

APPORTIONMENTS

§ 3.450 General.

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

(i) On behalf of his or her spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned.

(Authority: 38 U.S.C. 5307)

(b) Except as provided in § 3.458(e), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty with the air, military, or naval services of the United States.

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children.

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

(f) Prior to release of any amounts the relationship of the claimant and the dependency of a parent will be fully

developed, and the necessary evidence secured.

(g) The provisions of § 3.460 are applicable where the surviving spouse is entitled to a higher rate of pension under the circumstances described in that section.

[26 FR 1594, Feb. 24, 1961, as amended at 26 FR 7266, Aug. 11, 1961; 27 FR 6974, July 24, 1962; 32 FR 13226, Sept. 19, 1967; 37 FR 6678, Apr. 1, 1972; 44 FR 45939, Aug. 6, 1979]

§ 3.451 Special apportionments.

Without regard to any other provision regarding apportionment where hardship is shown to exist, pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Department of Veterans Affairs benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionnee.

[44 FR 45940, Aug. 6, 1979]

§ 3.452 Situations when benefits may be apportioned.

Veterans benefits may be apportioned:

(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.

(b) Pending the appointment of a guardian or other fiduciary.