

### § 3.461

### 38 CFR Ch. I (7-1-10 Edition)

the additional amount will be added to the surviving spouse's share.

(a) *Civil, Indian and Spanish-American wars.* Where pension is payable under 38 U.S.C. 1532, 1534, or 1536 apportionment will be based on the facts in the individual case in accordance with § 3.451.

(b) *Section 306 and old-law death pension.* Appointment of benefits provided under these pension programs will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451.

(Authority: 38 U.S.C. 5307)

(c) *Improved death pension.* Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451.

(Authority: 38 U.S.C. 5307)

[41 FR 21324, May 25, 1976, as amended at 43 FR 14018, Apr. 4, 1978; 44 FR 45940, Aug. 6, 1979; 61 FR 20727, May 8, 1996]

#### § 3.461 Dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) *Rates payable.* (1) The share for each of the children under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation.

(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.

[43 FR 14018, Apr. 4, 1978, as amended at 61 FR 20727, May 8, 1996]

#### REDUCTIONS AND DISCONTINUANCES

#### § 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 5112(b))

(a) *Except as otherwise provided (38 U.S.C. 5112(a)).* In accordance with the facts found.

(b) *Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)).* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.

(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) *Annual income.* See § 3.660.