

# TRAINING MODULE 7

## Study Plan

### DEATH PENSION

#### Objective:

To learn how to assist a claimant to submit a claim for death pension, and to become familiar with the requirements for such claims.

#### References:

Title 38, U.S. Code, Chapter 15.

38 Code of Federal Regulations, Part 3.

Adjudication Manual 21-1, Part IV; Part I, Appendix B; Part IV.

Adjudication Manual M21-1MR (Manual Rewrite), Parts 5 and 8.

VA Pamphlet 80-00-1, *Federal Benefits for Veterans and Dependents*.

#### Instructions:

Study the assigned reference materials to learn the requirements for death pension claims. Pay special attention to the income information in the application, as that will be a major portion of the development of the claim.

#### Summary:

Death pension is the income supplement program for a low-income surviving spouse and/or children of a veteran. The basic requirements are: wartime service, income and net worth within specified limits, and the veteran's death was not related to service.

VA currently maintains three death pension programs:

“Old law pension,” also known as “protected pension”;

“Section 306 pension,” also known as “86-211 pension”; and

“Improved pension,” which is the current pension program.

Improved pension began on January 1, 1979. All persons who were in receipt of pension under either of the prior pension laws, or who had a pension claim pending on that date, are protected under those laws for as long as they continue to meet the income and net worth limits of their program. If the pension award is terminated for any reason, the claimant may only reopen the claim *only* under the current (improved) pension program. In addition, since the claimant's status is in effect frozen, he or she may not claim additional pension because of being housebound or being in need of regular aid and attendance, unless he or she elects improved pension.

Qualifying wartime service for pension purposes means that the veteran served on active duty for at least 90 consecutive days, at least one day of which was during a wartime period; or if less than 90 days, was discharged because of disability for which service connection could be established without resort to any

## TRAINING MODULE 7

### Study Plan

presumptive provisions of the law; or had a disability for which service connection could be established which would have warranted a discharge for disability; or had two or more separate periods of active service for an aggregate of 90 days or more during more than one period of war.

For veterans whose wartime service was Gulf War Era (beginning August 2, 1990), minimum active service requirements (24 consecutive months or the full period for which called to active duty, whichever is less) apply: the veteran must have met either the minimum active service requirement or the general qualifying service requirement above, whichever was the greater.

In addition to the above, service requirements for death pension will be met regardless of the length of the veteran's service if at the time of death the veteran was receiving, or was entitled to receive, compensation or retired pay for a service-connected disability incurred or aggravated during a wartime period. Finally, if a veteran dies while on active duty under circumstances precluding payment of service-connected benefits (e.g., the death was not in line of duty, or was the result of willful misconduct), death pension may be payable to the surviving spouse and/or children provided the veteran had served honorably for at least two years, any part of which was during a wartime period.

Income and net worth limits for improved pension are spelled out in 38 U.S. Code, Sections 1541, 1542, and 1543. 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 21-1, Appendix B. All family income from all sources is counted, unless specifically excluded.

Specific categories of countable income are discussed in 38 CFR § 3.271. Categories of excluded and/or excludable income are listed in 38 CFR § 3.272. In addition, an extensive (but not comprehensive) listing of specific sources of countable and non-countable income is contained in M21-1, Part IV, Chapter 16, **Income and Net Worth**, Subchapter IX, **Improved Pension—Counting Specific Types of Income**. Medical and certain other expenses, paid by the surviving spouse and/or family members and not reimbursed from any source, may be *deducted* from otherwise countable income to reduce the levels determining pension rates payable. See Module 8, Section 2, **Deductible Expenses**, for more information.

Higher income limits apply if the surviving spouse has children in custody; however, the children's incomes are also counted, as well. In addition, higher income limits also apply if the surviving spouse is housebound or in need of regular aid and attendance.

A child beyond age 18 who was in the custody of an eligible surviving spouse before reaching age 18 will remain on the spouse's award as an additional dependent if the child is attending school (up to age 23) or was determined to be permanently incapable of self-support (helpless) prior to age 18.

In this circumstance, the child has no independent entitlement to pension, even if he or she is living elsewhere while attending school. A child not in the custody of the surviving spouse has separate entitlement, and that child's income and net worth are counted separately from the surviving spouse and any children in the spouse's custody. If there is no eligible surviving spouse, the income for each child is counted according to the formulas set out in 38 CFR § 3.24, and payment made as appropriate to or for each eligible child.

## TRAINING MODULE 7

### Study Plan

Pension is not payable to a surviving spouse and/or a dependent child if the spouse's or child's net worth is of such size that it would be reasonable for it to be consumed for the maintenance of that beneficiary. This is determined on a case-by-case basis, taking into account such factors as the nature, source(s), and amount(s) of income and assets; the nature and amount(s) of debts and expenses; the number and age(s) of any children; anticipated educational expenses for such children; the spouse's and/or children's state of health; and the anticipated life expectancy of the surviving spouse and/or children (where appropriate). In general, net worth is not a factor for consideration unless it is greater than \$80,000.

To determine the actual rate(s) payable, the surviving spouse's and/or children's total annual countable family income (after exclusions and deductions) is subtracted from the applicable income limit and the difference divided into twelve equal payments. If the total annual amount payable would be less than 4% of the maximum annual rate, payments may be made quarterly, semiannually, or even annually, unless the claimant specifically requests monthly payments.

