

§§ 3.1004–3.1006

38 CFR Ch. I (7–1–04 Edition)

(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.