

Department of Veterans Affairs

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may be discontinued under the provision of § 3.557 of this title. In those cases in which the payments have been discontinued, the Veterans Services Officer shall, when the estate has been reduced to \$500, immediately notify the Adjudication Division of that fact.

(b) *Waiver of discontinuance.* The Veterans Services Officer shall assist in those cases under the Veterans Services Officer's supervision in determining when discontinuance should be waived for one or more periods not to exceed 60 days of the veteran's care during any calendar year by making an appropriate recommendation.

(1) The Veterans Services Officer should not recommend waiver as an administrative expediency but should recommend waiver when necessary to avoid hardship.

(2) Hardship will not be considered present when assets are readily available to meet current liabilities.

(Authority: 38 U.S.C. 5503(b)(1)(A))

(c) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without spouse or child, is institutionalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate exceeds \$1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based on actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veterans for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award.

(Authority: 38 U.S.C. 5503(b)(2))

(d) *Death of veteran; personal funds of patient.* In the event of the incompetent veteran's death in other than a VA institution, the Veterans Services Officer

should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

(Authority: 38 U.S.C. 501)

[53 FR 20619, June 6, 1988]

§ 13.109 Determination of value of estate; 38 U.S.C. 5503(b)(1)(A) and 38 U.S.C. 5505.

Except as stated in paragraph (d) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Department of Veterans Affairs regional offices, hospitals, State institutions, hospitals or institutions of any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

(1) Adjusted service certificate.

(2) Insurance policy having cash surrender or loan value.

(3) Dividend credits on National Service Life Insurance and United States Government Life Insurance policies.

(4) Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

(5)(i) *For purposes of determinations under 38 U.S.C. 5503(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no

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reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. 5505.* The value of the veteran's home.

(6) Funds deposited into a pre-need burial arrangement such as a burial trust, prepaid burial agreement, burial insurance, etc. The value of the veteran's burial plot will be likewise excluded.

(7) Amounts withheld under § 3.551(b) of this chapter.

(Authority: 38 U.S.C. 5505)

NOTE: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[40 FR 54250, Nov. 21, 1975, as amended at 53 FR 20619, June 6, 1988; 56 FR 65853, Dec. 19, 1991]

§ 13.110 **Escheat; post fund.**

(a) *Escheat; 38 U.S.C. 5502(e).* Upon death of a beneficiary for whom payment of Department of Veterans Affairs benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary's personal representative) shall, upon request, account for and return to the Department of Veterans Affairs any remaining assets derived from Department of Veterans Affairs benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) *General Post Fund; 38 U.S.C. 5220(a).* Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Department of Veterans Affairs, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Department of Veterans Affairs all personal property, including money and choses in action

owned by the veteran at the time of his or her death. (See also § 14.514(c) of this chapter.)

(c) *Refusal of fiduciary or personal representative to cooperate.* If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Services Officer will submit a complete report to the Regional Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

§ 13.111 **Claims of creditors.**

Under 38 U.S.C. 5301(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable. If the fiduciary does not do so, the Veterans Services Officer should refer the matter to the Regional Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]

**PART 14—LEGAL SERVICES,
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