



## **NEW JERSEY LAW REVISION COMMISSION**

### **Draft Final Report Relating to the Recognition of Trusts for Beneficiaries with Disabilities in the New Jersey State-administered Retirement Systems**

**April 11, 2016**

The work of the New Jersey Law Revision Commission is only a recommendation until enacted. Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries, to:

Jayne J. Johnson, Esq., Counsel  
New Jersey Law Revision Commission  
153 Halsey Street, 7th Fl., Box 47016  
Newark, New Jersey 07102  
973-648-4575  
(Fax) 973-648-3123  
Email: [jjj@njlrc.org](mailto:jjj@njlrc.org)  
Web site: <http://www.njlrc.org>

## Executive Summary

This project is based on the New Jersey Supreme Court decision in *Saccone v. Bd. of Trustees of Police and Firemen's Ret. Sys.*, where the Court held that a retired firefighter could direct the survivors' benefits for a child with a disability to a special needs trust.<sup>1</sup> This Report recommends statutory language to codify the decision of the New Jersey Supreme Court that the compensation payable to an individual designated to receive benefits from a state-administered retirement system may be directed to a trust established for the benefit of that individual. This Report seeks to clarify the statutes governing state-administered pensions and benefits and to increase the awareness of the public to the Supreme Court decision in *Saccone*.

## Background

In *Saccone* case, the Board of Trustees of the Police and Firemen's Retirement System (PFRS) (the Board) ruled that the survivors' benefits must be paid to the spouse or children of the PFRS member and could not be directed to a special needs trust.<sup>2</sup> A special needs trust, established by a parent, grandparent, legal guardian, or court, is a trust that is "intended to allow a disabled individual to maintain eligibility for certain needs-based government benefits."<sup>3</sup> The child, in this case, was unable to work and considered totally disabled by the Social Security Administration, receiving Supplemental Security Income (SSI) and Medicaid, which were critically to provide for his care.<sup>4</sup>

The Court observed that under 42 U.S.C. 1396p(d), "Congress extended the protections afforded by the use of a special needs trust, finding that the contents of that type of trust are not considered 'income' for purposes of determining eligibility for Supplemental Security Insurance."<sup>5</sup> The Board concluded that the state statute only

---

<sup>1</sup> *Saccone v. Bd. of Trustees of the Police and Firemen's Ret. Sys.*, 219 N.J. 369, 388 (2014); NJLRC, Minutes of the May 21, 2015 meeting, available at <http://www.lawrev.state.nj.us/minutes/minutes%202015/MIN052115.pdf> (last visited Jan. 11, 2016) (indicating that this project was brought before the Commission in response to the request for additional information concerning the Miller Trusts/Qualified Income Trusts (QIT) to determine if the scope of the project should be broadened. The Court requested Staff to provide additional research concerning the statutes governing the state-administered retirement systems).

<sup>2</sup> *Saccone*, 219 N.J. at 375-76 (noting that the PFRS is administered by the New Jersey Department of the Treasury Division of Pensions and Benefits).

<sup>3</sup> *J.B. v. W.B.*, 215 N.J. 305, 321 (2013) (noting that N.J.S. 43:16A-12.1, as enacted in 1944, allowed PFRS members to designate a beneficiary from several different options, and to elect from one of three available retirement payout plans); *see also* N.J. ADMIN. CODE § 10:71-4.11(g) (2015).

<sup>4</sup> *J.B.*, 215 N.J. at 321; *see also Saccone*, 219 N.J. at 375 (citing 42 UNITED STATES CODE § 1396p(d) (West 2016)).

<sup>5</sup>

permits the spouse and children of the retiree to receive benefits and does not allow the member to change the designated beneficiary or provide for a contingent beneficiary.<sup>6</sup>

The New Jersey Supreme Court reversed the Appellate Division decision, which had affirmed the determination of the Board.<sup>7</sup> The Supreme Court held that the request of the parent did not involve assignment of the survivors' benefits or a change of the primary beneficiary, but involved only the "manner in which" the child would receive the survivors' benefits.<sup>8</sup>

The relevant statutory language provides that:

[u]pon the death after retirement of any member of the retirement system there shall be paid to the member's widow or widower a pension of 50% of final compensation for the use of herself or himself, to continue during her or his widowhood, plus 15% of such compensation payable to one surviving child or an additional 25% of such compensation to two or more children; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of final compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation would be payable to such children in equal shares.<sup>9</sup>

The Supreme Court "construe[d] the reference to 'child' " in the statute as the equivalent to a "first-party special needs trust established" solely for the benefit of a child with a disability.<sup>10</sup> The Court viewed the special needs trust as an extension of the child, reasoning that the retired member wanted the fund to be distributed through "a vehicle that prevents the benefit from becoming a financial liability" to the child.<sup>11</sup> The Court found that the "Board erred in not accommodating" the request and forcing the child "to choose between abandoning survivors' benefits earned" by the parent or "forgoing public assistance to provide for medical needs."<sup>12</sup> The Court found that the:

---

<sup>6</sup> *Id.* at 377, 388 (citing that N.J.S. 43:16A-12.1, as enacted in 1944, allowed PFRS members to designate a beneficiary from several different options, and to elect from one of three available retirement payout plans). The three optional plans were eliminated, however, when the statute was revised in 1967, only the spouse and children were permitted to receive the survivors' benefits.<sup>6</sup> The survivors' benefits effectuate upon the death of the member, and as a consequence, are not assignable by the member).

<sup>7</sup> *Saccone v. Bd. of Trustees of the Police and Firemen's Ret. Sys.*, 2012 WL 5232167 (App. Div. Oct. 24, 2012), *rev'd*, 219 N.J. 369 (2014); see also Ron Landsman, *Saccone v. Bd. of Trustees of the Police and Firemen's Ret. Sys.*, NAELA J. 77, 78 (Spring 2015).

<sup>8</sup> *Saccone*, 219 N.J. at 388.

<sup>9</sup> N.J. STAT. ANN. § 43:16A-12.1a (2015).

<sup>10</sup> *Saccone*, 219 N.J. at 388.

<sup>11</sup> *Id.* at 386.

<sup>12</sup> *Id.* at 388.

survivors' benefits statute, like the entire PFRS pension scheme, should be interpreted in light of its remedial character. The survivors' statute exists for the purpose of benefiting the spouse and children of deceased PFRS members. Yet, disabled persons, such as Anthony, are financially impaired by the Board's and the Appellate Division's strict construction of the survivors' benefits statute.<sup>13</sup>

The Court set aside the Board's determination and ordered administrative action consistent with its opinion.<sup>14</sup>

### **State-administered Retirement Systems**

The State of New Jersey administers the retirement systems for public employees through the New Jersey Department of Treasury, Division of Pensions and Benefits (the Division). Each of the following systems provides a series of benefit and pension options to a designated segment of the State's public employees:

- **Public Employees' Retirement System (PERS)** – is a defined benefit pension fund established in 1955. It is open to most state, county, municipal, authority, and school board employees and elected officials who are not required to become members of any other NJ state retirement system (i.e., Teachers' Pension and Annuity Fund, Police and Firemen's Retirement System, State Police Retirement System, Judicial Retirement System, or Alternate Benefit Program). Membership in the PERS of employees who meet eligibility requirements is mandatory in most cases.

---

<sup>13</sup>

<sup>14</sup> *Id.* at 388; *see also id.* at 373 (noting that at the time the *Saccone* case was decided, New Jersey had two major Medicaid programs – “Medically Needy” and pure Medicaid or “Medicaid Only.” The Medicaid Only program was available to applicants with income below the cap, and covered long-term care for individuals who lived at home, in an assisted living, or a nursing home facility. The Medically Needy program was available to individuals whose income exceeded the income cap.

This policy changed on December 1, 2014, when New Jersey eliminated the Medically Needy program. The new Medicaid program does not have an income cap, instead, it allows income in excess of the cap to be placed in a pass through vehicle, a “Qualified Income Trust” (QIT or Miller Trust). Each month that an individual is eligible for Medicaid, a portion of his income must be deposited into this trust. The trust contains certain provisions required by the State. Income that is deposited into the trust is not counted for Medicaid eligibility purposes. By passing the income in excess of the cap through the Miller Trust, the income is no longer counted in determining financial eligibility for Medicaid. Now, individuals with income above the cap may qualify for Medicaid whether they live at home, in an assisted living, or a nursing home facility.

The QIT: (1) must have a trustee to manage the administration and expenditures of the trust pursuant to state and federal law; (2) must be irrevocable; (3) cannot contain resources such as the proceeds from the sale of real or personal property, or money from a savings account; (4) the State of New Jersey must be the first beneficiary of all remaining funds up to the amount paid for Medicaid benefits upon the death of the Medicaid recipient; and (5) income deposited in the trust can only be used as defined in the post-eligibility treatment of income rules and used to pay for the cost share.

- **Police and Firemen's Retirement System (PFRS)** – is a defined benefit pension fund established in 1944. It is open to all police officers and firefighters appointed after June 1944. Participation of employees in the PFRS from municipalities is mandatory and a condition of employment. Certain State and County law enforcement job titles, including prison employees, are also covered by PFRS. If an employee in a county or state police or fire title does not meet PFRS eligibility requirements, PERS membership is required.
  - **Consolidated Police and Firemen's Pension Fund (CPFPPF)** – is a defined benefit pension fund established in 1952 to replace, on an actuarial basis, 212 local police and firemen pension funds. The CPFPPF membership is limited to policemen and firemen appointed prior to July 1, 1944.
  - **Prison Officers' Pension Fund (POPF)** – is a defined benefit pension fund established in 1941. The POPF was not maintained on an actuarial reserve basis and was closed to new employees as of January 1960. New employees are enrolled in the Police and Firemen's Retirement System.
- **State Police Retirement System (SPRS)** – is a defined benefit pension fund established in 1965 as the successor of the State Police Retirement and Benevolent Fund. All full-time troopers or commissioned or noncommissioned officers of the New Jersey Division of State Police appointed after July 1, 1965, are members of this system.
- **Judicial Retirement System (JRS)** – is a defined benefit pension fund established in 1973 after the repeal of the laws that had provided pension benefits to members of the State judiciary and their eligible survivors since 1948. All members of the State judiciary are required to enroll in the JRS.
- **Teachers' Pension and Annuity Fund (TPAF)** – is a defined benefit pension fund established in 1919 and reorganized in 1955. It is open to employees of boards of education and the State who must be certified or credentialed as a condition of employment. Membership in the TPAF for employees who meet eligibility requirements is mandatory.
- **Alternate Benefit Program (ABP)** – is a defined contribution pension fund established through legislation enacted between 1965 and 1968. The ABP covers certain employees of state colleges and universities and county colleges. Full-time faculty, officers, visiting professors and certain professional administrative staff required to possess a college degree or its equivalent, participate in the ABP.
- **Defined Contribution Retirement Program (DCRP)** - a defined contribution pension fund established on July 1, 2007 under the provisions of Chapter 92, P.L. 2007, and Chapter 103, P.L. 2007 (N.J.S.A. 43:15C-1 et seq.) The DCRP provides retirement benefits for eligible employees and their beneficiaries. Employees who are eligible for membership in the DCRP include:

- State or local officials *elected* on or after July 1, 2007;
- State or local officials *appointed* on or after July 1, 2007;
- Employees enrolled in the PERS or TPAF on or after July 1, 2007 who earn a salary in excess of established "Maximum Compensation" limits.
- **Central Pension Fund (CPF)** - consists of the administration of a series of noncontributory pension acts. These include Heath Act pensions for state employees, Veterans Act pensioners, Noncontributory Pensions for certain employees, Annuity for Widows of Governors, and special pensions. No reserves are established for the payment of retirement benefits. These benefits are administered by the Division in accordance with the governing statute and the rules and regulations of the State House Commission.<sup>15</sup>

Each retirement system identifies the requirements for designating a beneficiary for the pension benefits that remain at the death of an active or retired member.<sup>16</sup> The Division provides “fact sheets” and other guidelines to explain the parameters for beneficiary selection under each state-administered plan.<sup>17</sup> “Fact Sheet No. 68” provides the guidelines for designating a beneficiary and members are requested to review this document before they are name a minor, use a trust agreement, or act as a power of attorney for a member.<sup>18</sup> The Division explains the conditions that must be met before a minor receives a designated benefit, and also instructs members that they “may choose to leave” a “pension benefit to a trust established on behalf of a minor.”<sup>19</sup> The Division informs members that “[i]n limited circumstances a ‘Special Needs Trust’ ” may be “designated as a survivor option.”<sup>20</sup>

The statutory provisions governing the individual retirement systems are found primarily under Title 43 of the New Jersey Statutes, which provides for the pensions and retirement benefits of public employees, in the following chapters:<sup>21</sup>

---

<sup>15</sup> *Id.*

<sup>16</sup> NEW JERSEY TREASURY, DIVISION OF PENSIONS AND BENEFITS, Fact Sheets by Category, available at <http://www.state.nj.us/treasury/pensions/fact-sheets-by-category.shtml> (last visited Jan. 11, 2016) (The Division provides manuals to employers and a handbook to members to distill the benefit plans of each system. The Division, through the Office of Client Services, also provides assistance to employers, and offers members access to on-site counselors. The counselors address specific questions from members preparing for retirement, or other major life events. They also provide assistance to beneficiaries who seek guidance following the death of a pension member.)

