

TRAINING MODULE 6

Study Plan

DEPENDENCY and INDEMNITY COMPENSATION

Objective:

To learn the basics to assist a claimant in submitting a claim for this benefit and to become familiar with the requirements for such claims.

References:

Title 38, U.S. Code, Chapter 13

38 Code of Federal Regulations, Part 3

Adjudication Manual 21-1, Part 1, Appendix B; Parts IV

Adjudication Manual M21-1MR (Manual Rewrite), Part 4, Subpart III; Part 5; Part 8.

VA Pamphlet 80-04-01 *Federal Benefits for Veterans and Dependents*

Instructions:

Study the assigned reference materials to learn the basic requirements for Dependency and Indemnity Compensation (DIC) claims. There are two types of DIC benefits. The DIC benefit for surviving spouses and children, and the DIC-Parent benefit which is income based.

Summary:

Dependency and Indemnity Compensation (DIC) is the primary monthly monetary benefit payable to the surviving dependents of a deceased veteran, and is the equivalent benefit to disability compensation for veterans. Although it is usually a service-connected benefit, DIC may also be authorized for certain nonservice-connected death, as well. There is no minimum active duty service requirement for DIC claims; however, there may be a 90-day length of service requirement if the cause of death was a chronic disease (as defined, see 38 CFR §§ 3.307(a)(1) and 3.309(a)) and the issue was not addressed during the veteran's lifetime.

As with disability compensation for a veteran, DIC for a surviving spouse and/or children is not income-based. It is the benefit payable if the veteran died while on active duty, not due to willful misconduct; or, when death was after service, if a service-connected disability either directly caused, or contributed substantially to and materially hastened, the veteran's death. It is not required that service connection has been established prior to the veteran's death for the condition which caused or contributed to death. The rules and procedures for establishing service connection for a veteran's death are essentially similar to those for establishing a service-connected disability for a living veteran, with due consideration of the finality of the evidence in death claim.

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Since 1978, DIC has been payable *as if* the death were service-connected when a veteran who has been rated totally disabled from service-connected causes (whether 100% or by reason of individual unemployability) for ten continuous years or more at the time of death and dies from any cause other than willful misconduct.

If the veteran was out of service less than ten years, DIC is payable if a total disability rating was in effect for a period of at least five continuous years, from the date the veteran left service to the date of death.

Since November 30, 1999, DIC is payable to the surviving spouse and/or child of a former prisoner of war who was rated totally disabled from service-connected causes for at least one year at the time of death and who died from any cause (other than willful misconduct) after September 30, 1999. [38USC 1318]

Finally, DIC is also payable *as if* the death were service-connected, if the veteran dies as a result of VA examination, hospital care, medical and surgical treatment, Vocational Rehabilitation, or, since November 1, 2001 a program of Compensated Work Therapy under 38 USC 1718, or if a disability arising from such circumstances either directly causes, or contributes substantially to and materially hastens, the veteran's death. In this case, however, DIC is the **ONLY** benefit available: there are no ancillary benefits such as Loan Guaranty or education assistance. Again, the rules and procedures for establishing a qualifying compensable event are similar to those for a living veteran. [38USC 1151]

DIC rates payable for a surviving spouse and/or children are dependent on a number of factors, including when the veteran died and the number and status of dependent children, if any. If the veteran died on or after January 1, 1993, there is a basic rate payable for the surviving spouse, plus an enhanced rate if the veteran has been rated totally disabled (or could have been so rated, if it was not done while veteran was alive) for eight continuous years or more at the time of death. However, the enhanced rate is not payable if the spouse was not married to the veteran for the entire eight-year period (or if the veteran had not been out of service for eight years at the time of death). If the veteran died before January, 1993, the rate for the surviving spouse is based on the highest pay grade attained by the veteran on active duty *or* the basic/enhanced described above, whichever is the greater. In both cases, additional amounts are payable for the veteran's eligible children. Additional amounts are also payable to a surviving spouse who is housebound or in need of regular aid and attendance, as set out in 38 CFR § 3.351. Beginning January 1, 2005, a surviving spouse with one or more children under age 18 will be paid an additional \$250 per month for a transitional period of 24 months from the date entitlement to DIC begins or until the last child reaches age 18, whichever occurs first. This amount is in addition to any other DIC rates payable to the surviving spouse.

If there is an eligible surviving spouse, the veteran's minor children are considered to be additional dependents on the spouse's award. If the children are in the spouse's custody, they are included on the spouse's basic award. A child not in the spouse's custody will be paid his or her share of DIC on a separate award. Regardless of custody, each child is permanently removed as a dependent from the spouse's award upon reaching age 18. If there is no eligible surviving spouse, there are specified rates for the veteran's children, in equal shares, up to the time of each child's 18th birthday.

