

Office of the Secretary of Defense

§ 161.18

- b. Residing with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
- 8. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
- 9. Yes, if the child:
 - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death dependent on the former member for over 50 percent of the child's support; or
 - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is or was at the time of the member's or former member's death dependent on the member or former member for over 50 percent of the child's support.

(5) *Surviving Dependents of 100 Percent DAVs.* Surviving dependents of honorably discharged veterans rated as 100 percent disabled or 100 percent unemployable by the VA from a uniformed services-connected injury or disease at the time of his or her death are eligible for benefits as shown in Table 20 to part 161.

TABLE 20 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF 100 PERCENT DAVS

	CHC	DC	C	MWR	E
Widow or Widower: (DoD Beneficiary):					
Unremarried	No	No	Yes	Yes	Yes.
Remarried	No	No	No	No	No.
Unmarried	No	No	Yes	Yes	Yes.
Children, Unmarried, Under 21 Years:					
Legitimate, adopted, stepchild, illegitimate child of member, illegitimate child of spouse.	No	No	1	4	4.
Ward	No	No	2	2	2.
Pre-adoptive Child	No	No	3	3	3.
Children, Unmarried, 21 Years and Over.	No	No	1, 5	1, 5	1, 5.
Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.	No	No	1	4	4.

Notes:

1. Yes, if at the time of the sponsor's death, the person was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support. Children residing in the household of the authorized sponsor at the time of death are entitled to commissary privileges.
2. Yes, if, for determination of dependency made on or after July 1, 1994, was placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
 - a. Dependent on the member for over 50 percent support.
 - b. Residing with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
3. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20–20–20 or 10–20–10).
5. Yes, if the child:
 - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death, dependent on the former member for over 50 percent of the child's support; or
 - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is, or was at the time of the member's or former member's death, dependent on the member or former member for over 50 percent of the child's support.

§ 161.18 Benefits for abused dependents.

(a) Abused dependents of active duty uniformed services members entitled to retired pay based on 20 or more

years of service who, on or after October, 23, 1992, while a member, have their eligibility to receive retired pay terminated as a result of misconduct

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involving the abuse of the spouse or dependent child pursuant to 10 U.S.C. 1408(h), are eligible for benefits as shown in Table 21. For the purposes of these benefits the eligible spouse or

child may not reside in the household of the sponsor. See §161.19 for additional information on abused dependents under the 10/20/10 former spouse rule.

TABLE 21 TO PART 161—BENEFITS FOR ABUSED DEPENDENTS OF RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

	CHC	DC	C	MWR	E
Lawful Spouse	1, 2, 6	2, 6	2, 6	2, 6	2, 6.
Children, Unmarried, Under 18 Years:					
Legitimate, adopted, stepchild, pre-adoptive.	1, 3	3	4	4	4.
Children, Unmarried, 18 Years and Over (If entitled above).	1, 4, 5	4, 5	4, 5	4, 5	4, 5.

- Notes:**
1. Yes, if:
 - a. Not entitled to Medicare Part A hospital insurance through the SSA.
 - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.
 2. Yes, if a court order provides for an annuity for the spouse.
 3. Yes, if a member of the household where the abuse occurred.
 4. Yes, if a member of the household where the abuse occurred and dependent on that sponsor for over 50 percent of his or her support at the time the abuse occurred.
 5. Yes, if the child:
 - a. Is older than 18 years old and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; or
 - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 18, or occurred before the age of 23 while a full-time student.
 6. The spouse must have been married to the uniformed service member for at least 10 years, the uniformed service member must have completed 20 creditable years for retired pay, and they must have been married at least 10 years during the 20 years of creditable service (see §161.19). The uniformed services shall prescribe specific procedures to verify the eligibility of an applicant.

(b) Dependents of active duty uniformed service members (who have served for a continuous period greater than 30 days) not entitled to retired pay who have received a dishonorable or bad-conduct discharge, dismissal from a uniformed service as a result of a court martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense, separated on or after November 30, 1993, are eligible for tran-

sitional privileges in accordance with DoD Instruction 1342.24, “Transitional Compensation for Abused Dependents” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf>). For the purposes of these benefits the eligible spouse or child may not reside in the household of the sponsor. A maximum of up to 36 months of medical benefits can be granted by the uniformed services to the transitional compensation dependent.

TABLE 22 TO PART 161—BENEFITS FOR ABUSED DEPENDENTS OF NON-RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

	CHC	DC	C	MWR	E
Lawful Spouse	1, 2	2	2	2	2.
Children, Unmarried, Under 18 Years:					
Legitimate, adopted, and stepchild.	1, 2	2	2	2	2.
Children, Unmarried, 18 Years and Over (If entitled above).	1, 2, 3	2, 3	2, 3	2, 3	2, 3.

- Notes:**
1. Yes, if:
 - a. Not entitled to Medicare Part A hospital insurance through the SSA.

- b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
- 2. Yes, if
 - a. Residing with the member at the time of the dependent-abuse offense and not residing with the member while receiving transitional compensation for abused dependents.
 - b. Married to and residing with the member at the time of the dependent-abuse offense and while receiving transitional compensation for abused dependents.
- 3. Yes, if:
 - a. 18 years of age or older and incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support; or
 - b. 18 years of age or older, but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support.

§ 161.19 Benefits for former spouses.

(a) *20/20/20 former spouses.* Unremarried former spouses of a uniformed services member or retired member, married to the member or retired member for a period of at least 20 years, during which period the member or retired member performed at least 20 years of service that is creditable in determining the member's or retired member's eligibility for retired or retainer pay, or equivalent pay pursuant to 10 U.S.C. 1408 and 1072(2)(F), and the

period of the marriage and the service overlapped by at least 20 years are eligible for benefits as shown in Tables 23 and 24 to part 161. The benefit eligibility period begins on qualifying date of divorce from the uniformed services member.

(1) *20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60.* 20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60 are eligible for benefits as shown in Table 23 to part 161.

TABLE 23 TO PART 161—BENEFITS FOR 20/20/20 FORMER SPOUSES OF ACTIVE DUTY, REGULAR RETIRED, AND NON-REGULAR RETIRED MEMBERS AT AGE 60

	CHC	DC	C	MWR	E
Former Spouse:					
Unremarried	1, 2	1	Yes	Yes	Yes.
Remarried	No	No	No	No	No.
Unmarried	No	No	Yes	Yes	Yes.

- Notes:**
- 1. Yes, if the former spouse certifies in writing that he or she has no medical coverage under an employer-sponsored health plan.
 - 2. Yes, if:
 - a. Not entitled to Medicare Part A hospital insurance through the SSA.
 - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance with the exception of those individuals who qualify in accordance with section 706 of Public Law 111-84.

(2) *20/20/20 former spouses of a national guard, reserve member, or retired reserve member under age 60.* (i) In the case of former spouses of National Guard, Reserve, or Retired Reserve members or former members who are entitled to retired pay at age 60, but have not yet reached age 60, the former spouse is only entitled to commissary, MWR, and exchange benefits as shown in Table 24 to part 161. When the Retired Reserve member or former member attains or would have attained, age 60, the former spouse will be entitled to

benefits as shown in Table 23 to part 161.

(ii) In the case of former spouses of National Guard members or Reserve members ordered to active duty, or Retired Reserve members under age 60 recalled to active duty, they continue to receive benefits as shown in Table 24 to part 161 if the orders are for a period of 30 days or less. If the National Guard member, Reserve member, or recalled Retired Reserve member is on active duty orders in excess of 30 days, the former spouse will receive benefits as shown in Table 23 to part 161.