

Department of Veterans Affairs

§ 3.60

attendance at an educational institution or during which the person or the veteran is confined in a hospital, nursing home, other health-care facility, or other institution.

(3) *Adopted child of deceased veteran.* A person shall not be considered to have been a legally adopted child of a veteran as of the date of the veteran's death and thereafter unless one of the following conditions is met.

(i) The veteran was entitled to and was receiving for the person a dependent's allowance or similar monetary benefit payable under title 38, United States Code at any time within the 1-year period immediately preceding the veteran's death; or

(ii) The person met the requirements of paragraph (e)(2) of this section for a period of at least 1 year prior to the veteran's death.

(4) *Verification.* In the case of an adopted child of a living veteran, the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section are for prospective application. That is, in addition to meeting all of the requirements of paragraph (e)(2) of this section at the time of initial adjudication, benefits are not payable thereafter for or to a child adopted under the laws of any jurisdiction other than a State unless the requirements of paragraphs (e)(2)(ii), (iii) and (iv) of this section continue to be met. Consequently, whenever Department of Veterans Affairs benefits are payable to or for a child adopted under the laws of any jurisdiction other than a State, and the veteran who adopted the child is living, the beneficiary shall submit, upon Department of Veterans Affairs request, a report, or other evidence, to determine if the requirements of paragraph (e)(2)(ii), (iii), and (iv) of this section were met for any period for which payment was made for or to the child and whether such requirements will continue to be met for future entitlement periods. Failure to submit the requested report or evidence within a reasonable time from date of request may result in termination of benefits payable for or to the child.

(Authority: 38 U.S.C. 101(4), 501)

CROSS REFERENCES: Improved pension rates. See § 3.23. Improved pension rates; surviving children. See § 3.24. Child's relation-

ship. See § 3.210. Helplessness. See § 3.403(a)(1). Helplessness. See § 3.503(a)(3). School attendance. See § 3.667. Helpless children—Spanish-American and prior wars. See § 3.950.

[44 FR 45935, Aug. 6, 1979 and 45 FR 1878, Jan. 9, 1980, as amended at 45 FR 25391, Apr. 15, 1980; 49 FR 47003, Nov. 30, 1984; 65 FR 12116, Mar. 8, 2000; 72 FR 6959, Feb. 14, 2007]

§ 3.58 Child adopted out of family.

A child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a *child* within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs.

CROSS REFERENCE: Veteran's benefits not apportionable. See § 3.458.

[26 FR 1568, Feb. 24, 1961]

§ 3.59 Parent.

(a) The term *parent* means a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before his or her entry into active service.

(b) Foster relationship must have begun prior to the veteran's 21st birthday. Not more than one father and one mother, as defined, will be recognized in any case. If two persons stood in the relationship of father or mother for 1 year or more, the person who last stood in such relationship before the veteran's last entry into active service will be recognized as the *parent*.

(Authority: 38 U.S.C. 101(5))

[26 FR 1568, Feb. 24, 1961, as amended at 44 FR 45935, Aug. 6, 1979]

§ 3.60 Definition of "living with".

For the purposes of determining entitlement to pension under 38 U.S.C. 1521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged.

(Authority: 38 U.S.C. 1521(h)(2))

[44 FR 45935, Aug. 6, 1979]