

SENATE COMMITTEE ON INTERNATIONAL RELATIONS AND TRADE
81ST LEGISLATURE

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Chair

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MAY 10 2010

OPINION COMMITTEE



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May 4, 2010

The Honorable Greg Abbott
Attention: Nancy Fuller
Director, Opinions Division
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-46455-10
I.D. # 46455

RQ-0886-GA

RE: Opinion Request: *Is a surviving spouse or child of a public servant killed in the line of duty that was eligible for coverage under the public employer's health insurance plan before the death but had not yet elected to be covered, entitled to apply for coverage after the death of the public servant under the provisions of Chapter 615, Government Code? And if so, were the survivors who were not covered at the time of death entitled to reapply for coverage under the provisions of Chapter 615, Government Code, as amended by Senate Bill 872?*

Dear General Abbott:

In 1993, I authored Senate Bill 97, which related to the health care benefits of survivors of certain public servants. The bill amended Article 6228f, Vernon's Texas Civil Statutes, which has since been codified as Chapter 615, Government Code.

Chapter 615, Government Code, provides in part that the survivor of a public servant (peace officers and firefighters, etc.) killed in the line of duty are "*entitled to purchase continued health insurance benefits*" from the public servant's employer. Prior to 2009, the statute provided that the survivors were entitled to "*purchase the coverage at the group rate for that coverage.*" My original intent was that survivors would pay the same rate for their insurance that active employees pay.

Since the passage of Senate Bill 97, many public employers provided insurance to survivors at the same rate as active employees. However, some did not. A number of other concerns were raised by survivors with the language of the original legislation. Among these was a provision that provided that a survivor was not eligible for coverage under the public employer's plan if they were eligible for insurance through another employer or if they had remarried.

Many spouses of our public servants also work and their employers offer health insurance. Under the original law, these spouses were ineligible for coverage under Chapter 615, Government Code, if the public servant was killed in the line of duty. This provision was problematic at best. It has always been my intent that the families of our heroes be covered by insurance. However, this would



not be the case if a spouse were to lose their job. Both the spouse and the public servant's children would lose their insurance and there was no provision for them to rejoin the governmental insurance plan.

With these matters in mind, I authored Senate Bill 872, during the 81st Session of the Texas Legislature. Senate Bill 872 made it clear that survivors are entitled to obtain insurance coverage at the "*rate paid by current employees of the employing entity for that coverage.*" In addition, changes were made to the notification requirements imposed on the employer of a public servant killed in the line of duty and increased the time limit a survivor has to apply for coverage. Another provision also removed the provision that denied eligibility for coverage to a spouse who had remarried or who was eligible for insurance through another employer. The bill also provided a limited opportunity for survivors who were not currently covered by the employer's health insurance plan to re-apply for coverage until March 1, 2010. Senate Bill 872 passed the legislature and took effect on May 19, 2009.

Again, it was my intent, and I believe the legislature's intent, for the families of public servants to be covered by health insurance and to design all of the changes in Senate Bill 872 to help families who had "fallen through the cracks" under the provisions of the previous statute.

Since then a number of survivors have re-applied for coverage, including the survivors of several peace officers employed by Harris County who were killed in the line of duty. The spouses of these officers were not on the county health insurance plan at the time of the officer's death.

~~Harris County has denied coverage for these families based on the fact that they were not insured at the time of death. I have attached a copy of the denial letter received by Paula Claborn Henderson.~~

Harris County's denial is based on a strict interpretation of the term "*continued coverage.*" It is my belief that Harris County was incorrect in their interpretation and that they did not look to the entire statute, including the changes made by Senate Bill 872, when determining legislative intent.

The Supreme Court, in *City of Waco v. Larry Kelley* (February 19, 2010), pointed out that the court looks to the plain meaning of words used in statute "unless the context necessarily requires a different construction, a different construction is expressly provided by statute, or such an interpretation would lead to absurd or nonsensical results. In these cases, the court must examine the Legislature's words in context of the statute as a whole and not consider words or parts of the statute in isolation."

