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VA SURVIVOR BENEFITS

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AGENDA

- **Dependency and Indemnity Compensation (DIC)**
- **Survivors Pension**
- **Accrued Benefits and Substitution**
- **VA Burial and Memorial Benefits**
- **Education Benefits**


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DEPENDENCY AND INDEMNITY COMPENSATION (DIC)

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What is DIC?

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- An individual who qualifies as a surviving spouse, surviving child, or surviving parent may qualify for monthly VA DIC benefits based on:
 - Death that occurred during service
 - Death in whole or in part caused by condition connected to Vet's military service
 - Vet had a totally disabling SC disability for the 10 years, 5 years, or, in limited cases, 1 year, prior to death, or
 - Death due to negligent VA medical tx or VR&E

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DIC Based on 100% Rating Prior to Death

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- Vet had a totally disabling SC disability
 - Either a 100% combined rating or TDIU
- Entitled to DIC if Vet:
 - Had 100% SC rating continuously for at least **10 years** immediately preceding death
 - Had 100% SC rating continuously for at least **5 years** from the date of Vet's discharge/release from active duty
 - Was a **former POW** and had 100% SC rating continuously for at least **1 year** immediately preceding death
 - See 38 U.S.C. § 1318

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Hypo #1

⑥

- Vet Tim has been SC for the following since 2011:
 - 40% Back
 - 30% Psych
 - 10% Left knee
 - 10% Hearing Loss
 - 10% Tinnitus
 - TDIU
- 2023: Vet died in car accident


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Survey #1

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- Is Tim's surviving spouse eligible for DIC?
 - A. Yes
 - B. No - death not caused by SC condition
 - C. No - accidental deaths never eligible for DIC
 - D. Both B and C




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Answer

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- Tim had TDIU for over 10 years prior to his death

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Death Due to Disability SC Prior to Death

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- DIC can be established if claimant shows SC disability (or disabilities) were:
 - Principal (primary) cause of Vet's death; or
 - Contributory cause of Vet's death

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Principal Cause of Death

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- Disability, by itself, or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related to death

- 38 C.F.R. § 3.312(b)

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Contributory Cause of Death

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- Condition must be shown to have:
 - Contributed substantially or materially to death
 - Combined with another disability to cause death
 - Aided or lent assistance to the production of death
 - See 38 C.F.R. § 3.312(c) for full explanation of what constitutes contributory cause of death

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SC Disability Caused or Contributed to Death

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- Even if NSC primary cause of death was so overwhelming that eventual death was anticipated regardless of other conditions, VA should consider whether there may be a reasonable basis for finding that SC condition was so severe that it accelerated death
- Generally, VA does not consider a condition to have accelerated death unless condition affected a vital organ and was progressive or debilitating
- SC conditions of a static nature involving muscular or skeletal functions and not materially affecting other vital body functions generally not considered contributory causes of death (even if rated 100%)

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**SC Disability
Caused or Contributed to Death**

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- Vet's death can be SC if the primary or contributory cause of death was *aggravated* by an SC disability
- NSC disability must have been aggravated to the degree that it contributed substantially or materially to the production of death, combined to cause death, or aided or lent assistance to the production of death
- Must be an unbroken chain between SC disability and NSC condition that caused Vet's death
 - Ex: SC PTSD aggravated NSC alcoholism, which caused cirrhosis, which caused death

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**Determining Whether SC Condition
Caused or Contributed to Death**

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- Medical determination
- Death certificate first place to look (but not dispositive)
- VA exams
- If possible, obtain private medical opinion stating SC condition was primary or contributory cause of death
 - Make sure doctor provides sufficient rationale


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**Death Due to Disability
NOT SC Prior to Death**

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- Survivor can prove entitlement to DIC **even if cause of death not SC at time of death**
- Survivor can receive DIC **even if Vet never filed compensation claim during lifetime**
- Survivor must prove disease or disability that caused or contributed to Vet's death connected to service


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Death Due to Disability 
NOT SC Prior to Death

