



**DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 POST OFFICE BOX 3656
 ARLINGTON, VIRGINIA 22203-1995**



DATE: May 22, 2026

)	
In Re:)	
[REDACTED])	Claims Case No. 2024-CL-060302.2
)	
Claimant)	
)	

**CLAIMS APPEALS BOARD
 RECONSIDERATION DECISION**

DIGEST

The burden of proving the existence of a valid claim against the United States is on the person asserting the claim. The claimant must prove by clear and convincing evidence on the written record that the government is liable under the law for the amount claimed. Payment of a claim may only be made for an expense authorized by statute or regulation. When the language of a statute is clear on its face, the plain meaning of the statute will be given effect, and that plain meaning cannot be altered or extended by administrative action.

DECISION

The claimant, the adult child of a deceased member of the U.S. Army, through his representative, requests reconsideration of the appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2024-CL-060302, dated February 24, 2026. In that decision, DOHA sustained the Defense Finance and Accounting Service’s denial of the claim for the Survivor Benefit Plan (SBP) annuity of the deceased member.

Background

The claimant, the member’s son, was born on April 2, 1979. On August 31, 1999, two months after his high school graduation, the claimant was attacked. As a result, he suffered a traumatic brain injury and is unable to walk or use his right arm or leg. In anticipation of her retirement from the Army the member completed a DD Form 2656, *Data for Payment of Retired Personnel*, on June 26, 2008. On that form, the member noted that she was single, listed the

claimant as her dependent child and elected child-only SBP coverage for the claimant based on her full gross retired pay. Under the remarks section of the form, it is noted that the child-only SBP coverage “is for adult child with disability.” The member’s election on the DD Form 2656 was witnessed by an Army SBP counselor. The member retired from the Army on April 1, 2009. The Defense Finance and Accounting Service (DFAS) established the member’s retired pay account and began deducting SBP premiums from her monthly retired pay for child SBP coverage.

The member passed away on March 10, 2022. Through his aunt acting as his representative, the claimant filed a DD Form 2656, *Verification of Survivor Annuity*, claiming the SBP annuity as the dependent child of the member. DFAS denied the claim on the basis that the claimant did not qualify as a dependent child to receive the annuity because he was not under 18 years of age; or under 22 years of age and enrolled full-time at an accredited academic institution; or incapable of self-support because of a mental or physical incapacity which existed before his 18th birthday or incurred on or after his 18th birthday, but before his 22nd birthday, while pursuing a full-time course of study. The claimant appealed DFAS’s denial of his claim to DOHA. The claimant explained that he is incapable of self-support because of a physical incapacity incurred when he was 20 years old, two months after his high school graduation but before he started college. He further explained that in August 1999 while he was visiting his mother, and in the process of completing the college entrance process, he was attacked by two people on the military base where she was stationed. As a result, he was in a coma for three months and suffers from traumatic brain injury. He was unable to attend college after the assault and never will be able to go to school because of his injuries.

DFAS considered the claimant’s appeal and sustained its initial denial of the SBP annuity claim in an administrative report dated April 18, 2024. In that report, DFAS informed DOHA that the claimant is not eligible for the SBP annuity because he does not meet the definition of a “dependent child” established by law, given that he was not enrolled full-time in a course of study or training when he became incapacitated at age 20. DFAS explained that a retired member’s child is only eligible for the SBP annuity if the child is under 18 years of age, between 18 and 22 years and enrolled full-time at an accredited academic institution, or was incapable of self-support because of an incapacity existing before the child’s eighteenth birthday or incurred on or after that birthday, but before the child’s twenty-second birthday, while pursuing a full-time course of study or training.

The claimant filed a rebuttal to DFAS’s administrative report. In that rebuttal, the claimant stated that the military is liable for the assault that rendered him incapable of attending school at age 20. He stated that if he had not been attacked on base, he would have enrolled in college. He provided the Criminal Investigation Division’s report of investigation dated December 15, 1999, documenting his assault in August 1999.

In the appeal decision, the DOHA attorney examiner upheld DFAS’s denial of the claimant’s claim for the SBP annuity, explaining that he did not meet the definition of a dependent child set forth under 10 U.S.C. § 1447(11). The attorney examiner explained that although the claim for the SBP annuity was not payable under applicable statute and regulation, he may find further relief outside of DOHA. The attorney examiner directed the claimant to an

alternative remedy under 10 U.S.C. § 1552, that rests with the Army Board for Correction of Military Records (ABCMR).

In his reconsideration request, the claimant states that he has proven through evidence on the written record that the United States is liable to him for the SBP annuity. He was assaulted on base at a gas station while visiting his mother and his younger brother who lived in military housing. That unwarranted assault has left him disabled for the rest of his life. His mother elected SBP coverage for him at retirement and paid for his coverage.

Discussion

Under Department of Defense Instruction 1340.21 (May 12, 2004), the claimant must prove by clear and convincing evidence on the written record that the United States is liable to the claimant for the amount claimed. Payment of a claim may only be made for an expense authorized by statute or regulation and federal agencies and officials must act within the authority granted to them by law. *See* DOHA Claims Case No. 2020-CL-102001.3 (March 16, 2021).

The SBP, 10 U.S.C. §§ 1447-1455, is an income maintenance program for survivors of deceased military members. Under the SBP, participating members contribute a portion of their retired pay to fund annuity payments for their designated beneficiaries. Under 10 U.S.C. § 1447(11), payment of an annuity is authorized for the dependent children of participating service members when they die. Section 1447(11)(A) states that a “dependent child” is a person who:

- (i) is unmarried;
- (ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or training ..., or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing a full-time course of study or training; and
- (iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent child relationship.

Focusing on the language under the second of these three criteria, the claimant was 20 years old and not yet enrolled in college at the time he was attacked. Although the member elected SBP coverage for the claimant and DFAS accepted that election, the claimant did not meet the eligibility criteria for dependent child under the SBP. Therefore, the SBP annuity claim was properly denied by DFAS.

As explained by the attorney examiner in the appeal decision, the claimant may wish to pursue another available remedy with the ABCMR under 10 U.S.C. § 1552.

Conclusion

The claimant's request for reconsideration is denied, and we uphold the appeal decision dated February 24, 2026, disallowing the claim. In accordance with the Instruction 1340.21 ¶ E7.15.2, this is the final administrative action in this matter.

SIGNED: Catherine M. Engstrom

Catherine M. Engstrom
Administrative Judge
Chair, Claims Appeals Board

SIGNED: Michelle P. Tilford

Michelle P. Tilford
Administrative Judge
Member, Claims Appeals Board

SIGNED: David F. Hayes

David F. Hayes
Administrative Judge
Member, Claims Appeals Board