

Department of Veterans Affairs

§ 3.25

spouse's expenses necessary for reasonable family maintenance, and "hardship" shall be held to exist when annual expenses necessary for reasonable family maintenance exceed the sum of countable annual income plus VA pension entitlement. *Expenses necessary for reasonable family maintenance* include expenses for basic necessities (such as food, clothing, shelter, etc.) and other expenses, determined on a case-by-case basis, which are necessary to support a reasonable quality of life.

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

CROSS REFERENCES: Improved pension. See § 3.1(w). Child. See § 3.57(d). Definition of *living with*. See § 3.60. Exclusions from income. See § 3.272.

[44 FR 45933, Aug. 6, 1979, as amended at 52 FR 34907, Sept. 14, 1987; 53 FR 23235, June 21, 1988]

§ 3.24 Improved pension rates—Surviving children.

(a) *General*. The provisions of this section apply to children of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. Children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement. Basic eligibility to receive improved pension means that the surviving spouse is in receipt of improved pension or could become entitled to receive improved pension except for the amount of the surviving spouse's countable annual income or the size of the surviving spouse's estate (See § 3.274(c)). Under § 3.23(d)(5) the countable annual income of a surviving spouse includes the countable annual income of each child of the veteran in custody of the surviving spouse to the extent the child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Department of Veterans Affairs to do so would work a hardship on the surviving spouse.

(b) *Child with no personal custodian or in the custody of an institution*. In cases in which there is no personal custodian, *i.e.*, there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institu-

tion, pension shall be paid to the child at the annual rate specified in 38 U.S.C. 1542, as increased from time to time under 38 U.S.C. 5312, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 5312, the actual rate will be published in the "Notices" section of the FEDERAL REGISTER.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child*. Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse 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: