

**MACRS**  
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# 12B, Or Not 12B That is the Question



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SPRING MACRS

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## **G.L. c. 32, § 12B**

- What is it?
- The vehicle by which a dependent allowance is paid for the benefit of minor children concurrent with a § 12(2)(d) benefit.
- Also, the vehicle by which certain eligible children receive a limited member-survivor benefit under § 12(2)(d).

## **Section 11(2)(c) and Section 12B**

- Section 11(2)(c) acts as a “Gatekeeper” for the funds on account with the retirement board.
- What must be paid and what can be paid under § 12(2)(d) and § 12B is in part determined by § 11(2)(c).

## Section 11(2)(c) — The Gatekeeper

...Payment shall not be made under this subdivision if the deceased member is survived by a beneficiary appointed under **option (d) of subdivision (2) of section twelve** who is eligible to receive the allowance provided by said option, nor if the deceased member is a male and is survived by a person eligible to receive the allowance provided for in section **twelve B**, or is a female and is survived by a child eligible to receive the allowances provided for in section **twelve B**, unless the widow or person acting for such child elects, in lieu of receiving allowances provided for in said section **twelve B**, to have payment of any moneys due made in accordance with the provisions of this paragraph...

## Basic Section 12B Requirements

- Deceased must be a member in service...
- With two full years of creditable service...
- Who either did not nominate a beneficiary under § 12(2)(d) or who nominated his/her spouse...
- And the member must die...



## If The Member Was Married

- And leaves a spouse to whom such member was married for at least one year...
- And with whom such member was living at the time of his/her death (or who the board finds was living apart for justifiable cause)...
- And that spouse is eligible for and elects to receive a member-survivor allowance under § 12(2)(d)...
- Any surviving children of said deceased member who are under age 18 or over said age and physically or mentally incapacitated from earning on the date of death of the member, or under age 22 if a full-time student...
- There shall be paid to the spouse for the benefit of the children an additional allowance of \$120 a month for one child plus \$90 a month for each additional child.

## **If There Is No Surviving Spouse, Or the Surviving Spouse Dies (1)**

- Such amount of the member-survivor allowance as would have been payable to a spouse under § 12(2)(d) shall be paid for the benefit of such surviving children under § 12B.
- Allows the children to “step into the shoes” of non-existing spouse.
- For the calculation, assume that the “spouse” is the same age as the member.

## **If There Is No Surviving Spouse, Or the Surviving Spouse Dies (2)**

- Benefit is paid to the legally appointed guardian (note: the Board should utilize the guardian's SSN, not the child's).
- Benefit ceases upon all children surpassing the age restrictions.
- Guardian would receive the additional allowance for the benefit of the children, pursuant to the age restrictions.



# Termination

- Allowances payable under § 12B for the benefit of a child shall terminate upon whichever of the following first occurs:
  - Adoption.
  - Reaching the age of 18 (unless the child is physically or mentally incapacitated from earning on date of member's death).
  - Reaching the age of 22 (if a full-time student).
  - Marriage.
  - Death.

## **If Allowances Granted Only Under Section 12B**

- Any accumulated regular deductions with regular interest thereon to the member's date of death shall be transferred to the pension fund.
  - Purpose is to merge it and use it for the exclusive purpose of defraying the payment of such allowances.
- Any amount of accumulated additional deductions shall be paid in accordance with § 11(2)(c).
- The total annual allowance derived from and payable under § 12B shall not exceed the annual rate of regular compensation payable to the member at his/her death.

## Are After-born Children Eligible For a Section 12B Allowance?

- Workers' Compensation law at G.L. c. 152, § 35A provides that "children...shall also include children of the deceased employee conceived but not born at the time of the employee's injury..."
- *Martin v. Concord Ret. Bd., and PERAC* (CR-11-157)(Apr. 17, 2015) (Held that a conceived but not yet born child of a member in service was eligible for the dependent allowance in § 7(2)(a)(iii)).
- Child should receive, payable to his/her guardian, the monthly survivor allowance that would have been payable to a spouse (if there is no eligible spouse), plus \$120/\$90 per month, effective on the date of birth.

## A Guardian May Elect To Receive a Return Of Accumulated Deductions

- Section 11(2)(c) prohibits a return of accumulated deductions to a named beneficiary if the deceased is survived by a person/child eligible to receive an allowance under § 12B...
- **Unless**, the guardian for such person/child elects to receive the return of accumulated deductions in lieu of the § 12B allowance.
  - This gives the guardian the option if they feel that such refund would be more beneficial to the child. For instance, the return of deductions may be better for a 17-year old who would lose the § 12B benefit in one year.

## Incapacitated From Earning

- Member dies in service and spouse receives a member-survivor benefit pursuant to § 12(2)(d).
- Spouse dies and leaves behind a “physically or mentally incapacitated from earning” adult child.
- Regardless of the adult child’s age, the guardian for that adult child would receive exactly the same allowance his or her parent had been receiving (the § 12(2)(d) benefit plus \$120 per month) for so long as he or she remains physically or mentally incapacitated from earning.
- Benefit would cease upon his or her marriage or death.

