§ 3.459 Death compensation.

(a) Death compensation will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse.

(b) The surviving spouse may not be paid less than $65 monthly plus the amount of an aid and attendance allowance where applicable.

§ 3.460 Death pension.

Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where pension is payable under 38 U.S.C. 1532, 1534, or 1536 apportionment will be based on the facts in the individual case in accordance with § 3.451.

(b) Section 306 and old-law death pension. Appointment of benefits provided under these pension programs will be at rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant special apportionment under § 3.451.

(Authority: 38 U.S.C. 5307)
in excess of the total dependency and indemnity compensation.


REDUCTIONS AND DISCONTINUANCES

§ 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in these paragraphs unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.

(Authority: 38 U.S.C. 5112(b))

(a) Exception as otherwise provided (38 U.S.C. 5112(a)). In accordance with the facts found.

(b) Error; payee's or administrative (38 U.S.C. 5112(b), (9), (10)). (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with the payee's knowledge.

(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) Annual income. See § 3.660.

(d) Apportionment (§§ 3.450 series; § 3.556). (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under § 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) Federal employees' compensation (§ 3.708). The day preceding the date the award of benefits under the Federal Employees' Compensation Act became effective.

(f) Contested claims (§ 3.402(b) and § subpart F of part 20 of this chapter). Date of last payment.

(g) Death (38 U.S.C. 5112 (a), (b))—(1) Payee (includes apportionee). Last day of month before death.

(2) Dependent of payee (includes apportionee):

(i) Death prior to October 1, 1982: last day of the calendar year in which death occurred.

(ii) Death occurring on or after October 1, 1982: last day of the month in which death occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which death occurred.

(3) Veteran receiving retirement pay. Date of death.


(i) Election of Department of Veterans Affairs benefits (§ 3.700 series). Day preceding beginning date of award under other law.

(j) Foreign residence (38 U.S.C. 5308(a)). See § 3.653.

(k) Fraud (38 U.S.C. 6103(a), (d); §§ 3.669 and 3.901). Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) Guardian, marriage or divorce of (§ 3.856). Date of last payment (pending receipt of information as to change of name).

(m) Incompetency (§ 3.855). Date of last payment.

(n) Marriage (or remarriage) (38 U.S.C. 101(3), 5112 (b))—(1) Payee (includes apportionee). Last day of month before marriage.

(2) Dependent of payee (includes apportionee):

(i) Marriage prior to October 1, 1982: last day of the calendar year in which marriage occurred.

(ii) Marriage on or after October 1, 1982: last day of the month in which marriage occurred, except that section 306 and old-law pension reductions or terminations will continue to be effective the last day of the calendar year in which marriage occurred.