

CHAPTER 9

STUDY PLAN

DEPENDENCY AND INDEMNITY COMPENSATION, DEATH PENSION, AND ACCRUED BENEFITS

OBJECTIVE

To learn how to assist a claimant to submit a claim for Dependency and Indemnity Compensation (DIC), and to become familiar with the requirements for such claims.

REFERENCES

- Title 38, U.S. Code, Chapter 13 and 15
- 38 Code of Federal Regulations, Part 3
- Adjudication Manual M21-1MR (Manual Rewrite), Part 4, Subpart iii; Part 5; Part 8
- Veterans Benefits Manual, § 7.3.2 and § 7.3.4
- *Federal Benefits for Veterans, Dependents and Survivors*, 2014 edition
- VA Forms
 - 21 21-534EZ, *Application for DIC, Death Pension and/or Accrued Benefits*
 - 21-535, *Application for Dependency and Indemnity Compensation by Parent(s)*



INTRODUCTION

Dependency and Indemnity Compensation (DIC) is a monthly monetary benefit paid to the surviving dependents (spouse, children, or parents) of a deceased veteran. Although it is usually a service-connected benefit, DIC may also be authorized for certain non-service-connected deaths, as well.

You may, from time to time, still come across a surviving dependent in receipt of **death compensation**. This is the predecessor benefit to DIC, and is generally payable under the same conditions as DIC. From 1957 on, DIC was the benefit payable in nearly all cases, although up to 1972 there were certain circumstances where death compensation could be authorized. Death compensation cases are protected at their current levels so long as the claimant continues to meet eligibility requirements. As a result, unless the claimant elects to change to DIC, additional amounts such as aid and attendance, are not payable.

The application for DIC for a surviving spouse and/or children is VA Form 21-534EZ, Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child.

ELIGIBILITY

There are two basic ways that an eligible survivor can become entitled to DIC.

- One way is to show that the veteran's death was caused in whole, or in part, by a disability/disease that was itself caused by the veteran's military service.
- The second way is to show that the veteran had a service-connected disability that was totally disabling for a required period of time before the veteran died, even though this disability was not the cause of death.

ELIGIBILITY WHEN THE VETERAN'S DEATH WAS CAUSED BY MILITARY SERVICE



A deceased veteran's surviving spouse, children, and parents are eligible for Dependency and Indemnity Compensation (DIC) when a veteran dies "from a service-connected or compensable disability". (38 U.S.C. § 1310.)

Determining whether or not a veteran "died from" a certain condition can be difficult. In general, if a disability/disease/injury was considered to be the principal cause, or one of the contributory causes, of the veteran's death **and** that disability/disease/injury qualifies as service-connected, the survivor will be entitled to DIC benefits. "The service-connected disability will be considered as the principal or primary cause of death when that disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related to the death." (38 C.F.R. § 3.312(b).)

Service-connection for the disease/injury/condition that caused the veteran's death need not have been established by the VA at the time of the veteran's death. The rules and procedures for establishing service-connection for a veteran's death are the same as those for a living veteran, and can be applied posthumously, with due consideration of the finality of the evidence in a death claim. (38 U.S.C. § 1310(a).)



ADVOCACY TIP

With the growing number of veteran **suicides** in our country, it is important to remember that while the survivors of veterans who die by suicide while still in the service are not usually eligible for DIC benefits, the survivors of veterans who die by suicide *after* they have left service can be eligible for DIC benefits. For example, if a veteran dies by suicide after they have left the service, and they were suffering from a psychiatric condition such as PTSD that was the result of their military service, and their PTSD could be considered the cause, or one of the causes, of death, the survivor would be eligible for DIC benefits on that basis. 38 C.F.R. § 3.302: "*Service-connection for mental unsoundness in suicide*" is a very helpful regulation for advocates to use in this situation.

For veterans who die in service, the VA generally concludes that the death was service-connected. However, if the veteran died as **1)** the result of a suicide, or **2)** from a disease that occurred during the initial six months of active service, or **3)** it is reasonably likely that the death was due to misconduct by the veteran, the VA will issue a formal rating decision to determine whether the death is service-connected.

