



Department of

Veterans Services

Dependency Indemnity Compensation (DIC)

Overview

- Dependency and Indemnity Compensation (DIC)
 - 38 U.S.C. 1151, 1310, 1318
 - 38 C.F.R. 3.5; 3.22; 3.358; 3.702
 - M21-1, Part IV, Subpart iii, Chapter 1
- Substitution
 - 38 U.S.C. 5121A
 - 38 C.F.R. 3.1010
 - M21-1, Part VIII, Chapter 2

Overview

- SBP for Spouses and Benefits from the Department of Veterans' Affairs (VA)
 - 38 U.S.C. § 1311(a)
<https://www.dfas.mil/retiredmilitary/provide/sbp/>
- SBP-DIC Offset Phased Elimination News
 - <https://www.dfas.mil/RetiredMilitary/survivors/SBP-DIC-News/>

DIC

- Dependency and Indemnity Compensation (DIC)
 - A tax free monetary benefit paid to eligible survivors of military Servicemembers who died in the line of duty or eligible survivors of Veterans whose death resulted from a service-related injury or disease.

DIC – Common Myths (Poll #1)

- DIC Benefits, Veteran Must Have Filed Claim
- Yes or No?

DIC – Common Myths

- DIC Benefits, Veteran Must Have Filed Claim
 - The Veteran does NOT need to have filed a claim in order to file for DIC.
 - This is also applicable to Death Pension and Burial Benefits.

DIC – Common Myths (Poll #2)

- DIC is Decided Based on Evidence in Claims File.
- True or False?

DIC – Common Myths

- DIC is Decided Based on Evidence in Claims File
 - False – Can prove entitlement to DIC based on evidence collected or created after death.

DIC – Establishing Entitlement

- Legally Married
 - Generally must be married to the veteran for one year prior to Veteran's death.
 - Exceptions -
 - Married to a Servicemember who died on active duty, active duty for training or inactive duty training; OR
 - Validly married the Veteran before January 1, 1957; OR
 - Married the Veteran within 15 years of discharge from the period of military service in which the disease or injury that caused the Veteran's death began or was aggravated.
 - Not currently remarried.
 - Exception - A surviving spouse who remarries on or after December 16, 2003, and on or after attaining age 57, is entitled to continue to receive DIC.

DIC – Establishing Entitlement

- Death was service-connected OR should have been service connected.
- 38 U.S.C. 1318 – The Ten Year Rule
- Death was from a condition treated as service-connected under 38 U.S.C. 1151 or should have been treated as service-connected under this statute.
- Intent to File (VA 21-0966) – remember if filed by a survivor, there is only one option. If the wrong box is checked, this is considered a request for application and date of potential entitlement is not reserved.

DIC – Establishing Entitlement (Poll #3)

- Is a Intent to File 21-0966 necessary if the veteran passed away within one year to preserve date of benefits?
- Yes or No

DIC – Establishing Entitlement (Poll #3)

- Is a Intent to File 21-0966 necessary if the veteran passed away within one year to preserve date of benefits?
- No

DIC – Establishing Entitlement

- Death was service-connected or should have been service connected.
 - Nothing had to be service-connected prior to death.
 - Cause of Death – 38 C.F.R. 3.312
 - Principal cause of death.
 - Contributory cause of death.
 - Can prove entitlement with evidence collected or created after death.
 - Examples of evidence to prove service-connected death.
 - Death Certificate; Autopsy Report; STRs; VA Medical Records; Private Medical Records; Personal Statement; Etc.

DIC – Establishing Entitlement

- Total Service-Connected Disability Under 38 U.S.C. 1318
 - Regardless of cause of death, Veteran was totally disabled due to a service-connected condition for 10 years or more prior to death (or less if former POW (one year) or death after military service (five years from time of separation until death).
 - Eligibility even if total disability rating was based on individual unemployability rather than a schedular evaluation.
 - Can not prove on a “should have” been basis UNLESS clear and unmistakable error in not granting 100%.
 - Advocacy Tip: If a claim is pending at the time of death, can continue the claim using substitution. This may result in a retroactive award establishing 100% for statutory time periods and thus entitlement to DIC under 38 U.S.C. 1318.

