

353.657 SURVIVOR BENEFITS.

Subdivision 1. **Generally.** (a) In the event that a member of the police and fire fund, other than a firefighter covered by section 353.6511, or a police officer covered by section 353.6512, dies from any cause before retirement or before becoming disabled and receiving disability benefits, the association shall grant survivor benefits to a surviving spouse, as defined in section 353.01, subdivision 20, and to a dependent child or children, as defined in section 353.01, subdivision 15, except that if the death is not a line of duty death, the member must be vested under section 353.01, subdivision 47.

(b) Notwithstanding the definition of surviving spouse, a former spouse of the member, if any, is entitled to a portion of the monthly surviving spouse benefit if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under section 353.32, subdivision 1, if provided for in a marriage dissolution decree but not a monthly surviving spouse benefit despite the terms of a marriage dissolution decree filed with the association.

(c) The spouse and child or children are entitled to monthly benefits as provided in subdivisions 2 to 4.

[See Note.]

Subd. 2. **Benefit amount.** (a) The spouse of a deceased member is entitled to receive a monthly benefit for life equal to the following percentage of the member's average full-time monthly salary rate as a member of the police and fire plan in effect over the last six months of allowable service preceding the month in which death occurred:

- (1) if the death was a line of duty death, 60 percent of the stated average salary is payable; and
- (2) if the death was not a line of duty death or if death occurred while receiving disability benefits that accrued before July 1, 2007, 50 percent of the stated average salary is payable.

(b) If the member was a part-time employee in the position for which the employee qualified for participation in the police and fire plan, the monthly survivor benefit is based on the salary rate in effect for that member's part-time service during the last six months of allowable service. If the member's status changed from full time to part time for health reasons during the last year of employment, the monthly survivor benefit is based on the full-time salary rate of the position held as a member of the police and fire plan in effect over the last six months of allowable service preceding the month in which the death occurred.

Subd. 2a. **Death while eligible survivor benefit.** (a) If a member or former member who has attained the age of at least 50 years and either who is vested under section 353.01, subdivision 47, or who has credit for at least 30 years of allowable service, regardless of age attained, dies before the annuity or disability benefit becomes payable, notwithstanding any designation of beneficiary to the contrary, the surviving spouse may elect to receive a death while eligible survivor benefit.

(b) Notwithstanding the definition of surviving spouse in section 353.01, subdivision 20, a former spouse of the member, if any, is entitled to a portion of the death while eligible survivor benefit if stipulated under the terms of a marriage dissolution decree filed with the association. If there is no surviving spouse or child or children, a former spouse may be entitled to a lump-sum refund payment under section 353.32, subdivision 1, if provided for in a marriage dissolution

decree but not a death while eligible survivor benefit despite the terms of a marriage dissolution decree filed with the association.

(c) The benefit may be elected instead of a refund with interest under section 353.32, subdivision 1, or surviving spouse benefits otherwise payable under subdivisions 1 and 2. The benefit must be an annuity equal to the 100 percent joint and survivor annuity which the member could have qualified for on the date of death, computed as provided in sections 353.651, subdivisions 2 and 3, and 353.30, subdivision 3.

(d) The surviving spouse may apply for the annuity at any time after the date on which the deceased employee would have attained the required age for retirement based on the employee's allowable service. Sections 353.34, subdivision 3, and 353.71, subdivision 2, apply to a deferred annuity payable under this subdivision.

(e) No payment accrues beyond the end of the month in which entitlement to such annuity has terminated. An amount equal to the excess, if any, of the accumulated contributions which were credited to the account of the deceased employee over and above the total of the annuities paid and payable to the surviving spouse must be paid to the deceased member's last designated beneficiary or, if none, to the legal representative of the estate of such deceased member.

(f) Any member may request in writing, with the signed consent of the spouse, that this subdivision not apply and that payment be made only to the designated beneficiary, as otherwise provided by this chapter.

(g) For a member who is employed as a full-time firefighter by the Department of Military Affairs of the state of Minnesota, allowable service as a full-time state Military Affairs Department firefighter credited by the Minnesota State Retirement System may be used in meeting the minimum allowable service requirement of this subdivision.

Subd. 3. Dependent children. A dependent child, as defined in section 353.01, subdivision 15, is entitled to receive a monthly benefit equal to ten percent of the member's average full-time monthly salary rate as a member of the police and fire plan in effect over the last six months of allowable service preceding the month in which death occurred. Payments for the benefit of a dependent child must be made to the surviving parent, or to the legal guardian of the child or to any adult person with whom the child may at the time be living, provided only that the parent or other person to whom any amount is to be paid advises the board in writing that the amount will be held or used in trust for the benefit of the child.

Subd. 3a. Maximum and minimum family benefits. (a) The maximum monthly benefit per family must not exceed the following percentages of the member's average monthly salary as specified in subdivision 3:

- (1) 80 percent, if the member's death was a line of duty death; or
- (2) 70 percent, if the member's death was not a line of duty death or occurred while the member was receiving a disability benefit that accrued before July 1, 2007.

(b) The minimum monthly benefit per family, including the joint and survivor optional annuity under subdivision 2a, and section 353.656, subdivision 1a, must not be less than the following percentage of the member's average monthly salary as specified in subdivision 3:

- (1) 60 percent, if the death was a line of duty death; or

(2) 50 percent, if the death was not a line of duty death or occurred while the member was receiving a disability benefit that accrued before July 1, 2007.

(c) If the maximum under paragraph (a) is exceeded, the monthly benefit of the joint annuitant must be reduced to the amount necessary so that the total family benefit does not exceed the applicable maximum. The joint and survivor optional annuity must be restored, plus applicable postretirement adjustments under Minnesota Statutes 2008, section 356.41 or section 356.415, as the dependent child or children become no longer dependent under section 353.01, subdivision 15.

Subd. 4. Relation to workers' compensation law. If the member shall die under circumstances which entitle a surviving spouse and dependent children to receive benefits under the workers' compensation law, the amounts so received by them shall not be deducted from the benefits payable under this section.

Subd. 5. Postretirement adjustment eligibility. A survivor benefit under this section is eligible for postretirement adjustments under section 356.415.

History: 1971 c 297 s 4; 1973 c 753 s 75-77; 1974 c 229 s 20; 1975 c 102 s 22; 1975 c 359 s 23; 1978 c 471 s 7; 1978 c 796 s 39; 1980 c 607 art 15 s 3; 1981 c 180 s 17; 1982 c 404 s 9; 1Sp1985 c 7 s 16; 1986 c 444; 1986 c 458 s 13; 1987 c 284 art 5 s 16; 1987 c 372 art 1 s 8; art 9 s 22; 1989 c 319 art 13 s 45; art 17 s 16,17; 1990 c 570 art 11 s 11; 1991 c 269 art 2 s 7; 1991 c 341 s 24; 1992 c 432 art 2 s 20-22; 1Sp2005 c 1 art 4 s 97; 2007 c 134 art 4 s 26-29; 2008 c 349 art 4 s 5; 2009 c 169 art 1 s 42,43; 2010 c 359 art 1 s 39,40; 1Sp2011 c 8 art 6 s 13; art 7 s 13

NOTE: The amendments to subdivision 1 by Laws 2011, First Special Session chapter 8, article 6, section 13, and article 7, section 13, are effective contingent on the approvals in Laws 2011, First Special Session chapter 8, article 6, section 19, and article 7, section 19. Laws 2011, First Special Session chapter 8, article 6, section 19, and article 7, section 19.