DIC is also payable as if the death were service-connected if the veteran dies as a result of VA examination, hospital care, medical or surgical treatment, Vocational Rehabilitation, or, since November 1, 2001, a program of Compensated Work Therapy under 38 U.S.C. § 1718; or if a disability arising from such circumstances either directly causes, or contributes substantially to and materially hastens, the veteran's death. *In this case, however, DIC is the **only** benefit available;* there are no ancillary benefits such as Loan Guaranty, healthcare coverage, or education assistance. Again, the rules and procedures for establishing a qualifying compensable event are similar to those for a living veteran. (38 U.S.C. § 1151.)

ELIGIBILITY BASED ON THE DECEASED VETERAN'S HISTORY OF BEING 100% SERVICE-CONNECTED

DIC may also be paid to the surviving spouse and to the children of a deceased veteran who died and was rated totally disabled for service-connected conditions at the time of their death even though their service-connected conditions were not the cause of their death (a 100% disability rating because of individual unemployability is still qualifying). Per 38 U.S.C. § 1318(a) and (b); 38 C.F.R. § 3.22, the survivor will qualify if the veteran was:



ADVOCACY TIP

Benefits may not be paid under this section to a surviving spouse of a veteran unless, **1.** the surviving spouse was married to the veteran for one year or more immediately preceding the veteran's death; or, **2.** a child was born of the marriage or was born to them before the marriage. (38 U.S.C. § 1318(c).)

1. Continuously rated totally disabled for a period of 10 years immediately preceding death;
2. Continuously rated totally disabled from the date of military discharge and for at least 5 years immediately preceding death; **or**,
3. A former Prisoner of War who was continuously rated totally disabled for a period of at least one year immediately preceding death.

Effective July 7, 2014, the VA automatically pays DIC under 38 USC 1318 to an eligible surviving spouse without a claim. This is if the VA can establish eligibility, based on evidence of record, at the time of the veteran's death.

DIC MONETARY RATES

DIC for a surviving spouse or children is not income based. The current rate of DIC payable can be found by viewing the DIC Rate Tables on the VA website at: http://www.benefits.va.gov/compensation/resources_comp03.asp. The VA website also has a very helpful page that explains how to read the DIC Rate Tables at: www.benefits.va.gov/COMPENSATION/resources-rates-read-dic.asp.

DIC benefits are a flat basic rate to which extra amounts are added depending on the number of dependents and other entitlements. For example, additional amounts are payable to or for a disabled surviving spouse who is housebound or who is in need of regular aid and attendance, as set out in 38 C.F.R. § 3.351. Since January 1, 2005, a surviving spouse with one or more children under age 18 has been paid an additional \$250 per month for a transitional period of 24 months from the date entitlement to DIC begins or until the last child reaches age 18, whichever occurs first. This amount is in addition to any other DIC rates payable to the surviving spouse.

An enhanced DIC rate is payable in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive compensation for a service-connected disability that was rated totally disabling for a continuous period of at

least eight years immediately preceding death, and the spouse was continuously married to the veteran during this same time period. (38 U.S.C. § 1311(a)(2).)

If there is an eligible surviving spouse, the veteran's minor children are considered to be additional dependents on the spouse's award. If the children are in the spouse's custody, they are included on the spouse's basic award. A child not in the spouse's custody will be paid his or her share of DIC on a separate award. Regardless of custody, each child is permanently removed as a dependent from the spouse's award upon reaching age 18.



If there is no eligible surviving spouse, there are specified rates for the veteran's children, in equal shares, up to the time of each child's 18th birthday. Upon reaching age 18, each child attains independent entitlement to DIC without regard to whether there is an eligible surviving spouse. DIC

may only be paid to or for a child after age 18 if the child is attending an approved educational institution or is determined to be permanently incapable of self-support (helpless). DIC for school attendance may not be paid concurrently with Dependents' and Survivors' Education Assistance under 38 USC, Chapter 35; however, if the child has been found to be "helpless" there is no bar to concurrent payment, since in this case the DIC is not paid because of school attendance.