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- If VA denied Vet disability benefits for Condition A during Vet’s lifetime, and Condition A ultimately causes Vet’s death, survivor can still prove entitlement to DIC
- Survivor is entitled to a new opportunity to show that the condition was service-connected
 - 38 C.F.R. § 20.1106
- No “new and relevant” evidence requirement

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DIC Medical Opinions 
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- VA must obtain medical opinion for DIC claim when such an opinion is necessary to substantiate the claim – *Wood v. Peake*, 520 F.3d 1345, 1348 (Fed. Cir. 2008)
 - Exception: if there is no reasonable possibility that such assistance would help to prove entitlement
 - 38 U.S.C. § 5103A(a)(1), (2)
- Lower threshold than *McLendon* standard for living Vet compensation claims


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DIC Medical Opinions: 
COVID-19

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- VA must also obtain a medical opinion to determine if a SC disability was a principal or contributory cause of death when:
 - The death certificate ID’s COVID-19, but not SC disabilities, as the principal or contributory cause of death, and
 - a SC disability was a condition more likely to cause severe illness from COVID (according to CDC), and
 - the claimant is not otherwise eligible under the total disability criteria for DIC (38 U.S.C. 1318), and
 - the evidence doesn’t otherwise support a finding in favor of the claimant
 - Consolidated Appropriations Act, 2023, Division U - Joseph Maxwell Cleland and Robert Joseph Dole Memorial Benefits and Health Care Improvement Act of 2022, Pub. L. No. 117-328, § 202 (2022)

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DIC Eligibility - Spouses

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- These are the general rules for DIC eligibility, but there are various exceptions not being covered
 - See 38 C.F.R. §§ 3.50-3.60 for more info
- To qualify as surviving spouse, claimant must first show he or she was valid spouse of Vet at time of death
- If spouse divorced from Vet at time of death, spouse is NOT eligible for DIC
 - Regardless of who was at fault for divorce

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Valid Marriage

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- To qualify as surviving spouse, marriage must have been “valid”
- Requirements for a valid marriage:
 1. Free to marry at the time of marriage
 2. Formed a valid marriage
 - Traditional marriage
 - Valid common law marriage
 - State dependent – TN does not recognize



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Valid Marriage

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- Even a surviving spouse who had a valid marriage to Vet must have:
 - Continuously cohabitated with Vet; and
 - Not remarried after Vet’s death (in some cases)
 - 38 C.F.R. § 3.50

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Continuous Cohabitation

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- **Exceptions:**
 - Separations that occurred during the course of the marriage, regardless of fault, are irrelevant if no longer estranged at time of death
 - If separation was due to the misconduct of Vet or procured by Vet
 - Lived apart for medical/business/other reasons that do not show intent on the part of the surviving spouse to desert Vet
 - Living apart because of marital discord, but claimant not materially at fault

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Remarriage After Death

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- **Exceptions to the general rule that remarriage bars entitlement to DIC:**
 - Remarriage is void or annulled
 - Remarriage or relationship terminated
 - Surviving spouse still remarried, but remarriage occurred on or after age 55

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Marriages Deemed Valid

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- Where an attempted marriage of a claimant to Vet was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:
 - a) The marriage occurred 1 year or more before Vet died or existed for any period of time if a child was born of the purported marriage or born to them before such marriage, and
 - b) The claimant entered into the marriage without knowledge of the impediment, and
 - c) The claimant cohabited with the Vet continuously from date of marriage to date of Vet's death, and
 - d) No claim has been filed by a legal surviving spouse who has been found entitled to death benefits other than accrued monthly benefits covering a period prior to the Vet's death
 - 38 C.F.R. § 3.52

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Marriages Deemed Valid

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- A state’s lack of recognition of common law marriage can constitute a “legal impediment” under 38 C.F.R. § 3.52(b)
 - *Lamour v. Peake*, 544 F.3d 1317, 1322-23 (Fed. Cir. 2008)
 - VA Gen. Coun. Prec. 58-91 (June 17, 1991)
- In other words, if a claimant can establish that he/she didn’t know that a state didn’t recognize common law marriage, and attempted to enter a common law marriage with the Vet in that state, VA will deem the attempted marriage a valid marriage if the other requirements of 38 C.F.R. § 3.52 are met

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Same Sex Couples

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- Can married same sex couples receive spousal and survivor benefits in the same manner as opposite sex couples?



