Quarterly Progress Report, 1948

Follow this and additional works at: http://utdr.utoledo.edu/ur-87-68
riage or proof of any later marriage should also be submitted to the VA.

Marriages must be proven valid according to the law of the place where the parties resided at the time of marriage; at the time and place where the marriage was performed; or, at the time and place where they resided when the right to payment occurred.

Proof of marriage may be established by submitting: (1) a certified copy of public record of marriage, or by an abstract of public record containing identification of the parties, showing date and place, and number of previous marriages, if any by either party, or a certified copy of the church record of marriage; (2) original marriage certificate; (3) affidavit from clergyman or magistrate who officiated; (4) affidavits from two or more eye-witnesses to the ceremony; (5) affidavits from two or more witnesses in the case of common-law marriages, attesting that the marriage was recognized as such and that the parties lived together as man and wife, and other evidence as required by the State in which common-law marriage was contracted; (6) certified copies of final divorce decree(s) must be furnished, where either party was previously married—or proof of annulment, or proof of death.

Certain other evidence may be accepted by the VA, such as Bible records, photostats, etc., where the original documents are not available.

Proof of Death: The best proof of death is a certified copy of the public record of the death occurred, or a duly certified copy of coroner's report of death. If death occurs when the veteran is in a hospital or institution which is under the control of the U.S. Government, proof may be established by death certificate signed by the medical officer in charge. Death occurring in active service need not ordinarily be proved by the claimant.

Satisfactory evidence, attesting to the continued and unexplained absence of a veteran for seven years, and stating that a thorough search was made for the veteran without results, may be sufficient evidence to establish the death of the veteran, as of the date of the expiration of the seven years.

Proof of Birth or Relationship: (1) certified copy of public record of birth or certified copy of church record of baptism; (2) affidavit from physician or midwife in attendance at birth; (3) copy of Bible or other family record certified by notary public; (4) affidavits from two or more persons, preferably disinterested, stating their ages, showing name, place and date of birth of the person whose age and relationship is involved, and that, to their knowledge, such person is the child of the parents named therein, and stating the source of their knowledge; (5) other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration or naturalization records.

Note: Failure to furnish higher class evidence does not preclude acceptance of lower class evidence if it is sufficient to prove the point involved.

COMPENSATION AND PENSION DURING HOSPITALIZATION

No Reduction of Payments: Public Law 662, 79th Cong., approved Aug. 8, 1946, provides that a veteran who has no dependent(s), and
who is receiving hospital or medical care from the VA, will receive full payment for six months from the date of admittance to the hospital. If hospitalization extends for more than six months, the full amount, if $30 or less, will be continued. If the amount of the compensation is more than $30 it will then be reduced by 50%, but not less than $30 per month, after the first six months. If the veteran is discharged from the hospital under medical advice he will receive the full amount of the payments withheld. However, if the veteran leaves the hospital against medical advice, the amount withheld will not be paid until six months after hospitalization is terminated.

In the event of the death of any veteran subject to the above provisions prior to the lump sum payment to which he may be entitled, the lump sum will be paid to the next-of-kin in the following order of eligibility: widow or widower, children (in equal shares), parents (or dependent parent), brothers or sisters, but if there is no person within that class eligible to receive the payment, no payment will be made, except to the person who bore the expense of the last sickness or burial. Claim for the lump sum payment should be filed with the VA within five years from the death of the veteran.

APPORTIONMENT

Disability Compensation and Pension: A veteran's disability compensation (including increased subsistence allowances for veterans who are pursuing courses of vocational rehabilitation), emergency officers' retirement pay and service pension may be apportioned when the disabled veteran and his wife are not living together by reason of estrangement; where the veteran's child or children are not in his custody; where the veteran is rated incompetet, or where action is being taken to appoint a guardian for him.

A veteran who has dependent(s) and who is being furnished hospital treatment or domiciliary care, may have his award apportioned on behalf of his wife, child, or dependent parents, in the discretion of the Administrator of Veterans' Affairs.

If the veteran is in an institution and is determined by the Administrator to be incompetent, all or part of his award may be paid, in the discretion of the Administrator, to his wife, the guardian or custodian of the veteran, the chief officer of the institution for the benefit of the veteran, or it may be apportioned on behalf of the wife, child, or dependent parents.

