

§ 3.56

CROSS REFERENCES: Evidence. See §§ 3.206 and 3.207. Termination of marital relationship or conduct. See § 3.215.

[58 FR 32444, June 10, 1993, as amended at 60 FR 52863, Oct. 11, 1995; 64 FR 30245, June 7, 1999; 65 FR 43700, July 14, 2000; 71 FR 29084, May 19, 2006]

§ 3.56 [Reserved]

§ 3.57 Child.

(a) *General.* (1) Except as provided in paragraphs (a)(2) and (3) of this section, the term *child* of the veteran means an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and

(i) Who is under the age of 18 years; or

(ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an educational institution approved by the Department of Veterans Affairs. For the purposes of this section and § 3.667, the term "educational institution" means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria, including schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term "home schools" is limited to courses of instruction for grades kindergarten through 12.

(Authority: 38 U.S.C. 101(4)(A), 104(a))

(2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term *child* of the veteran also includes the following unmarried persons:

38 CFR Ch. I (7-1-12 Edition)

(i) A person who was adopted by the veteran between the ages of 18 and 23 years.

(ii) A person who became a stepchild of the veteran between the ages of 18 and 23 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.

(3) Subject to the provisions of paragraphs (c) and (e) of this section, the term *child* also includes a person who became permanently incapable of self-support before reaching the age of 18 years, who was a member of the veteran's household at the time he or she became 18 years of age, and who was adopted by the veteran, regardless of the age of such person at the time of adoption.

(Authority: 38 U.S.C. 101(4)(A))

(b) *Stepchild.* The term means a legitimate or an illegitimate child of the veteran's spouse. A child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of § 3.52, and who otherwise meets the requirements of this section is included.

(c) *Adopted child.* Except as provided in paragraph (e) of this section, the term means a child adopted pursuant to a final decree of adoption, a child adopted pursuant to an unrescinded interlocutory decree of adoption while remaining in the custody of the adopting parent (or parents) during the interlocutory period, and a child who has been placed for adoption under an agreement entered into by the adopting parent (or parents) with any agency authorized under law to so act, unless and until such agreement is terminated, while the child remains in the custody of the adopting parent (or parents) during the period of placement for adoption under such agreement. The term includes, as of the date of death of a veteran, such a child who:

(1) Was living in the veteran's household at the time of the veteran's death, and

(2) Was adopted by the veteran's spouse under a decree issued within 2 years after August 25, 1959, or the veteran's death whichever is later, and

(3) Was not receiving from an individual other than the veteran or the

Department of Veterans Affairs

§ 3.57

veteran's spouse, or from a welfare organization which furnishes services or assistance for children, recurring contributions of sufficient size to constitute the major portion of the child's support.

(Authority: 38 U.S.C. 101(4))

(d) Definition of *child custody*. The provisions of this paragraph are for the purpose of determining entitlement to improved pension under §§ 3.23 and 3.24.

(1) Custody of a child shall be considered to rest with a veteran, surviving spouse of a veteran or person legally responsible for the child's support if that person has the legal right to exercise parental control and responsibility for the welfare and care of the child. A child of the veteran residing with the veteran, surviving spouse of the veteran who is the child's natural or adoptive parent, or person legally responsible for the child's support shall be presumed to be in the custody of that individual. Where the veteran, surviving spouse, or person legally responsible for the child's support has not been divested of legal custody, but the child is not residing with that individual, the child shall be considered in the custody of the individual for purposes of Department of Veterans Affairs benefits.

(2) The term *person legally responsible for the child's support* means a person who is under a legally imposed obligation (e.g., by statute or court order) to provide for the child's support, as well as a natural or adoptive parent who has not been divested of legal custody. If the child's natural or adoptive parent has remarried, the stepparent may also be considered a person legally responsible for the child's support. A child shall be considered in the joint custody of his or her stepparent and natural or adoptive parent so long as the natural or adoptive parent and the stepparent are not estranged and residing apart, and the natural or adoptive parent has not been divested of legal custody. When a child is in such joint custody the combined income of the natural or adoptive parent and the stepparent shall be included as income of the person legally responsible for support under § 3.24(c).

(3) A person having custody of a child prior to the time the child attains age 18 shall be considered to retain custody of the child for periods on and after the child's 18th birthday, unless the person is divested of legal custody. This applies without regard to when a child reaches the age of majority under applicable State law. This also applies without regard to whether the child was entitled to pension prior to age 18, or whether increased pension was payable to a veteran or surviving spouse on behalf of the child prior to the child's 18th birthday. If the child's custodian dies after the child has attained age 18, the child shall be considered to be in custody of a successor custodian provided the successor custodian has the right to exercise parental control and responsibility for the welfare and care of the child.