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Same Sex Couples

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- Under 38 U.S.C. § 101(31), it would appear that same sex couples would not be entitled to VA spousal or survivor benefits
 - “‘spouse’ means a person of the opposite sex”
- But, since U.S. Supreme Court decision in *U.S. v. Windsor*, VA no longer follows 38 U.S.C. § 101(31)
- In VAOPGCPREC 3-2014, VA discusses *U.S. v. Windsor* and the effective dates for these claims
 - www.va.gov/OGC/docs/2014/VAOPGCPREC3-2014.pdf

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Length of Marriage

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- To be eligible for DIC based on SC cause of death, the surviving spouse must have been married to Vet
 - Before the expiration of 15 years after the end of the period of service in which the injury or disease causing the death of the Vet was incurred or aggravated, **or**
 - For 1 year or more, **or**
 - For any period 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)

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Length of Marriage

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- **Special rule for surviving spouse of same-sex marriage:**
 - Many LGBTQ+ Vets were unable to get married until after the 2015 *Obergefell* Supreme Court decision, despite being in a marriage-type relationship before then
 - This precluded many survivors of LGBTQ+ Vets from becoming eligible for survivor benefits because their spouse died before the marriage met VA's length-of-marriage requirements
 - To help remedy this, VA now counts the duration of marriage from when the surviving spouse can establish a "marriage-type" relationship, such as a commitment ceremony, joint banking account, or joint purchase of a house
 - Policy went into effect on 10/13/2022 and does not provide for retroactive benefits

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Who is a Child?

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- A child is:
 - An unmarried person, and
 - Meets age restrictions
 - Under the age of 18
 - Between 18 and 23, if pursuing higher education
 - Any age, if a "helpless child"

Requirements



• 38 U.S.C. § 101(4)(A); 38 C.F.R. § 3.57


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Who is a Child? 

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- A child is:
 - A biological child
 - A legally adopted child
 - A stepchild who is a member of the household or was a member at the time of the Vet's death
 - An illegitimate child, in certain circumstances
 - 38 U.S.C. § 101(4)(A); 38 C.F.R. § 3.57


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Who is a Child? 

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- A minor-dependent of a Vet is only a “child” for purposes of VA benefits if the individual meets the requirements of 38 U.S.C. § 101(4)(A)
 - *O'Brien v. Wilkie*, 948 F.3d 1339 (Fed. Cir. 2020)
- Example: If a Vet took court-ordered legal guardianship of his daughter's minor son (his grandson) and bore the costs of dependency, that child is NOT considered a child for VA purposes


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Helpless Child 

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- A helpless child is a biological child, stepchild, or adopted child of a Vet who, **before turning 18**, became permanently incapable of self-support
- The child may fit within this category due to either a physical or mental disability
 - 38 U.S.C. § 101(4)(a)(ii); 38 C.F.R. 3.315(a)


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Adult Children 

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- Adult children are not eligible for DIC or VA Survivors Pension
- Can receive accrued benefits / substitute if they paid the expenses of the Vet's last sickness and burial (and no other eligible claimant), but can only receive benefits up to the amount of those expenses
 - 38 U.S.C. § 5121(a); 38 C.F.R. § 3.1000(a)-(b)
- If no surviving spouse of claimant, can receive *Nehmer* benefits (retroactive benefits awarded to deceased claimant under *Nehmer*)
 - 38 C.F.R. § 3.816(f)


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Parents' DIC 

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- Parents' DIC is a benefit separate from DIC for surviving spouses and children
- Parents of deceased Vet are only eligible for Parents' DIC if they have a limited annual income
- Because income qualifications are so strict, very few parents qualify for Parents' DIC


