

Department of Veterans Affairs

§ 12.5

funds or effects, in which event the facility head or his or her designated representative will authorize delivery of all funds and effects to such executor or administrator upon receipt of appropriate documentary evidence of his or her qualifications and in exchange for appropriate receipts, or

(2) An heir capable of inheriting the personal property of the veteran makes claim for the funds and effects prior to delivery to the designee.

(3) Subsequent to the naming of a designee the veteran became incompetent and his or her guardian revoked such designation, in which event the facility head or his or her designated representative will deliver all funds and effects to his guardian in exchange for appropriate receipts subject to the limitation contained in paragraph (d) of this section, or

(4) Designee was the wife (or husband) of the veteran at the time of designation, and information at the disposal of the field facility indicates that she (or he) was thereafter divorced and the veteran was incompetent at or subsequent to the time of divorce, or

(5) Notwithstanding there is a designee, it is probable that title would pass to the United States under the provisions of §§ 12.19 to 12.23 issued pursuant to 38 U.S.C. 5502(e) and 38 U.S.C. 8520(a), or

(6) The facility head or his or her designated representative determines that there is reasonable ground to believe that the transfer of such possession to the designee probably would be contrary to the interests of the person legally entitled to the personal property, or there are any other special circumstances raising a serious doubt as to the propriety of such delivery to the designee.

In any case in which the facility head does not deliver the funds and effects, because of the provisions of paragraphs (a)(3), (4), and (5) of this section, he or she will develop all facts and refer the matter to the Chief Attorney of the regional office having jurisdiction over the area where the hospital is located, for advice as to the disposition which legally should be made of such funds and effects.

(b) When authorized by the facility head or his or her designated represent-

ative, the effects will be delivered or shipped to the designee. If shipped at Government expense, the shipment shall be made in the most economical manner but in no case at a cost in excess of \$25. If such expenses will exceed \$25, the excess amount shall be paid by the consignee to the facility head in advance. There will be no obligation on the Government, initially or otherwise, to pay such expenses in excess of \$25.

(c) When possession of funds or effects is transferred to a designee, the attention of the designee will again be directed to the fact that possession only has been transferred to him or her and that such transfer does not of itself affect title thereto and that such designee will be accountable to the owner of said funds and effects under applicable laws.

(d) Upon receipt from the proper Chief Attorney of an appropriate certification that the guardianship was in full force and effect at the time of the veteran's death and that the guardian's bond is adequate, funds (other than funds deposited by the Department of Veterans Affairs in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Department of Veterans Affairs) and effects of an incompetent veteran may be immediately delivered or sent to such guardian, inasmuch as the guardian had a right to possession, and he or she will be accountable therefor to the party entitled to receive the decedent's estate. If, however, it appears probable that decedent died without a valid will and left no person surviving entitled to inherit, the funds will not be paid to the former guardian but will be disposed of as provided in § 12.19(a). The effects will be sold, used, or destroyed, at the discretion of the facility head or his designated representative.

[25 FR 1613, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964]

§ 12.5 Nondesignee cases.

(a) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent, or the designee fails or refuses to claim the funds and effects as defined in § 12.0(a) within 90 days following the mailing of notice to such designee, the facility head will

§ 12.6

38 CFR Ch. I (7-1-14 Edition)

take appropriate action to dispose of the effects to the person or persons legally entitled thereto, *i.e.*, the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in the order named. Subject to the applicable provisions of §§12.3 and 12.4, such delivery may be made at any time before the sale contemplated by §12.9 to the designee or other person entitled under the facts of the case. Delivery will be made to the person entitled to priority as prescribed in this paragraph, unless such person waives right to possession, in which event delivery will be to the person, if any, in whose favor such prior entitled person waives right to possession. If the waiver is not in favor of a particular person or class, delivery will be to the person or persons next in order of priority under this paragraph. If in any case there be more than one person in the class entitled to priority, initially or by reason of waiver, delivery will be made only to their joint designated agent (who may, but need not, be one of the class), or to one of such class in his or her own behalf upon written waiver of all others of the class entitled thereto. The guardian of a minor or incompetent may waive his or her ward's prior right to possession.

(b) Except where delivery is made to a designee, executor, or administrator, funds of veterans who were competent at time of death will be released to the person or persons who would ultimately be entitled to distribution under the laws of the State of the decedent's domicile. The person or persons entitled may waive in writing his or her right to the funds in favor of another heir or next of kin.

(c) Funds of veterans who were incompetent at time of death occurring after November 30, 1959, if derived from sources other than gratuitous benefits deposited by the Department of Veterans Affairs in Personal Funds of Patients under laws administered by the Department of Veterans Affairs, will be disposed of in the same manner as for competent veterans.

(d) Funds deposited by the Department of Veterans Affairs in Personal

Funds of Patients, at any office, for veterans who were incompetent at time of death occurring after November 30, 1959 and which were derived from gratuitous benefits under laws administered by the Department of Veterans Affairs, will be paid upon receipt of proper application to the following persons living at the time of settlement, and in the order named: the surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. Any funds derived from gratuitous benefits not disposed of in accordance with this paragraph shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such funds as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses.

(e) No payment shall be made under paragraph (d) of this section unless claim therefor is filed with the Department of Veterans Affairs within 5 years after the death of the veteran, except that, if any person so entitled under such regulation is under legal disability at the time of death of the veteran, such 5-year period of limitation shall run from the termination or removal of the legal disability.

[18 FR 1854, Apr. 3, 1953 and 25 FR 1614, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964]

§ 12.6 Cases of living veterans.

(a) Except as provided in §12.8, effects of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the field facility) will be disposed of as follows:

(1) To the owner if competent, or if deceased to his or her administrator or executor or as directed in writing by such owner, or his or her executor or administrator.

(2) To the guardian of the owner if the latter be incompetent, or if deceased to his or her administrator or executor, or as directed in writing by such guardian, executor or administrator.