

**TITLE 2 PUBLIC FINANCE**  
**CHAPTER 83 JUDICIAL RETIREMENT**  
**PART 800 SURVIVOR PENSION**

**2.83.800.1 ISSUING AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.83.800.1 NMAC – Rp, 2.83.800.1, 10/10/2023]

**2.83.800.2 SCOPE:** This rule affects members, former members, retirees, beneficiaries, and the association under the Judicial Retirement Act.  
[2.83.800.2 NMAC – Rp, 2.83.800.2, 10/10/2023]

**2.83.800.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12B-3 and 10-12B-14 NMSA 1978.  
[2.83.800.3 NMAC – Rp, 2.83.800.3, 10/10/2023]

**2.83.800.4 DURATION:** Permanent.  
[2.83.800.4 NMAC – Rp, 2.83.800.4, 10/10/2023]

**2.83.800.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
[2.83.800.5 NMAC – Rp, 2.83.800.5, 10/10/2023]

**2.83.800.6 OBJECTIVE:** The objective of this rule is to establish the procedure for the payment of a survivor pension under the Judicial Retirement Act.  
[2.83.800.6 NMAC – Rp, 2.83.800.6, 10/10/2023]

**2.83.800.7 DEFINITIONS:** [RESERVED]

**2.83.800.8-9** [RESERVED]

**2.83.800.10 PROCEDURE:** The procedure for payment of a survivor pension is:

**A.** Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

**B.** The completed application shall be returned to PERA along with the following documents:

**(1)** A certified copy of the death certificate or other proof of death acceptable in a court of law.

**(2)** If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased.

**(3)** Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over 10 years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

**(4)** Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.

**(5)** Affidavit that the applicant or beneficiary of a special needs trust is not married or otherwise emancipated if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.

**(6)** Copies of social security cards for all prospective payees.

**(7)** If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member's covered employment as a judge or justice. If the member's only divorce was prior to becoming a

member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

**(8)** a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

**C.** The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in Subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

**D.** Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes.

[2.83.800.10 NMAC – Rp, 2.83.800.10, 10/10/2023]

**HISTORY of 2.83.800 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

JRA Rule 800, Survivor Pension, filed on 7/1/1992;

JRA Rule 800, Survivor Pension, filed on 11/1/1994.

**Other History of 2.83.800 NMAC:**

2.83.800 NMAC, Survivor Pension, filed 11/1/1994 and renumbered 12/28/2001.

2.83.800 NMAC, Survivor Pension, filed 12/28/2001 was repealed, and replaced with 2.83.800 NMAC, Survivor Pension, effective 10/10/2023.