



California Association of County Veterans Service Officers, Inc.
Serving Those Who Served

2025 Winter Professional Training Conference



Deep Dive Into DIC, Accrued Benefits and Substitution

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DIC Eligibility

Generally, there are two ways to establish eligibility for Dependency and Indemnity Compensation (DIC):

1. **Service-connected death** – death is proven to be result of or related to service (active duty, active duty for training, or inactive duty training).
2. 100% Service-connected for a **specified period of time** (38 U.S. Code § 1318).
 - If a service-connected condition **listed on the death certificate** is the **principal or a contributory** cause of death, then entitlement to DIC may be established.
 - Generally, if a veteran dies in- service, the VA concludes that the death was service-connected.

DIC Eligibility

- Veteran must have been discharged or released under conditions **other than dishonorable**.
- Death cannot be due to **willful misconduct**.
- In order for suicide to constitute willful misconduct, the act of self-destruction must be intentional (i.e., mentally sound).
- The act of suicide or a bona fide attempt is considered to be evidence of mental unsoundness.
- Therefore, where no reasonable adequate motive for suicide is shown by the evidence, the act will be considered to have resulted from mental unsoundness.

DIC Eligibility Under 38 U.S. Code § 1318

- **Ten-Year Rule:** At time of death, Veteran was **continuously** rated **100%** service-connected for the **ten-year** period immediately preceding death.
- **Five-Year Rule:** At time of death, Veteran was **continuously** rated **100%** service-connected for the **five-year** period **following date of discharge** or release from active duty.
- **POW Rule:** Effective October 1, 2011, at time of death, Veteran was **continuously** rated **100%** service-connected for the **one-year** period immediately preceding death.
- In all of the above, Veteran does **not** have to die of a service-connected condition for survivors to be eligible for DIC.
- Claim should be done automatically by VA.

DIC § 1318 Eligibility

Survivors may also be entitled to Section 1318 where the veteran does not meet the statutory ten-year, five-year or POW requirement if:

- The veteran **would have been** receiving total disability compensation for the requisite time period when he or she died **but for CUE by the VA** in a decision on a claim filed during the veteran's lifetime.
- During the veteran's lifetime, the VA issued a decision **without considering service department records that existed** when the VA issued its decision, so the VA reopens the claim after the veteran's death and **awards benefits that are retroactive** for the requisite period.
- When the veteran died, he or she had a service-connected disability that was continuously rated totally disabling by VA for the required period **but was not receiving compensation** because VA was paying the compensation to the veteran's dependents; VA was withholding the compensation to offset a debt owed by the veteran; the veteran had not waived retirement pay; or VA was withholding payments because the veteran's whereabouts were unknown.

§ 1318 Limitations

- Entitlement to DIC under the provisions of 38 U.S.C. 1318 **does not establish entitlement** to other benefits based on SC death, such as the \$2,000 burial allowance.
- If a survivor receives an award in a judicial proceeding based upon any cause of action for damages for the death of a veteran, they won't be paid 1318 DIC **until the total amount of such benefits equals** the total of the amount of the money received.

DIC Eligibility

Surviving Spouse Qualifications For DIC Eligibility:

- Lived with the Veteran without a break until their death, or if separated, surviving spouse wasn't at fault for the separation; **AND**
- Married the Veteran before or during service, **OR**
- Married the Veteran within 15 years of their discharge from the period of military service during which the qualifying illness or injury was incurred or aggravated, **OR**
- Married to the Veteran for at least 1 year, **OR**
- Had a child with the Veteran*

* The regulation, 38 CFR § 3.54, states "a child was born of the marriage, or was born to them before the marriage." *Born of the marriage* means "A fetus advanced to the point of gestation required to constitute a birth under the law of the jurisdiction in which the fetus was delivered." As such, **it doesn't appear that adopted or step-children would qualify as an exception to the one-year marriage rule.**

DIC Eligibility

- As of June 2015, VA recognizes all same-sex marriages without regard to a Veteran's state of residence.
- VA will recognize common law marriages for DIC benefits **if state laws allow.**
- In determining whether or not a person is or was the spouse of a Veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary **according to the law of the place where the parties resided** at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.
- If a DIC recipient remarries prior to the age of 55 – DIC payments stop (but can resume due to annulment, death or divorce).
- After age 55 – no restrictions.

