

§ 3.257

suspend the award or disallow the claim.

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 2900-0101 and 2900-0624.)

(Authority: Sec. 306(a)(2) and (b)(3), Pub. L. 95-588, 92 Stat. 2508-2509; 38 U.S.C. 1315(e))

[63 FR 53595, Oct. 6, 1998, as amended at 66 FR 56614, Nov. 9, 2001]

§ 3.257 Children; no surviving spouse entitled.

Where pension is not payable to a surviving spouse because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for the child or children as if there were no surviving spouse.

[62 FR 5529, Feb. 6, 1997]

§§ 3.258-3.259 [Reserved]

§ 3.260 Computation of income.

For entitlement to pension or dependency and indemnity compensation, income will be counted for the calendar year in which it is received.

(a) *Installments.* Income will be determined by the total amount received or anticipated during the calendar year.

(b) *Deferred determinations.* Where there is doubt as to the amount of the anticipated income, pension or dependency and indemnity compensation will be allowed at the lowest appropriate rate or will be withheld, as may be in order, until the end of the calendar year when the total income received during the year may be determined.

(c) *Proportionate income limitations; excess income.* A proportionate income limitation will be established under the conditions set forth in paragraph (d) of this section except where application of a proportionate income limitation would result in payment of a lower rate than would be payable on the basis of income for the full calendar year.

(d) *Proportionate income limitations; computation.* Income limitations will be computed proportionately for the purpose of determining initial entitlement, or for resuming payments on an award which was discontinued for a reason other than excess income or a

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change in marital or dependency status. A proportionate income limitation will be established for the period from the date of entitlement to the end of that calendar year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.

(e) *Proportionate income limitations; spouse.* In determining whether proportionate computation is applicable to a claim under Pub. L. 86-211 (73 Stat. 432), the total income for the calendar year of entitlement of both veteran and that of the spouse available for use of the veteran will be considered. If a proportionate income limitation is then applicable, it will be applied to both the veteran's and the spouse's income. The spouse's income will not be included, however, where his or her total income for the calendar year does not exceed \$1,200.

(f) *Rate changes.* In years after that for which entitlement to pension or dependency and indemnity compensation has been established or reestablished as provided in paragraph (d) of this section, total income for the calendar year will govern the payment of benefits. Where there is a change in the conditions of entitlement because of a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) *Fractions of dollars.* In computing a claimant's annual income a fraction of a dollar will be disregarded for the purpose of determining entitlement to

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monthly payments of pension and dependency and indemnity compensation.

(Authority: 38 U.S.C. 1315(g)(2); 1503(b))

[28 FR 30, Jan. 1, 1963, as amended at 29 FR 2944, Mar. 4, 1964; 37 FR 6677, Apr. 1, 1972; 40 FR 16066, Apr. 9, 1975]

§ 3.261 Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§ 3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

(a) *Income.*

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; old-law (veterans, surviving spouses and children)	Pension; section 306 (veterans, surviving spouses and children)	See—
(1) Total income from employment, business, investments, or rents.	Included	Included	Included	Included	§ 3.262(a).
(2) Income of spouse .....	.....do .....	.....do	Excluded .....	.....do	§ 3.262(b).
(3) Earnings of members of family under legal age.	.....do	Excluded .....	.....do	Excluded	§ 3.250(b)(2). § 3.252(e)(3).
(4) Earned income of child-claimant .....	.....do .....	.....do	Included .....	.....do.	
(5) Gifts, including contributions from adult members of family:					
Property .....	.....do	Included .....	.....do .....	.....do	§ 3.262(k).
Money .....	.....do .....	.....do .....	.....do	Included.	
(6) Value of maintenance by relative, friend, or organization.	Excluded	Excluded	Excluded	Excluded	§ 3.262(c).
(7) Rental value of property owned by and resided in by claimant.	.....do .....	.....do .....	.....do .....	.....do.	
(8) Charitable donations .....	.....do .....	.....do	Included .....	.....do	§ 3.262(d).
(9) Family allowance authorized by service personnel.	Included	Included .....	.....do	Included.	
(10) Reasonable value of allowances to person in service in addition to base pay.	.....do .....	.....do .....	.....do	Included except as earned income of child-claimant.	
(11) Mustering-out pay	Excluded .....	.....do	Excluded .....	.....do.	
(12) Six-months' death gratuity .....	.....do	Excluded .....	.....do	Excluded.	
(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.	Excluded	Excluded	Excluded	Excluded.	
(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):					
Retired Serviceman's Family Protection Plan (Subch. I):					
Annuities .....	.....do .....	.....do .....	.....do .....	.....do.	
Refund (10 U.S.C. 1446)	Included	Included	Included	Included.	
Survivor Benefit Plan (Subch. II) (Pub. L. 92-425; 86 Stat. 706).	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(e).
Annuity under § 653, Pub. L. 100-456	Included	Included	Excluded	Excluded	§ 3.262(r)
(15) Retirement pay received direct from service department.	Included	Included	Included	Included	§ 3.262(e).
(16) Retirement benefits; general .....	.....do .....	.....do .....	.....do .....	.....do	§ 3.262(h).
(17) Social security benefits:					
Old age and survivors', and disability insurance.	Included	Included	Included	Included	§ 3.262(f).
Charitable programs	Excluded	Excluded .....	.....do	Excluded.	
Lump-sum death payments	Included .....	.....do .....	.....do .....	.....do.	
Supplemental security income	Excluded	Excluded .....	.....do .....	.....do.	
(18) Railroad Retirement benefits .....	.....do	Included	Disability pension—Excluded Death pension—Included.	Included	§ 3.262(g).
(19) Retirement pay waived under Federal statute.	Excluded	Excluded	Excluded .....	.....do	§ 3.262(h).