**Section 1600.432 Indirect Payments to Child Survivors Through the Surviving Spouse**

Purpose. Section 15-145(c) of the Code authorizes SURS to pay the survivors insurance benefits of a child survivor to the surviving spouse if the child is "in care of" the surviving spouse. This Section defines the phrase "in care of". All references to "child" or "surviving child" in this Section assume that the child has fulfilled the applicable requirements under Section 15-145(c) of the Code and this Part to become eligible for survivor insurance benefits.

a) Surviving Child under Age 18

1) A surviving child under age 18 is "in care of" the surviving spouse if the child has been living with the surviving spouse for at least 30 days.

2) Except as provided in subsection (a)(3), a surviving child under age 18 who is living apart from the surviving spouse is "in care of" the surviving spouse if:

A) The child lived apart from the surviving spouse for not more than 4 months, or the current absence is not expected to last over 4 months;

B) The child is living apart from the surviving spouse because the child is attending school or because of the spouse's employment, but the surviving spouse makes contributions to the child's support that enable the spouse to claim the child as a dependent for federal income tax purposes or that provide at least 50% of the child's support; or

C) The child is living apart because of the child's physical or mental disability or because of a physical disability of the surviving spouse.

3) Notwithstanding subsection (a)(2), a surviving child who is living apart from the surviving spouse is not "in care of" a surviving spouse if:

A) The child is living with his or her other parent;

B) The child is removed from the surviving spouse's custody and control by court order;

C) The surviving spouse has given the right to have custody and control of the child to someone else; or

D) The surviving spouse has been adjudicated by a court to be under a legal disability.

b) Surviving Child Age 18 or Older

1) A surviving child between ages 18 and 22 who is a full-time student is "in care of" the surviving spouse if the surviving spouse makes contributions to the child's support that enable the spouse to claim the child as a dependent for federal income tax purposes or that provide at least 50% of the child's support.

2) A surviving child of age 18 or older who was dependent upon the participant or annuitant by reason of a physical or mental disability that began prior to the date the child attained age 18 (age 22 if a full-time student) is "in care of" the surviving spouse if:

A) The child has been living with the surviving spouse for at least 30 days; however, the child is not "in care of" the surviving spouse if:

i) The child is 18 years old or older with a mental disability, but the surviving spouse does not actively supervise the child's activities and does not make important decisions about the child's needs; or

ii) The child is 18 years old or older with a physical disability, but it is not necessary for the surviving spouse to perform personal services for the child. Personal services are services such as dressing, feeding and managing money that the child cannot do alone because of a disability.

B) The surviving spouse makes contributions to the child's support that enable the spouse to claim the child as a dependent for federal income tax purposes or that provide at least 50% of the child's support.

(Source: Added at 32 Ill. Reg. 16515, effective September 25, 2008)