(Authority: 38 U.S.C. 501, 1521(c), 1541(c))

(e) *Child adopted under foreign law*—

(1) *General*. The provisions of this paragraph are applicable to a person adopted under the laws of any jurisdiction other than a State. The term *State* is defined in 38 U.S.C. 101(20) and also includes the Commonwealth of the Northern Mariana Islands. The term *veteran* includes, for the purposes of this paragraph, a Commonwealth Army veteran or new Philippine Scout as defined in 38 U.S.C. 3566.

(2) *Adopted child of living veteran*. A person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of the veteran unless all of the following conditions are met.

(i) The person was less than 18 years of age at the time of adoption.

(ii) The person is receiving one-half or more of the person's support from the veteran.

(iii) The person is not in the custody of the person's natural parent unless the natural parent is the veteran's spouse.

(iv) The person is residing with the veteran (or in the case of divorce following adoption, with the divorced spouse who is also a natural or adoptive parent) except for periods during which the person is residing apart from the veteran for purposes of full-time

§ 3.58

attendance at an educational institution or during which the person or the veteran is confined in a hospital, nursing home, other health-care facility, or other institution.

(3) *Adopted child of deceased veteran.* A person shall not be considered to have been a legally adopted child of a veteran as of the date of the veteran's death and thereafter unless one of the following conditions is met.

(i) The veteran was entitled to and was receiving for the person a dependent's allowance or similar monetary benefit payable under title 38, United States Code at any time within the 1-year period immediately preceding the veteran's death; or

(ii) The person met the requirements of paragraph (e)(2) of this section for a period of at least 1 year prior to the veteran's death.

(4) *Verification.* In the case of an adopted child of a living veteran, the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section are for prospective application. That is, in addition to meeting all of the requirements of paragraph (e)(2) of this section at the time of initial adjudication, benefits are not payable thereafter for or to a child adopted under the laws of any jurisdiction other than a State unless the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section continue to be met. Consequently, whenever Department of Veterans Affairs benefits are payable to or for a child adopted under the laws of any jurisdiction other than a State, and the veteran who adopted the child is living, the beneficiary shall submit, upon Department of Veterans Affairs request, a report, or other evidence, to determine if the requirements of paragraph (e)(2)(ii), (iii), and (iv) of this section were met for any period for which payment was made for or to the child and whether such requirements will continue to be met for future entitlement periods. Failure to submit the requested report or evidence within a reasonable time from date of request may result in termination of benefits payable for or to the child.

(Authority: 38 U.S.C. 101(4), 501)

CROSS REFERENCES: Improved pension rates. See § 3.23. Improved pension rates; surviving children. See § 3.24. Child's relation-

38 CFR Ch. I (7-1-12 Edition)

ship. See § 3.210. Helplessness. See § 3.403(a)(1). Helplessness. See § 3.503(a)(3). School attendance. See § 3.667. Helpless children—Spanish-American and prior wars. See § 3.950.

[44 FR 45935, Aug. 6, 1979 and 45 FR 1878, Jan. 9, 1980, as amended at 45 FR 25391, Apr. 15, 1980; 49 FR 47003, Nov. 30, 1984; 65 FR 12116, Mar. 8, 2000; 72 FR 6959, Feb. 14, 2007]

§ 3.58 Child adopted out of family.

A child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a *child* within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs.

CROSS REFERENCE: Veteran's benefits not apportionable. See § 3.458.

[26 FR 1568, Feb. 24, 1961]

§ 3.59 Parent.

(a) The term *parent* means a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before his or her entry into active service.

(b) Foster relationship must have begun prior to the veteran's 21st birthday. Not more than one father and one mother, as defined, will be recognized in any case. If two persons stood in the relationship of father or mother for 1 year or more, the person who last stood in such relationship before the veteran's last entry into active service will be recognized as the *parent*.

(Authority: 38 U.S.C. 101(5))

[26 FR 1568, Feb. 24, 1961, as amended at 44 FR 45935, Aug. 6, 1979]

§ 3.60 Definition of "living with".

For the purposes of determining entitlement to pension under 38 U.S.C. 1521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged.

(Authority: 38 U.S.C. 1521(h)(2))

[44 FR 45935, Aug. 6, 1979]