<sup>17</sup> NEW JERSEY TREASURY, DIVISION OF PENSIONS AND BENEFITS, *Fact Sheets by Category*, available at <http://www.state.nj.us/treasury/pensions/fact-sheets-by-category.shtml> (last visited Jan. 11, 2016).

<sup>18</sup> *Id.*

<sup>19</sup> NEW JERSEY TREASURY, DIVISION OF PENSIONS AND BENEFITS, *Fact Sheets #68 – Designating a Beneficiary*, available at <http://www.state.nj.us/treasury/pensions/pdf/factsheets/fact68.pdf> (updated November 2015) (last visited Jan. 11, 2016).

<sup>20</sup> *Id.*

<sup>21</sup> N.J. STAT. ANN. § 43:1-1 to - 22-15(2015).

- 6A - the Judicial Retirement System,
- 15A - the Public Employees' Retirement System, and
- 16A - the Police and Firemen's Retirement System.

Certain plans are provided for in other titles, including the Teachers' Pension and Annuity Fund, in Title 18A, chapter 66, and the State Police Retirement System which is governed by Title 53, chapter 5A. The allocation of benefits, method of payout distribution, and the determination of which dependents are eligible to receive benefits at the death of an active or retired employee vary from one system to another.

### Proposed Statutory Language

The Commission proposes revisions to the state-administered systems in accord with the decision in *Saccone*. The revisions incorporate the recommendations provided from several attorneys specializing in elder and disability law who commented on the proposed statutory language presented in previous drafts of this Report.<sup>22</sup>

One leading attorney in this area of practice, Regina Spielberg, Esq., observed that “[i]t is entirely possible that one person with disabilities can have two trusts: a (d)(4)(A) or (C) trust and a Miller trust.”<sup>23</sup> Ms. Spielberg advised that removing the reference to “special needs trusts,” ensures that the scope of the draft language extends to all of the intended trusts. She stated that:

At the time of the *Saccone* decision, New Jersey did not permit the use of ‘Miller’ trusts, which are authorized under 42 U.S.C. 1396p(d)(4)(B). However, New Jersey now requires the use of Miller trusts if an individual applying for Medicaid has income greater than the income cap. Miller trusts are unique in that they do not have special needs language and are created solely to receive excess income (such as the retirement system

---

<sup>22</sup> The following proposal was submitted by an attorney who provided an amicus curiae brief in *Saccone* on behalf of the National Academy of Elder Law Attorneys (NAELA):

The benefit provided to the authorized beneficiary may be payable to a special needs trust established for the authorized beneficiary pursuant to 42 U.S.C. 1396p(d)(4) and any rule or regulation adopted pursuant thereto.

The following proposal was received informally from an attorney specializing in elder law:

A special needs trust established pursuant to 42 U.S.C. 1396p(d)(4) and any rule or regulation adopted pursuant thereto may be the vehicle for, or beneficiary of, any pension or compensation benefit available to any beneficiary authorized hereunder.

<sup>23</sup> Email from Regina M. Spielberg, Esq., Partner, Schenck, Price, Smith & King, LLP, to Jayne J. Johnson, Counsel to the NJLRC (Feb. 29, 2016 10:38 AM EST) (on file with the NJLRC). NJLRC).

survivor's pension). As a result, the revision should include all trusts created under 42 U.S.C. 1396p(d)(4), that is special needs trusts (d)(4)(A), Miller trusts, and pooled trusts under (d)(4)(C).

Ideally, these trusts should be the authorized beneficiary in the place of anyone entitled to benefits. It is not sufficient to pay directly to a person with disabilities and have them (or the guardian) place the funds into the trust. That arrangement can result in the loss of Supplemental Security Income benefits.<sup>24</sup>

Ms. Spielberg recommended the following statutory language:

The compensation due to a widow, widower or child may be paid directly to any trust established for the benefit of the widow, widower or child pursuant to 42 U.S.C. 1396p(d)(4) and any rule or regulation adopted pursuant thereto.<sup>25</sup>

Along with this proposal, Staff obtained comment from Donald Vanarelli, Esq. who represented the Saccone family for more than six years, culminating with the 2014 New Jersey Supreme Court decision.<sup>26</sup> He stated that the, “the Supreme Court ruling was a recognition that the agency and lower court decisions had not only violated the spirit of the public employees’ pension law, which is to be liberally construed in favor of the member, but also the public policy favoring the establishment of special needs for the disabled.”<sup>27</sup>

Mr. Vanarelli provided insightful accounts of his work on behalf of Thomas Saccone to demonstrate how codifying the *Saccone* decision will ensure that individuals with disabilities, entitled to benefits under the state-administered retirement system, are protected as the Supreme Court envisioned.<sup>28</sup> Mr. Vanarelli also observed that a “clearly drafted” proposal is “vital” to avoid future misapplication of N.J.S. 43:16A-12a. and the other related statutes. Mr. Vanarelli submitted the following proposal:

A beneficiary identified in this subsection shall be defined to include a special needs trust established for the such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), or any successor statute or rule or regulation adopted pursuant thereto. Such special needs trust may be the vehicle

---

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Letter from Donald D. Vanarelli, Esq., Law Offices of Donald D. Vanarelli, to Jayne J. Johnson, Counsel to the NJLRC (Mar. 1, 2016) (enclosed, on file with the NJLRC).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

for, or beneficiary of, any benefit to which the beneficiary is or will be entitled pursuant to this subsection.<sup>29</sup>

The Commission proposes a broad reference to the individuals entitled to compensation under the statute and includes a reference to “successor statutes,” along with language that describes a (d)(4) trust in accord with the *Saccone* decision. Based on the comments received, Staff proposes adding the following in the respective provisions of the state-administered retirement systems:

The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death after retirement of the member of the retirement system pursuant to this subsection.<sup>30</sup>

---

<sup>29</sup> Mr. Vanarelli noted that the phrase “or will be” was included “because, remarkably, during the course of the *Saccone* litigation, the Division argued that Mr. Saccone was not entitled to a ruling on his case because such ruling would be “clearly hypothetical since Mr. Saccone and his wife are still alive and his son may or may not be alive when Mr. Saccone dies.”

<sup>30</sup> The Commission during the course of its work considered the federal statutes governing beneficiaries with disabilities. The federal framework under section 624 of the National Defense Authorization Act of 2015, 10 U.S.C. 1450, governs the compensation provided to surviving beneficiaries of military service person and ensures the same protections described in the *Saccone* holding. The Commission adopted consistent, narrowly tailored revisions to clarify the compensation due to beneficiaries with disabilities under the various statutory schemes governing our state-administered retirement systems, instead of recommending to restructure the state statutes to adopt the federal scheme. The text of 10 U.S.C. 1450 is provided for further reference:

(a) In general. Effective as the first day after the death of a person to whom section 1448 of this title applies (or on such other day as the person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person’s beneficiaries under the Plan, as follows:

(1) **Surviving spouse or former spouse.** The eligible surviving spouse or the eligible former spouse.

(2) **Surviving children.** The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) **Dependent children.** The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person’s spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) **Special needs trust for sole benefit of certain dependent children.** Notwithstanding subsection (i), a supplemental or special needs trust established under subparagraph (A) or (C) section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396(d)(4)) for the sole benefit of a dependent child considered disabled under section

## Conclusion

This Report recommends statutory language to reflect the determination of the New Jersey Supreme Court that the compensation payable to an individual designated to receive benefits from a state-administered retirement system may be directed to a trust established for the benefit of that individual, in order to clarify the statutes governing state-administered pensions and benefits and to increase the awareness of the public to the Supreme Court decision in *Saccone*.

This Report proposes draft language to codify the holding in *Saccone*, recommending revisions to N.J.S. 43:16A-12.1, and related statutory provisions governing other State-administered retirement systems. The text of the draft language is provided in the pages that follow. Underlined language is proposed by the New Jersey Law Revision Commission.

---

1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical capacity.<sup>30</sup>

## Draft

### **43:16A-12.1 (a). Widows' and widowers' pension; increased benefits; minimum annual amount.**

Upon the death after retirement of any member of the retirement system there shall be paid to the member's widow or widower a pension of 50% of final compensation for the use of herself or himself, to continue during her or his widowhood, plus 15% of such compensation payable to one surviving child or an additional 25% of such compensation to two or more children; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of final compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation would be payable to such children in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death after retirement of the member of the retirement system pursuant to this subsection.

#### COMMENT

42 U.S.C. 1396p(d) provides the following:

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an subchapter.

N.J.A.C. 10:71-4.11(g) provides:

vii. The special needs trust shall state that it is established by a parent, grandparent, or legal guardian of the trust beneficiary, or by a court.

(1) The trust shall identify the grantor/settlor by name and as the parent, grandparent, legal guardian, or court. A court can be named as the grantor, if the trust is established pursuant to a settlement of a case before it, or if the court is otherwise involved in the creation of the trust.

viii. The trust shall specifically state that it is irrevocable. Neither the grantor, the trustee(s), nor the beneficiary shall have any right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke or terminate the trust or any of its terms or to designate the persons who shall possess or enjoy the trust estate during his or her lifetime.

(1) Notwithstanding the irrevocability provision above, the trust can state that “the trust shall be irrevocable except that the trust may be amended as necessary to conform with the requirements of 42 U.S.C. 1396p and/or state law.”

ix. The trustee shall be specifically identified by name and address. The trust shall state that the original trust beneficiary cannot be the trustee. The trust shall make provisions for naming

a successor trustee in the event that any trustee is unable or unwilling to serve. The Bureau of Administrative Control, Division of Medical Assistance and Health Services, as well as the trust beneficiary and/or guardian, shall be given prior notice if there is a change in the trustee.

x. The trust shall specifically state that the trustee shall fully comply with all State laws, including the Prudent Investor Act, N.J.S.A. 3B:20-11.1 et seq. The trust shall provide that the trustee cannot take any actions not authorized by, or without regard to, State laws. If the trust gives the trustee authorization or power not provided for in the Prudent Investor Act, an accompanying letter shall provide an explanation for each such authorization or power.

xi. Except as approved by court order, after notice to the Division of Medical Assistance and Health Services, individual trustee fees shall be in accordance with N.J.S.A. 3B:18-23 et seq. or, in the case of a corporate trustee, the corporate trustee's regular fee schedule. The trustee shall not delay or defer accepting compensation or commissions more than one year from the date(s) they would otherwise be payable under the terms of the trust or of any applicable statute or rule. If the trust identifies a guardian, the trust shall specifically identify him or her by name. A guardian shall be compensated only as provided by law. The parent of a minor child shall not be compensated from the trust as the child's guardian.