If we look at the statute as a whole, then it should be noted that the legislature intended a liberal interpretation of the statute, again with the overall purpose in mind of providing support to the families of public servants who have made the ultimate sacrifice. An example of this can be found

in Section 615.072 (b), Government Code, which reads:

(b) In a determination of whether the survivor of an individual listed under Section 615.071 is eligible for the payment of assistance under this subchapter, any reasonable doubt arising from the circumstances of the individual's death shall be resolved in favor of the payment of assistance to the survivor.

This section clearly shows that the legislature intended that the surviving family members of public servants are to be provided for, even if there is reasonable doubt regarding the circumstances of the death.

This same standard should apply when making a determination as to whether or not a survivor is entitled to health insurance coverage. It would not have made sense for us to make the changes referenced above in Senate Bill 872 and then allow only some of the survivors who were not covered to re-apply for coverage and not the others.

Section 615.073, Government Code provides in part that survivors are "*entitled to purchase continued health insurance benefits.*" I would argue that "*continued health insurance benefits*" includes the eligibility for benefits. If the family was eligible for benefits before the employee's death, then that eligibility continues, under the time limits enumerated in the statute, for the family to purchase coverage after the death.

For this not to be the case would be "nonsensical" under the Supreme Court's definition of legislative intent. ~~Take for example, a case where a covered spouse was pregnant at the time of death. When the child is born, under the Harris County's interpretation, the child could not be added to the insurance coverage as a survivor because that child was not covered at the time of death. It is clear that the child would have been "eligible" for coverage after being born had it not been for the fact that the public servant was killed in the line of duty.~~

I would also point out that it was made clear during the legislative debate of Senate Bill 872 that survivors who were not covered, but were eligible under the changes provided for in the bill, would be eligible to re-apply for coverage. On the Floor of the Senate, I addressed the case of the family of Bridgeport Police Department Sergeant Randy White. The White family was not eligible to purchase insurance at the time of Sergeant White's death because his spouse was covered by her employer's insurance at the time of death. I specifically stated on the Floor of the Senate that it was my intent for the White family to be eligible to re-apply for coverage under the provision of the bill.

Based on the above, I respectfully request that you issue an opinion addressing the following questions:

Is a surviving spouse or child of a public servant killed in the line of duty that was eligible for coverage under the public employer's health insurance plan before the death but had not yet elected to be covered, entitled to apply for coverage after the death of the public servant under the provisions of Chapter 615, Government Code? And if so, were the survivors who were not covered at the time of death entitled to reapply for coverage under the provisions of Chapter 615, Government Code, as amended by Senate Bill 872?

Thank you in advance for your timely consideration of this important issue. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,



Senator Eddie Lucio, Jr.
Chair, Committee on International Relations & Trade



Representative Jose Menendez
House Sponsor, SB 872

Enclosures: Harris County Denial Letter to Mrs. Paula Claborn Henderson

cc: The Honorable Jose Menendez

EL/ir



HARRIS COUNTY, TEXAS

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David Kester, Director
Larry Durant, Deputy Director

March 11, 2010

**REGULAR MAIL and
CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mrs. Paula Claborn Henderson
31619 Wistaria Farms Rd.
Magnolia, TX 77355

Dear Mrs. Henderson:

We are in receipt of your request to enroll in the Harris County medical plan. You indicate that your request is based on your entitlement to the Government Code Chapter 615 regarding benefits for survivors of law enforcement officers killed in the line of duty as amended.

Section 615.073 of that law refers to the eligibility of survivors to purchase *continued* health insurance benefits from the political subdivision that employed the deceased individual, including health coverage. Our records indicate that you were not covered under the Harris County's health benefits plan at the time of your husband's death; therefore you were not offered continuation of coverage.

The amendments to Chapter 615 as included in SB 872 in the 2009 legislative session referred to the re-application rights to eligible survivors who either did not purchase *continued* coverage or who subsequently dropped coverage if they had initially elected it.

I regret that we are unable to honor your request for coverage. If you have any questions, please call me at 713-755-6495.

Sincerely,

Robin L. Vincent, ARM, CEBS
Benefits Administrator