

year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(2) Where the initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application for clothing allowance may be filed within 1 year from the date of notification to the veteran of such determination.

(Authority: 38 U.S.C. 1162)

(d) If a veteran is incarcerated in a Federal, State, or local penal institution for a period of more than 60 days and is furnished clothing without charge by the institution, VA shall reduce the amount of the annual clothing allowance by 1/365th of the amount otherwise payable for each day the veteran was incarcerated during the 12-month period preceding the anniversary date for which entitlement is established. No reduction shall be made for the first 60 days of incarceration.

(Authority: 38 U.S.C. 5313A)

[37 FR 19134, Sept. 19, 1972, as amended at 39 FR 2362, Jan. 21, 1974; 49 FR 28242, July 11, 1984; 56 FR 5756, Feb. 13, 1991; 62 FR 35422, July 1, 1997]

§3.811 Minimum income annuity and gratuitous annuity.

(a) *Eligibility for minimum income annuity.* The minimum income annuity authorized by Public Law 92-425 as amended is payable to a person:

(1) Whom the Department of Defense or the Department of Transportation has determined meets the eligibility criteria of section 4(a) of Pub. L. 92-425 as amended other than section 4(a)(1) and (2); and

(2) Who is eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; and

(3) Whose annual income, as determined in establishing pension eligibility, is less than the maximum annual rate of pension in effect under 38 U.S.C. 1541(b).

(b) *Computation of the minimum income annuity payment*—(1) *Annual income.* VA will determine a beneficiary's annual

income for minimum income annuity purposes under the provisions of §§3.271 and 3.272 of this part for beneficiaries receiving improved pension, or under §§3.260 through 3.262 of this part for beneficiaries receiving old law or section 306 pensions, except that the amount of the minimum income annuity will be excluded from the calculation.

(2) VA will determine the minimum income annuity payment for beneficiaries entitled to improved pension by subtracting the annual income for minimum income annuity purposes from the maximum annual pension rate under 38 U.S.C. 1541(b).

(3) VA will determine the minimum income annuity payment for beneficiaries receiving old law and section 306 pensions by reducing the maximum annual pension rate under 38 U.S.C. 1541(b) by the amount of the Retired Servicemen's Family Protection Plan benefit, if any, that the beneficiary receives and subtracting from that amount the annual income for minimum income annuity purposes.

(4) VA will recompute the monthly minimum income annuity payment whenever there is a change to the maximum annual rate of pension in effect under 38 U.S.C. 1541(b), and whenever there is a change in the beneficiary's income.

(c) An individual otherwise eligible for pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 shall be considered eligible for pension for purposes of determining eligibility for the minimum income annuity even though as a result of adding the amount of the minimum income annuity authorized under Public Law 92-425 as amended to any other countable income, no amount of pension is due.

(d) If the Department of Defense or the Department of Transportation determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Pub. L. 100-456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of

death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.

(e) *Termination.* Other than as provided in paragraph (c) of this section, if a beneficiary receiving the minimum income annuity becomes ineligible for pension, VA will terminate the minimum income annuity effective the same date.

(Authority: Sec. 4, Pub. L. 92-425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))

[63 FR 412, Jan. 6, 1998, as amended at 63 FR 62943, Nov. 10, 1998]

§3.812 Special allowance payable under section 156 of Pub. L. 97-377.

The provisions of this section apply to the payment of a special allowance to certain surviving spouses and children of individuals who died on active duty prior to August 13, 1981, or who died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. This special allowance is a replacement for certain social security benefits which were either reduced or terminated by provisions of the Omnibus Budget Reconciliation Act of 1981.

(a) *Eligibility requirements.* (1) A determination must first be made that the person on whose earnings record the claim is based either died on active duty prior to August 13, 1981, or died as a result of a service-connected disability which was incurred or aggravated prior to August 13, 1981. For purposes of this determination, character of discharge is not a factor for consideration, and death on active duty subsequent to August 12, 1981, is qualifying provided that the death resulted from a service-connected disability which was incurred or aggravated prior to August 13, 1981.

(2) Once a favorable determination has been made under paragraph (a)(1) of this section, determinations as to the age, relationship and school attendance requirements contained in paragraphs (a)(1) and (b)(1) of section 156 of Pub. L. 97-377 will be made. In making these eligibility determinations VA shall apply the provisions of the Social Security Act, and any regulations promulgated pursuant thereto, as in effect during the claimant's period of eligibility. Unless otherwise

provided in this section, when issues are raised concerning eligibility or entitlement to this special allowance which cannot be appropriately resolved under the provisions of the Social Security Act, or the regulations promulgated pursuant thereto, the provisions of title 38, Code of Federal Regulations, are for application.

(b) *Computation of payment rate—(1) Basic entitlement rate.* A basic entitlement rate will be computed for each eligible claimant in accordance with the provisions of subparagraphs (a)(2) and (b)(2) of section 156 of Pub. L. 97-377 using data to be provided by the Social Security Administration. This basic entitlement rate will then be used to compute the monthly payment rate as described in paragraphs (b)(2) to (b)(6) of this section.

(2) *Original or reopened awards to surviving spouses.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in dependency and indemnity compensation rates under 38 U.S.C. 1311 which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(3) *Original and reopened awards to children.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) *Subsequent legislative increases in rates.* The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child