§ 3.353 Determinations of incompetency and competency.

(a) Definition of mental incompetency. A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) Authority. (1) Rating agencies have sole authority to make official determinations of competency and incompetency for purposes of: insurance (38 U.S.C. 1922), and, subject to §13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager will develop information as to the beneficiary’s social, economic and industrial adjustment; appoint (or recommend appointment of) a fiduciary as provided in §13.55 of this chapter; select a method of disbursing payment as provided in §13.56 of this chapter, or in the case of a married beneficiary, appoint the beneficiary’s spouse to receive payments as provided in §13.57 of this chapter; and authorize disbursement of the benefit.

(c) Due process. Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a hearing as provided in §3.103. Such notice is not necessary if the beneficiary has been declared incompetent.
§ 3.354 Determinations of insanity.

(a) Definition of insanity. An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.

(b) Insanity causing discharge. When a rating agency is concerned with determining whether a veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. 5303(b)), it will base its decision on all the evidence procurable relating to the period involved, and apply the definition in paragraph (a) of this section.

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§ 3.355 Testamentary capacity for insurance purposes.

When cases are referred to a rating agency involving the testamentary capacity of the insured to execute designations or changes of beneficiary, or designations or changes of option, the following considerations will apply:

(a) Testamentary capacity is that degree of mental capacity necessary to enable a person to perform a testamentary act. This, in general, requires that the testator reasonably comprehend the nature and significance of his act, that is, the subject and extent of his disposition, recognition of the object of his bounty, and appreciation of the consequence of his act, uninfluenced by any material delusion as to the property or persons involved.

(b) Due consideration should be given to all facts of record, with emphasis being placed on those facts bearing upon the mental condition of the testator (insured) at the time or nearest the time he executed the designation or change. In this connection, consideration should be given to lay as well as medical evidence.

(c) Lack of testamentary capacity should not be confused with insanity or mental incompetence. An insane person might have a lucid interval during which he would possess testamentary capacity. On the other hand, a sane person might suffer a temporary mental aberration during which he would not possess testamentary capacity. There is a general but rebuttable presumption that every testator possesses testamentary capacity. Therefore, reasonable doubts should be resolved in favor of testamentary capacity.

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