Marriages “Deemed Valid”

- VA may determine that a marital-type relationship is a “deemed valid marriage” even where no legal marriage was created under state law.
- This may apply where the VA determines that there would have been a valid marriage but for the existence of a legal impediment.
- This type of relationship may be “deemed valid” and treated as a legal marriage if the claimant was **unaware of the existence of the legal impediment** at the time of the marriage.
- For example, a deemed valid marriage may exist where a person lived with a veteran for a period of time in what the person sincerely believed to be a valid common law marriage, but in a jurisdiction in which common law marriage was not recognized.

DIC For Dependent Children

- For a surviving spouse with one or more of the deceased veteran's children below the age of 18, DIC is increased for each child (\$409.52 as of 12/1/2024).
- There is also a transitional benefit of \$350.00 per month if there is at least one minor child.
- **Not per child**, just an extra \$350.00.
- **Transitional Benefit** only applies for **first two years** after Veteran's death (so long as at least one child is under the age of 18 for the full two years).

DIC Eligibility

Surviving Children If **No Surviving Spouse**

- DIC benefits may be paid to the veteran's *minor* surviving children, but only where there is no surviving spouse.
- The children will be paid in equal shares at the rates set by statute (\$697.96 for 1 child, \$502.03 each for 2 children, etc. – 12/2024).
- Surviving children must be under age 18 or between ages 18 and 23 and in a VA-approved school program.
- **Helpless** children over age 18 are paid an additional \$409.52 (child must have become helpless before age 18). Example: if there are 2 eligible surviving children, and one of them is a helpless child, the rate for that child would be \$911.55 (\$502.03 + \$409.52).

DIC Eligibility

Surviving Children **In College**

- An **unmarried** surviving child between age 18 and 23 is entitled to DIC in his/her own right while pursuing a course of instruction at an approved educational institution, **even if surviving spouse is collecting DIC** (\$346.95 as of 12/24 - paid to child separately).
- The child must elect either DIC benefits **OR** Chapter 35 Educational Benefits that are also available for children of veterans who died of a service-connected disability; **they cannot receive both.**

DIC Eligibility

Surviving **Helpless Children** If There is Also A Surviving Spouse:

- A **helpless** surviving child over age 18 is entitled to DIC in his/her own right if the child became permanently unable to support themselves before age 18, and if surviving spouse is collecting DIC (\$697.96 as of 12/24).

DIC Eligibility

Surviving Dependent Parents

- DIC paid to dependent parents is based on their annual income (note that net worth does not count).
- Parent(s) must demonstrate that they are financially dependent upon Veteran.
- Because the income qualifications are strict, few parents qualify for DIC.
- Dependent parents are required to complete an annual income questionnaire.

8-Year Provision

DIC is increased by \$351.02 per month* if:

- Veteran was receiving 100% compensation (or TDIU) for eight years immediately preceding death.
- Married to the same spouse for the entire eight-year period.
- Additional DIC amount paid for Aid & Attendance or Housebound (\$409.52 or \$191.84 as of December 2024)

*As of December 1, 2024

DIC Example

Total monthly payment for someone with 2 children under age 18, and who qualifies for the 8-year provision and Aid and Attendance

\$1,653.06 (monthly rate)
+ \$409.52 (1st child under age 18)
+ \$409.52 (2nd child under age 18)
+ \$351.02 (8-year provision)
+ \$409.52 (Aid and Attendance)
+ \$350.00 (transitional benefit for the first 2 years after the Veteran's death)
= \$3,582.37 per month

SBP Offset

- January 1, 2022 began Phase Two of the Phase-Out of Reduction of Survivor Benefit Plan Survivor Annuities.
- In 2022, surviving spouse SBP annuity payments issued by the Defense Finance and Accounting Service (DFAS) were offset by no more than one-third of the amount of DIC.
- Eligible survivors will also continue to receive the Special Survivors Indemnity Allowance (SSIA) in 2022, up to the maximum amount of \$346 per month or up to the amount of SBP reduced (if the amount of the SBP reduction is less than \$346).
- The SBP-DIC offset was **fully eliminated** as of January 1, 2023.