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Filing DIC Claim 

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- Application form is VA Form 21P-534EZ
- Prior to filing 21P-534EZ, claimant can submit ITF on VA Form 21-0966 to protect date of claim
 - If claimant submits 534EZ w/in 1 year of ITF, date of ITF = date of claim
- VA has shorter DIC form for survivors of Vet who died in-service (VA Form 21P-534a)
- Parents' DIC claim filed on VA Form 21P-535
- On VA Form 21P-534EZ and 21-535, VA added a question to allow claimants to elect reevaluation of a previously denied DIC claim based on new eligibility under the PACT Act

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Survey #2

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- When a survivor files VA Form 21P-534EZ, which of the following benefits are included in that claim?
 - A. DIC only
 - B. DIC and Survivors Pension
 - C. DIC and accrued benefits/substitution
 - D. DIC, Survivors Pension, and accrued benefits/substitution

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Answer

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D

- **Claim on VA Form 21P-534EZ includes: DIC, Survivors Pension, and Accrued Benefits/Substitution**

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Filing DIC Claim

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- Application for Social Security survivor benefits is also considered an application for VA DIC benefits
 - SSA should transmit application and supporting documents to VA, but not always done
 - May support EED for DIC if claimant filed earlier Social Security survivor benefits claim
 - Notify VA about SSA claim and approx. date filed
 - VA must attempt to obtain docs from SSA, but submit copies of in claimant's possession
 - 38 U.S.C. § 5105; 38 C.F.R. § 3.153

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DIC Effective Dates

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- No time limit for filing DIC claim, BUT date claim is filed will determine effective date
- DIC claim filed w/in one year of Vet's death
 - Effective Date = First day of month of Vet's death
- DIC claim filed more than one year after Vet's death
 - Effective Date = Date of claim
- Don't forget that SSA survivor benefits claim = claim for DIC

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DIC Effective Dates

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- Claim for DIC is automatically construed as a claim for Survivors Pension and accrued benefits/substitution; and vice versa
- If survivor filed claim for DIC, and Survivors Pension claim was not adjudicated, the effective date for Survivors Pension claim will be preserved from the date of original filing
 - 38 U.S.C. § 5101(b); 38 C.F.R. § 3.152(b)(1)

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DIC Effective Dates & PACT Act

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- The PACT Act created a new statute: 38 U.S.C. § 1305, Reevaluation of DIC determinations pursuant to changes in presumptions of SC
 - When a law, reg, or court decision/settlement establishes or modifies a presumption of SC, VA must identify all DIC claims that were previously denied that might have been decided differently based on change
 - Allow claimant to have claim reevaluated
 - If DIC then granted, VA must assign effective date as if the new presumption was in effect at the time of the prior claim

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DIC Effective Dates & PACT Act

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- VA must conduct outreach to inform DIC claimants they may request to have claim reevaluated based on change re presumption
 - Notice on VA's website and,
 - Notifying Veterans Service Orgs and,
 - Directly contacting each claimant!
- Rule applies to presumptions established / modified on or after 8/10/2022 (when PACT Act became law)
- There is no time limit for requesting reevaluation of previously denied DIC claim

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DIC – Additional Allowances

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- Monthly DIC payment (**\$1,562.74**) can be increased based on any of the following:
 - If at time of death, Vet was in receipt of or entitled to receive compensation for SC disability rated 100% (including TDIU) for a continuous period of at least 8 years immediately preceding death AND surviving spouse was married to Vet for those 8 years
 - For each dependent child
 - If surviving spouse needs A&A
 - If surviving spouse housebound
- Note: If Vet died before 1/1/1993, base DIC rate depends on Vet's pay grade


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SURVIVORS PENSION

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Survivors Pension

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- Available to surviving spouse of Vet whose death is not service-connected
- Requirements
 - Wartime service
 - Minimum length of service
 - Financial (need-based)
 - **Countable income limit**
 - **Net worth limit**

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Wartime/Length of Service Requirement

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- Vet must have served during a period of war:
 - World War II (12/7/1941 – 12/31/1946)
 - Korean conflict (6/27/1950 – 1/31/1955)
 - Vietnam War era (11/1/1955 – 5/7/1975 for Vets who served in the Republic of Vietnam during that period; 8/5/1964 – 5/7/1975 for other Vets)
 - Gulf War (8/2/1990 – present (end date to be set by future law or presidential proclamation))

