WEST VIRGINIA CODE: §8-22-26

§8-22-26. Death benefits.

(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or a retirement pension pursuant to §8-22-25(a) and §8-22-25(b) of this code, leaving in either case a surviving spouse, or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension pursuant to §8-22-24 of this code if prior to July 1, 1981, , or pursuant to §8-22-23a and §8-22-24 of this code if after June 30, 1981, or is receiving or is entitled to receive retirement pension benefits pursuant to §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other than as specified in subsection (b) of this section leaving in either case a surviving spouse or any dependent child or children under the age of 18 years, or dependent father or mother, or both, or any dependent brothers or sisters, or both, under the age of 18 years, or any dependent child over the age of 18 years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth in this subdivision and subdivision (1) of this subsection, the board of trustees of such pension and relief fund shall, immediately following the death of the member, pay to or for each entitled surviving dependent the following pension benefits: To the surviving spouse, until death or remarriage, a sum per month equal to 60 percent of the member's pension or, in the event the member was not receiving a pension at the time of the member's death, a sum per month equal to 60 percent of the monthly retirement pension such member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or the sum of $300 per month, whichever is greater; to each dependent child, a sum per month equal to 20 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 20 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or until the child attains the age of 18 years or marries, whichever first occurs; to each dependent orphaned child, a sum per month equal to 25 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 25 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's

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death if the member had then been eligible for a retirement pension, until the child attains the age of 18 years or marries, whichever first occurs; to each dependent father or mother, a sum per month for each equal to 10 percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to 10 percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension; to each dependent brother or sister, the sum of $50 per month until he or she attains the age of 18 years or marries, whichever first occurs, but in no event shall the aggregate amount paid to all brothers and sisters of the member exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive his or her pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below 65 percent of the total amount paid to all dependents.

(b) The surviving spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any member who dies by reason of service rendered in the performance of the member's duties shall, regardless of the length of the member's service and irrespective of whether the member was or was not entitled to receive, or was or was not receiving, disability pension or temporary disability payments at the time of the member's death, receive the death benefits provided for in subsection (a) of this section. If the member had less than three years' service at the time of the member's death, the member's pension shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six percent interest shall be refunded to the member's named beneficiary or, if no beneficiary has been named, to the member's estate to the extent that the contributions plus interest exceed any disability or retirement benefits that the member may have received before the member's death.

(d) This section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits authorized to be made pursuant to this section. This section and benefits provided pursuant to this section are expressly subject to subsequent legislative enactments as may provide for any change, modification, or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of §8-22-24 of this code, the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

(f) For the purpose of distributing premium tax proceeds as required by §33-3-14d of this code, one beneficiary of the death benefit authorized by this section shall be included in the average monthly number of retired police officers and firefighters.

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(g) If there are no survivors entitled to receive benefits pursuant to the provisions of this section because of death, age, or marital status, to the extent the member's contributions to the fund plus six percent interest exceed any survivor benefits already paid, any excess shall be refunded to the member's named beneficiary. If there is no named beneficiary, any excess shall be paid to the member's heirs to be distributed in accordance with §42-1-1 *et seq*. of this code relating to intestate succession.

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