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, 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. For death pension, the surviving spouse will also qualify regardless of the length of the marriage, if the marriage took place prior to the delimiting date for the particular wartime period as specified in 38 CFR § 3.54(a).

A claim for death pension by any class of dependent is **ALWAYS** a claim for DIC also, as well as a claim for any available accrued benefits. In general, if a surviving spouse qualifies for both DIC and death pension, DIC will be awarded as the greater benefit. However, a 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 (whether 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. 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 the possession of the Department of Veterans Affairs, even if it was not physically in the veteran's claims file on that date.

Since November 1, 1990, the remarriage of a surviving spouse is a permanent bar to further payment of death pension. The only exception is if the requirements of 38 CFR § 3.55(a)(1) are met: the remarriage is void, or it has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Department of Veterans Affairs that the annulment was obtained through fraud by either party or by collusion.

**TRAINING MODULE 7**  
**Study Plan**  
**Study Questions: Death Pension**

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

1. How many major pension programs are there currently being administered by the Department of Veterans Affairs (DVA) for death pension? \_\_\_\_\_
2. Death pension is based on the same eligibility service dates and character of discharge as the Veteran's non-service connected disability pension.
  - a. True
  - b. False
3. The surviving spouse and two children have countable income for VA purposes of \$11,050.00. Their maximum annual (improved) pension rate is \$11,093.00. How would they be paid.
  - a. Monthly
  - b. Quarterly
  - c. Semiannually
  - d. Annually, unless the spouse specifically requests to have monthly payments.
4. A surviving spouse receives lump sum life insurance of \$5,000, her only source of income is her Social Security of \$550, which has been adjusted after the death of the veteran, and the funeral bill was \$7,000 paid. Is the surviving spouse eligible for death pension?
  - a. True
  - b. False
5. The net worth is a factor for Improved Pension death claims. What additional evidence or VA Forms must be submitted with a claim when net worth is a factor? \_\_\_\_\_ When is VA Form 21-4185 used with a death pension claim?
  - a. True
  - b. False
6. There is no surviving spouse, but there are two minor children who have a custodian/guardian. When computing income to determine eligibility, the custodian's income is considered. \_\_\_\_\_ The child's earned income is considered. \_\_\_\_\_ The child's net worth is considered. \_\_\_\_\_
7. At what dollar amount of net worth (corpus of estate) does the VA begin development?  
\_\_\_\_\_

## TRAINING MODULE 7

### Study Plan

8. The surviving spouse is under PL 86-211 (section 306) and receiving the maximum. She enters a nursing home requiring regular aid and attendance. Her pension will automatically be increased/decreased.
- a. True
  - b. False
9. The veteran served from August 7, 1962 to August 6, 1964. He was married on May 7, 1985, and was killed in a traffic accident on February 20, 1986. No children resulted from the marriage. The surviving spouse is now applying for VA death pension. She reports no income except for General Assistance. Eligibility requirements for death pension are met.
- a. True
  - b. False
10. A surviving spouse remarries and that marriage is dissolved by death or divorce, the surviving spouse eligible to resume benefits from the veteran. \_\_\_\_\_
- a. True
  - b. False
- If you answer true, explain:
11. Disability is a factor in determining death pension.
- a. True
  - b. False
12. A surviving spouse has Social Security income only; will she receive an EVR. \_\_\_\_\_ If not, should she report her medical expenses? \_\_\_\_\_ If she does report Medical Expenses, explain what forms are required? \_\_\_\_\_
13. The veteran died on July 1, 2008. There was a life insurance policy of \$3,000, funeral expenses of \$5,000 were prepaid on May 15, 2000, and her monthly Social Security will be \$350 (adjusted). When should the surviving spouse file a claim for death pension? \_\_\_\_\_ Will the amount of her pension payment change in 12 months? \_\_\_\_\_ If so why?
14. The veteran was in receipt of disability compensation at the rate of 10% for tender Scars. He died in a car accident on May 15, 2009. The surviving spouse has income of \$40,000 from all sources and net worth of \$500,000, should the surviving spouse file a claim for death pension? \_\_\_\_\_ If she should, why? \_\_\_\_\_ If she should not, why?

## **TRAINING MODULE 7**

### **Study Plan**

#### **FORMS**

##### **ORIGINAL CLAIM**

VA Form 21-22 –Appointment of Veterans Service Organization as claimant's representative

VA Form 21-534 –Application for widow's death pension, DIC, or accrued benefit

Certified DD 214, If no verified service on record

Veteran's Death Certificate, unless death in VA Facility

Social Security numbers of all dependents

Written verification of income

Itemized funeral bill

Paid receipt, if paid

Other last illness expenses

Optional documents to submit:

Marriage Certificate

Divorce Decrees from all previous marriages for both veteran and spouse

If applicable, death certificate of previous marriages for both veteran and spouse

Birth certificates for all minor children and children over 18 in school

If child over 18, submit VA Form 21-674 (school attendance form) for each child over 18

##### **REOPEN WIDOW'S DEATH PENSION**

VA Form 21-4138 - Statement in support of claim

Appropriate EVR

Verification of Income