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Wartime/Length of Service Requirement

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- If Vet first entered active duty **before 9/8/1980** (before 10/17/1981 for officers): **90 days (at least one day during a period of war)**
- Vets who first entered active duty **after 9/7/1980** (after 10/16/1981 for officers), must have completed a continuous period of active duty of at least **24 months (with at least one day during a period of war)** for their survivors to be eligible for Survivors Pension, with the following exceptions:

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Wartime/Length of Service Requirement

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- 24 month exceptions:
 1. Vet served full period for which he or she was called or ordered to active duty or was granted an early discharge under 10 U.S.C. § 1171 or a hardship discharge under 10 U.S.C. § 1173
 2. Vet at death was receiving or entitled to receive compensation or retired pay for SC disability based on wartime service
 3. Vet was discharged or released from active duty for disability incurred in or aggravated in line of duty

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**Financial Requirements
Survivors Pension MAPR**

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- Maximum Annual Pension Rate (MAPR) for surviving spouse with no dependents: \$10,757
- If survivor's annual income is greater than MAPR, survivor not entitled to Survivors Pension
 - Countable income may be reduced by unreimbursed medical expenses
- MAPR increases if surviving spouse has dependents
- MAPR also increases if survivor is **housebound or in need of A&A**
- VA also factors in survivor's net worth

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**Financial Requirements
Housebound and Aid and Attendance**

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- **Housebound MAPR – \$13,147**
 - Housebound: Claimant cannot leave, or can only rarely leave house because of a disability
- **Aid and Attendance MAPR – \$17,182**
 - Aid and Attendance: Claimant needs assistance with Activities of Daily Living (ADLs), patient in nursing home, or limited eyesight
- **VA Form 21-2680 for both**

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Financial Requirements
Net Worth Limit

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- **Net worth** limit to be eligible for Survivors Pension is **\$150,538** (effective 12/1/2022)
- Net worth includes assets and annual countable income
- **Note:** If child's net worth is more than net worth limit, VA doesn't consider them to be the surviving spouse's dependent when they determine pension entitlement/amount

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Financial Requirements
Net Worth Limit- Assets

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- Assets do not include primary residence and up to 2 acres of residential lot area, car, and personal effects consistent with a reasonable mode of life
- VA will look at assets transferred in the 3 years prior to filing a claim
- If certain assets were transferred for less than fair market value during this look-back period, thus making claimant eligible for pension, claimant subject to penalty period of up to 5 years during which pension prohibited


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**ACCRUED
BENEFITS
VS.
SUBSTITUTION**

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Accrued Benefits vs. Substitution

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- **Accrued Benefits**
- “Accrued benefits” represent benefits owed to deceased claimant at time of death
- Accrued benefits determinations based on evidence in VA’s possession at time of claimant’s death
- To recover benefits that deceased claimant was owed, survivor must file claim for “accrued benefits” within 1 year of death
- No new evidence can be submitted

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Accrued Benefits vs. Substitution

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- **Substitution**
- Only applies for deaths on or after 10/10/2008
- Eligible substitute can “step into the shoes” of deceased claimant
- If VA grants substitution request, substitute can continue the claim or appeal
- Substitute can submit additional evidence
- If benefits are ultimately awarded, they are paid to substitute

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Accrued Benefits vs. Substitution

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- **Accrued benefits claim may be better if you want decision based only on evidence already in c-file**
- Vet submitted a favorable medical opinion before death and there are no competing opinions
 - Don’t want VA to be able to get negative opinion
- **WARNING:** Opinion better be good and advise claimant of potential dangers of this strategy
- If waiving substitution, must do so in writing (on Form 21P-534EZ)

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When are Substitution/Accrued Benefits Available? 


