

**Note from the Attorney General's Office:**

1973 Op. Att'y Gen. No. 73-065 was overruled by  
1988 Op. Att'y Gen. No. 88-090.

## OPINION NO. 73-065

## Syllabus:

Stepchildren living in the household of and financially dependent upon, a member of the State Teachers Retirement System at the time of his death are eligible for survivor benefits under R.C. 3307.49.

To: James L. Sublett, Executive Director, State Teachers Retirement System of Ohio, Columbus, Ohio

By: William J. Brown, Attorney General, July 2, 1973

Your request for an opinion asks whether stepchildren of a deceased member of the State Teachers Retirement System are entitled to survivor's benefits. Your question reads as follows:

Are "stepchildren" who were living in the household of, and dependent on, the deceased member at the time of his death eligible for survivor benefits under Section 3307.49 of the Ohio Revised Code?

The Section to which you refer reads in pertinent part as follows:

(C) "Dependent child" means any unmarried child of a deceased member under age eighteen, or any other financially dependent child of a deceased member, regardless of age, adjudged physically or mentally incompetent by a court or by a physician appointed by the board. A dependent child receiving, or eligible to receive a benefit on or after the effective date of this section, shall include such child under age twenty-two who is a student in and attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the full-time curriculum requirements of such institution and as determined by board policy.

"Child" as used in this section includes a legally adopted child. If a court hearing for an interlocutory decree for adoption has been held prior to the time of the member's death, the beneficiary shall qualify for the monthly benefit notwithstanding the fact that the final decree of adoption, adjudging the surviving spouse as the adoptive parent, is made subsequent to the death of the member, and such benefit shall commence with the month subsequent to the final decree.

Your attention is called to the case of Berkmeyer v. Kellerman, 32 Ohio St. 239, 244 (1877), in which the Court said:

When a stepfather "takes the wife's child into his own house, he is then considered as standing in loco parentis, and is responsible for the maintenance and education of the child so long as it lives with him, for, by that act, he holds the child out to the world as part of his own family." Stone v. Carr, 3 Esp. 1; Cooper v. Martin, 4 East, 82. And the step-child is not liable on an express or implied promise, during minority, to pay for necessities furnished by his stepfather. 2 Kent's Com. 192, note, citing Sharp v. Crapsey, 11 Barb. 224, and Hussey v. Roundtree, Pusbee's (N.C.) Rep. 110.

I assume that the stepchildren in the present instance stand in the same position as those in the Berkmeyer case, for each was received into the stepfather's household and accepted as a member of his immediate family. This is apparent from the fact that the stepchildren here were raised, provided with food, clothing and other necessities by their stepfather.

The rationale behind the Berkmeyer decision can be found in Wing v. Hibbert, 7 Ohio N.P. 124 (1900), which reads as follows:

It is the policy of the law to encourage and extend the family relation, so that where persons assume the relation of parent and child, they shall be entitled to all the rights, and subject to all the liabilities of that relation.

A step-father is under no obligation to support the child of his wife by a former husband; yet, if he receives the child into his own home, and educates and supports him, discharging to him all the duties of a parent, he would be entitled to claim the earnings of the child, and is liable for the support of such child, and may be bound by his contracts for necessities.

See generally, Opinion No. 72-030, Opinions of the Attorney General for 1972.

There is a close similarity between the survivor's funds established by the legislature for the State Teachers Retirement System, and similar funds created for the Public Employees Retirement System and Workmen's Compensation.

R.C. 4123.59(D), which governs the distribution of "death benefits" under the Workmen's Compensation Act, describes the dependents of a deceased member in the following terms:

(D) The following persons shall be presumed to be wholly dependent for their support upon a deceased employee:

(1) A wife upon a husband with whom she lives at the time of his death, or a wife who is not residing with her husband because of the aggression of the husband;

(2) A child under the age of sixteen years, or over said age if physically or mentally incapacitated from earning, upon only the one parent who is contributing more than one-half of the support for such child and with whom he is living at the time of the death of such parent, or for whose maintenance such parent was legally liable at the time of his death.  
(Emphasis added.)

This statute was interpreted by the court in Plair v. Keller, 16 Ohio Misc. 157, 241 N.E.2d 767 (1968), to include stepchildren as dependents. The pertinent portion of that opinion reads as follows:

It is admitted that the four children in question were children of the widow of the deceased. They were not children of the deceased, legitimate or illegitimate, nor had they ever been adopted by the deceased. They had, however, been fully supported by the deceased since the time of the marriage of the deceased to the mother of the children. They lived in the same house with the deceased and their mother, ate at the table of the deceased and enjoyed the privileges of the deceased and his wife. There can be no question, therefore, but what they were "members of the family" of the deceased employee, as that term is used in everyday life and in accordance with the numerous definitions found in any dictionary.

Your attention is also called to R.C. 145.45(D), which states the definition of "dependent" for survivor benefit purposes under the Public Employees Retirement System statutes. This subsection reads as follows:

(D) For the purpose of this section, a dependent widower, parent, child, or financially dependent incompetent progeny is defined as one who was receiving at least one-half support from the member during the twelve-month period immediately preceding the member's death.  
(Emphasis added.)

This statute implicitly provides that a stepchild supported by a stepparent is eligible for the appropriate survivor's benefits.

The purpose behind these similar "survivor funds", whether it be Public Employees Retirement System, Workmen's Compensation, or State Teachers Retirement System, is to compensate and support

members of the deceased's family and alleviate the loss of the family "breadwinner". This loss would not be mitigated in any way merely by the fact that the members of the family, members dependent on the deceased for their daily subsistence, were not "family" in the legal sense. In the present instance, the stepchildren could not have been any more the "dependent children" required under R.C. 3307.49 were they in fact the legal children of the deceased.

The stepchildren in the present case were financially dependent on the deceased for their support, had been accepted by the deceased as his natural children, and were a part of his immediate family. By accepting and supporting them as his own, the deceased stood in loco parentis and afforded them the legal status of natural children within the meaning of the Berkmeyer case. In my opinion, therefore, these stepchildren fall within the definition of "dependent child", under R.C. 3307.49 (C), and are entitled to the statutory survivor's benefits earned by the deceased.

In specific answer to your question it is my opinion, and you are so advised, that stepchildren living in the household of and financially dependent upon, a member of the State Teachers Retirement System at the time of his death are eligible for survivor benefits under R.C. 3307.49.