(1) If an adult beneficiary is not competent, the trust shall specifically state that the "guardianship protections for the incompetent's funds which are required by New Jersey law and Court rules are incorporated by reference into this trust." The trustee shall either file a bond or shall get the Court's permission not to do so.

xii. The trust shall specifically state that, upon the death of the primary beneficiary, the State will be notified, and shall be paid all amounts remaining in the trust up to the total value of all medical assistance paid on behalf of the beneficiary. The trust shall comply fully with this obligation under the statute to first repay the State, without requiring the State to take any action except to establish the amount to be repaid. Repayment shall be made to the Treasurer, State of New Jersey, and shall be sent to the Division of Medical Assistance and Health Services, to the attention of the Bureau of Administrative Control, PO Box 712, Trenton, New Jersey 08625-0712, or to any successor agency.

xiii. If there is a provision for repayment of other assistance programs, the trust shall specifically state that the Medicaid Program shall be repaid prior to making repayment to any other assistance programs.

xiv. The trust shall specifically state that if the beneficiary has received Medicaid benefits in more than one state, each state that provided Medicaid benefits shall be repaid. If there is an insufficient amount left to cover all benefits paid, then each state shall be paid its proportionate share of the amount left in the trust, based upon the amount of support provided to the beneficiary.

xv. No provisions in the trust shall permit the estate's representative to first repay other persons or creditors at the death of the beneficiary. Only what remains in the trust after the repayments specified in (g)1xii, xiii and xiv above have been made shall be considered available for other expenses or beneficiaries of the estate. The trust may provide for a prepaid burial plan, but shall not state that it will pay for reasonable burial expenses after the death of the trust beneficiary.

xvi. The trust shall specify that a formal or informal accounting of all expenditures made by the trust shall be submitted to the appropriate eligibility determination agency on an annual basis.

xvii. The State shall be given advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Division of Medical Assistance and Health Services, Bureau of Administrative Control, PO Box 712, Mail Code 6, Trenton, New Jersey 08625-0712, or any successor agency, 45 days prior to the expenditures.

xviii. New Jersey rules and laws do not permit a trust to create a will for an incompetent or a minor. The money creating the trust, any additions and/or interest accumulated, cannot be left to other parties, but shall pass by intestacy. The trust shall not create other trusts within it.

2. A pooled trust is a special needs trust, containing the assets of a disabled individual, which meets the following conditions:

i. The trust shall be established and managed by a non-profit association;

ii. A separate account shall be maintained for each beneficiary of the trust, but for purposes of investment and management of the funds, the trust may pool the funds from those accounts;

iii. Accounts in the trust shall be established solely for the benefit of the disabled individual by the individual, by a parent, grandparent, or legal guardian of the individual, or by a court;

iv. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust shall pay to the State of New Jersey the amount remaining in the account, up to an amount equal to the total amount of medical assistance paid under Title XIX of the Social Security Act on behalf of the individual. To meet this requirement, the trust shall include a provision specifically providing for such payment; and

v. Funds of an individual 65 or older, which are transferred to a pooled trust shall be subject to the transfer penalty provisions contained in N.J.A.C. 10:71-4.10.

(h) Title XIX of the Social Security Act (42 U.S.C. § 1917(d)(4)(B)) provides for an exemption from the trust provisions for qualified income trusts (also known as Miller trusts). Special provisions for this form of trust apply, under the law, only in those states which do not provide medically needy coverage for nursing facility services. Because New Jersey does cover services in nursing facilities under the medically needy component of the Medicaid program, the establishment of a qualified income trust shall be presumed to be an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community based services under one of the waiver programs.\*

(i) Upon the denial of eligibility or the termination of long-term care level services due to the application of the trust provisions in (e) and (f) above, the county welfare agency shall notify the applicant/beneficiary of his or her right to request an undue hardship exception. An applicant/beneficiary may apply for an exception to these trust provisions if he or she can show that the transfer will cause an undue hardship to him-or herself. The applicant/beneficiary shall provide sufficient documentation to support the request for an undue hardship waiver to the county welfare agency within 20 days of notification of the denial of eligibility or termination of benefits due to these trust provisions.

1. For the purposes of this chapter, undue hardship shall be considered to exist when:

i. The application of the trust provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the trust provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and

ii. The applicant/beneficiary can irrefutably demonstrate the assets placed in trust are beyond his or her control and that the asset cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets placed in trust.

2. In the event that a waiver of undue hardship is denied, neither the Department of Human Services, the Department of Health and Senior Services, nor the county boards of social services shall have any obligation to take any action to assure that payment of services is provided during the penalty period.

3. If the request for undue hardship consideration is denied by the county welfare agency, the county welfare agency shall notify the applicant of the denial and that the applicant may request a fair hearing in accordance with the provisions of N.J.A.C. 10:49-10.

\**See supra* n. 15 – As of December 1, 2014 - New Jersey eliminated the Medically Needy program. The new Medicaid program does not have an income cap, instead, it places any income in excess of the cap in a pass through vehicle, a “Qualified Income Trust” (QIT or Miller Trust), and is no longer presumed to be an asset transfer for the purposes of qualifying for Medicaid.

## **18A:66-46. Accidental death benefits.**

a. Upon the death of a member in active service as a result of:

(1) an accident met in the actual performance of duty at some definite time and place, or

(2) service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status, and not as the result of his willful negligence, an accidental death benefit shall be payable, if a report of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action.

No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to his widow or widower a pension of 50% of the compensation, upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, for the use of herself or himself and the children of the deceased member, to continue during her or his widowhood; if there is no surviving widow or widower or in the case the widow or widower dies or remarries, 20% of such compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares. If there is no surviving widow, widower or child, 25% of the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, will be payable to one surviving parent or 40% of such compensation will be payable to two surviving parents in equal shares. In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

c. If there is no surviving widow, widower, child or parent, there shall be paid to any other beneficiary of the deceased member his accumulated deductions at the time of death. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for,

any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

d. In no case shall the death benefit provided in subsection b. be less than that provided under subsection c.

e. In addition to the foregoing benefits payable under subsection b. or c., there shall also be paid in one sum to such member's beneficiary an amount equal to 1 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**18A:66-108. Collection from members; refund to members or representatives.**

a. The board of trustees may, in the manner prescribed by the bylaws of the corporation, assess and collect monthly or semimonthly from each member of the pension fund the amount required to be paid by said member into the fund. All moneys so collected shall be paid to the treasurer of the corporation.

The board of trustees may make it a condition of membership that each member sign an order on the treasurer of school moneys, or other disbursing officer, directing the retention from his or her salary or wages of the amount of his or her assessments and the payment of the amount so retained directly to the treasurer of the corporation, and the treasurer of school moneys, or other disbursing officer, shall make such retention and payment, but such right of retention and payment shall become operative only in the event of the same being authorized by the bylaws of the corporation.

b. Whenever any member shall die in service or his or her employment be terminated, for reasons other than retirement, all payments made by such employee to the fund shall be returned to the employee, if alive; or to such person, if living, as he shall have nominated by written designation, duly executed and filed with the board of trustees; otherwise to the executor or administrator of the member's estate, together with simple interest at the rate of 4% per annum.

c. Upon the receipt of proper proof of the death of a member in service, on account of which no accidental death benefit is payable under subsection e. of this section or the death of a member who has been retired for disability but who has not yet attained 60 years of age, there shall be paid to such person, if living, as he

shall have nominated by written designation, duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate an amount equal to one and one-half times the compensation upon which his contributions are based or received by the member in the last year of creditable service; provided, however, that if such a member shall have attained 70 years of age or the member who has been retired for disability has attained 60 years of age, the amount payable shall equal three-sixteenths of the compensation received by the member in the last year of creditable service instead of one and one-half times such compensation. Such member may also file, and alter from time to time during his lifetime, as desired, a request with the board of trustees directing payment of said benefit in one sum or in equal installments over a period of years or as a life annuity. Upon the death of such member, a beneficiary to whom a benefit is payable in one sum may elect to receive the amount payable in equal annual installments over a period of years or as a life annuity.

d. Whenever any member who was a member on June 26, 1962, shall die after retirement on pension, not having received in pension payments an amount equal to the total amount of his or her contributions to the fund, including simple interest at 2% per annum, the difference between the amount so received and the amount of contributions, plus interest, shall be paid to the surviving named beneficiary on file with the board of trustees, and if none, then to his or her legal representative; unless said employee has made provision with the board of trustees for optional benefits under the provisions of section 18A:66-110.

e. Upon the death of a member in active service as a result of an accident in the performance of his or her duties as such employee and not as the result of his willful negligence, an accidental death benefit shall be payable, if a report, in a form acceptable to the board of trustees, of the accident is filed with the pension fund within 60 days next following the accident and an application for such benefit is filed with the said board of trustees within two years of the date of the accident, but the board of trustees may waive such time limits for a reasonable period, if in the judgment of the board the circumstances warrant such action. Evidence must be submitted to the board of trustees proving that the natural and proximate cause of death was an accident arising out of and in the course of employment at some definite time and place. Upon application by or on behalf of the dependents of such deceased member, the board of trustees, in addition to the payment of his contributions, as provided in this section, shall grant a pension of one-half of the average annual salary received by him or her during the three years immediately preceding his or her death to the spouse of the deceased member or, if no surviving spouse, then to the child or children of such member under age 18, divided in such manner as the board in its discretion shall determine to continue until the youngest surviving child dies or attains age 18. The

compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

#### **40:11-23. Manner of payment.**

The pension shall be paid as follows:

a. If there are a dependent widow and dependent children of the deceased member, the pension shall be paid to such widow for the use of herself and such children. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

b. If there are dependent children but no widow the pension shall be paid in equal shares to those dependent children who have not reached 18 years of age. If there are 2 or more such children, the pension shall not exceed the sum of \$50.00 per month for each child, and if there is only 1 such child, the sum of \$75.00 per month. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

c. If a dependent widow remarries, no part of the pension shall be paid for her use, but the pension may be paid as if the deceased member had died leaving him surviving a dependent child or children under 18 years of age and no dependent widow. No pension shall be paid hereunder after the death of the widow and the arrival at the age of 18 of all the children of the deceased member.

d. The term “dependent widow” as used in this section shall not apply to a surviving spouse who shall have married such deceased member at or after his attainment of the age of 50 years.

#### **43:6A-17. Death in active service; payments to beneficiaries.**

a. Upon the receipt of proper proofs of the death in active service of a member of the retirement system, there shall be paid to his widow a survivor's benefit of 25% of final salary for the use of herself, to continue during her widowhood, plus 10%

of final salary payable to one surviving child or plus 15% of final salary to two or more surviving children; if there is no surviving widow or in case the widow dies or remarries, 15% of final salary will be payable to one surviving child, 20% of final salary to two surviving children in equal shares and if there be three or more children, 30% of final salary will be payable to such children in equal shares. If there is no surviving widow or child, 20% of final salary will be payable to one surviving parent or 30% of final salary will be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation benefit to which the beneficiary is due or will be due upon the death of the member of the retirement system pursuant to this subsection.

b. In addition to the foregoing benefits payable under subsection a., there shall also be paid in one sum to the member's beneficiary an amount equal to one and one-half times the final salary received by the member.

c. For the purposes of this section final salary means the current salary for the judicial position in which the member served at the time of death.

#### **43:6A-18. Death after retirement; payments to beneficiaries.**

Upon the receipt of proper proofs of the death after retirement of a member of the retirement system, there shall be paid to his widow a survivor's benefit of 25% of final salary for the use of herself, to continue during her widowhood, plus 10% of final salary payable to one surviving child or plus 15% of final salary to two or more surviving children; if there is no surviving widow or in case the widow dies or remarries, 15% of final salary will be payable to one surviving child, 20% of final salary to two surviving children in equal shares and if there be three or more children, 30% of final salary will be payable to such children in equal shares. For the purposes of this section final salary means the current salary for the judicial position in which the member served at retirement. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death after retirement of the member of the retirement system pursuant to this subsection.