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- To be eligible for substitution/accrued benefits, at time of claimant's death, there must be either:
 - A pending claim

OR

- A pending appeal/review
 - 38 C.F.R. § 3.1010 (g)(1); Manual M21-1, XI.ii.3.A.2.a (change date May 2, 2023)


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Pending Claim 

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- Claim filed, but claimant died before RO decision
 - Intent to file does not count
- RO issued decision, but claimant died before 1 year appeal/review request deadline expired, and did not file appeal/review request before death


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Pending Appeal/Review 

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- For AMA cases:
 - Claimant died after filing appeal/review request, but before decision
- For Legacy cases:
 - Claimant died after filing NOD, but before SOC
 - Claimant died after SOC, but before deadline for filing Form 9
 - Claimant died after filing Form 9, but before BVA issued decision

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Substitution Priority Order

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- Substitution eligibility is determined based on a priority order listed in 38 C.F.R. § 3.1000(a):
 1. Surviving spouse
 2. Surviving children (equal shares)
 3. Surviving dependent parents
 4. Person who bore the expense of last sickness or burial, but only as much as necessary to reimburse those expenses

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How to File a Substitution Request

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- Must be filed no later than one year after claimant's death
- Requirements for substitution request (use VA Form 21P-534EZ):
 - Must be in writing
 - Indicate an intent to substitute
 - Name of deceased claimant
 - Name of substitute
 - Deceased claimant's claim #, SS #, or appeal #

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Proving Eligibility for Substitution

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- Evidence of eligibility to substitute must be provided to VA
- Evidence of eligibility to substitute includes:
 - Evidence that individual is among those listed in § 3.1000(a)
 - Evidence that the individual is first in priority order

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Proving Eligibility for Substitution

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- If substitution request fails to provide evidence of eligibility, VA will inform applicant:
 - Of evidence needed to complete request
 - That VA will take no further action on request unless evidence of eligibility is received
 - That VA must receive evidence of eligibility no later than 60 days after date of notification or 1 year after claimant's death, whichever is later, or VA will deny substitution request

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Who Makes Initial Decision on Substitution Request?

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- VARO (even if case before BVA at time of claimant's death)
- The denial of a substitution request can be appealed to BVA

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What Happens After Substitution Granted?

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- Substitute will “step into the shoes” of the original claimant
- VA will only send notice (in regard to its duty to notify) if such notice was never provided to deceased claimant or if notice provided was inadequate
- Substitute may not add issues or in any way expand the claim

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What Happens After Substitution Granted?

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- Substitute may raise new theories of entitlement
 - Ex.: if original claimant only argued direct SC, substitute could also argue secondary SC
- Substitute can submit additional evidence, request a hearing, and appeal/request review of an adverse decision

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What Happens After Substitution Granted?

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- Substitute must complete any action required by law within time period remaining for claimant to take such action on the date of death
 - The time remaining to take such action will start to run on the date of mailing of the decision granting substitution request
 - Be cautious of tight deadlines


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What Happens If Substitute Wins?

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- The time period for any benefits awarded goes from effective date of award based on date deceased claimant filed claim to date of claimant's death




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Prohibition on Substitution by Subordinate Members 

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- Failure to timely file a request to substitute or a waiver of the right to request substitution by eligible substitute will not give person in lower eligibility category the right to request substitution
- In other words, if deceased Vet’s surviving spouse does not file substitution request within 1 year of Vet’s death (or waive right to request substitution), Vet’s children do not become eligible for substitution


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Joint Class Representative 

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- A joint class is a group of 2 or more individuals eligible to substitute in the same priority group under § 3.1000(a)
 - Ex. 2 or more surviving children
- The first eligible person in joint class to file substitution request will represent whole joint class
- But, any benefits that are awarded will be spilt evenly among eligible members of the joint class


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What Happens If Substitute Dies? 

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- If substitute dies, another member of the same joint class or a member of the next lower category of substitutes listed in § 3.1000(a) may file a request to be substituted for deceased substitute
- A request to be substituted for deceased substitute must be filed no later than one year after date of substitute’s death (not claimant’s death)
- A new VA Form 21-22, *Appointment of Individual as Claimant’s Representative*, is required to represent the substitute, even if you previously represented the deceased claimant


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BURIAL BENEFITS


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VA Burial and Memorial Benefits

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- **VA offers various burial and memorial benefits for eligible claimants including:**
 - Burial Allowance for NSC Death
 - Burial Allowance for SC Death or in-service Death
 - Burial in National Cemetery
 - Plot or Interment Allowance
 - Headstones, Markers, and Medallions
 - Burial Flags