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Upon reaching age 18, each child attains independent entitlement to DIC without regard to whether there is an eligible surviving spouse. DIC may only be paid to or for a child after age 18 if the child is attending an approved educational institution or is determined to be permanently incapable of self-support (helpless). DIC for school attendance may not be paid concurrently with Dependents' Education Assistance under 38 USC, Chapter 35; however, if the child has been found to be "helpless," there is no bar to concurrent payment, since in this case the DIC is not because of school attendance. All of the various DIC rates are set out in Adjudication Manual M21-1, Appendix B.

If the veteran was entitled to military retired pay and had contributed to the Survivor Benefits Plan (SBP) during his or her lifetime, the surviving spouse may not be concurrently paid both DIC and full amount of SBP. If the SBP is more than the DIC rate, the SBP is reduced by an amount equal to the DIC rate. If the DIC rate is greater than the SBP, the SBP is discontinued and any unpaid amounts remaining are refunded to the surviving spouse.

These rules do not apply to SBP for children--- payment of DIC to or for a child does not affect any SBP payable.

An eligible surviving spouse may simultaneously be paid both DIC and Dependents' Education Assistance under 38 USC, Chapter 35. When DIC has been (or will be) awarded under either 38 USC 1318 or 38 USC 1151, if any beneficiary is awarded any amount from a judicial proceeding, settlement, or compromise by reason of the veteran's death, DIC payments to or for that beneficiary must be withheld until the full amount of such award has been recovered. This does not apply to Social Security or Workman's Compensation benefits, even though they may have been awarded by judicial proceeding.

DIC is payable for a veteran's surviving parent(s) if the veteran's death is service-connected or is compensable under 38 USC 1151. There is no eligibility for DIC for parents under 38 USC 1318. Parents' DIC is income-based---the income limits are spelled out in 38 USC 1315. The income limits are adjusted periodically; the adjusted limits are published in the "Notices" section of the *Federal Register*, and are listed in Adjudication Manual M 21-1, Appendix B. All of the parents' family income from all sources is counted, unless specifically excluded. **Note**---DIC claims from surviving dependent parents of veterans who die while on active duty are under the initial jurisdiction of VAROIC Philadelphia, Pennsylvania; once the award is running, jurisdiction transfers to the Pension Maintenance Center (PMC) for the parent's address.

Specific categories of countable and excludable income are discussed in 38 CFR §§ 3.260 and 3.261. Categories of excluded and/or excludable income are also discussed in 38 CFR 3.362.

More complete information is given in M21-1, Part IV, Chapter 16, **Income and Net Worth**, Subchapter III, **Parents' DIC**. Medical and certain other expenses, paid by the parent and/or family and not reimbursed from any source, may be *deducted* from otherwise countable income to reduce the levels used for determining pension rates payable. See Module 8, Section 2, **Deductible Expenses**, for further information.

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A parent's marital status is not a factor in eligibility, but does affect the income limit(s) applicable: there are different income limits according to whether one or both parents survive, and if both, whether they are married to each other or have or have not remarried. Net worth is not a factor for parents' DIC

Additional amounts are also payable if one of both parents are in need of aid and attendance.

If the amount of the total annual benefit payable is less than 4% of the maximum rate, payments will be made semi-annually unless monthly payments are specifically requested. When DIC has been (or will be) awarded under 38 USC 1151, if either parent is awarded any amount from a judicial proceeding, settlement, or compromise by reason of the veteran's death, DIC payments to or for that parent must be withheld until the full amount of such award has been recovered.

It is not required that a dependent have been recognized prior to the veteran's death. However, there are time limits for recognition of a surviving spouse for benefits purposes: in general, when the veteran dies after service, the surviving spouse must have been married to the veteran for at least one year prior to the veteran's death, or for any length of time if a child was born of the marriage or was born to them before the marriage. In addition, for service-connected deaths only, the marriage may have been for any length of time if it took place within fifteen (15) years after the end of the period of service during which the condition which caused or contributed to the veteran's death was incurred or aggravated. (For example, for a Vietnam-era veteran, the marriage would have to have been before May 7, 1990, fifteen years after the end of the Vietnam Era.) Finally, there are no length of marriage requirements if the marriage occurred while the veteran was in service, or before service, or if a married servicemember dies while on active duty.

Remarriage of a surviving spouse generally terminates eligibility for DIC. Eligibility may be re-established if the remarriage is terminated by death, divorce, or annulment. Since January 1, 2004, a surviving spouse age 57 or older who is eligible for DIC and other benefits as a surviving spouse and who remarries will not lose any eligibility because of such remarriage.

A claim for DIC by a surviving spouse and/or children is *ALWAYS* also a claim for any available accrued benefits, as well as a claim for death pension for a surviving spouse and/or children if DIC is denied, if the service and income requirements are satisfied. In general, if a surviving spouse qualifies for both DIC and death pension, DIC will be awarded as the greater benefit. However, the surviving spouse may elect to receive death pension instead, if it is to the spouse's advantage, even though it is a lesser benefit.