#### **43:7-9. Payment of pension to widow, children or dependent parents**

a. Upon the receipt of proper proofs of the death of a member who shall have lost his life, there shall be paid to his widow or widower a pension of 25% of

the member's average final compensation, for the use of herself or himself, to continue during her or his widowhood, plus 15% of such salary payable to one surviving child or plus 25% of such salary to two or more surviving children; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of the member's average final compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares; if there is no surviving widow, widower or child, 25% of the member's average final compensation will be payable to one surviving parent or 40% of such compensation will be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

b. Upon the receipt of proper proofs of the death after retirement of a former member of the pension fund, there shall be paid to his widow or widower a pension of 25% of the member's average final compensation for the use of herself or himself, to continue during her or his widowhood, plus 15% of such compensation payable to one surviving child or plus 25% of such compensation to two or more surviving children; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of the member's average final compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

c. The changes in benefits provided by subsections a. and b. of this section shall apply only to pensions hereafter granted; provided, however, that pensions granted prior to the effective date of this amendatory and supplementary act shall be increased to the schedule of payments stipulated by subsection a. on the first of the month following the commission's approval of those cases where proper evidence is submitted to the satisfaction of the pension commission that the death of the member in active service was the result of an accident met in

the actual performance of duty at some definite time and place, that such death was not the result of the member's willful negligence, and that the death occurred within 5 years of the accident; provided, further, that any pension in an amount less than \$1,600.00 per annum, presently paid or to be paid in the future to a widow or widower or a prison officer, shall be increased to \$1,600.00 per annum. d. For purposes of this section:

(1) "Child" shall mean a deceased member's unmarried child either (a) under the age of 18 or (b) of any age who, at the time of the member's death, is disabled because of an intellectual disability or physical incapacity, is unable to do any substantial, gainful work because of the impairment and his impairment has lasted or can be expected to last for a continuous period of not less than 12 months, as affirmed by the examining physicians of the fund.

(2) "Widower" shall mean the man to whom a member was married before the date of her retirement or at least 5 years before the date of her death and to whom she continued to be married until the date of her death and who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a widower will be considered terminated by marriage of the widower subsequent to the death of the member.

(3) "Widow" shall mean the woman to whom a member was married before the date of his retirement or at least 5 years before the date of his death and to whom he continued to be married until the date of his death and who has not remarried.

(4) "Parent" shall mean the parent of a member who was receiving at least one-half of his support from the member in the 12-month period immediately preceding the member's death or the accident which was the direct cause of the member's death. The dependency of such a parent will be considered terminated by marriage of the parent subsequent to the death of the member.

**43:10-5.3. Service of one year or more; death benefits; pension deferred under § 43:10-2.**

If any member of the pension fund who shall have paid into the fund the full amount of his or her assessments or contributions and been in the county services for a period of at least 1 year, dies, 2 ½ % of the salary received by such person shall be paid each year to the surviving spouse or minor children, as the case may be, and for each additional year of service more than 1 year, the amount of the pension shall be increased to the extent of 2 ½ % of the salary, but not to exceed in any event 50% thereof.

If any member of the pension fund who shall have deferred his pension under the provisions of R.S.43:10-2, dies before receiving any benefits, the pension shall be payable to the surviving spouse or children, as the case may be, and shall be based on the amount of salary earned and years of service which the member had at the time of deferral.

In no event shall the amount of any pension payable pursuant to the provisions of this section be less than \$3,000 per annum. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

#### **43:10-6. Payment to dependent children.**

If an employee or pensioner dies leaving dependent children under 18 years of age and he or she is, at death, a widower or widow, the benefits of this article which a widow or widower would otherwise be entitled to receive, shall be paid to the guardian of such children for their exclusive use and benefit. If one child survives, such benefits shall cease when such child attains 18 years of age. If more than one such child survives, the benefits shall be divided proportionately among all of such children under the age of 18 years and the benefits shall continue in full until the youngest child attains 18 years of age. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

#### **43:10-18.9. Retirement on half pay; pensions to surviving widow or children; retirement after completion of 15 years of service**

(a) Subject to the other provisions of this act, any county employee:

(1) who shall have served or who shall hereafter have served in the employ of such county continuously or in the aggregate, and shall have accumulated credit in the retirement system, for a period of 20 years, and who shall have attained the age of 60 years, shall, upon his application, be retired on one-half of salary; or

(2) who shall have served in the employ of such county continuously or in the aggregate, and shall have accumulated credit in the retirement system, for a

period of 30 years, and who shall have attained the age of 55 years, shall, upon his application, be retired on one-half of salary; or

(3) who shall regardless of age have served in the employ of such county continuously or in the aggregate for a period of 35 years, shall, upon his application, be retired on one-half of salary.

In addition, any county employee who shall retire at 55 years of age or older, and who shall have served at least 30 years in the employ of the county, shall receive an additional one and one-half per cent of salary for each additional year of service exceeding 30 years, not to exceed 60% of salary.

Upon and after the death of such employee or pensioner, said retirement pension shall be paid to the surviving widow, so long as she remains unmarried; surviving widower, so long as he remains unmarried; or minor children up to 18 years of age, as the case may be.

(b) (Deleted by amendment.)

(c) Should a member, after having completed 15 years of service for which credit has been established in the pension fund, be separated voluntarily or involuntarily from the service, before reaching age 60, and not by removal for cause on charges of misconduct or delinquency, he may elect to receive the payments provided for in section 181 of the act to which this act is amendatory and supplementary, or a deferred pension beginning at age 60, in the amount equal to two and one-half per cent of salary for each year of service for which credit has been established in the pension fund, except that no pension payable under this subsection shall exceed 50% of salary.

Upon and after the death of such pensioner, said pension, which the pensioner was receiving prior to his death, shall be paid to the surviving widow, so long as she remains unmarried; surviving widower, so long as he remains unmarried; or minor children up to 18 years of age, as the case may be. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the pensioner pursuant to this subsection.

#### **43:10-18.13. Death of employee after one or more years of service; pensions to survivors.**

Subject to the other provisions of this act, upon and after the death of any county employee who shall have served or who shall hereafter have served in the employ of the county continuously or in the aggregate for a period of one year, there shall be paid to the surviving widow, so long as she remains unmarried; surviving

widower, so long as he remains unmarried; or minor children up to the age of 18 years, as the case may be, two and one-half per cent of the salary of such employee, and for each additional year of service more than one year, the amount of said pension shall be increased to the extent of two and one-half per cent of said salary, not exceeding in any event 50% of the salary, except, if the deceased employee was at the time of death credited with more than 30 years of service and was 55 years of age or older, the benefit shall be in an amount not to exceed the amount of pension the employee would have received had the employee retired on the date of death, and not to be less than \$5,000.00 annually. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:10-18.14. Death of employee or pensioner who is widow or widower leaving dependent children; benefits to children until 18.**

If an employee or pensioner dies leaving dependent children under eighteen years of age and he or she is, at death, a widower or widow, the benefits of this article which a widow or dependent widower would otherwise be entitled to receive shall be paid to the guardian of such children for their exclusive use and benefit. If one child survives, such benefits shall cease when such child attains eighteen years of age. If more than one child survives, the benefits shall be divided proportionately among all of such children under the age of eighteen years. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee or pensioner pursuant to this subsection.

**43:10-18.15. Dependency of widower of female employee; necessity; workmen's compensation; conviction of crime; semi-monthly payments; interest.**

The following provisions shall apply to all members of the retirement system:  
(a) No pension shall be paid to the surviving husband of a deceased member of the retirement system unless he is and continues to remain dependent upon the income which the member was receiving at the time of her death, nor unless he is

and continues to remain physically or mentally incapable of pursuing a gainful occupation. The pension commission shall determine the question of the dependency of the surviving husband as well as the ability of a surviving husband to pursue a gainful occupation.

(b) (Deleted by amendment.)

(c) (Deleted by amendment.)

(d) (Deleted by amendment.)

(e) The rights of any employee or beneficiary to receive any payments under the workmen's compensation act of New Jersey shall not be affected or impaired by any of the provisions of this act.

(f) Where the service of an employee is terminated by reason of imposition of a sentence upon him of actual commitment to a penal institution on account of conviction of an indictable offense involving moral turpitude, no pension under this act shall be paid to any such employee; provided, however, that no member of this retirement system who shall have served honorably as a county employee for a period of 20 years and shall have attained the age of 60 years shall be deprived of his pension privileges because of any violation of the rules and regulations established for the government of such county employment, but he may be fined, reprimanded or discharged.

(g) Where any pension or other benefit shall be payable from the pension fund herein provided to any retired employee or other beneficiary who is or shall be confined in a penal institution as the result of a conviction of a crime involving moral turpitude, the pension commission may pay such pension or any part of it or other benefit to the wife, husband, minor children, mother or father of the confined person if it determines the same is necessary for their maintenance during such confinement. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

(h) All payments of pensions shall be made semimonthly and payments of pensions, refunds or other benefits under this act shall be made without interest.

**43:10-18.18. Withdrawal from retirement system; separation from service; retirement on pension; death without surviving spouse or children.**

From and after July 1, 1943, any employee who is or becomes a member of this retirement system may not withdraw therefrom and shall not be entitled to a refund of any moneys theretofore and thereafter deducted from his salary hereunder; provided, however, that any employee who separates from the county

service through his discharge, resignation, or for any other reasons other than retirement shall be entitled to a refund of all moneys theretofore deducted from his salary for the retirement system established hereunder; provided, however, that any member of the retirement system established hereunder who retires on pension under the provisions of any other act, shall be entitled, upon written application made therefore to the pension commission within 3 months after such retirement on pension, to a refund of the moneys theretofore deducted from his salary for the retirement system, and provided, further, that where the service of an employee is terminated by death of the employee, if such employee leaves no widow, dependent widower, or dependent children under 18 years of age, all moneys theretofore deducted from his salary for the retirement system established hereunder shall be paid to the person designated by said employee as his or her beneficiary and if no such designation has been made or if the beneficiary has predeceased said employee, all moneys deducted from his or her salary for the retirement system shall be paid to the estate of the deceased employee. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:10-18.51. Employees' pension fund in counties of 300,000 to 325,000.**

In each county of this State having a population of from three hundred thousand to three hundred twenty-five thousand inhabitants a county employees' pension fund shall be created, set apart, maintained and administered, in the manner prescribed in this act,<sup>1</sup> for the benefit of employees of such county and of the widows, widowers, and children of such employees, and of all contributors to, participants in, and beneficiaries of any pension fund in operation in such county at the time this act shall come in force and effect in such county, under and by virtue of articles one, two, five, six and nine of chapter ten and chapter nine of Title 43 of the Revised Statutes and of sections 40:37-157 to 40:37-174, inclusive, of the Revised Statutes and of "An act providing for the retirement of persons employed in the department of weights and measures of any county in this State, and providing a pension for such persons so retired," filed June twenty-first, one thousand nine hundred and thirty-eight (P.L.1938, c. 397). The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the

beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:10-18.62. Death of employee after one years employment; benefits to survivors.**

Subject to the other provisions of this act, upon and after the death of any county employee who shall have served or who shall hereafter have served in the employ of the county continuously or in the aggregate for a period of 1 year, there shall be paid to the surviving widow, so long as she remains unmarried, surviving widower, so long as he remains unmarried, or minor children up to the age of 18 years, as the case may be, 2 ½ % of the salary of such employee, and for each additional year of service more than 1 year, the amount of said pension shall be increased to the extent of 2 ½ % of said salary, not exceeding in any event 25% of the final compensation but not less than \$2,500.00. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

**43:10-18.63. Pensions to surviving children.**

If an employee or pensioner dies leaving dependent children under 18 years of age and he or she is, at death, a widower or widow, the benefits of this article which a widow or widower would otherwise be entitled to receive shall be paid to the guardian of such children for their exclusive use and benefit. If one child survives, such benefits shall cease when such child attains 18 years of age. If more than one child survives, the benefits shall be divided proportionately among all of such children under the age of 18 years. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee or pensioner pursuant to this subsection.

**43:10-18.64. Election between pensions; workmen's compensation; conviction; time of payments; eligibility of widows or widowers.**

The following provisions shall apply to all members of the retirement system:

- (a) (Deleted by amendment; P.L.1978, c. 127.)
- (b) Where a husband and wife are each receiving a pension as a retired employee from any retirement system supported wholly or in part by the county, upon the

death of either the husband or the wife, if the survivor is entitled to receive another pension on account of such death, said survivor shall elect to accept one or the other of the two pensions but in no case shall a beneficiary receive more than one pension at the same time.

(c) Where any employee or other beneficiary is entitled to receive two pensions under the provisions of this act, such employees or other beneficiary shall elect to receive one or the other of the two pensions and in no case shall receive more than one pension.

(d) The rights of any employee or beneficiary to receive any payments under the Workmen's Compensation Act of New Jersey shall not be affected or impaired by any of the provisions of this act.