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Burial Allowance for NSC Death

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- **Eligibility includes:**
 - Vet was in receipt of VA comp or pension at time of death
 - Vet died with an original or reopened claim for VA comp or pension pending, and VA later determines Vet would have been entitled to comp or pension
 - Vet was receiving military retired / disability pay in lieu of VA comp at time of death
 - Vet died while hospitalized by VA or while receiving care in VA nursing home or VA domiciliary
 - Vet died while traveling, under proper authorization and at VA expense, to or from a specified place for purpose of exam, treatment, or care

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Burial Allowance for NSC Death

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- If eligible, NSC death burial allowance:
 - \$893 if death on or after 1/5/2023
 - \$300 if death before 1/5/2023, unless Vet died while hospitalized by VA
 - \$893 if death on or after 10/1/2022 while Vet hospitalized by VA
 - \$828 if death 10/1/2021-9/30/2022 while hospitalized by VA
- www.va.gov/burials-memorials/veterans-burial-allowance/

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Burial Allowance for NSC Death

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- Must file VA Form 21P-530, *Application for Burial Benefits*
- Application must be filed w/in 2 years of Vet's burial or cremation
- VA will automatically pay this benefit to eligible surviving spouses if eligibility can be determined from evidence of record
- If no spouse, others may be eligible, including executor of Vet's estate
- See 38 C.F.R. §§ 3.1705, 3.1706 for more info on burial allowance for NSC death

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Burial Allowance for SC Death

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- VA will pay up to \$2,000 towards funeral and burial expenses
 - Will pay full amount unless it has evidence on the date it receives notice of death that expenses less than \$2,000
- SC disability or disabilities must have directly caused death or been contributory cause of death
 - Disabilities SC under 38 U.S.C. § 1151 do NOT count
- No time limit for submitting application
- VA will automatically pay burial benefits to surviving spouse if evidence shows Vet's death was service-related

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Burial Allowance for SC Death

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- VA will presume death was SC if Vet was rated 100% at time of death
 - Unless VA has evidence to the contrary as of date it receives notice of Vet's death
 - TDIU does not count
- See 38 C.F.R. § 3.1704 for more info on burial allowance for SC death

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Plot or Interment Allowance

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- Vet must be eligible for burial in national cemetery, but is not buried in national cemetery
- \$893 paid as plot or interment allowance to person/entity incurring expense (for deaths on/after 10/1/2022; lower amount for deaths prior to 10/1/2022)
 - Unless VA has evidence that actual expenses were lower
 - Paid to state if Vet buried in state veterans cemetery at no cost
 - Paid to claimant if Vet buried elsewhere
- Paid in addition to burial allowance
- Available for Vets who died from NSC causes (or SC causes if Vet buried in state veterans cemetery)

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Plot or Interment Allowance

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- Claim must be submitted w/in 2 years of Vet's burial
- If Vet not buried in state veterans cemetery, VA will pay allowance to claimant if:
 - Eligible for NSC burial allowance
 - Eligible for burial allowance for Vets who died while hospitalized by VA
 - Vet was discharged from active service for disability incurred or aggravated in line of duty
 - At time of discharge from active service, Vet had disability, shown by official service records, which in medical judgment would have justified discharge for disability
- See 38 C.F.R. § 3.1707 for more info

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Burial in National Cemetery

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- Benefits include gravesite, headstone or marker, opening and closing of grave, and perpetual care
- Eligibility includes:
 - Vets discharged / separated from active duty under conditions other than dishonorable who completed required period of service
 - Service members who died during active duty
 - Persons entitled to retired pay as result of 20 years creditable service with Reserves

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Burial in National Cemetery

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- Member of Reserves or National Guard whose death occurred under honorable conditions, in certain circumstances
- ROTC members whose death occurred under honorable conditions, under certain circumstances
- U.S. citizens who served in armed forces of a government allied with U.S. in a war, under certain circumstances
- Spouse, surviving spouse, minor child, unmarried dependent adult child, or eligible parent of eligible Vet
- See 38 U.S.C. § 2402 for more info on burial in a national cemetery

