this bill becomes law, payments shall be made to citizens and nationals of other nations in a lump sum equal to the total amount contributed to the Social Security Administration by the employee while employed in the Federated States of Micronesia as of the date the employee ceases to be a resident of the Federated States of Micronesia in accordance with paragraph (d) of this section.

(d) For purpose of this section, an individual resides in the Federated States of Micronesia if they are present in the territory of the Federated States of Micronesia for 180 days out of the last 365 days and have ties to the Federated States of Micronesia that indicate residence such as a home, vehicle, bank accounts or personal property.

(e) In determining the benefits and entitlements under this title for an individual who receives a lump sum payment in accordance with paragraphs (b), (c) or (d) of this section and who subsequently returns to the Federated States of Micronesia to undertake further covered employment, no covered quarters, employee contributions or employer contributions accrued by the individual prior to receiving a lump sum payment shall be counted.

Source: PL 2-74 § 309; PL 14-37 § 7; PL 14-86 § 3; PL 15-73 § 9; PL 16-10 § 4.

§ 810. Optional lump sum payment to individuals not fully insured who reach retirement age.

(1) Any individual who reaches retirement age and who is not fully insured for Social Security benefits may, at his or her own option, elect to have a lump sum payment of four percent of his or her total cumulative covered earnings. If an individual elects to accept the lump sum payment, he or she shall lose credit for all quarters of coverage earned up to that point. If that individual returns to work, he or she shall start over again to earn quarters of coverage leading to being currently or fully insured. Only individuals who have resided in the Federated States of Micronesia for at least one year preceding their applications for these benefits, and who have either resided in the Federated States of Micronesia for a period of time of not less than ten years total, or who were born in the Federated States of Micronesia, are eligible for this optional lump sum payment.

(2) For the purpose of this section, total Social Security contributions include contributions paid by the individual to the Trust Territory Social Security System.

Source: PL 7-120 §§ 1, 3, modified.

Editor's note: PL 7-120 was signed into law by the President on December 11, 1992.

§ 811. International agreements.

(1) *Purpose of agreement.* The President is authorized to enter into agreements establishing totalization arrangements between the social security system established by this title and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this title and the social security system of such foreign country. Such agreements shall be subject to the approval of Congress by resolution.

(2) *Definitions.* For the purposes of this section:

(a) the term "social security system" means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(b) the term "period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this title or under the social security system of a country which is a party to an agreement entered into under this section.

(3) *Crediting periods of coverage; conditions of payment of benefits.*

(a) Any agreement establishing a totalization arrangement pursuant to this section shall provide:

(i) that in the case of an individual who has at least eight quarters of coverage as defined in section 603(11) of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, that individual's periods of coverage under the social security system of that foreign country may be combined with periods of coverage under this title and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and

disability insurance benefits under this title;

(ii) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this title or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this title or under the system established under the laws of such foreign country, but not under both, and shall further set forth the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(iii) that where an individual's periods of coverage are combined, the benefit amount payable under this title shall be based on the proportion of such individual's periods of coverage which was completed under this title.

(b) Any such agreement may provide that an individual who is entitled to cash benefits under this title shall, notwithstanding other provisions of title to the contrary, receive such benefits while he resides in a foreign country which is a party to such agreement.

(c) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this title and which the President deems appropriate to carry out the purposes of this section.

(4) *Regulations.* The Board shall make rules and regulations and establish such procedures as are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(5) *Reports to Congress.* The Board shall include as part of its annual submission to Congress required by section 703 of this title, a report describing each agreement that was in effect at any time during the previous fiscal year. The report shall state the estimated number of individuals affected by each agreement and the effect of each agreement on the estimated income and expenditures of the programs established by this chapter.

Source: PL 12-76 § 7.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.