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except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Department of Veterans Affairs benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionnee.

[44 FR 45940, Aug. 6, 1979]

§ 3.452 Situations when benefits may be apportioned.

Veterans benefits may be apportioned:

(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.

(b) Pending the appointment of a guardian or other fiduciary.

(c)(1) Where an incompetent veteran without a fiduciary is receiving institutional care by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child, or, except as provided in paragraph (c)(2), for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(2) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under § 3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in § 3.454(b).

(Authority: 38 U.S.C. 501(a); 5307; 5503(a))

(d) Where additional compensation is payable on behalf of a parent and the veteran or his or her guardian neglects or refuses to contribute such an amount to the support of the parent

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the additional compensation will be paid to the parent upon receipt of a claim.

CROSS REFERENCES: Institutional awards. See § 3.852. Disappearance of veteran. See § 3.656. Reduction because of hospitalization. See § 3.551. Penal institutions. See § 3.666.

[26 FR 7266, Aug. 11, 1961, as amended at 27 FR 6974, July 24, 1962; 40 FR 21724, May 19, 1975; 44 FR 45940, Aug. 6, 1979; 66 FR 48560, Sept. 21, 2001; 68 FR 34542, June 10, 2003]

§ 3.453 Veterans compensation or service pension or retirement pay.

Rates of apportionment of disability compensation, service pension or retirement pay will be determined under § 3.451.

[26 FR 7266, Aug. 11, 1961]

§ 3.454 Veterans disability pension.

Apportionment of disability pension will be as follows:

(a) Where a veteran with spouse, or child is incompetent and without legal fiduciary and is maintained in an institution by the United States or any political subdivision thereof, \$25 monthly will be paid as an institutional award to the Director of a Department of Veterans Affairs medical center or chief officer of a non-Department of Veterans Affairs institution for the use of the veteran, and the balance will be paid to the dependent or dependents. If the veteran has no spouse, or child but has a dependent parent, apportionment will be in accordance with § 3.451.

(b)(1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 1521(b), as in effect on December 31, 1978, is reduced to \$50 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between \$50 and the total amount of pension payable on December 31, 1978.

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

(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to \$60 monthly under § 3.551(d) or (e)(2), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of

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the apportionment generally will be the difference between \$50 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

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

(3) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to \$90 monthly under § 3.551(e)(1) an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between \$90 and the rate payable if pension was being paid under 38 U.S.C. 1521(c) including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

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

[40 FR 36329, Aug. 20, 1975, as amended at 44 FR 45940, Aug. 6, 1979; 56 FR 65850, 65851, Dec. 19, 1991; 57 FR 7847, Mar. 4, 1992; 68 FR 34542, June 10, 2003]

§ 3.458 Veteran's benefits not apportionable.

Veteran's benefits will not be apportioned:

(a) Where the total benefit payable to the disabled person does not permit payment of a reasonable amount to any apportionee.

(b) Where the spouse of the disabled person has been found guilty of conjugal infidelity by a court having proper jurisdiction.

(c) For purported or legal spouse of the veteran if it has been determined that he or she has lived with another person and held herself or himself out openly to the public to be the spouse of such other person, except where such relationship was entered into in good faith with a reasonable basis (for example trickery on the part of the veteran) for the spouse believing that the marriage to the veteran was legally terminated. No apportionment to the spouse will thereafter be made unless there has been a reconciliation and later estrangement.

(d) Where the child of the disabled person has been legally adopted by another person, except the additional compensation payable for the child.

(e) Where a child enters the active military, air, or naval service, any additional amount will be paid to the veteran unless such child is included in an existing apportionment to an estranged spouse. No adjustment in the apportioned award will be made based on the child's entry into service.

(f)(1) For the spouse, child, father or mother of a disabled veteran, where forfeiture was declared prior to September 2, 1959, if the dependent is determined by the Department of Veterans Affairs to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies.

(2) For any dependent of a disabled veteran, or surviving spouse where forfeiture of benefits by a person primarily entitled was declared after September 1, 1959, by reason of fraud, treasonable acts, or subversive activities.

(Authority: 38 U.S.C. 6103(b); 6104(c); 6105(a))

(g) Until the estranged spouse of a veteran files claim for an apportioned share. If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf.

[26 FR 7266, Aug. 11, 1961, as amended at 40 FR 21724, May 19, 1975; 44 FR 45940, Aug. 6, 1979]

§ 3.459 Death compensation.

(a) Death compensation will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse.

(b) The surviving spouse may not be paid less than \$65 monthly plus the amount of an aid and attendance allowance where applicable.

[40 FR 21725, May 19, 1975, as amended at 44 FR 45940, Aug. 6, 1979]

§ 3.460 Death pension.

Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where the surviving spouse's rate is in excess of \$70 monthly because of having been the spouse of the veteran during service or because of need for regular aid and attendance,