(e) Where the service of an employee is terminated by reason of imposition of a sentence upon him of actual commitment to a penal institution on account of conviction of an indictable offense involving moral turpitude, no pension under this act shall be paid to any such employee; provided, however, that no member of this retirement system who shall have served honorably as a county employee for a period of 20 years and shall have attained the age of 55 years shall be deprived of his pension privileges because of any violation of the rules and regulations established for the government of such county employment, but he may be fined, reprimanded or discharged.

(f) Where any pension or other benefit shall be payable from the pension fund herein provided to any retired employee or other beneficiary who is or shall be confined in a penal institution as the result of a conviction of a crime involving moral turpitude, the pension commission may pay such pension or any part of it or other benefit to the wife, husband, minor children, mother or father of the confined person if it determines the same is necessary for their maintenance during such confinement. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

(g) All payments of pensions shall be made semimonthly. Payments of pensions, refunds or other benefits under this act shall be made without interest.

(h) Upon and after the adoption of this act the benefits hereunder shall not extend to the widow or widower of any county employee who shall remarry, or shall have married such employee after such employee has retired or attained the age of 50 years, nor to any children of such marriage, but benefits shall extend to the widow or widower of a county employee who marries or shall have married the employee after the employee has attained the age of 50 years, provided the

employee remains in the employment of the county and an active member of the fund for at least 5 years after such marriage.

(i) Persons who may become entitled to pensions under this act shall be paid on the first and fifteenth day of each month, or at the same time as all persons permanently employed by the county.

**43:10-25. Pension to widow and children.**

The widow of any county detective who shall die from any cause shall receive a pension so long as she shall remain unmarried, equal to ½ of the amount of the annual salary of such county detective at the time of his death, and at her death or in case there be no widow, his minor child or children, until each reaches the age of 16 years, shall receive the amount of said pension for their support. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:10-33. Pension to widow and children.**

The widow or children of any member of such police force who shall have lost his life in the performance of his duty, shall, so long as she remains unmarried or so long as the children or any of them remain under the age of sixteen years, receive a pension equal to one-half of the amount of his salary at the time of his death. If the police officer leaves a widow and children, the pension shall be paid to the widow so long as she remains unmarried. If he leaves children and no widow, the pension shall be paid to those children who have not attained the age of sixteen years in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:10-38. Pension to widow, children or parent of deceased member.**

The widow, children or sole dependent parent of a member of the county police department, who shall have served therein for a period of ten years, paid into the fund the full amount of his annual assessment or contributions and either lost his life in the performance of his duty or died from causes other than injuries received in the performance of duty, shall receive a pension equal to the full amount of

such member's salary at the time of his death, but not exceeding one thousand dollars. No widow shall be entitled to a pension who shall have married the member after he shall have reached the age of fifty years.

If the member leaves him surviving a widow and children, the pension shall be paid to the widow for the use of herself and the children. If he leaves three or more children but no widow, the pension shall be paid, in equal shares, to the children who have not reached the age of sixteen years; if there are two children, they shall be paid twenty dollars each monthly; if one child, he shall be paid twenty-five dollars monthly. If a widow entitled to a pension hereunder remarries, the pension shall cease and shall not be paid to her or her children. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

If he leaves no widow and no children under sixteen years of age, the pension shall be paid to his sole dependent parent.

#### **43:10-39. Pension to widow, children or parent of deceased retired member.**

The widow of any retired member of such police department, who was married to her deceased husband before the date of his retirement and before he reached the age of 50 years, shall, if he paid into the fund the full amount of his annual assessments or contributions and continued so to do after his retirement until his death, which death shall have been from causes other than injuries received in the performance of duty, receive a pension equal to one-half of the pay of her deceased husband at the time of his retirement, not exceeding \$2,000.00, for so long as she remains unmarried. This pension shall be for the use of herself and any children of her deceased husband under 16 years of age.

If a retired deceased member leaves no widow but leaves three or more children under 16 years of age, the pension shall be paid, in equal shares, to those of his children who have not attained the age of 16 years; if there be only two such children, they shall be paid \$20.00 each monthly; and if only one such child, he shall be paid \$25.00 monthly, until the age of 16 years is reached.

If there is no widow and no child under 16 years of age, the pension shall be paid to the sole dependent parent of the deceased member. All retirements hereunder shall be made and pensions allowed by the pension commission hereinafter created. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary

pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:10-53. Pension to dependent widower and children.**

The widower of any county probation officer who shall die from any cause while in the service, whether such county probation officer shall have served as such for a continuous period of twenty years or not, or whether such county probation officer shall have reached the age of sixty years or not, shall receive a pension, so long as he shall remain unmarried, equal to one-half the amount of the annual salary of such county probation officer at the time of her death, and upon the death of such widower, or in the event there be no widower, the child or children of such probation officer, under the age of sixteen years shall, until each reaches the age of sixteen years, receive the proportionate amount of such pension; provided, however, that no pension shall be paid to the surviving husband of any deceased probation officer unless such surviving husband was wholly dependent for his income upon such county probation officer at the time of her death, and shall continue to remain so dependent upon the income which such probation officer was receiving at the time of her death; and further provided, that such surviving husband shall be and continue to remain physically or mentally incapable of pursuing some gainful occupation. The question of dependency, as well as ability to pursue some gainful occupation, of the surviving husband shall be determined in the same manner as the permanent incapacity of probation officer as provided for in section 43:10-51 of this title. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

**43:10-54. Death after retirement; pension to widow and children.**

If any county probation officer, after having been retired on one-half pay, shall die, leaving him surviving a widow, who was his wife at the time of his retirement, such widow, so long as she shall remain unmarried, shall receive a pension equal to one-half the amount of the annual salary of such county probation officer at the time of his retirement; and upon the death of such widow, or in the event there be no widow, the child or children of such probation officer,

under the age of sixteen years, shall, until each reaches the age of sixteen years, receive the proportionate amount of such pension. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:10-55. Death after retirement; pension to dependent widower and children.**

If any county probation officer, after having been retired on one-half pay, shall die, leaving her surviving a widower, who was her husband at the time of her retirement, such widower, so long as he shall remain unmarried, shall receive a pension equal to one-half the amount of the annual salary of such probation officer at the time of her retirement, and upon the death of such widower or in the event there be no widower, the child or children of such probation officer, under the age of sixteen years, shall, until each reaches the age of sixteen years, receive the proportionate amount of such pension; provided, however, that no pension shall be paid to the surviving husband of any deceased probation officer unless such surviving husband was wholly dependent for his income upon such county probation officer at the time of her death, and shall continue to remain so dependent upon the income which such probation officer was receiving at the time of her death; and further provided, that such surviving husband shall be and continue to remain physically or mentally incapable of pursuing some gainful occupation. The question of dependency of surviving husband shall be determined in the same manner as the permanent incapacity of probation officers as provided for in section 43:10-51 of this title. The pension provided to the authorized beneficiary may be payable to a special needs trust established for the authorized beneficiary pursuant to 42 U.S.C. 1396p(d)(4) and any rule or regulation adopted pursuant thereto.

**43:10-66. Pension to widow or widower and children on death of employee.**

The widow of any sheriff's employee who shall die from any cause shall receive a pension so long as she shall remain unmarried, equal to one-half of the amount of the annual salary of such sheriff's employee at the time of his death, and at her death, or in case there be no widow, his minor child or children, until each reaches the age of 16 years, shall receive the amount of said pension for their support. A "widower" shall

receive the same benefits as a “widow” receives pursuant to this section. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

#### **43:10-109. Pension to widow or children or sole dependent parent.**

The widow or children or sole dependent parent of any superintendent or assistant superintendent of the county department of weights and measures, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty, shall receive a pension equal to one-half of the salary of such member at the time of his death; provided, however, that in case of a widow and children such pension shall be paid to the widow for the use of herself and the children, if any, and in case of children and no widow, then such pension shall be paid to such of the children who have not attained the age of sixteen years, in equal shares; provided, there are three or more children; if there are two children, they shall be paid thirty dollars (\$30.00) each monthly; if one child, thirty-five dollars (\$35.00) monthly; and in case there is no widow and no children under the age of sixteen years, then such pension shall be paid to the sole dependent parent of such deceased member; provided, further, no widow shall be entitled to a pension who shall have married any such member after he shall have attained the age of fifty years, after the passage of this act; provided, further, that if any widow entitled to a pension as aforesaid remarry, then such pension shall cease and shall not be paid to such widow or her children. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

#### **43:13-4. Payments to certain dependents.**

The widow, dependent husband, children under the age of sixteen years or dependent parents, as the case may be, of a municipal employee who shall have:

- a. Paid into the fund the full amount of his annual assessments or contributions and who dies as a result of injuries or illness received or incurred in the performance of his duties; or

b. Served in the employ of a city of the first class in the aggregate for twenty years, and who has paid into the fund the full amount of his annual assessments or contributions and who dies from causes other than injuries or illness received or incurred in the performance of his duties; or

c. Been retired and pensioned under this article and continued to pay into the fund the full amount of his annual assessments or contributions based on his retirement pay after his retirement and until his death, and who dies--

Shall receive a pension in an amount equal to one-half of the salary received by the employee at the time of his death, and in those cases where an employee shall have been retired and pensioned previous thereto in an amount equal to one-half of the salary he received at the time of his retirement. The pension so paid shall not exceed the sum of one thousand dollars annually. No pension shall be paid to a widow or dependent husband if she or he was married to her or his deceased spouse after the date of her or his retirement or after she or he shall have reached fifty-five years of age. The pension shall be paid to the widow or dependent husband during her or his natural life and so long as she or he remains unmarried. If there is no widow or dependent husband surviving such employee, or no widow or husband qualified to take under this article, or if the widow or husband subsequently dies or remarries and such employee shall have left her or him surviving children under the age of sixteen years such children shall receive payments as follows: If there is one child, he shall be paid the sum of twenty-five dollars monthly until he reaches sixteen years of age; if two children, each shall be paid twenty-five dollars monthly until he reaches sixteen years of age; if three or more children, such pension equal in amount to one-half of the salary received by the employee at the time of his death or retirement, but not exceeding in the aggregate one thousand dollars annually, shall be paid to the children who have not reached sixteen years of age in equal shares, but no one of such children shall receive more than twenty-five dollars monthly. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection. If there is no widow, dependent husband and children under sixteen years of age at the time of such employee's death, the pension shall be paid to any dependent parent or parents of such deceased employee.

#### **43:13-22.20. Pension to dependents of employee or pensioner after death.**

Subject to the other provisions of this act, upon and after the death of such employee member or pensioner member, said retirement pension shall be paid to

the surviving widow or widower, so long as he or she remains unmarried; minor children or dependent parents, as the case may be; provided, however, that in no instance shall a pension payment to such widow or widower, minor children or dependent parent exceed \$3,000.00 per annum. In the event of the death of a pensioner member, such payments shall not exceed the amount received by the decedent pensioner. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

**43:13-22.21. Disability not arising out of employment; retirement pension; pension to dependents after death.**

Subject to the other provisions of this act, any member employee who shall have served or who shall hereafter have served in the employ of such city continuously for a period of 5 years and shall become permanently and totally disabled as the result of injury or illness not arising out of and in the course of his employment, shall, upon his application and approval thereof by the commissioners be retired on a pension equal to 2 ½ % of the salary received by him at the time of his retirement; and for each additional year of aggregate service, but not more than 20 years of service in the aggregate, the amount of said pension shall be increased to the extent of 2 ½ % of said salary for each year, not exceeding in any event 50% of said salary; provided, however, that for each year of service over 30 years there shall be an increase of disability pension of 2 ½ % of the salary received by the employee at the time of said retirement; provided further, however, that no such pension, regardless of service or disability, shall exceed three-quarters of the annual salary of said employee at the time of retirement; nor shall any such pension be in excess of \$12,000.00 per annum. Upon and after the death of such retired member or upon and after the death of any member who died as a result of injury or illness not arising out of and in the course of his employment, the said pension or a pension based upon the services of said member as the case may be, shall be paid to the surviving widow or widower, so long as he or she remains unmarried, minor children or dependent parent, as the case may be; provided, however, that in no instance shall said pension exceed the sum of \$3,000.00 per annum. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any

benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:13-22.22. Disability arising out of employment; retirement pension.**

