

§ 3.24

38 CFR Ch. I (7–1–12 Edition)

reduced by the amount of the countable annual income of the veteran or surviving spouse.

(Authority: 38 U.S.C. 1521, 1541)

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 1521(g), as increased from time to time under 38 U.S.C. 5312. 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.

(Authority: 38 U.S.C. 1521(g))

(d) *Definitions of terms used in this section—(1) Dependent.* A veteran’s spouse or child. A veteran’s spouse who resides apart from the veteran and is estranged from the veteran may not be considered the veteran’s dependent unless the spouse receives reasonable support contributions from the veteran. (Note that under § 3.60 a veteran and spouse who reside apart are considered to be living together unless they are estranged.) A child of a veteran not in custody of the veteran and to whose support the veteran is not reasonably contributing, may not be considered the veteran’s dependent.

(Authority: 38 U.S.C. 1521(b))

(2) *In need of aid and attendance.* As defined in § 3.351(b).

(3) *Housebound.* As defined in § 3.351(d)(2), (f). This term also includes a veteran who has a disability or disabilities evaluated as 60 percent or more disabling in addition to a permanent and totally disabling condition. See § 3.351(d)(1).

(4) *Veteran’s annual income.* This term includes the veteran’s annual income, the annual income of the veteran’s dependent spouse, and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 1522(b)) in the veteran’s custody or to whose support the veteran is reasonably contributing (to the extent such child’s income is reasonably available to or for the veteran, unless in the judgment of

the Department of Veterans Affairs to do so would work a hardship on the veteran.) There is a rebuttable presumption that all of such a child’s income is reasonably available to or for the veteran.

(Authority: 38 U.S.C. 1521 (c), (h))

(5) *Surviving spouse’s annual income.* This term includes the surviving spouse’s annual income and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 1543(a)(2)) in the custody of the surviving spouse to the extent that such 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. There is a rebuttable presumption that all of such a child’s income is available to or for the surviving spouse.

(Authority: 38 U.S.C. 1541(c), (g))

(6) *Reasonable availability and hardship.* For the purposes of paragraphs (d)(4) and (d)(5) of this section, a child’s income shall be considered “reasonably available” when it can be readily applied to meet the veteran’s or surviving 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 institution, 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:

(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