Month of Death Benefits

- For the month of death (MOD), surviving spouses are entitled to receive a death payment not less than the **amount of benefits the veteran would have received** in compensation or pension benefits for that month.
- Even surviving spouses **who are not entitled to death benefits** (DIC or death pension) are entitled to this one-time MOD payment.
- Before 1997, only surviving spouses who were entitled to death benefits were paid month-of-death benefits.

DIC Effective Date

- If a DIC claim is received by the VA within **one year of the veteran's death** the award will be retroactive to the date of death.
- If a DIC claim is received by the VA after one year of date of death, the award will be effective the date it was received.
- There is NO time limit to file a claim for DIC.

DIC Effective Date

- Applications for survivors' benefits filed with the Social Security Administration on or after January 1, 1957, that are based on the death of a veteran constitute claims for VA death benefits, and are considered to have been received by the VA on the date they are received by the Social Security Administration (SSA).
- As of August 6, 2012, VA is required to interpret an application made on **any document** filed with either VA or the Social Security Administration that exhibits **intent to apply for survivor benefits**, as an application for DIC.
- NOTE: One-time-lump-sum death payment or automatic conversion of SSA spousal benefits to SSA survivors benefits DOES NOT count for above. Spouse must **actually file** an application.

DIC Effective Date

- A claim for DIC is, by statute, **automatically considered** a claim for death pension and accrued benefits.
- Likewise, a claim for death pension is considered a claim for DIC and accrued benefits.
- Therefore, if a survivor files for DIC but the VA does not adjudicate the survivor's entitlement to death pension, the survivor's effective date for death pension is the **date he or she originally filed for DIC**.
- The same is true if the survivor files for death pension but the VA does not adjudicate the DIC claim.
- Prior to March 24, 2015, if the surviving family member checked the box on the application for burial benefits to indicate that the veteran's death was related to service, the application qualified as an informal claim for DIC.

DIC Claims That Involve a Disease Based on the Use of Tobacco Products

- In 1998, Congress passed a law that prohibits service connection for a death or disability that is caused by the veteran's use of tobacco during the veteran's service.
- Therefore, DIC claimants will be unsuccessful if they argue that the veteran's death was caused by the tobacco that he or she used in service.
- However, DIC claimants can still prevail if they argue that the veteran had a service-connected condition— such as PTSD—that caused the veteran to use tobacco.
- Example: A survivor may receive DIC where medical evidence establishes that the veteran's service-connected PTSD played a significant part in the development of a tobacco addiction and the veteran dies of lung cancer (or other tobacco-related illness) caused by the tobacco addiction.

QUESTIONS?

LIVE
Q&A

Death Due to Disability Not Service Connected Prior to Death

- It doesn't matter if the VA denied the Veteran disability benefits for the condition on one or more occasions during the veteran's lifetime.
- The surviving family member is entitled to a **completely new opportunity** to show that the condition was service connected.
- The survivor may **add new, stronger evidence** to the claims file concerning the three elements of service connection.
- Alternatively, the survivor may **rely on the evidence already in the veteran's claims file** and show that all three elements are satisfied (regardless of how VA adjudicators may have evaluated this evidence during the veteran's lifetime).

Death Due to Disability Not Service Connected Prior to Death

- VA may have wrongly denied the veteran's disability benefits during the veteran's lifetime, or the statutes, regulations, or case law may have changed in the survivor's favor since the VA last looked at the issue when the veteran was alive.
(PACT ACT!)
- A survivor may obtain a VA medical opinion or examination in order to substantiate a DIC claim whenever such an opinion is necessary to substantiate the claimant's claim.
- The VA may refuse to provide this assistance to a survivor only when there is no reasonable possibility that an examination or opinion would help to substantiate the claim.

Cause of Death

- The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the **principal or a contributory** cause of death or was **aggravated** by a service-connected disability.
- Death can be service-connected based on a **non-service-connected** disability “if it can be shown that the non-service-connected disability was **aggravated to the degree that it contributed substantially or materially to the production of death**, combined to cause death, or aided or lent assistance to the production of death.”
- Example: Veteran’s service-connected post-traumatic stress disorder aggravated his non-service-connected alcoholism, which caused or contributed to his cirrhosis, which caused his death.” *El-Amin v. Shinseki*, 26 Vet. App. 136, 138 (2020).