An eligible surviving spouse may simultaneously be paid both DIC and Dependents' and Survivors' Education Assistance under 38 U.S.C., Chapter 35. When DIC has been (or will be) awarded under either 38 U.S.C. § 1318 or 38 U.S.C. § 1151, if any beneficiary is awarded any

amount from a judicial proceeding, settlement, or compromise by reason of the veteran's death, DIC payments to or for that beneficiary must be withheld until the full amount of such award has been recovered. This does not apply



ADVOCACY TIP

For the surviving children of a deceased veteran, it is not required that a dependent be recognized prior to the veteran's death.

to Social Security or Workers' Compensation benefits, even though they may have been awarded by judicial proceedings.

DIC FOR SURVIVING PARENTS

DIC is payable to a veteran's surviving parent(s) if the veteran's death is service-connected or is compensable under 38 U.S.C. § 1151. There is no eligibility for parents' DIC under 38 U.S.C. § 1318.

DIC for surviving parents is income based, unlike regular DIC (see limits in 38 U.S.C. § 1315). All of the parents' family income from all sources is counted unless specifically excluded. Specific categories of **countable** and **excludable** income are discussed in 38 C.F.R. §§ 3.260 and 3.261. Medical and certain other expenses, paid by the parent and not reimbursed from any source, may be deducted from otherwise countable income to reduce income for VA purposes (**IVAP**) used for determining DIC rates payable. See M21-1MR, Part 5, Subpart i, Chapter 3.D, *Reduction of Income Due to Unreimbursed Expenses*.

Additional amounts are payable if one or both parents are in need of aid and attendance. When DIC has been (or will be) awarded under 38 U.S.C. § 1151, if either parent is awarded any amount from a judicial proceeding, settlement, or compromise by reason of the veteran's death, DIC payments to or for that parent must be withheld until the full amount of such award has been recovered.



The application for parents' DIC is VA Form 21-535, *Application for Dependency and Indemnity Compensation by Parent(s)*. DIC claims are processed by the VA Regional Office which would have jurisdiction based on the veteran's address at time of death, or the Regional Office having jurisdiction for the address of the surviving spouse and/or children (if any). Once the award is in a running status, **jurisdiction** of parents' DIC cases transfers to the Pension Maintenance Center (PMC) for the parent's address.

THE EFFECTS OF MARITAL STATUS ON DIC BENEFICIARIES' ELIGIBILITY

MARITAL STATUS AND DIC FOR SURVIVING SPOUSES

MARRIAGE REQUIREMENTS

In certain cases there are time limits for recognition of a surviving spouse for benefits purposes: in general, when the marriage occurred *after* service, the surviving spouse must have been married to the veteran for at least one year prior to the veteran's death, or for any length of time if a child was born of the marriage or was born to them before the marriage. (38 C.F.R. §§ 3.54(c)(2) and (3).)

Alternatively, for service-connected deaths only, the marriage may have been for any length of time if it took place within fifteen (15) years after the end of the period of service during which the condition which caused or contributed to the veteran's death was incurred or aggravated. There is no length of marriage requirements if the marriage occurred while the veteran was in service, or before service, or if a married servicemember dies while on active duty. (38 CFR § 3.54.)

THE EFFECTS OF REMARRIAGE

Remarriage of a surviving spouse generally terminates eligibility for DIC. Eligibility may be re-established under certain circumstances including death, divorce and annulment. For each method of termination of marriage, different levels of benefits are re-established. Beginning January 1, 2004, a surviving spouse age 57 or older who is eligible for DIC and related benefits and who remarries will not lose any eligibility because of such remarriage. (38 C.F.R. § 3.55(a).) Remarriage of surviving children has similar effects. (38 C.F.R. § 3.55(b).)