## Section 12B Calculation

- First, must calculate the § 12(2)(d) Option A benefit.
  - Assume the member and the beneficiary were born on the same day.
- Then multiply by the appropriate Option C factor to produce the monthly § 12(2)(d) benefit.
- Then divide the benefit equally among the guardians of the children (if there is more than one child).
- Add the additional monthly allowance of \$120 per month for the oldest child and \$90 per month for each additional child.
- When one child is no longer eligible, the same § 12(2)(d) benefit is then split among the eligible children, with the now oldest eligible child entitled to \$120 per month.



## Section 3(8)(c) Liability

- The additional dependent allowance under § 12B should **not** be included in a § 3(8)(c) billing.
  - Section 3(8)(c) specifically states, in pertinent part, that whenever a beneficiary receives a survivor's allowance from a system where a portion of such allowance is "attributable to service" in a second system, the first system shall be reimbursed.
  - The additional dependent allowance in § 12B is not attributable to the member's service. The number of children a member has is independent of the amount of service a member rendered in a given system.
  - Therefore, the additional dependent allowance should not be included in any § 3(8)(c) billing.

## Payments to Full-Time Students

- Full-time students who are between the ages of 18 and 21 should directly be paid any § 12B benefits they are entitled to receive.
- Absent mental incapacity, anyone aged 18 years old is legally considered an adult and, therefore, cannot have a legal guardian.

## Cases of Note

- *Bowden v. PERAC*
- *Gelman v. Springfield Retirement Board*
- *Hathaway-Medeiros v. State Board of Retirement*
- *Scichilone v. Brookline Retirement Board*
- *Wood v. State Board*
- *DeForitis v. Taunton Retirement Board*

## ***Bowden v. PERAC***

- **Docket No.:** CR-11-730
- **Date:** February 11, 2015 (DALA)
- **In a Nutshell:** Petitioner's husband was terminated from his position when it was eliminated by his employer due to budgetary constraints. This made him a member inactive at the time of his death. See G.L. c. 32, § 3(1)(a)(ii). Section 12B benefits are available only to survivors of members in service.

## ***Gelman v. Springfield Retirement Board***

- **Docket No.:** CR-11-730
- **Date:** February 21, 2014
- **In a Nutshell:** Neither G.L. c. 32, § 12(2)(d) nor § 12B authorize payments to a non-beneficiary, surviving child of a deceased member after he or she has been emancipated. Section 12 does not entitle the child of a deceased member to a life-long benefit in the same manner as a spouse.

## ***Hathaway-Medeiros v. State Board***

- **Docket No.:** CR-07-492
- **Date:** December 4, 2009
- **In a Nutshell:** Member named his sister as his § 11(2)(c) refund of accumulated deductions beneficiary. Member had a minor child whose guardian elected that the child receive the § 12(2)(d), via § 12B. Section 12 trumps § 11(2)(c), so the allowance was paid to the child.



## “Last Week Tonight”



## ***Scichilone v. Brookline Retirement Board***

- **Docket No.:** CR-07-728
- **Date:** February 11, 2010 (DALA)
- **In a Nutshell:** The named § 11(2)(c) beneficiary of the deceased member is not entitled to any benefits, because the guardian for the deceased's minor children elected the member-survivor benefit of § 12(2)(d) via § 12B. Once the children are no longer eligible for the benefit, any and all remaining accumulated deductions in the deceased member's account will revert to the pension fund of the system to defray the costs of paying the benefit, and there will be no residual accumulated deductions available for the § 11(2)(c) beneficiary.

## ***Mary Ann Wood v. State Board***

- **Docket No.:** CR-08-109
- **Date:** April 30, 2008
- **In a Nutshell:** Member died, and his wife received § 12B benefits for the children. One of the children became disabled years after the member's death. DALA ruled that because the child was not incapacitated at the time of the father's death, his § 12B benefit ceases when he reaches the age of majority.

## ***DeForitis v. Taunton Ret. Bd.***

- **Docket No.:** CR-19-052
- **Date:** June 16, 2023 (DALA)
- **In a Nutshell:** Marital problems led to wife moving out of marital home, but couple never divorced. Member died, and wife attempted to elect the § 12(2)(d) benefit. DALA determined she was not an eligible spouse because there was not “justifiable cause” for their living apart. Section 12(2)(d) benefit awarded to member’s minor son from prior marriage, via § 12B.

## Conclusion

- Section 12B provides for a relatively minor benefit (\$120/\$90 a month) and, possibly, a significant benefit (member-survivor allowance).
- Regardless of either benefit, both will cease at age 18 or 22 (if a full-time student), unless the child was physically or mentally incapacitated from earning on the date of death of the member.
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**QUESTIONS?**