Subject to the other provisions of this act, any city employee who shall become permanently or totally disabled as a result of injury or illness arising out of and in the course of his employment shall, upon his application and approval thereof by the commission, be retired on a pension equal to one-half of the annual salary received by him at the time of his retirement; provided, however, that in no instance shall the pension exceed \$12,000.00 per annum; and provided further, however, that where an employee has served more than 30 years he shall be entitled to 2 ½ % of his annual salary for each additional year of service over 30 years, but not exceeding 40 years, and in no event shall such pension exceed \$12,000.00 annually. Upon and after the death of such retired member or upon and after the death of any member who dies as a result of any injury or illness arising out of and in the course of his employment, the said pension or a pension of one-half of the said annual salary of such member shall be paid as hereinafter provided to the surviving widow or widower, so long as he or she remains unmarried; minor children or dependent parent, as the case may be; provided, however, that in no instance shall the pension exceed \$3,000.00 per annum. The pension due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:13-22.25. Death benefits to widow or dependents.**

Subject to the other provisions of this act, upon the death of any employee member who shall have served or who shall hereafter have served in the employ of the city continuously for a period of at least 5 years, there shall be paid to the surviving widow or widower, so long as he or she remains unmarried; minor children or dependent parent, as the case may be, an amount equal to 2 ½ % of the salary received by such employee at the time of his death and 2 ½ % of said yearly salary for each additional year of service more than 1 year, but not exceeding in any event 50% of said salary received at the time of death, and in no instance shall such pension exceed \$3,000.00; provided, however, that wherever the provisions of any of the three pension funds which have been merged into the fund, provide for greater benefits for the present members thereof, their widows,

widowers, minor children or dependent parent, then and in that event the said widow, widower, minor children or dependent parent shall be entitled to said greater benefits as therein provided; and provided, further, that after 5 years' membership in the retirement system, the pension payment to widow or widower shall not be less than \$1,000.00. In the event of the death of a pensioner member the amount of pension payment paid his or her widow or widower shall not exceed the amount of the pension payments he or she received at the time of his or her death and in no event in excess of \$3,000.00 annually. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

#### **43:13-22.26. Manner of priority payments to survivors.**

Subject to the other provisions of this act, upon and after the death of any employee member, pensioner member, or beneficiary, the benefits herein provided for the surviving widow or widower, minor children, including adopted children, and dependent parent shall be paid in the following manner of priority:

- (1) To the surviving widow or widower, until he or she remarries;
- (2) If no widow or widower, or upon the death of such widow or widower, then the pension shall be paid to the guardian of the minor children, for the exclusive use of said children, in the following amounts, \$80.00 per month for each minor child, provided further that in no event shall the funds paid to minor children exceed in the aggregate the sum of \$3,000.00 annually. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.
- (3) In the event there be no surviving widow, widower, or minor children, then the pension shall be paid to the dependent parent or parents in equal shares.

#### **43:13-22.28. Dependency of surviving spouse; no beneficiary; election between two pensions; workmen's compensation; persons convicted; payments; eligibility of widow or widower.**

The following provisions shall apply to all members of the retirement system;

- (a) The commission shall determine the question of the dependency of the surviving widow or widower.
- (b) When an employee member of the retirement system dies leaving no beneficiary set forth in section 24 of P.L.1954, c. 218 (C. 43:13-22.26) surviving, there shall be paid to his or her estate a sum equivalent to his or her contributions to the retirement system, without interest.
- (c) Where a husband and wife are each receiving a pension as a retired employee from any retirement system supported wholly or in part by the city, except as otherwise herein provided, then upon the death of either the survivor shall elect to except one or the other of the two pensions, but in no case shall said survivor receive more than one pension at the same time. If the deceased was a member of the retirement system created hereby, the surviving widow or widower may continue to receive the pension being paid to him by reason of his membership in any other pension system or fund and in that event he shall be entitled to receive from the pension fund created hereby a sum equal to the total contributions paid into the pension fund by the said deceased husband or wife, as the case may be, without interest.
- (d) Where any employee or other beneficiary is entitled to receive two pensions under the provisions of this act, such employee or other beneficiary shall elect to receive one or the other of the two pensions, and in no case shall receive more than one pension.
- (e) The rights of any employee or beneficiary to receive compensation under the Workmen's Compensation Act of New Jersey shall not be affected or impaired by any of the provisions of this act.
- (f) Where the service of an employee is terminated by reason of conviction of a crime involving moral turpitude, no pension under this act shall be paid to any such employee; provided, however, that no member of this retirement system who shall have served honorably as a city employee for a period of 25 years and shall have attained the age of 55 years, shall be deprived of his pension privileges because of any violation of the rules and regulations established for the government of such city employees not involving conviction of a crime involving moral turpitude as aforesaid.
- (g) Where any pension or other benefit shall be payable from the retirement system herein provided to any retired employee or other beneficiary who is or shall be confined in a penal institution as a result of conviction of a crime involving moral turpitude, the pension commission may pay such pension or any part of it or other benefit to the wife, husband, minor children, mother or father of the confined person, if it determines the same is necessary for their maintenance during such confinement. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such

beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the members pursuant to this subsection.

(h) All payments of pension shall be made semimonthly, and payments of pensions, refunds or other benefits of this act shall be made without interest.

(i) The benefits of this act shall not extend to the widow or widower of any city employee or of any pensioner who shall remarry or shall have married such employee or pensioner after such employee or pensioner has retired or attained the age of 55 years, nor to any children of such marriage.

(j) Any member entitled to a pension, or receiving a pension, under the provisions of this act, who shall be appointed to or is serving in any position or office within the municipality from which he has or will retire, and will be entitled to a salary which is paid from public funds, shall not during such period of employment receive any payments or pension or other benefits under this act.

#### **43:13-22.56. Death benefits.**

(a) Upon the death of a member in service who shall have paid into the fund the full amount of contributions due and who shall die as a result of injuries or illness received or incurred in the performance of that member's regular or assigned duties or who shall have served in the employ of the city for 20 or more years, a pension of 50% of the member's final salary shall be paid to the surviving widow, so long as she remains unmarried, or surviving widower, so long as he remains unmarried; if there is no surviving widow or widower or in case the widow or widower dies or remarries, a pension of 20% of such final salary shall be paid to one surviving child, 35% of such final salary shall be paid to two surviving children in equal shares, and if there be three or more children, 50% of such final salary shall be paid to such children in equal shares; and if there is no surviving widow, widower or child, a pension of 25% of such final salary shall be paid to one surviving dependent parent or a pension of 40% of such final salary shall be paid to two surviving dependent parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(b) Upon the death of a member in service who shall have paid into the fund the full amount of contributions due and who shall die for causes other than injuries or illness received or incurred in the performance of that member's regular or

assigned duties and who shall have served in the employ of the city for five or more years but less than 20 years, a pension in an amount equal to 50% of the member's final salary shall be paid to the surviving widow, so long as she remains unmarried, or surviving widower, so long as he remains unmarried; if there is no surviving widow or widower or in case the widow or widower dies or remarries, a pension of 20% of such final salary shall be paid to one surviving child, 35% of such final salary shall be paid to two surviving children in equal shares, and if there be three or more children, 50% of such final salary shall be paid to such children in equal shares; and if there is no surviving widow, widower or child, a pension of 25% of such final salary shall be paid to one surviving dependent parent or a pension of 40% of such final salary shall be paid to two surviving dependent parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(c) Upon the death of a pensioner from the retirement system who has retired for age and service under the provisions of section 4 of P.L.1964, c. 275 (C.43:13-22.53), or who has retired under the provisions of subsection (a), (b), (c) or (d) of section 1 of P.L.1967, c. 222 (C.43:13-22.54a), or who has retired because of a disability under the provisions of section 6 of P.L.1964, c. 275 (C.43:13-22.55), a pension equal to 50% of the amount of the pension, including any adjustment thereto under sections 7 through 13 of P.L.1990, c. 20 (C.43:13-22.69 to 43:13-22.75), payable to the decedent at the time of death shall be paid to the surviving widow, so long as she remains unmarried, or surviving widower, so long as he remains unmarried; if there is no surviving widow or widower or in case the widow or widower dies or remarries, such pension shall be paid to one surviving child or to two or more surviving children in equal shares; and if there is no surviving widow, widower or child, such pension shall be paid to one surviving dependent parent of the retirant or to both surviving dependent parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the pensioner pursuant to this subsection.

(d)(1) In the event a pension shall be payable as a result of the death of a member in service and there are no eligible survivors at the time of such member's death, an amount equal to such member's contributions to the fund, without interest,

shall be paid to the member's estate. If, after the payment of all pension and survivorship benefits payable by the retirement system to any eligible survivors of a deceased member or retiree, the total amount of those benefits, including adjustments under sections 7 through 13 of P.L.1990, c. 20 (C.43:13-22.69 to 43:13-22.75), together with the total amount of any retirement allowance or pension benefits, including adjustments, which shall have been paid to the decedent during retirement, is less than the amount of the decedent's contributions during membership in the retirement system, the amount of the difference, without interest, shall be payable to the deceased member or retiree's estate.

(2) If at the time of the death of a member in service the sole eligible survivors of such member are minor children and the total of the aggregate payments on account of such children shall be an amount which is less than such member's contributions to the fund, without interest, the balance of such amount shall be payable to the guardian of such minor children.

#### **43:13-26. Widow's, children's or dependent's pension.**

The widow of a life guard, officer or member of the life guard force who loses his life in the performance of his duty, dies from natural causes or has been retired on pension shall receive a pension, so long as she remains unmarried equal to one-half of the amount of the annual salary of her husband at the time of his death. At her death, or if there is no widow or she remarries, her minor child or children shall receive the pension for their support until the youngest reaches sixteen years of age. If there are no children under sixteen years of age, the pension shall be paid to the dependent parent or parents of such life guard officer or life guard. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

#### **43:13-37.8. Retirement on half pay; dependents after death.**

Subject to the limitations hereinafter provided, any town employee who shall have served or who shall hereafter have served in the employ of such town continuously or in the aggregate for a period of twenty years, and who shall have attained the age of sixty years, shall, upon his application, be retired on half pay. In the event that such town employee shall have retired and pensioned under the provisions of this act and shall have continued to pay into said pension fund or have deducted for the benefits of such pension fund the full amount of his percentage based on the amount of his pension after his retirement and until his death, then, in such event and subject to the limitation hereinafter provided, an

amount equal to one-half of the salary or compensation received by such town employees at the time of his retirement shall be paid each year to the dependent widow, dependent children under the age of sixteen years or dependent parent or parents, as the case may be. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:13-37.9. Death of employee after 20 years of service; pensions to dependents.**

In the event that any such town employee entitled to the benefits of this act, who having had deducted from his salary or compensation the percentage provided in this act, shall die as the result of injury or illness received or incurred in the performance of his duty, or in the event that such town employee shall have served in the employ of the town continuously or in the aggregate for twenty years and who has had deducted from his salary or compensation the percentage provided for in this act, shall die from cause other than injury or illness received or incurred in the performance of his duty, subject to the limitations hereinafter provided, there shall be paid each year to his dependent widow, dependent child or children under the age of sixteen years, or dependent parent or parents, a sum equal to one-half the compensation or salary received by such town employee at the time of his death. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:13-37.10. Death of employee after 5 years of service; pensions to dependents.**

Subject to the limitations hereinafter provided, in the event of the death of any such town employee who shall die from causes other than injuries or illness received or incurred in the performance of his duties, and who was not previously retired or pensioned and who has had deducted from his salary or compensation the percentage provided for in this act, and who has been in the employ of the town for five years, in that event twelve and one-half per centum (12 ½ %) of the salary received by such town employee at said death shall be paid each year to the dependent widow, dependent child or children under the age of sixteen years or dependent parent or parents, as the case may be, and for each additional year of service more than five years the amount of said pension shall be increased to the

extent of two and one-half per centum (2 ½ %) of such salary, not exceeding in any event fifty per centum (50%) of said salary. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:13-37.12. Death of employee leaving no widow; benefits to dependent children.**

In the event that any such town employee shall die leaving no widow, but shall leave a dependent child or children under the age of sixteen years, the amount of the benefits under this act shall be five hundred dollars (\$500.00) per annum for each dependent child, but the aggregate amount for such dependent children shall not exceed the amount to which such town employee's widow would have been entitled to under the provisions of this act had she survived him. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the employee pursuant to this subsection.