Accrued benefits includes any claim, formal, informal, or inferred, for a recurring benefit that was pending and unresolved at the time of the veteran's death; or any recurring benefit that was due but not paid at the time of the veteran's death, such as when a claim was approved but the veteran died before the initial check was issued, or there were unnegotiated or non-negotiated checks.

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If the accrued benefit is based upon a claim pending at the time of the veteran's death, all of the evidence necessary for a favorable decision must have been in file on the date of the veteran's death. For this purpose, the term "in file" means the evidence was in VA, in VA's possession, even if it was not physically in the veteran's claims file on that date.

If more than one class of dependents applies, the order of precedence for accrued benefits is (1) surviving spouse; (2) children (in equal shares); and (3) parents (in equal shares). If there are no eligible (or potentially eligible) survivors, any accrued amounts available are only payable as reimbursement to the person or entity who paid the costs of the veteran's final illness, funeral and burial. Previously, payment of retroactive benefits as accrued was limited to two years prior to the month of death; Public Law 108-183 removed this restriction for veterans who died on or after December 16, 2003.

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Questions: Dependency and Indemnity Compensation

Using the assigned references and reading materials, answer the following questions:

1. During his/her lifetime the veteran established service connection for a psychiatric condition, rated as 50% disabling. He died by suicide. This death can be rated as service-connected.
 - a. True
 - b. False
2. The surviving spouse's family income from all sources is a factor in determining the DIC monthly rates payable.
 - a. True
 - b. False
3. The veteran dies of a service-connected disability. He and his spouse were only married for ten months; however, the spouse was six months pregnant when he died. She is eligible for DIC, upon the birth of their child.
 - a. True
 - b. False
4. The remarriage of a deceased veteran's widowed mother is an automatic bar to further payment of parents' DIC.
 - a. True
 - b. False
5. The veteran was permanently retired from service for disability because of a heart condition. The veteran filed a disability claim with VA, which assigned a rating of 100%. Six years after leaving service, he is killed in an automobile accident. The surviving spouse eligible for DIC.
 - a. True
 - b. False
6. Deceased veteran's mother has applied for DIC. She reports income from Social Security only. She also reports owning a parcel of land (not her residence) valued at \$50,000, but states she does not receive any income from the property. This will affect her eligibility to DIC.
 - a. True
 - b. False

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7. Vietnam veteran did not file a claim for disability during his lifetime. He died three months ago, from prostate cancer, for which he was treated at a VA medical facility. Physician's notes in 1997 report the veteran as saying that he felt his cancer was "somehow related to Agent Orange from Vietnam, and he should see if VA would give him any benefits for it." The surviving spouse has submitted a VA Form 21-534.
- a. The death is service-connected?
 - True
 - False
 - b. Any accrued benefits are payable.
 - True
 - False
8. The veteran's highest pay grade on active duty was Brigadier General. He died in 1998, from service-connected causes. He was rated 100% for ten years prior to death. The spouse will receive DIC payments based on his rank.
- a. True
 - b. False
9. If a surviving spouse was previously eligible for DIC payments remarries and then the re-marriage is terminated, DIC benefits may be reinstated.
- a. True
 - b. False

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FORMS

FORMS FOR DIC

- VA Form 21-22 - Appointment of Veterans Service Organization as Claimant's Representative
- VA Form 21-534 - Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable)
- VA Form 21-674 - Request for Approval of School Attendance
(Child age 18 and older not electing DEA)
- VA Form 21-686c – Declaration of Status of Dependents
(If additional dependency listing needed)
- VA Form 21-4138 - Statement in Support of Claim (To relate any facts or comments)
- NCDVA-1A - Medical evidence to apply for Housebound or Aid & Attendance

FORMS FOR PARENT'S DIC

- VA Form 21-22 - Appointment of Veterans Service Organization as Claimant's Representative
- VA Form 21-535 - Application for Dependency and Indemnity Compensation by Parent(s)
- VA Form 21-686c – Declaration of Status of Dependents
(If additional dependency listing needed)
- NCDVA-1A - Medical evidence to apply for Aid & Attendance

DOCUMENTS FOR DIC

- Marriage Certificate (current spouse)
- Divorce Decrees or Death Certificates (previous spouses)
- Certified DD-214 (If claims number not established)
- Death Certificate of Veteran
- Birth Certificate of Dependents (or Adoption Papers)
- Terminal Hospital Report and/or Medical Evidence to establish well-grounded claim for service connected death
- Social Security Numbers

DOCUMENTS FOR PARENT'S DIC

- Certified DD-214 (If claim number not established)
- Death certificate of veteran
- Birth Certificate of veteran (listing names of parents)
- Marriage Certificate
- Divorce Decrees or Death Certificates (previous spouses) for claimant and dependent spouse
- Social Security Award Letters for claimant and dependent spouse
- Proof of Other Income
- Terminal Hospital Report and/or medical evidence to establish well-grounded claim for service-connected death