

(c) The assistance referred to in this section will not be available to any veteran more than once.

(Authority: 38 U.S.C. 2102)

[46 FR 47543, Sept. 29, 1981, as amended at 53 FR 23237, June 21, 1988]

§3.810 Clothing allowance.

(a) Except as provided in paragraph (d) of this section a veteran who has a service-connected disability, or a disability compensable under 38 U.S.C. 1151 as if it were service-connected, is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 1162. The annual clothing allowance is payable in a lump sum, and the following eligibility criteria must also be satisfied:

(1) A VA examination or hospital or examination report from a facility specified in §3.326(c) discloses that the veteran wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in §3.350(a), (b), (c), (d), of (f); or

(2) The Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing, or that because of the use of a physician-prescribed medication for a skin condition which is due to the service-connected disability irreparable damage is done to the veteran's outergarments. For the purposes of this paragraph "appliance" includes a wheelchair.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

(c)(1) Except as provided in paragraph (c)(2) of this section, the application for clothing allowance must be filed within 1 year of the anniversary date

(August 1) for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allowance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-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

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(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 de-

termines 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