Handling Complex DIC Cases

- A survivor may be able to demonstrate entitlement to DIC even if the principal or contributory cause of death was **not a condition that was service-connected** by the VA at the time of death. In fact, a survivor can be entitled to DIC even if the veteran **never filed an application** for VA benefits.
- Don't stop at reviewing VA's lists of presumptive medical conditions.
- Research for plausible connections between the Veteran's service and death, keeping in mind other possible risk factors.
- In most cases a private medical opinion will be necessary to win a previously denied DIC claim.
- Consider requesting an amended death certificate if possible.

Accrued Benefits

- Accrued benefits can be sought for any monthly VA benefit that was “due and unpaid” **based on evidence in the file at the time of the individual’s death.**
- When a veteran dies, accrued benefits are payable in full to his or her surviving spouse, whose eligibility is determined on the date of the veteran’s death, and is **not impacted by remarriage** after the veteran’s date of death.
- If there is no surviving spouse, the veteran’s surviving children are entitled to accrued benefits, payable in equal shares to each eligible child.
- If there is no surviving spouse or child, the veteran’s surviving **dependent parents** are entitled to accrued benefits, payable in equal shares (or payable in full if there is only 1 surviving dependent parent).
- If there are no living people who are entitled to VA accrued benefits based on relationship, the VA will reimburse the person who paid for the veteran's last illness and burial expenses.
- If beneficiary #1 dies, the next beneficiary has one year from the original beneficiary’s death to request accrued benefits.

Accrued Benefits

- A survivor is entitled to accrued benefits if entitlement derives from an existing rating or decision, or if there was a **claim for VA benefits pending** at the time of the death.
- The general rule is that where the **appeal period has not yet expired**, the case is still pending.
- If there was no claim pending when the veteran died and no existing decision showed entitlement, the survivor has **no accrued-benefits claim**.
- An accrued benefits claim must be filed **within one year of the death** of the individual whose pending claim is the basis of the accrued claim.
- Any time a qualifying family member files a claim for DIC or death pension within one year of the death, the VA **must also consider it a claim for accrued benefits**.

Accrued Benefits

Applications for accrued benefits may be filed by using VA Forms:

- 21P-601 (Application for Accrued Amounts Due a Deceased Beneficiary)
- VA Form 21P-534 (Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child (Including Death Compensation if Applicable); and for surviving parents)
- VA Form 21P-534EZ (Application for DIC, Survivors Pension, and/or Accrued Benefits)
- VA Form 21P-535 (Application For Dependency and Indemnity Compensation By Parent(s) (including Accrued Benefits and Death Compensation when Applicable)
- VA Form 21P-0847 (Request for Substitution of Claimant Upon Death of Claimant)

Accrued Benefits

- Prior to March 24, 2015, a survivor could file for accrued benefits without using one of the forms listed above (i.e., an informal claim or an intent to file benefits, was filed within the one-year period after the death of the claimant.
- For deaths occurring on or after December 16, 2003, successful accrued benefits claimants are entitled to the entire amount of benefits that would have been paid had death not occurred.
- For deaths that occurred before December 16, 2003, the claimant may recover **only two years of benefits**.
- However, benefits may be paid for any two-year period that they were due and unpaid and are not limited to benefits accrued in the two years immediately preceding the veteran's death.

Substitution

- On or after October 10, 2008, a VA claimant dies while his or her claim for a VA benefit is pending, a survivor has **one year to file a request to be substituted** for the deceased claimant.
- Substitution is allowed when, at the time of the Veteran's death a **rating decision has been issued** but the claimant has not appealed, and the 1-year period for appeal has not yet expired OR an appeal was filed prior to the VA claimant's death but the **appeal was not finally decided** prior to death.
- Individuals are eligible for substitution if they are eligible for accrued benefits.

