

Lesson 3.3 Learning Objectives

Recognize the major benefits available to survivors after the death of a Veteran.

- Identify ways to prevail on a Dependency and Indemnity Compensation (DIC) claim.
- Identify who qualifies as an eligible survivor for VA purposes.
- Identify how a qualifying survivor should proceed if the Veteran had a claim pending at the time of death.

Dependency and Indemnity Compensation



- DIC is a monthly benefit for qualifying survivors based upon a Veteran's:
 - Death in service
 - Death related to service
 - Death after being rated totally disabled for a period of time

Poll Question

What is the basic monthly rate for DIC?

A. \$142.29

B. \$627.61

C. \$1,340.14

D. \$3,106.04



Death in Service

- Death in service is generally service-connected.
- **Exception** if the death was caused by the Veteran's **willful misconduct**.
 - Example: car collision while driving under the influence of alcohol or drugs.

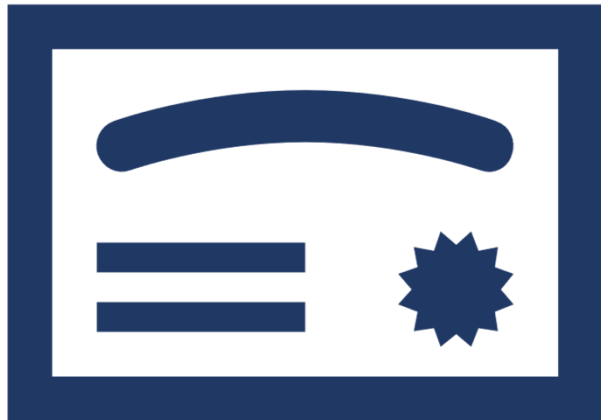


Death Related to Service

- DIC benefits may be awarded if a service-connected condition was the ***principal*** or ***contributory*** cause of death.
- A contributory cause of death:
 - Contributed substantially or materially, or
 - Combined with other conditions to cause death, or
 - Aided or assisted death.
- Cause of death does ***not*** have to have been service-connected before death.

Seek service connection for conditions like **heart disease** and **diabetes** while the Veteran is still alive.

Death Certificates



- Usually treated as conclusive by VA.
 - M21-1, Part IV, Subpart iii, Chapter 1, Section B.1.i.
- But, often are not reliable:
 - Not used clinically.
 - Often completed by non-physicians.
- Submit medical records from end of Veteran's life.
 - Amend death certificate

Totally Disabled Prior to Death

- A Veteran's death will be considered service-connected if the Veteran is rated as totally disabled for a certain period prior to death.¹
- Applicable period is:
 - Generally 10 years, or
 - 5 years if continuous since discharge, or
 - 1 year for former POW.
- Must be based on rating assigned, not rating that should have been assigned
 - Unless clear and unmistakable error (CUE) or
 - Can rely on pending claim.

¹38 U.S.C. § 1318

Qualifying Survivors



Qualifying survivors include:

- Spouse
- Child
 - (if no eligible spouse)
- Dependent surviving parent
 - (if no spouse or children)

Qualifying Spouse

- Three requirements of a qualifying spouse:
 1. Valid marriage
 2. Timing requirement
 3. Continuous cohabitation

As of 2015, VA recognizes same-sex marriages.



Qualifying Spouse: Valid Marriage



A valid marriage means:

- Formal or common-law marriage
 - Determined by state law
- Not divorced
 - But ex may satisfy state common-law marriage
- Not remarried prior to age 57

Qualifying Spouse: Time

Couple must be married for **at least one year** prior to the Veteran's death, unless they were:



- Married before, or in, **military service**
- Married and continuously cohabitating if the spouse and the Veteran had a **child** together
- Married **within 15 years** after the period **of service** connected to the cause of death, or
- **Married before 1957** (for DIC or WWII pension) or various dates (for pensions based upon other periods of war).

Qualifying Spouse: Continuous Cohabitation

Couple must have been:

- Living together,
- Living apart for reasons other than marital disorder,
 - Ex. Employment or medical care
- Separated without intent to “desert” the Veteran, OR
- Separated due to misconduct by the Veteran
 - Ex. Abuse
- VA may ask claimant the cause of the separation if they were not living with the Veteran.



