

§ 3.43 Burial benefits at the full-dollar rate for certain Filipino veterans residing in the United States on the date of death.

(a) *Definitions.* For purposes of this section:

(1) *United States (U.S.)* means the states, territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(2) *Residing in the U.S.* means an individual's principal, actual dwelling place was in the U.S. When death occurs outside the U.S., VA will consider the deceased individual to have been residing in the U.S. on the date of death if the individual maintained his or her principal actual dwelling place in the U.S. until his or her most recent departure from the U.S., and he or she had been physically absent from the U.S. less than 61 consecutive days when he or she died.

(3) *Citizen of the U.S.* means any individual who acquires U.S. citizenship through birth in the territorial U.S., birth abroad as provided under title 8, United States Code, or through naturalization, and has not renounced his or her U.S. citizenship, or had such citizenship cancelled, revoked, or otherwise terminated.

(4) *Lawfully admitted for permanent residence* means that the individual was lawfully accorded the privilege of residing permanently in the U.S. as an immigrant by the U.S. Citizenship and Immigration Services under title 8, United States Code, and on the date of death, still had this status.

(b) *Eligibility requirements.* VA will pay burial benefits under chapter 23 of title 38, United States Code, at the full-dollar rate, based on service described in § 3.40(c) or (d), when an individual who performed such service dies after November 1, 2000, or based on service described in § 3.40(b) when an individual who performed such service dies after December 15, 2003, and was on the date of death:

- (1) Residing in the U.S.; and
- (2) Either—
 - (i) A citizen of the U.S., or
 - (ii) An alien lawfully admitted for permanent residence in the U.S.; and
- (3) Either—

- (i) Receiving compensation under chapter 11 of title 38, United States Code; or

- (ii) Would have satisfied the disability, income and net worth requirements of § 3.3(a)(3) of this part and would have been eligible for pension if the veteran's service had been deemed to be active military, naval, or air service.

(c) *Evidence of eligibility.* (1) In a claim for full-dollar rate burial payments based on the deceased veteran having been a natural born citizen of the U.S., a valid original or copy of one of the following documents is required:

- (i) A valid U.S. passport;
- (ii) A birth certificate showing that he or she was born in the U.S.; or
- (iii) A Report of Birth Abroad of a Citizen of the U.S. issued by a U.S. consulate abroad.

(2) In a claim based on the deceased veteran having been a naturalized citizen of the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA, or a valid U.S. passport, will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(3) In a claim based on the deceased veteran having been an alien lawfully admitted for permanent residence in the U.S., only verification of that status by the U.S. Citizenship and Immigration Services to VA will be sufficient proof for purposes of eligibility for full-dollar rate benefits.

(4) VA will not pay benefits at the full-dollar rate under this section unless the evidence establishes that the veteran was lawfully residing in the U.S. on the date of death.

(i) Such evidence should identify the veteran's name and relevant dates, and may include:

- (A) A valid driver's license issued by the state of residence;
- (B) Employment records, which may consist of pay stubs, W-2 forms, and certification of the filing of Federal, State, or local income tax returns;
- (C) Residential leases, rent receipts, utility bills and receipts, or other relevant documents showing dates of utility service at a leased residence;
- (D) Hospital or medical records showing medical treatment or hospitalization of the veteran or survivor, and

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showing the name of the medical facility or treating physician;

(E) Property tax bills and receipts; and

(F) School records.

(ii) A Post Office box mailing address in the veteran's name does not constitute evidence showing that the veteran was lawfully residing in the United States on the date of death.

(Authority: 38 U.S.C. 107, 501(a))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0655)

[66 FR 66767, Dec. 27, 2001, as amended at 71 FR 8221, Feb. 16, 2006; 72 FR 9, Jan. 3, 2007]

RELATIONSHIP

§ 3.50 Spouse and surviving spouse.

(a) *Spouse*. "Spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Surviving spouse*. Except as provided in § 3.52, "surviving spouse" means a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j) and who was the spouse of the veteran at the time of the veteran's death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse; and

(2) Except as provided in § 3.55, has not remarried or has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held himself or herself out openly to the public to be the spouse of such other person.

[62 FR 5529, Feb. 6, 1997]

§ 3.52 Marriages deemed valid.

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was

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born to them before such marriage (see § 3.54(d)), and

(b) The claimant entered into the marriage without knowledge of the impediment, and

(c) The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death as outlined in § 3.53, and

(d) No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death.

(Authority: 38 U.S.C. 103(a))

CROSS REFERENCE: Definition, marriage. See § 3.205(c).

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 1215, Feb. 9, 1962; 32 FR 13224, Sept. 19, 1967; 41 FR 18299, May 3, 1976]

§ 3.53 Continuous cohabitation.

(a) *General*. The requirement that there must be continuous cohabitation from the date of marriage to the date of death of the veteran will be considered as having been met when the evidence shows that any separation was due to the misconduct of, or procured by, the veteran without the fault of the surviving spouse. Temporary separations which ordinarily occur, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.

(b) *Findings of fact*. The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information. If the evidence establishes that the separation was by mutual consent and that the parties lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will not be considered as having been broken. State laws will not control in determining questions of desertion; however, due weight will be given to findings of fact in court decisions made during the life of the veteran on issues