**43:13-40. Payments to certain dependents.**

The widow, dependent husband, children under the age of sixteen years or dependent parents, as the case may be, of a municipal employee or officer who shall have:

- a. Paid into the fund the full amount of his annual assessments or contributions and who dies as a result of injuries or illness received or incurred in the performance of his duties; or
- b. Served in the employ of a village in any county of the first class in the aggregate for twenty-five years, and who has paid into the fund the full amount of his annual assessments or contributions and who dies from causes other than injuries or illness received or incurred in the performance of his duties; or
- c. Been retired and pensioned under this article and continued to pay into the fund the full amount of his annual assessments or contributions based on his retirement pay after his retirement and until his death, and who dies--

Shall receive a pension in an amount equal to one-half of the salary received by such employee or officer at the time of his death, and in those cases where an employee or officer shall have been retired and pensioned previous thereto, in an

amount equal to one-half of the salary he received at the time of his retirement. The pension so paid shall not exceed the sum of one thousand dollars annually. No pension shall be paid to a widow or dependent husband if she or he was married to her or his deceased spouse after the date of her or his retirement or after she or he shall have reached fifty-five years of age. The pension shall be paid to the widow or dependent husband during her or his natural life and so long as she or he remains unmarried. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due pursuant to this subsection.

If there is no widow or dependent husband surviving such employee or officer, or no widow or husband qualified to take under this article, or if the widow or husband subsequently dies or remarries and such employee or officer shall have left her or him surviving children under the age of sixteen years, such children shall receive payments as follows: If there is one child, he shall be paid the sum of twenty-five dollars monthly until he reaches sixteen years of age; if two children, each shall be paid twenty-five dollars monthly until he reaches sixteen years of age; if three or more children, such pension equal in amount to one-half of the salary received by the employee at the time of his death or retirement, but not exceeding in the aggregate one thousand dollars annually, shall be paid to the children who have not reached sixteen years of age in equal shares, but no one of such children shall receive more than twenty-five dollars monthly.

If there is no widow, dependent husband and children under sixteen years of age at the time of such employee's or officer's death, the pension shall be paid to any dependent parent or parents of such deceased employee or officer.

**43:15A-49. Accidental death; allowance to dependents or payments to beneficiaries.**

a. Upon the death of a member in active service as a result of:

(1) an accident met in the actual performance of duty at some definite time and place, or

(2) service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status, and not as the result of his willful negligence, an accidental death benefit shall be payable, if a report of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action.

No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to his widow or widower a pension of 50% of the compensation, upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, for the use of herself or himself and the children of the deceased member, to continue during her or his widowhood; if there is no surviving widow or widower or in case the widow or widower dies or remarries, 20% of such compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares. If there is no surviving widow, widower or child, 25% of the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, will be payable to one surviving parent or 40% of such compensation will be payable to two surviving parents in equal shares. In the event of accidental death occurring in the first year of creditable service, the benefits payable pursuant to this subsection shall be computed at the annual rate of compensation. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

c. If there is no surviving widow, widower, child or parent, there shall be paid to any other beneficiary of the deceased member his accumulated deductions at the time of death.

d. In no case shall the death benefit provided in subsection b. be less than that provided under subsection c.

e. In addition to the foregoing benefits payable under subsection b. or c., there shall also be paid in one sum to such member's beneficiary an amount equal to one and one-half times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service.

#### **43:15A-150. Death in active service; benefits to be paid.**

a. Upon the receipt of proper proofs of the death in active service of a workers compensation judge member of the retirement system, there shall be paid to the member's widow a survivor's benefit of 25% of final salary for the use of the widow, to continue during widowhood, plus 10% of final salary

payable to one surviving child or plus 15% of final salary to two or more surviving children; if there is no surviving widow or in case the widow dies or remarries, 15% of final salary shall be payable to one surviving child, 20% of final salary to two surviving children in equal shares and if there are three or more children, 30% of final salary shall be payable to such children in equal shares. If there is no surviving widow or child, 20% of final salary shall be payable to one surviving parent or 30% of final salary shall be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

b. In addition to the benefits payable under subsection a. of this section, there shall also be paid in one sum to the member's beneficiary an amount equal to one and one-half times the final salary received by the member.

#### **43:16-3. Pension to dependents on death of members while not on duty or after retirement.**

(a) Upon the receipt of proper proofs of the death of a member who shall not have died while on duty, there shall be paid to the member's surviving spouse a pension of 50% of the member's average salary, for the use of herself or himself, to continue during her or his widowhood, plus 15% of such salary payable to one surviving child or plus 25% of such salary to two or more surviving children; if there is no surviving spouse or in case the surviving spouse dies or remarries, 20% of the member's average salary will be payable to one surviving child, 35% of such salary to two surviving children in equal shares and if there be three or more children, 50% of such salary will be payable to such children in equal shares; if there is no surviving spouse or child, 25% of the member's average salary will be payable to one surviving dependent parent or 40% of such salary will be payable to two surviving dependent parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(b) Upon the receipt of proper proofs of the death after retirement of a former member of the pension fund, there shall be paid to the member's surviving spouse

a pension of 50% of the member's average salary for the use of herself or himself, to continue during her or his widowhood, plus 15% of such salary payable to one surviving child or plus 25% of such salary to two or more surviving children; if there is no surviving spouse or in case the surviving spouse dies or remarries, 20% of the member's average salary will be payable to one surviving child, 35% of such salary to two surviving children in equal shares and if there be three or more children, 50% of such salary will be payable to such children in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(c) The changes in benefits provided by subsections (a) and (b) of this section shall apply only to pensions granted after April 1, 1967; provided, however, that any pension in an amount less than \$4,500.00 per annum presently being paid or to be paid in the future, pursuant to R.S. 43:16-3, to a surviving spouse of a police officer or firefighter who did not die while on duty or who died following retirement, shall be increased to \$4,500.00 per annum. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(d) The State shall pay the additional costs arising from the increase from 25% to 50% in the proportion of a member's average salary payable as a pension to that member's surviving spouse pursuant to the provisions of this 1987 amendatory and supplementary act. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

#### **43:16-4. Pension to dependents on loss of life while on duty.**

(a) Upon the receipt of proper proofs of the death of a member who shall have lost his life while on duty, there shall be paid to his widow or dependent widower a pension of 70% of the member's average salary, for the use of herself or himself and the children of the deceased member, to continue during her or his

widowhood; if there is no surviving widow or dependent widower or in case the widow or dependent widower dies or remarries, 20% of the member's average salary will be payable to one surviving child, 35% of such salary to two surviving children in equal shares and if there be three or more children, ½ of such salary will be payable to such children in equal shares; if there is no surviving widow, dependent widower, or child, 25% of the member's average salary will be payable to one surviving dependent parent or 40% of such salary will be payable to two surviving dependent parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(b) The changes in benefits provided by subsection (a) of this section shall apply only to pensions granted after April 1, 1967; provided, however, that any pension in an amount less than \$4,500.00 per annum presently being paid or to be paid in the future, pursuant to R.S. 43:16-4, to a widow of a policeman or fireman who lost his life while on duty, shall be increased to \$4,500.00 per annum.

(c) The State shall pay the additional pension costs arising from the increase from ½ to 70% in the proportion of a member's average salary payable as a pension to that member's surviving spouse pursuant to the provisions of this section of this 1987 amendatory and supplementary act.

**43:16A-9. Death in service; allowance to beneficiary; death benefits; death within or after 30 days of retirement.**

(1) Upon the receipt of proper proof of the death of a member in active service on account of which no accidental death benefit is payable under section 101 there shall be paid to such member's widow or widower a pension of 50% of final compensation for the use of himself or herself and children of the deceased member, to continue during his or her widowhood; if there is no surviving widow or widower or in the case the widow or widower dies or remarries, 20% of final compensation will be payable to one surviving child, 35% of final compensation to two surviving children in equal shares and if there be three or more children, 50% of final compensation will be payable to such children in equal shares.

In the event of death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

If there is no widow or widower or child, 25% of final compensation will be payable to one surviving parent or 40% of final compensation will be payable to two surviving parents in equal shares.

(2) If there is no widow or widower, child or parent, there shall be paid to any other beneficiary of the deceased member his or her aggregate contributions at the time of death.

(3) In no case shall the death benefit provided in subsection (1) be less than that provided under subsection (2).

(4) In addition to the foregoing benefits payable under subsection (1) or (2), there shall also be paid in one sum to the member's beneficiary, an amount equal to 3 ½ times final compensation.

(5) a. For the purposes of this section and section 10 (5),<sup>2</sup> a member of the Police and Firemen's Retirement System shall be deemed to be an active member for a period of no more than 93 days while on official leave of absence without pay when such leave is due to any reason other than illness, and for a period of not more than one year in the event of an official leave (a) due to the member's maternity, or (b) to fulfill a residency requirement for an advanced degree, or (c) as a full-time student at an institution of higher education, and (1) while he is disabled due to sickness or injury arising out of or in the course of his employment as a member to whom this act applies, is not engaged in any gainful occupation, and is receiving or entitled to receive periodic benefits (including any commutation of, or substitute for, such benefits) for loss of time on account of such disability under or by reason of workmen's compensation law, occupational disease law or similar legislation and has not retired or terminated his membership; or (2) for a period of no more than two years while on official leave of absence without pay if satisfactory evidence is presented to the retirement system that such leave of absence without pay is due to the member's personal illness other than an illness to which (1) above applies.

b. If a member dies within 30 days after the date of retirement or the date of board approval, whichever is later, a death benefit shall be payable only if he is deemed to be an active member in accordance with this section; provided, however, a member applying for disability benefits shall be deemed an active member if he was covered by the death benefit provisions of the act at the termination of employment, filed the application for disability retirement with the retirement system within 30 days following such termination of employment and dies within 30 days after the date of retirement or the date of board approval, whichever is later. If a member files an application for disability retirement while in service and otherwise meets the requirements for disability retirement, but dies before the retirement takes effect, the retirement shall be considered effective. The compensation due to a beneficiary identified in this subsection shall be paid

directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:16A-10. Accidental death benefit; report; benefits payable.**

(1) Upon the death of a member in active service as a result of:

(a) an accident met in the actual performance of duty at some definite time and place, or

(b) service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status, and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the retirement system within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

The provisions of this subsection shall also apply to a member who is a fireman and who dies as a result of an accident met in the actual performance of duty as a volunteer fireman in any municipality in the State, provided the member's death was not the result of the member's willful negligence.

(2) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to his widow or widower a pension of 70% of the compensation, upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, for the use of herself or himself and the children of the deceased member; if there is no surviving widow or widower or in case the widow or widower dies, 20% of such compensation will be payable to one surviving child, 35% of such compensation to two surviving children in equal shares and if there be three or more children, 50% of such compensation will be payable to such children in equal shares.

If there is no surviving widow, widower or child, 25% of the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service, will be payable to one surviving dependent parent or 40% of such compensation will be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary

pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

(3) If there is no surviving widow, widower, child or dependent parent, there shall be paid to any other beneficiary of the deceased member, his aggregate contributions at the time of death.

(4) In no case shall the death benefit provided in subsection (2) be less than that provided under subsection (3).

(5) In addition to the foregoing benefits payable under subsection (2) or (3), there shall also be paid in one sum to such beneficiary, if living, as the member shall have nominated by written designation duly executed and filed with the retirement system, otherwise to the executor or administrator of the member's estate, an amount equal to 3 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service.

(6) In addition to the foregoing benefits, the State shall pay to the member's employer-sponsored health insurance program all health insurance premiums for the coverage of the member's surviving widow or widower and dependent children.

#### **43:18-15. Payment of pensions; retirement; death; incapacity.**

Pensions shall be paid from such fund in following manner:

I. In all cities of this state in which this chapter is or shall hereafter become operative, every employee and officer, as defined in section 43:18-7 of this title, who shall have honorably served therein for twenty-five years continuously, and who is a member of said pension fund corporation, and who has paid all the dues and assessments levied and provided for by the statutes of New Jersey governing said corporation and the by-laws of said corporation, and who shall have attained the age of fifty-five years, shall upon application to the local board or department of health of such city, be retired by such board and shall thereupon receive from such pension fund, an amount, annually, equal to one-half of the average salary received by such employee, for the last two years of his or her employment; provided, however, that the retirement age of fifty-five years herein prescribed shall not retroactively affect the retirement age of any member employee who was a member of said pension fund corporation prior to June fifth, one thousand nine hundred and thirty-six.