The wife of a veteran is entitled to an apportionment after an interlocutory decree has been granted but only until the decree becomes final.

Apportionment Not Authorized: No apportionment of disability compensation will be authorized until relationship and dependency have been proved according to the requirements of the law and regulations under which the benefit is payable. Apportionment will not be authorized in the following cases: where the pension is for nonservice disability, with certain exceptions; where the disabled veteran, or his guardian, is rendering support which is considered fair and reasonable; where the amount of the benefit is $20 monthly or less; where a court has found the wife guilty of unfaithfulness; where the child is in active military or naval service.
### TABLE OF APPORTIONMENTS

Apportionment of disability compensation, emergency officers' disability retirement pay and disability pension, amounting to more than $20 per month will be made as follows:

<table>
<thead>
<tr>
<th>Disabled Person and</th>
<th>Portion for Wife with Children in custody of her custody</th>
<th>Children not in custody of Wife or Vet.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wife but no child</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>Wife and 1 child</td>
<td>60%</td>
<td>20%</td>
</tr>
<tr>
<td>Wife and 2 children</td>
<td>55%</td>
<td>25%</td>
</tr>
<tr>
<td>Wife and 3 or more</td>
<td>50%</td>
<td>30%</td>
</tr>
<tr>
<td>children</td>
<td>(equally divided)</td>
<td></td>
</tr>
<tr>
<td>No wife but 1 child</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>No wife but 2</td>
<td>70%</td>
<td>30%</td>
</tr>
<tr>
<td>children</td>
<td>(equally divided)</td>
<td></td>
</tr>
<tr>
<td>No wife but 3 or</td>
<td>65%</td>
<td>35%</td>
</tr>
<tr>
<td>more children</td>
<td>(equally divided)</td>
<td></td>
</tr>
</tbody>
</table>

**Death Payments:** Apportionment of compensation or pension may be made where the child or children of a deceased veteran are not in the actual or constructive custody of the widow. Part may be paid to the widow and part to the legal guardian or custodian of the children. In most cases, the share for all children will be the amount to which they would be entitled if there were no widow, and the share for the widow will be the difference between the children's share and the total amount payable, except that the widow's share may not be less than 50% of the amount to which she would be entitled if there were no children. The amount payable to the children is divided equally among them, regardless of their ages.

For example, in a case where a veteran's death is due to wartime service-connected disease or disability and he is survived by a widow and five children, three of whom are not in custody of the widow, but in custody of the first wife or another person, the rates would be computed as follows: the five children would be entitled to $81.60 equally divided. Each child would be entitled to $16.32. The widow's share is the difference between the children's share and the total amount payable—subtract $81.60 (children's share) from $140.40, the amount payable for all.

This would grant the widow $58.80 as her share. Since she has two children in her custody, add $32.64 (twice $16.32) which amounts to $91.44. The other three children not in the widow's custody receive three times $16.32 or $48.96.

$ 140.40 Amount payable to widow with two children.  
48.96 Amount payable to three children not in widow's custody.

When a claim is filed by or on behalf of one or more dependents, but not by or for all eligible dependents, the awards for those who did file a claim will be payable as though there were no other dependents. If, while a death award is being paid, an additional dependent files a claim, there will be a retroactive adjustment made, provided that no overpayment will result.

**Special Apportionment:** Special apportionments may be authorized if it is clearly proved that the application of existing evidence will not result in undue hardship on the disabled veteran or upon any one of his dependents, and if relief can be afforded by such special apportionment without undue hardship to the other persons involved.

**When a Child Attains Age 18:** When a child attains the age of 18, or marries, the apportioned payment which is payable on behalf of
such child will terminate. However, such payment will be continued after the child attains that age, if the child is pursuing a course of education or training which has been approved by the Administrator of Veterans' Affairs. But it will not be continued after the child marries or attains the age of 21. If the child, prior to reaching age 18, becomes permanently incapable of self-support by reason of mental or physical defects, payments may be continued during the period of incapacity.

**INCOME LIMITATIONS**

**Disability Pensions:** Payment of pension for nonservice-connected disability will not be made if the veteran is single or has no minor children and if his annual income exceeds $1,000, or to any veteran who is married or has minor children if his annual income exceeds $2,500. The award will be discontinued, whenever the income exceeds these limitations. The VA will require the veteran to present whatever proof or evidence is necessary to compute his or her annual income.

