

Department of Veterans Affairs

§ 3.1003

due and unpaid at the date of the veteran's death is payable under the provisions of this section.

[26 FR 1608, Feb. 24, 1961, as amended at 27 FR 11892, Dec. 1, 1962; 30 FR 11389, Sept. 8, 1965; 31 FR 4790, Mar. 22, 1966; 34 FR 840, Jan. 18, 1969; 39 FR 15126, May 1, 1974; 56 FR 18733, Apr. 24, 1991; 56 FR 24239, May 29, 1991; 61 FR 67950, Dec. 26, 1996; 62 FR 5529, Feb. 6, 1997; 62 FR 35423, July 1, 1997; 67 FR 65708, Oct. 28, 2002]

§ 3.1001 Hospitalized competent veterans.

The provisions of this section apply only to the payment of amounts actually withheld on a running award under § 3.551(b) which are payable in a lump sum after the veteran's death.

(a) *Basic entitlement.* Where an award of disability pension for a competent veteran without dependents was reduced because of hospital treatment or institutional or domiciliary care by the Department of Veterans Affairs and the veteran dies while receiving such treatment or care or before payment of amounts withheld, the lump sum is payable to the living person first listed as follows:

(1) The veteran's spouse, as defined in § 3.1000(d)(1);

(2) The veteran's children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) The veteran's dependent parents (in equal shares), or the surviving dependent parent, as defined in § 3.1000(d)(3);

(4) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See § 3.1002.)

(b) *Claim.* Applications must be filed with the Department of Veterans Affairs within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit on the retroactive period of an award or for furnishing evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for

reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(c) *Lump sum withheld after discharge from institution.* The provisions of paragraphs (a) and (b) of this section will apply in the event of the death of any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated against medical advice or as the result of disciplinary action.

(Authority: 38 U.S.C. 5503)

[26 FR 1609, Feb. 24, 1961, as amended at 27 FR 5539, June 12, 1962; 27 FR 8177, Aug. 16, 1962; 27 FR 11893, Dec. 1, 1962; 39 FR 15126, May 1, 1974]

§ 3.1002 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary. (See § 3.1(o)).

(Authority: 38 U.S.C. 5121(b) and 5502(d))

[39 FR 15126, May 1, 1974]

§ 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1) through (4), except that the total amount payable shall not include any payment for the month in which the payee died (see § 3.500(g)), and payments to persons described in § 3.1000(a)(4) shall be limited to the amount necessary to reimburse such persons for the expenses of last sickness and/or burial.

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

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(2) Nothing in this section will preclude payment to an otherwise entitled claimant having a lower order of precedence under §3.1000(a)(1) through (4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in §3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not will not revert to the state because there is no one eligible to inherit it.

(c) The provisions of this section do not apply to checks for lump sums representing amounts withheld under §3.551(b) or §3.557. These amounts are subject to the provisions of §§3.1001 and 3.1007, as applicable.

(Authority: 38 U.S.C. 501(a), 5122)

[59 FR 25329, May 16, 1994, as amended at 64 FR 54207, Oct. 6, 1999]

§§ 3.1004–3.1006 [Reserved]

§ 3.1007 Hospitalized incompetent veterans.

Where an award of disability pension for an incompetent veteran without dependents was reduced under §3.551(b) because of hospitalization, institutional or domiciliary care by the Department of Veterans Affairs, or an award of disability pension, compensation or emergency officers' retirement pay was discontinued under former §3.557(b) (as applicable prior to December 27, 2001) because the veteran was hospitalized by the United States or a political subdivision and had an estate which equaled or exceeded the statutory maximum, and the veteran dies before payment of amounts withheld or not paid by reason of such care, no part of such amount will be paid to any person. The provisions of this section are applicable to amounts withheld for periods prior to as well as subsequent to the rating of incompetency. The term *dies before payment* includes cases in

which a check was issued and the veteran died before negotiating the check.

(Authority: 38 U.S.C. 5503)

[39 FR 30349, Aug. 22, 1974, as amended at 66 FR 48561, Sept. 21, 2001; 68 FR 34543, June 10, 2003]

§ 3.1008 Accrued benefits payable to foreign beneficiaries.

In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemembers' indemnity) accruing under laws administered by the Department of Veterans Affairs, while the amount thereof remains in the special deposit account established by Pub. L. 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

[26 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Department of Veterans Affairs either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) *Eligible persons.* Gratuitous benefits shall be paid to the living person first listed as follows:

(1) His or her spouse, as defined in §3.1000(d)(1);

(2) His or her children (in equal shares), as defined in §3.57 but without regard to their age or marital status;

(3) His or her dependent parents (in equal shares) as defined in §3.59 or the surviving parent, provided that the parent was dependent within the meaning of §3.250 at the date of the veteran's death.