

# Apportionments

With Kristina Olson, PMC and Jill Pallo, VSC

# References

- 38 U.S.C. 5307, Apportionment of benefits
- 38 CFR 3.450, Apportionment – General
- 38 CFR 3.451, Special Apportionments
- 38 CFR 3.452, Situations when benefits may be apportioned
- 38 CFR 3.458, Veteran's benefits not apportionable

# Apportionments-background

- “Regular” apportionment OR  
    “Special “ apportionment (during incarceration)
- 38 U.S.C. 5307 permits the VA to apportion all or any part of a Veteran’s compensation benefits to their dependent(s) under certain circumstances.
- A claim for apportionment of compensation must be submitted by a dependent of the Veteran, or on the dependent’s behalf (e.g. a minor child) on prescribed form
- VA will not apportion benefits to a dependent as a convenience to the Veteran.

# Who is Eligible?

An apportionment may be paid to or for the Veteran's:

- Estranged spouse,
- Child(ren) in an estranged or former spouse's custody,
- Child not living with the Veteran or Veteran's surviving spouse, or
- Dependent parent.

**Note:** Dependents do not need to be on the Veteran's award to be paid an apportionment as long as the legal relationship to the Veteran is properly established.

# Criteria for Granting Apportionment

38 CFR 3.450(a)(1)(ii) permits apportionment of compensation to a Veteran's dependent spouse and/or children provided:

- The claimant does not reside with the Veteran, and
- The Veteran is not providing a reasonable level of support to the claimant.

38 CFR 3.451 permits the special apportionment of compensation to a Veteran's dependents provided:

- The claimant does not reside with the Veteran,
- Financial hardship on the part of the claimant is shown, and
- Apportionment will not cause undue hardship on the Veteran and their other dependents.

# When Apportionment Cannot Be Granted

38 CFR 3.458 prohibits the apportioning of a Veteran's benefits when:

- Total benefit payable not a reasonable amount to apportion
- Spouse found guilty of conjugal infidelity (by court)
- Spouse has lived with another person and held themselves out as married (exceptions may apply)
- Child has been legally adopted by another person (exceptions may apply)

# Required Form-All Apportionments

- The prescribed form for a claim for apportionment is VA Form 21-0788, *Information Regarding Apportionment of Beneficiary's Award*.
- VA Form 21-0788 provides decision makers with:
  - the amount of monetary support the beneficiary is providing to the claimant, if any, and
  - Information about the net worth and monthly income and expenses of the
    - beneficiary
    - claimant, and
    - claimant's custodian, if applicable.

(We need the "household" income of the claimant)

# Estimating Apportionment Amount

When making the apportionment estimate, we consider:

- any additional amount VA pays for dependents on the award
- ordinarily between 20- to 50-percent of Veteran's benefits are apportioned
- the final decision may only apportion an amount that is *equal to or less than* the estimated amount - a greater amount cannot be apportioned without re-issuing due process
- round to an even dollar amount (no cents)



# Regular Apportionment Process

- Claim received on proper form-Date claim received is effective date for apportionment if granted
- Review form for potential entitlement
- Issue due process to Veteran with an estimated apportionment amount and VA Form 21-0788
- Develop to claimant if additional information is needed
- Make decision after 65 days
- Award and notify all parties

# Making Decision

We consider the income and expenses reported on VA Form 21-0788 from both parties when determining:

- whether an apportionment would create a financial hardship on the beneficiary and their dependent(s) [38 CFR 3.451],
- whether the claimant has a financial need for the apportionment [38 CFR 3.451, 3.454(b), or 3.665(e)] and
- the amount of benefits VA should apportion.

**Note:** We may request documentary proof of expenses from a claimant or beneficiary that have been clearly inflated

# Considerations

When granting the apportionment, consider the following factors when determining the amount of the apportionment:

- The amount of VA benefits payable to the Veteran
- Other resources and income of the Veteran and the claimant
- Special needs of the Veteran and/or their dependents
- The amount apportioned should generally be consistent with the total number of dependents involved
- Ordinarily, apportion between 20- and 50- percent of the Veteran's benefits

# Incarcerated Apportionment-Compensation

- Granted during periods of Veteran's incarceration
- Dependency requirements the same as before
- Prescribed form is required-can come from claimant OR Veteran
- No due process to Veteran is necessary
- Decision is made based on evidence
- Effective date is 61<sup>st</sup> day of incarceration, if claim received within one year of notice of right to receive apportionment (retro applied to Veteran's overpayment)
- Can grant up to the available difference but only for period of Veteran's incarceration
- Subject to immediate discontinuance on release from prison

# Apportionment -Pension

- Payable to-
  - Estranged Spouse
  - Child not living with the Veteran or in custody of an estranged/former spouse
  - Child not living with a surviving Spouse getting 306 or Old Law pension
  - Dependent parent
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- Same process as Compensation apportionments

# Incarcerated Apportionments-Pension (1)

- 21-0788 can be received from Veteran **OR** dependent
- the Veteran's dependent(s) must meet the income requirements for Survivors Pension MAPR (*without* consideration of the Veteran's income).
- Allotment amount to dependents while veteran is incarcerated is limited to the **lesser** of the following:
  - the amount of pension to which the Veteran was entitled before VA discontinued his/her pension due to incarceration, or
  - the amount of Survivors Pension to which the dependent(s) would be entitled based on current income

# Incarcerated Apportionments-Pension (2)

- If the veteran is entitled to both *Pension AND Compensation* a dependent is entitled to the **lesser of the following**:
  - the amount of pension to which the Veteran was entitled before VA discontinued his/her pension due to incarceration, or
  - the amount of Survivors Pension to which the dependent(s) would be entitled based on current income.
- If VA does not receive notice of a Veteran's incarceration until **after incarceration has ended**, and termination of the Veteran's pension benefits (or reduction of compensation benefits) due to incarceration is otherwise in order, **no apportionment is payable to the Veteran's dependent(s)**.
- When incarceration ends = apportionment ends (no omnibus)
- A granted special apportionment can be used to offset an Incarceration debt.

- Questions?