MARITAL STATUS AND DIC FOR SURVIVING PARENTS

A parent's marital status is not a factor in eligibility, but does affect the applicable income limit(s): there are different income limits according to whether one or both parents survive, and if both, whether they are married to each other or have or have not remarried. Net worth is not a factor for parents' DIC.

DIC, DEATH PENSION, AND ACCRUED BENEFITS

A claim for DIC by any class of dependent is always also a claim for death pension for a surviving spouse and/or children if DIC is denied, if the service and income requirements are satisfied, as well as always being a claim for any available accrued benefits. (38 C.F.R. §§ 3.152(b)[1] and [2].) In general, if a surviving spouse qualifies for both DIC and death pension, DIC will be awarded as the greater benefit. However, the surviving spouse may elect to receive death pension instead if it is to the spouse's advantage, even though it is a lesser benefit 38 C.F.R. § 3.802(d)(2).

Accrued benefits includes any claim (whether formal, informal, or inferred) for a recurring benefit that was pending and unresolved at the time of the veteran's death; or any recurring benefit that was due but not paid at the time of the veteran's death, such as when a claim was approved but the veteran died before the initial check was issued; or one or more checks had been issued, but not cashed or deposited, prior to the veteran's death. If the accrued benefit is based upon a claim pending at the time of the veteran's death, all of the evidence necessary for a favorable decision must have been in file on the date of the veteran's death. For this purpose, the term "in file" means the evidence was in the VA's possession at the time of the veteran's death, even if it was not physically in the veteran's claims file on that date. 38 C.F.R. § 3.1000.

If more than one class of dependents applies, the order of precedence for accrued benefits is **1.** surviving spouse; **2.** children (in equal shares); and **3.** parents (in equal shares). If there are no eligible (or potentially eligible) survivors, any accrued amounts available are only payable as reimbursement to the person or entity that paid the costs of the veteran's final illness, funeral and burial.

NON-SERVICE CONNECTED DEATH BENEFITS: DEATH PENSION

Non-Service-Connected Death Benefits, or, Death Pension, is an income supplement program for low-income surviving spouses and unmarried children of deceased veterans with wartime service. The basic requirements for death pension are that the veteran served during a wartime period, dependency is established, income and net worth are within specified limits, and Dependency and Indemnity Compensation (DIC) is not payable.

NOTE: DIC is a death benefit award to the surviving spouse, eligible child or children, and dependent parent or parents of a veteran who died as the result of a service-connected disability or injury, or died while in receipt of service-connected disability compensation; as is discussed in Chapter 9.



Over the years, the VA has had different pension programs: "Old-law Pension," "Section 306 Pension," and "Improved Law Pension" which is the current program. The Improved Law Pension Program began January 1, 1979. All persons who were in receipt of pension under either of the prior pension laws, or who had a pension claim pending on December 31, 1978, are protected under those laws for as long as they continue to meet the income and net worth limits for those programs.

The three Pension Management Centers (PMCs) are located in Philadelphia, PA; Milwaukee, WI; and St. Paul, MN. All cases of Death Pension and DIC from California are under the exclusive jurisdiction of the St. Paul, MN PMC.

DEATH PENSION ELIGIBILITY REQUIREMENTS

The deceased veteran **must have**:

1. Been discharged under conditions **other than dishonorable**,
2. Had **90 days** or more of active military service, **except**:
 - a. For those veterans who entered active duty on or after September 8, 1980, or officers who entered active duty on or after October 16, 1981, 24 consecutive months or the **full period** for which called to active duty, whichever is less; **or**
 - b. If a veteran served in the active military, naval or air service during a period of war and was discharged or released from such service for a disability adjudged service-connected without presumptive provisions of law, or at time of discharge had such a **service-connected disability**, shown by official service records, which in medical judgment would have justified a discharge for disability.
3. Served at least one day of his or her military career during a **period of wartime**.

(38 C.F.R. § 3.3(a)(4).)

WHO IS ELIGIBLE TO APPLY FOR THE BENEFIT?