Substitution

- Substitution has a significant advantage over the accrued benefits process because it **does not contain the accrued benefits restriction that a claimant cannot submit additional evidence** to show entitlement to accrued benefits.
- The substituted party is in the **same procedural position** as the deceased claimant and may **submit new evidence** to prove entitlement or **raise new theories of entitlement**.
- A substituted claimant may not add issues or expand a claim, and inferred or implied claims cannot be recognized.
- The VA has a **duty to assist** and provide notice of the information needed to substantiate the claim in the same manner as if the original claimant were still alive.

Substitution

- A request for substitution must **filed within one year** of the veteran's death.
- The time within which a substitute has to appeal is governed by the amount of time the VA claimant had left to appeal at the time of the claimant's death, **and that remaining time period starts to run again** on the date of mailing of the VA's substitution decision.
- For example, at the time of her death, the claimant had 6 months left to file an appeal. The substituted claimant would have 6 months from **the date of the VA decision granting the request to substitute** within which to file an appeal. Thus, in these situations the appeal filing deadline is more than 1 year after the date of the VA rating decision.

Substitution

A standard application is not required to request to substitute. A request to substitute, from an individual in the categories of eligible persons, is deemed to be included when VA receives a claim for

- Accrued benefits
- Survivors Pension, or
- Dependency and Indemnity Compensation (DIC), or

A written request to substitute containing the

- Intent to substitute
- Name of the person requesting to substitute
- Name of the deceased claimant, and
- Deceased claimant's claim number, Social Security number, or appeal number

Substitution

A request for substitution may be submitted by filing any of the following documents:

- VA Form 21P-601 - Application for Accrued Amounts Due a Deceased Beneficiary (also use for reimbursement)
- VA Form 21P-535 - Application for Dependency and Indemnity Compensation by Parent(s) (Including Accrued Benefits and Death Compensation When Applicable)
- VA Form 21P-0847 - Request for Substitution of Claimant Upon Death Claimant
- VA Form 21P-534EZ* - Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits

* Because VA may process 534EZ as accrued benefits claim and only consider evidence in VA's possession at the time of death, we recommend filing for both DIC AND Substitution

Substitution

IMPORTANT NOTE

Although an application for DIC is also an application for accrued benefits, the opposite is not true. So, if you file an application for substitution only, then a DIC application more than a year later, the effective date for DIC will likely not go back to the date of death.

We recommend filing a DIC application within one year of death **even if you don't think it will be granted**. This way if the DIC is granted later after an appeal, the earlier effective date will be preserved.

Substitution On a Pending BVA Appeal

- If the Board does not issue a decision on a pending appeal prior to the VA claimant's death, the Board will **dismiss the appeal and return the file to the AOJ**. The AOJ will make a determination regarding the eligibility for substitution, and any adverse determination is appealable to the Board.
- If the claimant is found eligible for substitution, either by the AOJ or on appeal to the Board, the substitute claimant will receive the **same docket number** that was assigned to the original claimant's appeal.
- The AOJ may make a determination on substitution without a Board dismissal if a **hearing request is pending** at the Board when the appellant dies.
- It's best to assume the BVA is not aware that Substitution has been granted. Inquire with BVA on status of appeal and if it has it been placed back on docket.

Final Takeaways

- The POA of the deceased claimant is no longer valid after death and does not transfer to a substitute claimant, so be sure to have the substitute claimant execute a new power of attorney (POA) form.
- A request for substitution must **filed within one year** of the veteran's death.
- A survivor may be able to demonstrate entitlement to DIC even if the principal or contributory cause of death was **not a condition that was service-connected** by the VA at the time of death. In fact, a survivor can be entitled to DIC even if the veteran **never filed an application** for VA benefits.
- Don't forget about ongoing *Nehmer* review for bladder cancer, Parkinsonism; previously denied Blue Water Navy claims and PACT Act claims..
- Some examples of successful DIC appeals:
 - AML from herbicide exposure at Chanute AFB in Illinois
 - IHD/CHF from herbicide exposure at Avon AFB in Florida
 - Cholangiocarcinoma due to herbicide exposure
 - Glioblastoma due to herbicide exposure
 - Colon cancer due to herbicide exposure
 - Cerebral stroke due to herbicide exposure
 - Prostate cancer due to radiation exposure

QUESTIONS?

LIVE
Q&A

More Questions?

Feel free to contact us about questions from this training or **ANYTIME** you have a question about a claim:

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