

Department of Veterans Affairs

§ 3.25

and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less).

(Authority: 38 U.S.C. 1542)

CROSS REFERENCES: Child. See § 3.57(d). Exclusions from income. See § 3.272.

[44 FR 45933, Aug. 6, 1979, as amended at 52 FR 34907, Sept. 14, 1987; 61 FR 20727, May 8, 1996]

§ 3.25 Parent's dependency and indemnity compensation (DIC)—Method of payment computation.

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 1315(b)(1), as increased from time to time under 38 U.S.C. 5312, reduced by \$.08 for each dollar of such parent's countable annual income in excess of \$800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 1315(b)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than \$5 a month.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rate computation method in this paragraph applies to:

(1) Two parents who are not living together, or

(2) An unremarried parent when both parents are living and the other parent has remarried.

The monthly rate of DIC paid to such parent shall be the rate specified in 38 U.S.C. 1315(c)(1), as increased from time to time under 38 U.S.C. 5312, reduced by an amount no greater than \$.08 for each dollar of such parent's countable annual income in excess of \$800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 1315(c)(3), as increased from time to time under 38 U.S.C. 5312, and no payment of DIC to a parent under this paragraph may be less than \$5 monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the FEDERAL REGISTER as provided in paragraph (f) of this section.

(d) *Two parents living together or remarried parents living with spouse.* The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 1315(d)(1), as increased from time to time under 38 U.S.C. 5312, reduced to an amount no greater than \$.08 for each dollar of such parent's and

§ 3.26

spouse's combined countable annual income in excess of \$1,000 except that no payments of DIC to a parent under this paragraph may be less than \$5 monthly. Each time there is a rate increase under 38 U.S.C. 5312, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the FEDERAL REGISTER as provided in paragraph (f) of this section.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 1315(g), as increased from time to time under 38 U.S.C. 5312, if such parent is:

(1) A patient in a nursing home, or

(2) Helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Rate publication.* Each time there is an increase under 38 U.S.C. 5312, the actual rates will be published in the "Notices" section of the FEDERAL REGISTER.

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

[52 FR 34907, Sept. 14, 1987, as amended at 61 FR 20727, May 8, 1996]

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95-588, as increased from time to time under section 306(a)(3) of Pub. L. 95-588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 1521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95-588, as increased from time to time under section 306(b)(4) of Pub. L. 95-588.

(d) Each time there is an increase under section 306 (a)(3) or (b)(4) of Pub. L. 95-588, the actual income limitations

38 CFR Ch. I (7-1-05 Edition)

will be published in the "Notices" section of the FEDERAL REGISTER.

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

[52 FR 34908, Sept. 14, 1987]

§ 3.27 Automatic adjustment of benefit rates.

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of pension.

(Authority: 38 U.S.C. 5312(a))

(b) *Parents' dependency and indemnity compensation—maximum annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency indemnity compensation for parents.

(Authority: 38 U.S.C. 5312(b)(1))

(c) *Monetary allowance under 38 U.S.C. chapter 18 for certain individuals who are children of Vietnam veterans.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, VA shall, effective on the dates such increases become effective, increase by the same percentage the monthly allowance rates under 38 U.S.C. chapter 18.

(Authority: 38 U.S.C. 1805(b)(3), 1815(d), 5312)

(d) *Medal of Honor pension.* Beginning in the year 2004, VA shall, effective December 1 of each year, increase the monthly Medal of Honor pension by the same percentage as the percentage by which benefit amounts payable under section 215(i) of Title II of the Social Security Act are increased effective December 1 of such year.

(Authority: 38 U.S.C. 1562(e))