1. A **surviving spouse** who meets the income eligibility requirements, and:
 - a. Has not remarried.
 - i. Since November 1, 1990, the remarriage of a surviving spouse **permanently** terminates the spouse's eligibility to death pension. The only exception is if the remarriage is void, or has been annulled by a court having authority to render annulment decrees.

b. Was married to the veteran for more than one year unless: 1) a child was born before or during the marriage, or 2) the marriage occurred prior to a date specified by the VA based on the veteran's period of wartime service (e.g. for marriage to a Vietnam veteran before May 8, 1985, there is no minimum length requirement). (38 C.F.R. § 3.54(a).)

c. There is no length or marriage requirement if the marriage occurred while the veteran was in service, or before service, or if a married servicemember dies while on active duty. (38 C.F.R. § 3.50 – 3.60.)

d. Even if the marriage between the surviving spouse and the veteran cannot be recognized because of some legal impediment, it may still be "deemed valid" for VA benefits purposes providing the claimant entered into the marriage without knowledge of the impediment, the claimant continuously cohabited with the veteran from the date of the marriage to the date of the veteran's death; and, no claim has been filed by a legal surviving spouse who has been found entitled to death benefits.

If the veteran and the surviving spouse had lived in a **common-law** relationship, the VA will only recognize such common-law marriage if it was legal in the state that recognized common-law marriages at time of the marriage. Note: California does **not** recognize common-law marriage.



ADVOCACY TIP

The application form for these benefits asks very detailed questions about the applicant's income, savings, and net worth. Collecting all of the information needed for the application could be difficult for someone to do under the best of circumstances, let alone when one is grieving the loss of a loved one. You may want to recommend that the applicant ask a close friend or family member to assist her or him in gathering the necessary documentation.

2. A **surviving child** who is unmarried and meets the income eligibility requirements, and:
 - a. Who is under the age of 18, **or**
 - b. under the age of 23 if attending a VA approved school, **or**
 - c. became permanently incapable of self-support because of disability before age 18.
 - i. In such a case, the child may be eligible for the benefit as long as the condition exists, unless the child remarries or the child's income exceeds the applicable limit. (38 C.F.R. § 3.57.)

WHAT ARE THE INCOME AND NET WORTH REQUIREMENTS?

Income and net worth limits for death pension are spelled out in 38 U.S.C. §§ 1541, 1542, and 1543. The VA Improved Death Pension **Rate Table** can be found on the VA website at: http://www.benefits.va.gov/pension/current_rates_survivor_pen.asp. There is also a very helpful page on the VA website to help interpret the Rate Table that can be found here: <http://www.benefits.va.gov/PENSION/rates.asp>.



All family income from all sources is counted, unless specifically excluded. Specific categories of countable income are discussed in 38 C.F.R. § 3.271. The survivor's countable income, referred to as **Income for VA Purposes (IVAP)**, may be reduced by a certain amount of unreimbursed medical expenses (UMEs). Categories of **excluded income** and/or **deductible expenses** are listed in 38 C.F.R. § 3.272. The income limits are periodically adjusted based on the Consumer Price Index on the same schedule governing Social Security benefits which permits concurrent cost-of-living increases in both pension and Social Security. Since entitlement is based on recipients' income and net worth, any material change to their estimated annual income, net worth or dependents must be promptly reported to the VA.

The VA no longer requires pension recipients to complete annual Eligibility Verification Reports verifying their income and net worth. Technological improvements allow the VA to conduct income data matching with Federal agencies; however, the pension recipient is still responsible for notifying the VA of any change in income or change in the number of dependents.

Higher income limits apply if the surviving spouse has children in custody; however, the children's incomes are then also counted as well. In addition, higher income limits also apply if the surviving spouse is in need of **Special Monthly Pension** by being housebound or in need of regular aid and attendance.

Pension is not payable to or for a surviving spouse and/or a dependent child if the spouse's or child's net worth is of such size that it would be reasonable for it to be consumed for the maintenance of that beneficiary.

