



Department of

**Veterans Services**

# Death Benefits

# Overview

- Death Pension
  - Title 38, U.S. Code, Chapter 15
  - 38 Code of Federal Regulations, Part 3
  - Adjudication Manual, M21-1MR (Manual Rewrite), Parts 5 and 8
  - VA Pamphlet 80-19-01, Federal Benefits for Veterans, Dependents and Survivors 2020

# Overview

- Dependency and Indemnity Compensation (DIC)
  - 38 U.S.C. 1151, 1310, 1318
  - 38 C.F.R. 3.5; 3.22; 3.358; 3.702
  - M21-1, Part IV, Subpart iii, Chapter 1
  - VA Pamphlet 80-19-01, Federal Benefits for Veterans, Dependents and Survivors 2020

# Overview

- SBP for Spouses and Benefits from the Department of Veterans' Affairs (VA)
  - 38 U.S.C. § 1311(a)  
<https://www.dfas.mil/retiredmilitary/provide/sbp/>
- SBP-DIC Offset Phased Elimination News
  - <https://www.dfas.mil/RetiredMilitary/survivors/SBP-DIC-News/>

# Death Pension

- Death Pension
  - Death Pension is an income supplement program for a low-income surviving spouse and/or children of a veteran. 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.

# Death Pension

- **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 injury or disease incurred in or aggravated by active military, naval, or air service, in the line of duty; and is discussed further in the presentation*

# Death Pension

- Application for death pension is made by completing and submitting a *VA Form 21P-534EZ application for DIC, Survivors Pension, and/or Accrued Benefits.*

# Death Pension

- A claim for death pension and any class of dependents is always a claim for DIC also. If the surviving spouse qualifies for both DIC and death pension, DIC will be awarded as the greater benefit. A claim for death pension is also always a claim for accrued benefits. 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



# Death Pension

there were any un-cashed checks. If the accrued benefit is based upon a claim pending at the time of the veteran's death, all the evidence necessary for a favorable decision must have been of record on the date of the veteran's death.

# Death Pension

- Since January 2002, the VA began to consolidate the adjudication of pension claims into three Pension Management Centers (PMCs). The VA stated that this was done in order to centralize processing of all running pension awards, achieve a more effective use of limited human resources, improve technical accuracy based on skills specialization and enhanced use of computer program edits, and to allow VA Regional Offices to concentrate on compensation claims processing. The three PMCs are located in Philadelphia, PA, Milwaukee, WI, and St. Paul, MN.

# Death Pension

- As mentioned earlier, certain requirements must be met to be eligible for Death Pension: wartime service; be an eligible dependent; and meet the required income restrictions.

# Death Pension

- **Wartime Service:** Qualifying wartime service for pension purposes means that the veteran served on active duty for at least 90 consecutive days, at least one day of which was during a wartime period; or if less than 90 days, was discharged because of a disability; or had two or more separate periods of active duty for an aggregate of 90 days or more during more than one period of war. 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, is required unless they were discharged earlier because of a disability.

# Death Pension

- In addition to the above, service requirements for death pension will be met regardless of the length of the veteran's service if at the time of death the veteran was receiving, or was entitled to receive, compensation or retired pay for a service-connected disability incurred or aggravated during a wartime period.

# Death Pension

- **Be An Eligible Dependent:** There are time limits for recognition of a surviving spouse for benefit 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. There is *no* length of marriage requirements if the marriage occurred while the veteran was in service, or before service, or if a married service member dies while on active duty.

# Death Pension

- 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.

# Death Pension

- 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.
- 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.



# Income/Net Worth Requirements

- Income and net worth limits for death pension are spelled out in 38 USC 1541, 1542, and 1543 and can also be found on the VA website at [www.va.gov](http://www.va.gov) or TDVS' December 2020 Benefits Bulletin. All family income from all sources is counted, unless specifically excluded. Specific categories of countable income are discussed in 38 CFR § 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).

# Income/Net Worth Requirements

- Categories of excluded and/or excludable income are listed in 38 CFR § 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 a recipient's income and net worth, any material change to their estimated annual income, net worth or dependents must be promptly reported to the VA.

# Income/Net Worth Requirements

- 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.

# Income/Net Worth Requirements

- 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.

# Special Monthly Pension (SMP)

- **Aid and Attendance Benefits:** A surviving spouse who suffers severe disability may be entitled to additional benefits when there is demonstrated the need for regular aid and attendance of another person. Such need exists when the surviving spouse is unable to feed him/herself, dress or undress him/herself, or keep him/herself ordinarily clean and presentable. Eligibility may also be shown when the surviving spouse is unable to attend to the needs of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the surviving spouse from hazards or dangers incident to his or her daily environment.

