

§ 10.34

38 CFR Ch. I (7-1-04 Edition)

- (a) Claimant's age.
- (b) Amount contributed to claimant by deceased veteran.
- (c) Value of all real and personal property owned by claimant.
- (d) Total monthly expenses of the claimant and total monthly income.
- (e) The fact that claimant did or did not receive an allotment of pay or allowance during the veteran's military or naval service.
- (f) Incapability of self-support by reason of mental or physical defect.
- (g) Any other fact or facts pertinent to the determination of dependency.

§ 10.34 Proof of age of dependent mother or father.

The mother or father of a veteran to be entitled to the presumption of dependency within the meaning of section 602(c) or section 312(c) of the Act, as amended, shall be required to submit proof of age in accordance with the requirements as set forth in regulations of the Department of Veterans Affairs.

§ 10.35 Claim of mother entitled by reason of unmarried status.

Claim of a mother for the benefits to which she may be entitled by reason of her unmarried status as outlined in section 202(c) or section 312(c)3 of the Act, as amended, shall be supported by a statement of fact, under oath, of such status, together with one of the following:

- (a) Certified copy of public record of death of the husband.
- (b) Certified copy of court record of divorce decree.

§ 10.36 Proof of marital cohabitation under section 602 or section 312 of the Act.

In order to prove marital cohabitation within the meaning of that term as used in section 602(a) or section 312(c)1 of the Act, as amended, claimant shall be required to establish:

- (a) A valid marriage, such marriage to be shown by the best evidence obtainable in accordance with the provisions of regulations of the Department of Veterans Affairs.
- (b) The fact of living together as man and wife, with such fact to be established by:

(1) Statement of the widow or widower showing that he or she and the veteran lived together as man and wife and also showing the place or places of residence during such marital cohabitation and the approximate time of such residence; or

(2) Statement of two competent persons showing that they personally knew the claimant and veteran and that they had personal knowledge that said claimant and veteran lived together as man and wife and were recognized as such.

(c) The fact that the marital status existed at the time of the death of the veteran or where it is established that the veteran is deceased, as provided in section 312(a)1 of the Act, as amended, at the beginning of such 7-year period, such fact to be established by:

(1) Statement by claimant that he or she and the veteran had not been divorced and that there had been no annulment of the marriage.

(2) Statement of claimant that he or she was not remarried at the time of making application.

(3) Statement of two competent persons showing that they personally knew the claimant and the veteran; that they personally knew of the marriage relationship between claimant and veteran; that to the best of their knowledge and belief there had been no divorce and no annulment of the marriage and that claimant was not remarried at the time of making and filing application.

§ 10.37 Claim of widow not living with veteran at time of veteran's death.

If a veteran and widow were not living together at the time of the death of the veteran the widow will be required to establish:

(a) That the living apart was not due to her willful act, and

(b) Actual dependency upon the veteran at the time of his death or at any time thereafter and before January 2, 1935.

(1) A determination of what shall constitute a willful act, as used in section 602(a) of the Act, as amended, will be made upon consideration of all facts relating to such act and upon such investigation of such facts as may be deemed warranted. For the purpose of

Department of Veterans Affairs

§ 10.42

this section, the fact that a veteran lived apart from the widow because of any act by the widow involving desertion or moral turpitude will be construed as the willful act of the widow. Cause of separation and time and duration of separation at the time of the death of the veteran shall be taken into consideration in determining a willful act.

(2) A determination of the existence of actual dependency will be made under the criteria set forth in §§ 10.32 and 10.33 with respect to dependency of a mother or father.

§ 10.38 Proof of age of veteran's child.

A child of a veteran shall be required to submit proof of age in accordance with the requirements set forth in the regulations of the Department of Veterans Affairs.

§ 10.39 Mental or physical defect of child.

If claim is made under section 602(b), (2), of title IV of the Act as amended, alleging that a child over 18 years of age was incapable of self-support at the death of the veteran or that he became incapable of self-support subsequent to the death of the veteran but on or before January 2, 1935, or that he was incapable of self-support at the disappearance of the veteran or became incapable of self-support after the disappearance of the veteran and before the expiration of the period of seven years mentioned in section 312(c), (2), of the Act, it will be necessary to furnish evidence as to the mental or physical condition of the child at the time it is alleged he became incapable of self-support.

(a) Where incapability of self-support by reason of the mental defect of the child is alleged, the following evidence will be required:

(1) Certified copy of court order or decree declaring the child to be mentally incompetent; or

(2) A report of a licensed physician setting forth all of the facts as to the child's mental condition; or

(3) The affidavit of the person having custody and control of the child, setting forth all of the available information as to the child's mental condition. The affidavit must be substantiated by

two competent disinterested persons who shall state that they personally know the child, that they have read the affidavit made by the person having custody and control of the child, and that the information therein set forth is true to the best of their knowledge and belief.

(b) Where incapability of self-support by reason of physical defect of the child is alleged, the following evidence will be required:

(1) Report of a licensed physician setting forth all of the facts as to the child's physical condition; and

(2) Affidavit of the child regarding his physical condition and the affidavits of two competent disinterested persons, who shall state that they personally know the claimant, that they have read his affidavit and that the same is true to the best of their knowledge and belief.

§ 10.40 Payment on account of minor child.

Payments to a minor child shall be made to the legally constituted guardian, curator or conservator, or to the person found by the director to be otherwise legally vested with the care of the child.

§ 10.41 Definition of "child".

The term *child* as used in the regulations in this part includes:

(a) A legitimate child;

(b) A child legally adopted;

(c) A stepchild if a member of the veteran's household at the time of the death of the veteran, or

(d) An illegitimate child but as to the father only if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support or has been judicially decreed to be the putative father of such child.

§ 10.42 Claim of child other than legitimate child.

A claim of a child legally adopted by the veteran upon whose service the claim is based shall be supported by a certified copy of the court record of such adoption. A claim of a stepchild of a veteran shall be supported by an affidavit of his or her legal guardian, stating that at the time of the death of the