Department of Veterans Affairs

§ 3.450 General.

(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

(i) On behalf of his or her spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned.

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

§ 3.450 (a) Initial entitlement to full-dollar rate.

The latest of the following:

(1) Date entitlement arose;

(2) Date on which the veteran or survivor first met the residency and citizenship or permanent resident alien status requirements in § 3.42, if VA receives evidence of this within one year of that date; or

(3) Effective date of service connection, provided VA receives evidence that the veteran or survivor meets the residency and citizenship or permanent resident alien status requirements in § 3.42 within one year of the date of notification of the decision establishing service connection.

(b) Resumption of full-dollar rate. (1) Date the veteran or survivor returned to the United States after an absence of more than 60 consecutive days; or

(2) First day of the calendar year following the year in which the veteran or survivor was absent from the United States for a total of 183 days or more, or the first day after that date that the veteran or survivor returns to the United States.

[71 FR 8221, Feb. 16, 2006]

APPORTIONMENTS
§ 3.451 Special apportionments.

Without regard to any other provision regarding apportionment where hardship is shown to exist, pension, compensation, emergency officers’ retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, 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 apportionee.

§ 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).

(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 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