Poll Question

Dennis Gazaille served in the Marine Corps in the 1960s. In 2008, he married Nancy. Fifty-eight days prior to their first wedding anniversary, he died of lung cancer. Mrs. Gazaille filed a claim for DIC arguing under 38 U.S.C. § 1151 that VA negligently failed to diagnose the Veteran's lung cancer and that he would have lived at least to their first anniversary if treatment had started earlier. Can Mrs. Gazaille prevail in this claim if she proves he would have survived at least a year?

A. Yes

B. No



Qualifying Child



- Child's relation can be
 - Biological
 - Adopted as a minor
 - Step-child living with Veteran
- Child's age must be
 - Under 18,
 - 18-23 and in an education program, OR
 - Permanently "helpless" before age 18

Effective Date

- DIC can be filed at any time.
 - Even years after death of Veteran.
 - However, children can only file if under 18 or
 - up to 23 and still in school or
 - Permanently helpless before 18
- Effective date is the date of the Veteran's death **only** if filed within one year of the Veteran's death.



Poll Question

Cynthia is the daughter of Veteran David. David was killed in 1969 while on active duty, with no surviving spouse. At the time of his death, Cynthia was a minor child. Cynthia first filed a claim seeking DIC in 2010.

Is Cynthia eligible to received DIC?

A. Yes

B. No

C. Need more information



VA Form 21P-534EZ

21P-534EZ Application for DIC, Survivors Pension, and/or Accrued Benefits

- Sections required depend on facts of claim
- Sections I, VI, X, XI, and XII are always required for DIC
- Section I
 - Veteran's information first
 - Survivor's second

SECTION I: PERSONAL INFORMATION (MUST COMPLETE)					
1. VETERAN'S NAME (Last, first, middle)		2. VETERAN'S SOCIAL SECURITY NUMBER		3. VETERAN'S DATE OF BIRTH (MM,DD,YYYY)	
4. VETERAN'S SEX ☐ MALE ☐ FEMALE		5. HAS THE VETERAN, SURVIVING SPOUSE, CHILD, OR PARENT EVER FILED A CLAIM WITH VA? ☐ YES ☐ NO (If "Yes," provide the file number in Item 6)		6. VA FILE NUMBER	
7. DID THE VETERAN DIE WHILE ON ACTIVE DUTY? ☐ YES ☐ NO		8. VETERAN'S SERVICE NUMBER		9. WHAT IS THE VETERAN'S DATE OF DEATH? (MM,DD,YYYY)	
10. WHAT IS YOUR NAME? (First, middle, last name)		11. WHAT IS YOUR RELATIONSHIP TO THE VETERAN? (Check one) ☐ SURVIVING SPOUSE ☐ PARENT ☐ CHILD ☐ CUSTODIAN FILING FOR CHILD			
12. WHAT IS YOUR SOCIAL SECURITY NUMBER?		13. WHAT IS YOUR DATE OF BIRTH? (MM,DD,YYYY)		14. ARE YOU A VETERAN? ☐ YES ☐ NO	
15A. WHAT IS YOUR ADDRESS? Street address, rural route, or P.O. Box Apt. number City State ZIP Code Country				15B. YOUR TELEPHONE NUMBER(S) (include Area Code) DAYTIME () EVENING () CELL PHONE ()	
16A. YOUR PREFERRED E-MAIL ADDRESS (if applicable)		16B. YOUR ALTERNATE E-MAIL ADDRESS (if applicable)			
17. WHAT ARE YOU CLAIMING? (Check all that apply) ☐ DEPENDENCY AND INDEMNITY COMPENSATION (DIC) ☐ SURVIVORS PENSION ☐ ACCRUED BENEFITS					

Substitution



If Veteran (or other claimant) dies while a claim is pending:

- A survivor may take over (“substitute” into) the claim at the same point in the process
- The survivor can add additional evidence
 - AMA evidentiary windows will still apply
- Only available if the Veteran **died after October 10, 2008.**

Request substitution by submitting

- Claim for DIC benefits
 - Complete Section III of [21P-534EZ](#)
- OR [VA Form 21P-0847](#)

Accrued Benefits

If the Veteran died **before** October 10, 2008, with a pending claim, the survivor had to file a claim for **accrued benefits**

- This had to be filed as a **new claim** within one year of the veteran's death.
 - Important: limited to evidence of record ***at the time of death.***
- Accrued benefits is still an option for survivors after October 2008.
 - Rarely the better choice because the survivor loses their place in line and can't submit new evidence.