Determinations as to whether or not

net worth is excessive for pension entitlement is taken on a case-by-case bases, taking into account such factors as the amount(s) of income and assets; the nature and amount(s) of debts and expenses; the number and age(s) of any children; the amount of anticipated educational expenses for such children; the anticipated life expectancy of the surviving spouse and/or children (where appropriate), as determined by actuarial tables.

A child beyond the age 18 who was in the custody of an eligible surviving spouse before reaching age 18 will remain on the spouse's award as an additional dependent if the child is attending school (up to age 23) or is determined to be permanently incapable of self-support ("helpless"). In this circumstance, the child has no dependent entitlement to pension, even if he or she is living elsewhere while attending school. A child not in the custody of a surviving spouse has separate entitlement, and that child's income and net worth are counted separately from the



ADVOCACY TIP

In general, net worth is not a factor for consideration.

surviving spouse and any children in the spouse's custody. If there is no eligible surviving spouse, the income for each child is counted according to the formulas set out in 38 C.F.R. § 3.24, and payment made as appropriate to or for each eligible child.

THE CURRENT IMPROVED DEATH PENSION RATE TABLE CAN BE FOUND AT THE FOLLOWING WEBSITE:

- http://www.benefits.va.gov/pension/current_rates_survivor_pen.asp.

SPECIAL MONTHLY PENSION (SMP)

Special Monthly Pension (SMP) is a benefit awarded when a claimant's disability is especially severe. There are two types of SMP: 1) housebound, and 2) aid and attendance.

HOUSEBOUND BENEFITS

A surviving spouse may also qualify for housebound benefits.

- To qualify for housebound benefits, the surviving spouse must have:
 - one disability that is 100% permanent and total, as well as other disabilities that are independently rated at 60% or more, **or**
 - Be so disabled as to be housebound in fact

AID AND ATTENDANCE BENEFITS

These benefits are awarded when the VA determines that a surviving spouse needs the aid and attendance of another person. You do not need to show that the spouse's need for the aid and attendance of another person is constant or permanent in order to be eligible. Eligibility for this benefit requires a showing of greater disability than is required for housebound benefits. Entitlement to A&A can be established by showing (38 C.F.R. § 3.351(c)):



- The surviving spouse is blind or so nearly blind as to have corrected visual acuity of 5/200 or less in both eyes or concentric contraction of the visual field to 5 degrees or less,
- Proving that the surviving spouse is a patient in a nursing home because of mental or physical incapacity, **or**
- Showing (based on facts found basis 38 C.F.R. § 3.352(a)):
 - inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable;
 - frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);
 - inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness;
 - inability to attend to the wants of nature;
 - or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment.



STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. A veteran who was a former POW received an original grant of service connection coronary artery disease rated 100% disabling, the retro-active grant goes back for one year. The veteran dies from an unrelated illness the day after he receives his notification. Is his surviving spouse eligible for DIC? (Y/N) 38 U.S.C. § 1318(a); 38 C.F.R. § 3.22
2. The surviving spouse's family income from all sources is a factor in determining the DIC monthly rates payable? (T/F)

38 U.S.C. § 1311(a)(2)
3. The veteran dies of a service-connected disability. He and his spouse were only married for ten months; however, the spouse was six months pregnant when he died. When is the spouse eligible for DIC?

38 C.F.R. § 3.54(c)
4. The remarriage of a deceased veteran's widowed mother is an automatic bar to further payment of parents' DIC? (T/F)

38 C.F.R. § 3.25(b)
5. The veteran was permanently retired from service for disability because of a heart condition. The veteran filed a disability claim with VA, which assigned a rating of 100% from the date of retirement from service. Six years after leaving service, he is killed in an automobile accident. Is the surviving spouse eligible for DIC? (Y/N) 38 C.F.R. § 3.22(a)(2)(ii)
6. Deceased veteran's mother has applied for DIC. She reports income from Social Security only. She also reports owning a parcel of land (not her residence) valued at \$50,000, but states she does not receive any income from the property. Will this affect her eligibility to DIC? (Y/N)

38 C.F.R. § 3.261(c)

7. Vietnam veteran did not file a claim for disability during his lifetime. He died three months ago, from prostate cancer, for which he was treated at a VA medical facility. Physician's notes in 1997 report the veteran as saying that he felt his cancer was "somehow related to Agent Orange from Vietnam, and he should see if VA would give him any benefits for it." The surviving spouse has submitted a VA Form 21-534.

