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38 CFR Ch. I (7-1-02 Edition)

the full monthly rate, excluding any allowance for regular aid and attendance, will be restored effective the date of reduction. The full monthly rate for an incompetent veteran, or for a competent veteran whose pension was reduced under § 3.551(c), will be restored effective the date of departure from the hospital unless it is determined that apportionment for a spouse should be continued. In all instances, any allowance for regular aid and attendance will be restored effective the date of departure from the hospital.

(2) Upon the veteran's return to the hospital, an award which is subject to reduction under § 3.551 (b) or (c) will again be reduced effective the date of the veteran's return to the hospital. In all instances, any allowance for regular aid and attendance will be discontinued, if in order, effective the date of the veteran's return to the hospital.

(b) *Temporary absence—less than 30 days.* A temporary absence of less than 30 days, including the day of departure, will not require adjustment of the award. This applies to any approved absence. Any allowance for regular aid and attendance for such periods will be authorized after the veteran has been discharged from the hospital.

(c) *Adjustment based on need.* Where an award of pension was reduced under § 3.551(c), the full rate covering absences of less than 30 days may be restored, subject to prior payments, prior to discharge from hospitalization at the request of the Director of the hospital, center or domiciliary, where this action is necessary to meet the veteran's financial needs, if the veteran has been hospitalized for more than 6 months and the periods of absence exceed a total of 30 days.

(d) *Irregular discharge.* When a competent veteran is given an irregular discharge, the full rate will be restored effective the date of release from the hospital. Payment of any amount withheld under § 3.551(b) will not be authorized until the expiration of 6 months after termination of hospitalization unless the prior release is changed to a regular release. However, amounts not paid under paragraph (c) of this section covering absence of less than 30 days where the award was reduced under

§ 3.551(c) will be authorized immediately.

(e) *Regular discharge.* When a veteran, either competent or incompetent, is given a regular discharge or release, the full rate, including any allowance for regular aid and attendance will be restored effective the date of release from the hospital, subject to prior payments. The award will be based on the most recent rating and, where the award was reduced under § 3.551(b), will include, in the case of a competent veteran, any amounts withheld because of hospitalization. The amount withheld for an incompetent veteran will not be authorized until the expiration of 6 months following a rating of competency by VA. Any institutional award will be discontinued effective date of last payment, as provided in § 3.501(j). Where an apportionment made under § 3.551(c) is not continued, the apportionment will be discontinued effective the day preceding the date of the veteran's release from the hospital, or, if adjusted, effective the date of the veteran's release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment.

(Authority: 38 U.S.C. 5503)

(f) *Types of discharges.* A discharge is considered regular if it is granted because of having received maximum hospital benefits. A discharge for disciplinary reasons or because of the patient's refusal to accept, neglect of or obstruction of treatment; refusal to accept transfer, or failure to return from authorized absence, is considered irregular.

[27 FR 7678, Aug. 3, 1962, as amended at 27 FR 8794, Sept. 1, 1962; 38 FR 34115, Dec. 11, 1973; 39 FR 34532, Sept. 26, 1974; 40 FR 45169, Oct. 1, 1975; 44 FR 22721, Apr. 17, 1979; 44 FR 45942, Aug. 6, 1979; 50 FR 50616, Dec. 11, 1985]

§ 3.557 Incompetents; estate equals or exceeds statutory limit and institutionalized.

(a) Where a veteran having neither spouse, child, nor dependent, is being

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hospitalized by VA and is rated incompetent by VA, the pension of such veteran will be subject to reductions as provided in §3.551.

(Authority: 38 U.S.C. 5503)

(b) Where a veteran:

(1) Is rated incompetent by VA,

(2) Has neither spouse nor child,

(3) Is hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge, and

(4) Effective November 1, 2000, has an estate, derived from any source, which equals or exceeds an amount which is five times the rate of compensation specified in 38 U.S.C. 1114(j), further payments of pension, compensation or emergency officer's retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to one-half that amount. Whenever there is an increase in the rate of compensation payable under 38 U.S.C. 1114(j) for a veteran with a service-connected disability rated as total, effective on the date such increase becomes effective, the amount specified in paragraph (b)(4) shall be an amount equal to five times such increased rate of compensation. The dollar value of that increased amount, as well as the dollar value of one-half that amount, will be published in the Notices section of the FEDERAL REGISTER. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission.

(c) For veterans subject to paragraph (b) of this section, the value of the veteran's estate shall be computed under the provisions of §13.109 of this title.

(Authority: 38 U.S.C. 501)

(d) Payment of pension, compensation or emergency officers' retirement pay to a veteran subject to the provisions of paragraph (b) of this section will be discontinued the last day of the month of admission or the last day of the month in which the veteran's estate equals or exceeds the amount specified in paragraph (b)(4) of this section, whichever is later. All or any part of the benefit not paid to the veteran may be apportioned for his or her de-

pendent parents on the basis of need as determined by the Veterans Services Officer. If the veteran is not hospitalized by the Department of Veterans Affairs there may be paid out of any remaining amounts so much of the pension, compensation or emergency officers' retirement pay as equals the amount charged the veteran for his or her current care and maintenance in the institution in which the treatment or care is furnished, but not more than the amount determined to be the proper charge.

(Authority: 38 U.S.C. 5503)

(e)(1) When the discontinuance of payments under this section results or would result in financial hardship for the veteran, discontinuance may be waived to avoid or reduce such hardship. Waiver of discontinuance under this paragraph may be granted more than once in any calendar year but may not exceed a total of 60 days in any calendar year.

(2) The veteran, or any person or organization acting on the veteran's behalf, is authorized to request such waiver.

(3) For purposes of this paragraph, financial hardship shall be held to exist for any month in which a veteran's liabilities during that month exceed the sum of the veteran's income and liquid assets during that month.

(4) Waivers under this paragraph are not to be granted as an administrative expediency or where liquid assets are readily available to meet current expenses.

(Authority: 38 U.S.C. 5503)

[26 FR 1598, Feb. 24, 1961, as amended at 27 FR 7678, Aug. 3, 1962; 36 FR 25225, Dec. 30, 1971; 40 FR 45170, Oct. 1, 1975; 45 FR 64910, Oct. 1, 1980; 50 FR 50616, Dec. 11, 1985; 53 FR 23237, June 21, 1988; 66 FR 48560, Sept. 21, 2001]

CROSS REFERENCES: Veterans disability pension. See §3.454(c). Reductions and discontinuances; general. See §3.500. Reductions and discontinuances; veterans. See §3.501. Amounts withheld or not paid incompetent veteran. See §3.1007. Estate equals or exceeds statutory limit. See §13.108 of this chapter. Determination of value of estate. See §13.109 of this chapter.