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Headstones, Markers, and Medallions

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- **For deaths that occurred on or after 11/1/1990**
 - VA must furnish, when requested, an inscribed headstone, marker, or medallion for grave of Vet who was eligible for burial in national cemetery, but was buried in private cemetery
 - VA has this obligation even if Vet's grave already marked with privately purchased marker
- **For deaths prior to 11/1/1990**
 - VA only obligated if Vet's grave not already marked with private headstone
- **Must file VA Form 40-1330, *Claim for Standard Government Headstone or Marker***

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Burial Flags

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- A free U.S. burial flag is provided to the next of kin or close friend of deceased Vets who:
 - Served during wartime
 - Served after 1/31/1955
 - Served only in peacetime and separated from the military prior to 6/27/1950, after serving at least one enlistment, or separated because of a disability caused or aggravated by active service
 - Died while serving on active duty after 5/27/1941
 - Are missing in action and presumed dead
 - Served in the Selected Reserve (in some cases)

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Burial Flags

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- Must file VA Form 27-2008, *Application for United States Flag for Burial Purposes*
- Flags are issued at VAROs, national cemeteries, and Post Offices


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**EDUCATION
BENEFITS**

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Education Benefits

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- **Two major educational programs with special eligibility for survivors:**
 - Survivors' and Dependents' Educational Assistance (DEA)
 - Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship)
- **Individuals who qualify for both must pick one program when applying, and cannot switch programs after election**
 - Exception: Children whose veteran-parent died in LOD before Aug. 1, 2011

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Overview of DEA Benefits

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- **Also called “Chapter 35” benefits**
- **Monthly payment to help cover certain education or training**
 - Up to 45 months, if started program before 8/1/2018
 - Up to 36 months, if started program on or after 8/1/2018
- **Surviving spouse CAN concurrently receive DIC and DEA**
- **Surviving child CAN’T concurrently receive DIC and DEA**
- **See 38 U.S.C. §§ 3510-3514 for more info**

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Eligibility for Surviving Spouses and Children

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- **General Eligibility**
 - Vet died of SC disability or on active duty; or
 - Vet died while suffering from SC disability rated as total and permanent
- **Time limits specific to surviving spouses:**
 - For surviving spouse of service member who died on active duty: 20 years after date of death
 - For other surviving spouses: 10 years from date of VA decision or death
- **Age limit for surviving children:**
 - Generally, must be between age 18 and 26
 - Military service may extend eligibility until age 31
- See 38 U.S.C. § 3512; 38 C.F.R. §§ 3.807, 21.3046, and 21.3021

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Retroactive DEA Benefits

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- **Family members can file for retroactive DEA within 1 year after VA awards DIC / finds death SC or awards a total and permanent disability rating**
- See 38 U.S.C. § 5113(b) for more info

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Overview of Fry Scholarship

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- **Full tuition and fees (subject to caps for private and foreign schools), housing allowance, and stipend for up to 36 months of education**
- See 38 U.S.C. § 3311(f) for more info
- **As of 8/1/2018, recipients can also participate in Yellow Ribbon Program**
- See 38 U.S.C. § 3317 and 38 C.F.R. § 21.9700 for more info

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Eligibility for Surviving Spouses

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- **Surviving spouse is eligible if:**
 - Service member died in LOD after 9/10/2001; or
 - Service member died on or after 9/11/2001 while a member of the Selected Reserve from a SC disability
- **Time limit:**
 - Within 15 years of service member's death
 - Loses eligibility if remarries

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Eligibility for Surviving Children

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- **Surviving children eligible if:**
 - Parent died in LOD after 9/10/2001; or
 - Parent died on or after 9/11/2001 while a member of the Selected Reserve from a SC disability
- **Time limits:**
 - If turned 18 or graduated HS before 2013, eligible until age 33
 - If turned 18 or graduated HS in 2013 or after, no limit
- See 38 U.S.C. § 3311 and www.va.gov/education/survivor-dependent-benefits/fry-scholarship/

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Questions?

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