**Death Pensions:** A widow who has no dependent(s) will not receive a pension for nonservice-connected death if her annual income exceeds $1,000. If she has dependents, her annual income may not exceed $2,500. However, if it does, the child or children of the deceased veteran may nevertheless receive the payments as though there were no widow.

If a minor child has an annual income in excess of $1,000, the payment of the pension is prohibited. But, if the veteran has two or more children whose combined income is more than $1,000, they may receive their proportionate share of the pension. Where only one of the veteran's two children has an income exceeding $1,000, the other child is eligible to receive the amount which would be payable where there is no widow and only one child, instead of one-half of the amount which is payable for two children.

**Computation of Income:** The "income" referred to above means total income from wages, salaries, bonuses, earnings, investments, rent or income derived from a business or profession. However, the business or professional income may be reduced by the deduction of necessary operating expenses. Proceeds of gifts and inheritances from the settlement of estates must be included when computing annual income. Property received through inheritance will not be considered as annual income until it has been converted into cash.

**Disability or death benefits,** including pension or compensation, U.S. Government or National Service Life Insurance, six months' death gratuity pay, and payments of adjusted compensation which are payable by the U.S. Government will not be considered in determining annual income. Overtime pay to Civil Service employees also is not included in computing annual income.

However, family allowances which are paid to the dependents of enlisted men, payments to Federal Civil Service employees, railroad retirement benefits, Civil Service retirement annuity, lump sum payments and installments of life, accident, disability, health, or similar insurance (other than Government), compensation paid by the U.S. Employees' Compensation Commission or a state compensation or industrial board, social security benefits, and the amount deducted from the salary of a Civil Service employee for the purpose of a retirement fund, will be considered in computing annual income.
APPEALS OF CLAIMS

The decision rendered by the Veterans Administration Adjudication Branch on any claim for compensation or pension may be appealed by the claimant within one year from the date of disallowal of the original claim by filing VA Form 1-P-9 with the VA office which handled the original claim. If no appeal is filed within the one year period, the original decision made by VA becomes final and the claim may not thereafter be reopened and allowed—with the exception of claims for widow's pension based on the veteran's non-service-connected death if the reason for disallowal is based on excessive income, since payment may be made on such a claim in any subsequent year when the widow's expected income is less than the limitation; in such cases, payment may be made upon notification to the VA by the widow regarding her income, and no appeal procedure is necessary nor is a new claim required.

The service officer of any recognized veterans' organization or the American Red Cross, will assist any eligible claimant in filing an appeal.

When a claim is denied by the Board of Veterans' Appeals, it may not thereafter be reopened or allowed except in case of an obvious error in the record or where new and material information is received from the Army, Air Force, or Navy Department. A new claim may be filed and, if denied, may be appealed. If award is made, it will date from date of new application.

Appeals are heard in the order of their certification, and only for very special reasons may a case be advanced for earlier consideration. The claimant will usually be granted a personal appearance before the Board of Appeals, if he so desires, but he must bear his own expenses in connection with such appearance. A claimant may designate an agency or individual to act as his representative or attorney at the hearing. When the claimant wishes to have personal representation by the Red Cross, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, the United Spanish War Veterans, or any other recognized organization, this must be specifically provided for by filing a Power-of-Attorney Form 2-P-22. Whenever an appeal is filed in a Regional Office, the liaison representative or State Service Officer of a recognized organization in the Regional office should be advised of the fact that the organization has been requested to represent the claimant.

A representative of one of these organizations will sometimes advise the veteran against appealing a given case which, because of its weakness, may endanger the veteran's entire benefits. In other words, he may lose what he now has if he appeals for more. In such cases, the claimant should be advised of the strength and weaknesses of the claim and he should decide whether he still wishes to appeal. It is much easier to win a case before a local board than it is to win an appeal.

It is not advisable to appeal a case on the question of degree of disability (in order to receive more compensation or pension); it is preferable to send a new medical statement requesting reconsideration.
OTHER PUBLICATIONS

A complete list of our publications may be obtained by sending a postal card request to "At Your Service," 1115 Eighteenth Street, N. W., Washington 6, D. C.