# Special Monthly Pension (SMP)

- A surviving spouse, who because of disability is permanently bedridden, will also meet the requirements for the aid and attendance benefit. A surviving spouse will be presumed to be in need of regular aid and attendance if he or she is a patient (not simply a resident) in a nursing home because of disability; or if he or she is blind, with vision in both eyes 5/200 or worse, or concentric contraction of visual fields of 5° or less bilaterally.

# Poll Question #1

- 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.

# Poll Question #1 Answer

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  - 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.



# Poll Question #1 Answer

- **Be An Eligible Dependent:** There are time limits for recognition of a surviving spouse for benefit 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. There is *no* length of marriage requirements if the marriage occurred while the veteran was in service, or before service, or if a married service member dies while on active duty.

# Dependency and Indemnity Compensation (DIC)

- Dependency and Indemnity Compensation (DIC) is a monthly tax free monetary benefit paid to the surviving dependents (surviving spouse, children, or parents) of a deceased veteran. Although it is usually a service-connected benefit, DIC may also be authorized for certain nonservice-connected deaths, as well. There is no minimum active duty service requirement for DIC claims; however, there may be a 90-day length of service requirement if the cause of death was a chronic disease (as defined, see 38 CFR § 3.307(a) (1) and § 3.309(a)) and the issue was not addressed during the veteran's lifetime.

# DIC for a Surviving Spouse, Children or Parent

- DIC for a surviving spouse and/or children is not income based. It is a benefit that is payable if the veteran died while on active duty, in the line of duty or when the death was after service as long as the immediate cause of death was service-connected. It is not required that service connection had been established prior to the veteran's death for the condition which caused or contributed to death. The rules and procedures for establishing service connection for a veteran's death are essentially similar to those for establishing a service-connected disability for a living veteran, with due consideration of the finality of the evidence in a death claim

# DIC for a Surviving Spouse, Children or Parent

- The application for DIC, Survivors Pension, and/or Accrued Benefits is VA Form 21P-534EZ. **Note**—DIC claims from survivors of veterans who die on active duty are under exclusive jurisdiction of VAROIC Philadelphia, Pennsylvania.

# DIC for a Surviving Spouse, Children or Parent

- Since 1978, DIC has been payable **as if** the death were service-connected when a veteran who had been rated totally disabled from service-connected causes (whether 100% or by reason of individual unemployability) for ten continuous years or longer at the time of death dies from any cause other than willful misconduct. If the veteran was out of service less than ten years, DIC is payable if a total disability rating was in effect for a period of at least five continuous years, from the date the veteran left service to the date of death. Since November 30, 1999, DIC is payable to the surviving spouse and/or child of a former prisoner of war who was rated totally disabled from service-connected causes for at least one year at the time of death, and who died after September 30, 1999 from any cause other than willful misconduct [38 USC 1318].

# DIC for a Surviving Spouse, Children or Parent

- The current rate of DIC payable can be found on the VA website at [www.va.gov](http://www.va.gov) or TDVS' [December 2020 Benefits Bulletin](#). Additional amounts are also 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 CFR § 3.351. Beginning January 1, 2005, a surviving spouse with one or more children under age 18 will be paid an additional \$289 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.

# DIC for a Surviving Spouse, Children or Parent

- If the veteran died before January 1, 1993, the rate for the surviving spouse is based on the highest pay grade attained by the veteran on active duty *or* the basic/enhanced rates described above, whichever is the greater.
- 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.

# DIC for a Surviving Spouse, Children or Parent

- If the veteran was entitled to military retired pay and had contributed to the Survivor Benefit Plan (SBP) during his or her lifetime, the surviving spouse may not be concurrently paid both DIC and the full amount of SBP. If the SBP is more than the DIC rate, the SBP is reduced by an amount equal to the DIC rate. If the DIC rate is greater than SBP, the SBP is discontinued and any unpaid amounts remaining are refunded to the surviving spouse. These rules do not apply to SBP for children – payment of DIC to or for a child is independent of and does not affect any SBP payable to or for that child.



# DIC for a Surviving Spouse, or Children

- 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.

# DIC for a Surviving Spouse, or Children

- An eligible surviving spouse may simultaneously be paid both DIC and Dependents' and Survivors' Education Assistance under 38 USC, Chapter 35. When DIC has been (or will be) awarded under either 38 USC 1318 or 38 USC 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 to Social Security or Workers' Compensation benefits, even though they may have been awarded by judicial proceedings.

# DIC for Parents

- DIC is payable to a veteran's surviving parent(s) if the veteran's death is service connected or is compensable under 38 USC 1151. There is no eligibility for parents' DIC under 38 USC 1318. Parents' DIC is income based (see limits in 38 USC 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 CFR § 3.260 and 3.261. Categories of excluded and/or excludable income are also discussed in 38 CFR § 3.362. 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.

# DIC for Parents

- The application for parents' DIC is the application for DIC, Survivors Pension, and/or Accrued Benefits is VA Form 21-534EZ. DIC claims from surviving dependent parents of veterans who die while on active duty are under the initial jurisdiction of VAROIC Philadelphia, Pennsylvania; all others 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 parent's DIC cases transfers to the Pension Management Center (PMC) for the parent's address.