- a. Is/was the death service-connected? (Y/N)
- b. Are there any accrued benefits payable? (Y/N)

38 C.F.R. §§ 3.309(e), 3.312, 38 C.F.R. §§ 3.152(b); 3.155(a) and 3.1000(a)

8. The veteran's highest pay grade on active duty was brigadier general. He died in 1998, from service-connected causes. He was rated 100% for ten years prior to death. What regulation determines the DIC rate for the surviving spouse?

38 U.S.C. § 1311; 38 C.F.R. § 3.10(d)

9. If a surviving spouse who was previously eligible for DIC remarries and then the remarriage is terminated, can DIC benefits be reinstated? (Y/N)

38 C.F.R. §§ 3.55(a), (i), (ii)

10. A surviving child of a deceased veteran who is in the custody of the surviving spouse earns her own income. She may choose to receive death pension as her own separate entitlement due to the fact that she has her own income. (T/F)

Children in custody of a surviving spouse who have basic eligibility to receive improved pension do not have separate entitlement. The child's income will be deemed part of the spouse's countable annual income, unless in the judgment of the VA, to do so would be a hardship on the surviving spouse.

38 C.F.R. § 3.24

11. The veteran served from August 7, 1962 to August 6, 1964. He was married on May 7, 1985, and was killed in a traffic accident on February 20, 1986. No children resulted from the marriage. The surviving spouse is now applying for VA death pension. She reports no income except for General Assistance. Are eligibility requirements for death pension met?

- a)** Yes
- b)** No—Veteran has no wartime service.
- c)** No—Surviving spouse was married to veteran less than one year when veteran died.
- d)** No, for both of the above reasons.

38 C.F.R. §§ 3.3(b)(4)(i), 3.54(a)(3)(vii)

12. There is no eligible surviving spouse. There are two dependent children, ages 15 and 19. The 19-year old is attending a VA approved college, and has earned income of approximately \$4,200 per year, but no unearned income from interest or other sources. The 15-year old has no income from any source. Are both children eligible for death benefits and within the income limits for pension? (Y/N)

38 C.F.R. §§ 3.272(j)(1), 38 C.F.R. 3.57

13. There is no eligible surviving spouse. There are two minor children, both in the custody of the same parent. One child has income beyond the maximum annual pension rate, and is not eligible for VA pension. Does this affect the other child's entitlement? (Y/N)

38 C.F.R. § 3.24(c)(2)

14. A child who is included on the award of a surviving spouse receives property which causes the child's own net worth to become excessive. What is the effect on the spouse's pension award?

- a.** So long as the award remains in a running status, there is no effect.
- b.** The child must always be removed from the award.
- c.** The child is removed from the award, unless doing so results in the surviving spouse receiving a greater monthly rate without the child than with it; in that event, no action is taken.
- d.** The child's net worth is added to the surviving spouse's net worth, and the entire award is terminated.

38 C.F.R. §§ 3.23(d)(5), 3.274(d)

15. A surviving spouse has income, including a Social Security benefit that makes her income for VA purposes just within the maximum annual pension rate. There is a cost-of-living increase in Social Security rates that raises her income for VA purposes over the maximum for the year. There is no change in any other income amount. Does this cause the surviving spouse to lose entitlement to VA pension? (Y/N)

38 C.F.R. § 3.27(a)

16. A veteran submitted a claim for type II diabetes mellitus and lung cancer. His DD214 shows service in the Republic of Vietnam for 6 months in 1969. He died 1 month after filing his claim and has no surviving spouse or child. Is accrued benefits still payable? Y/N

(Accrued benefits is payable to the person(s) who incurred the cost of the veteran's illness, interment and/or burial)

38 C.F.R. § 3.1000 (5)