Whenever any employee or officer, having served a period of five years or over in the board or department of health or city hospital, who, having paid into the fund the full amount of his or her annual assessments, shall die or in the event that any member who has been heretofore, or who shall hereafter be retired and pensioned under the provisions of this chapter shall die, then and in each of such events, a pension in an amount equal to one-half the amount of the average salary received by such member during the last two years of his or her employment and in those cases where a member has been retired and pensioned previous thereto, shall be paid to the widow for the benefit of herself and minor children, if any, under the age of sixteen years, but in no case shall such payment exceed one thousand dollars per annum; provided, however, that in cities of the second class, in which on June second, one thousand nine hundred and thirty-seven, the act entitled "An act concerning local boards of health and employees thereof in cities in this state, and for the relief of such employees," approved April second, one thousand nine hundred and thirteen, as amended and supplemented, was in force, a pension in an amount equal to one-half of the amount of the average salary received by such member during the last two years of his or her employment shall be paid to the widow, but in no case shall the payment exceed the sum of two thousand dollars per annum.

In the event a member shall die and leave a surviving husband who is incapacitated either mentally or physically and unable to pursue a gainful occupation for the care of himself and children, if there be any, such surviving husband shall be entitled to a pension of one-half the amount of the average salary received by such member, such pension not to exceed one thousand dollars annually.

No pension shall be paid to any widow or widower of any member of the corporation unless he or she was married to a member of the corporation before the date of said member's retirement and before said member arrived at the age of fifty years. Upon the remarriage of any such widow or widower pension payments shall cease.

In the event that there shall be no widow or widower surviving or qualified to take under this chapter, but such deceased member shall leave children surviving under the age of sixteen years then such pension shall be paid to such of said member's children who have not attained the age of sixteen years in equal shares if there are three or more of them; if only two they shall be paid twenty dollars each, monthly, and if only one, such child shall be paid twenty-five dollars monthly, until the age of sixteen years is reached. In no event shall the payment under this provision exceed the sum of one thousand dollars annually. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust

established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

II. The board of trustees of any pension fund corporation organized under this chapter are hereby authorized to pay to any member from such pension fund an amount equal to one-half of his or her average salary received by him or her for the last two years of his or her employment; provided, that any such employee or officer of such board or department shall hereafter become incapacitated, either mentally, or physically; provided, however, that no such payments shall be made unless the member has completed his or her fifth year of service in said board or department of health or city hospital.

III. Any employee or officer of any such local board or department of health who shall have served therein for twenty-five years continuously, and who is a member of said pension fund corporation and who has paid all the dues and assessments levied and provided for by the statutes of New Jersey governing said corporation and the by-laws of said corporation, and who shall have attained the age of fifty-five years, who shall become incapacitated either mentally or physically from illness or injuries incurred in the performance of his duties as such employee, or who, by reason of advanced age is found unfit for the performance of his duties, shall be retired by the local board or department of health of such city and thereupon he shall receive from such pension fund an amount equal to one-half the average salary received by him for the last two years of his employment; provided, however, that the retirement age of fifty-five years herein prescribed shall not retroactively affect the retirement age of any member employee entered into and obtaining prior to June fifth, one thousand nine hundred and thirty-six.

#### **43:19-14. Payments to dependents.**

If any member of the pension corporation who shall have paid into the fund the full amount of his annual assessments or contributions dies as a result of injuries or illness received or incurred in the performance of duty; or if any such member who shall have served in the city's employ in the aggregate for twenty years and paid into the fund the full amount of annual assessments or contributions, dies from causes other than injuries or illness received or incurred in the performance of duty; or if any such member shall after July fourth, one thousand nine hundred

and twenty-seven, have been retired and pensioned under this chapter and subsequently dies, then and in each of such events, as hereinafter provided, a pension in an amount equal to one-half of the salary received by such member at the time of death, and in those cases where a member has been retired and pensioned prior thereto one-half of the salary received by such member at the time of retirement, shall be paid to the widow or husband for the benefit of herself or himself and minor children, if any, under the age of sixteen years or dependent parents as the case may be. The pension so paid shall not exceed the sum of one thousand dollars annually. The pension shall be paid to the surviving spouse during his or her natural life and so long as he or she shall remain unmarried, but no pension shall be paid to the widow or husband of any member who shall, after July fourth, one thousand nine hundred and twenty-seven, marry the member after such member has reached the age of fifty years. If there is no surviving spouse of the member, or no surviving spouse qualified to take under this chapter, or if the surviving spouse subsequently dies or remarries, and the member shall have left him or her surviving as heirs at law and next of kin, minor children under the age of sixteen years, payments to such minor children shall be made as follows: If there be one child, the sum of twenty-five dollars shall be paid to such child monthly until he or she arrives at the age of sixteen years; if there are two or more children the pension equal in amount to one-half of the salary received by such member at the time of death or retirement, but not exceeding in the aggregate one thousand dollars annually shall be paid to such children who have not attained the age of sixteen years in equal shares but in no event shall any one child receive more than the sum of twenty-five dollars monthly. If there is no widow, dependent husband and no children under the age of sixteen years, at the time of the death of such municipal employee, then such pension shall be paid to the dependent parents, if any, of such deceased municipal employee. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**43:19-15. Death of member after five years' service; payments.**

In case any such member dies from causes other than injuries or illness received or incurred in the performance of his duties and he shall have paid into the fund the full amount of his annual assessments or contributions and served in the employ of the city for five years, then twenty-five per cent of the pension which would have been paid if the deceased member had served in the employ of the city for twenty years, shall be paid to the surviving spouse or minor children, as

the case may be. For each additional year of service thereafter, the proportionate amount of the pension to be paid to the surviving spouse or minor children as the case may be, shall be increased to the extent of five per cent over and above such twenty-five per cent for each additional year of service up to and including twenty years. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**53:5A-12. Death benefits if no accidental death benefit payable.**

a. Upon the receipt of proper proofs of the death in active service of a member of the retirement system on account of which no accidental death benefit is payable, there shall be paid to the surviving spouse a pension of 50% of final compensation for the use of that spouse and children of the deceased, to continue for so long as the person qualifies as a “surviving spouse” for the purposes of this act; if there is no surviving spouse or in case the spouse dies or remarries, 20% of final compensation will be payable to one surviving child, 35% of final compensation to two surviving children in equal shares and if there be three or more children, 50% of final compensation will be payable to such children in equal shares.

In the event of death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

If there is no surviving spouse or child, 25% of final compensation will be payable to one surviving parent or 40% of final compensation will be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

b. If there is no surviving spouse, child or parent, there shall be paid to any other beneficiary of the deceased member his aggregate contributions at the time of death. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

c. In no case shall the death benefit provided in subsection a. be less than that provided under subsection b.

d. In addition to the foregoing benefits payable under subsection a. or b., there shall also be paid in one sum to the member's beneficiary, an amount equal to 3 ½ times final compensation.

e. (Deleted by amendment. P.L.1971, c. 181.)

f. (Deleted by amendment. P.L.1971, c. 181.)

**53:5A-14. Accidental death benefit; designation of beneficiary.**

a. Upon the death of a member in active service as a result of:

(1) an accident met in the actual performance of duty at some definite time and place, or

(2) service in the reserve component of the Armed Forces of the United States or the National Guard in a federal active duty status,

and such death was not the result of the member's willful negligence, an accidental death benefit shall be payable if a report of the accident is filed in the office of the Division of State Police within 60 days next following the accident, but the board of trustees may waive such time limit, for a reasonable period, if in the judgment of the board the circumstances warrant such action. No such application shall be valid or acted upon unless it is filed in the office of the retirement system within five years of the date of such death.

b. (1) Upon the receipt of proper proofs of the death of a member on account of which an accidental death benefit is payable, there shall be paid to the surviving spouse a pension of 70% of final compensation or of adjusted final compensation, as appropriate, for the use of that spouse and children of the deceased, to continue for as long as the person qualifies as a "surviving spouse" for the purposes of this act. If there is no surviving spouse or in case the spouse dies, 20% of final compensation or of adjusted final compensation, as the case may be, will be payable to one surviving child, 35% of final compensation or of adjusted final compensation, as the case may be, to two surviving children in equal shares and if there be three or more children, 50% of final compensation or of adjusted final compensation, as the case may be, will be payable to such children in equal shares.

If there is no surviving spouse or child, 25% of final compensation will be payable to one surviving parent or 40% of final compensation will be payable to two surviving parents in equal shares.

As used in this paragraph, "adjusted final compensation" means the amount of final compensation or final compensation as adjusted, as the case may be, increased by the same percentage increase which is applied in any adjustments of the compensation schedule of active members after the member's death and before

the date on which the deceased member of the retirement system would have accrued 25 years of service under an assumption of continuous service, at which time the amount resulting from such increases shall become fixed and shall be the basis for adjustments pursuant to the Pension Adjustment Act, P.L.1958, c. 143 (C.43:3B-1 et seq.). Any adjustments to final compensation or adjusted final compensation shall take effect at the same time as any adjustments in the compensation schedule of active members. The provisions of the Pension Adjustment Act shall not apply to any pension based upon adjusted final compensation other than the fixed pension in effect at the conclusion of the 25-year period. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

(2) In the event of accidental death occurring in the first year of creditable service, the benefits, payable pursuant to this subsection, shall be computed at the annual rate of compensation.

c. If there is no surviving spouse, child or parent, there shall be paid to any other beneficiary of the deceased member, his aggregate contributions at the time of death. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

d. In no case shall the death benefits provided in subsection b. be less than that provided under subsection c.

e. In addition to the foregoing benefits payable under subsection a. or b. , there shall also be paid in one sum to the member's beneficiary, an amount equal to 3 1/2 times final compensation.

f. (Deleted by amendment.)

g. (Deleted by amendment.)

h. In addition to the foregoing benefits, the State shall pay to the member's employer-sponsored health insurance program all health insurance premiums for the coverage of the member's surviving spouse and surviving children.

**53:5A-14.1. Pension benefits under former section 53:5-5 discontinued by remarriage of mother; right to receive benefits.**

The surviving child or children of any former member of the New Jersey State Police who were receiving pension benefits under former section 53:5-5 of the Revised Statutes, repealed by the act to which this act is a supplement, and whose pension benefits have been discontinued by reason of the remarriage of their mother occurring after January 1, 1966, shall be entitled to receive benefits calculated in accordance with section 14 b. of the act to which this act is a supplement. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.

**53:5A-25. Death after retirement; pension to surviving spouse; compensation to surviving children.**

Upon the death after retirement of a member of the retirement system, there shall be paid to the surviving spouse a pension of 50% of final compensation for the use of that spouse and children of the deceased, to continue for so long as the person qualifies as a “surviving spouse” for the purposes of this act; if there is no surviving spouse or in case the spouse dies or remarries 20% of final compensation will be payable to one surviving child, 35% of final compensation to two surviving children in equal shares and if there be three or more children, 50% of final compensation will be payable to such children in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death after retirement of the member pursuant to this subsection.

**53:6A-17. Death in active service.**

Upon the receipt of proper proofs of the death in active service of a member of the retirement system, there shall be paid to his widow a survivor's benefit of 25% of final salary for the use of herself, to continue during her widowhood, plus 10% of final salary payable to one surviving child or plus 15% of final salary to two or more surviving children; if there is no surviving widow or in case the widow dies or remarries, 15% of final salary will be payable to one surviving child, 20% of final salary to two surviving children in equal shares and if there be three or more children, 30% of final salary will be payable to such children in equal

shares. If there is no surviving widow or child, 20% of final salary will be payable to one surviving parent or 30% of final salary will be payable to two surviving parents in equal shares. The compensation due to a beneficiary identified in this subsection shall be paid directly to any trust established for the benefit of such beneficiary pursuant to 42 U.S.C. 1396p(d)(4), any successor statute, or any rule or regulation adopted pursuant thereto. Such trust may be the beneficiary of, or the vehicle for, any benefit to which the beneficiary is due or will be due upon the death of the member pursuant to this subsection.