# DIC for 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 for Parents

- Additional amounts are payable if one or both parents are in need of aid and attendance. If the amount of the total annual benefit payable is less than 4% of the maximum rate, payments will be made semi-annually unless monthly payments are specifically requested. When DIC has been (or will be) awarded under 38 USC 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.

# Poll Question #2

- The surviving spouse's family income from all sources is a factor in determining the DIC monthly rates payable?
  - a. True
  - B. False

# Poll Question #2 Answer

- The surviving spouse's family income from all sources is a factor in determining the DIC monthly rates payable?
  - a. True
  - B. False**



# Poll Question #2 Answer

- DIC for a surviving spouse and/or children is not income based. It is a benefit that is payable if the veteran died while on active duty, in the line of duty or when the death was after service as long as the immediate cause of death was service-connected

# Poll Question #3

- 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?
  - a. Yes
  - b. No

# Poll Question #3 Answer

- 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?
  - a. Yes
  - b. No

# Poll Question #3 Answer

If the veteran was out of service less than ten years, DIC is payable if a total disability rating was in effect for a period of at least five continuous years, from the date the veteran left service to the date of death.

# SBP-Survivor Benefit Plan

- Survivor Benefit Plan
  - The Survivor Benefit Plan is a Department of Defense sponsored and subsidized program that provides up to 55 percent of a service member's retired pay to an eligible beneficiary upon the death of the member. The program provides no-cost automatic coverage to members serving on active duty, and reserve component members who die of a service connected cause while performing inactive duty training. In addition, active duty members can purchase coverage upon retirement and reserve component members can elect coverage when they have 20 years of qualifying service for reserve retired pay.

# SBP/DIC offset

- Spouse SBP annuitants, except for those who remarry after age 57 (or in other specific circumstances), cannot receive full SBP and DIC at the same time (DIC payments made directly to children, or to a guardian on behalf of children, do not affect SBP child annuity payments).
- When DFAS is informed by the VA that a spouse annuitant is receiving DIC, the law requires that DFAS deduct the amount of DIC received from the amount of SBP payable and pay the remaining amount of the SBP to the annuitant. This is called the SBP/DIC offset.

# SBP/DIC offset

- For example, if an annuitant receives a monthly SBP annuity of \$500 from DFAS and becomes eligible to receive a monthly DIC award of \$400 from the VA, DFAS will deduct the \$400 DIC from the \$500 SBP and pay the remaining \$100 to the annuitant.
- If the SBP payment is greater than the DIC payment, a partial refund of premiums paid into the program during the service member's retirement will be made to the spouse.

# SBP/DIC offset

- If the DIC payment is greater than the SBP payment, SBP will be stopped completely and all eligible basic spouse premiums paid into the program during the service member's retirement will be refunded. If the SBP payment is greater than the DIC payment, a partial refund of premiums paid into the program during the service member's retirement will be made to the spouse.



# SBP-DIC Offset Phased Elimination

- The National Defense Authorization Act for Fiscal Year 2020 modified the law that requires an offset of Survivor Benefit Plan (SBP) payments for surviving spouses who are also entitled to Dependency and Indemnity Compensation (DIC) from the Department of Veterans Affairs (VA). Under the previous law, a surviving spouse who receives DIC is subject to a dollar-for-dollar reduction of SBP payments, which can result in SBP being either partially or fully offset. The repeal will phase-in the reduction of this offset beginning on January 1, 2021, and culminating with elimination of the offset in its entirety on January 1, 2023. For the remainder of calendar year 2020, surviving spouses remain subject to the existing dollar-for-dollar offset of SBP payments by the amount of DIC paid by VA. After January 1, 2021, survivors subject to the “SBP-DIC Offset” will potentially see a change in their SBP payments.

# SBP-DIC Offset Phased Elimination (Poll 4)

- If a surviving spouse previously received a refund of SBP premiums paid due to the SBP-DIC offset, you will the surviving spouse need to pay back that refund because of this change in the law?
  - a. Yes
  - b. No

# SBP-DIC Offset Phased Elimination (Poll 4)

- If a surviving spouse previously received a refund of SBP premiums paid due to the SBP-DIC offset, you will the surviving spouse need to pay back that refund because of this change in the law?
  - a. Yes
  - b. No**

# SBP-DIC Offset Phased Elimination (Poll 4)

- If a surviving spouse previously received a refund of SBP premiums paid due to the SBP-DIC offset, you will the surviving spouse need to pay back that refund because of this change in the law?
- No, will **not** need to pay back that refund because of this change in the law.

# Next Lunch and Learn

- **January 2021 Lunch and Learn: Burial Benefits**  
**January 13, 2021 @ 11:30 CST or 12:30 EST**

# Questions?