DIC – Establishing Entitlement

- Death was from a condition treated as service-connected under 38 U.S.C. 1151 or should have been treated as service-connected under this statute.
 - DIC may be awarded if the Veteran's death was caused by:
 - Hospital, medical, surgical treatment, or examination at a VA facility or contract facility.
 - Participation in Vocational Rehabilitation training.
 - Participation in Compensated Work Therapy.

DIC – Rates

- DIC Rate Table (effective 12/1/2019)
 - https://www.benefits.va.gov/COMPENSATION/resources_comp03.asp
- Additional Allowance
 - 8 Years – Total Disability and Marriage
 - Dependent Child
 - Aid and Attendance
 - Housebound
 - One or More Children Under 18 – Two Year Transitional Benefits
\$250 per month transitional stipend for up to two years while the veteran's minor children are in the household. If the veteran's children are no longer in the household prior to the end of the two-year period, the transitional payments will cease

Substitution

- Substitution is the right of a living person to submit additional evidence in support of the deceased claimant's pending claim or appeal.
- Generally
 - Survivors can now continue a claim after a veteran or claimant dies.
 - Request for substitution must be filed within 1 year of death of veteran or survivor.
 - VA Form 21P-0847
 - Claim for accrued benefits, survivor's pension or DIC will be deemed a request to substitute unless the survivor waives substitution.
 - Advocacy Tip: File a VA Form 21P-0847

Substitution

- Benefits of Substitution
 - Allows new evidence to be submitted.
 - Affords substituted claimant duty to assist.
 - Potential for retroactive benefits.
 - Election between accrued benefits and substitution.
 - Generally, better to file for substitution.

SBP-Survivor Benefit Plan

- Survivor Benefit Plan
 - The Survivor Benefit Plan is a Department of Defense sponsored and subsidized program that provides up to 55 percent of a service member's retired pay to an eligible beneficiary upon the death of the member. The program provides no-cost automatic coverage to members serving on active duty, and reserve component members who die of a service connected cause while performing inactive duty training. In addition, active duty members can purchase coverage upon retirement and reserve component members can elect coverage when they have 20 years of qualifying service for reserve retired pay.

SBP/DIC offset

- Spouse SBP annuitants, except for those who remarry after age 57 (or in other specific circumstances), cannot receive full SBP and DIC at the same time (DIC payments made directly to children, or to a guardian on behalf of children, do not affect SBP child annuity payments).
- When DFAS is informed by the VA that a spouse annuitant is receiving DIC, the law requires that DFAS deduct the amount of DIC received from the amount of SBP payable and pay the remaining amount of the SBP to the annuitant. This is called the SBP/DIC offset.

SBP/DIC offset

- For example, if an annuitant receives a monthly SBP annuity of \$500 from DFAS and becomes eligible to receive a monthly DIC award of \$400 from the VA, DFAS will deduct the \$400 DIC from the \$500 SBP and pay the remaining \$100 to the annuitant.
- If the SBP payment is greater than the DIC payment, a partial refund of premiums paid into the program during the service member's retirement will be made to the spouse.

SBP/DIC offset

- If the DIC payment is greater than the SBP payment, SBP will be stopped completely and all eligible basic spouse premiums paid into the program during the service member's retirement will be refunded. If the SBP payment is greater than the DIC payment, a partial refund of premiums paid into the program during the service member's retirement will be made to the spouse.

SBP-DIC Offset Phased Elimination

- The National Defense Authorization Act for Fiscal Year 2020 modified the law that requires an offset of Survivor Benefit Plan (SBP) payments for surviving spouses who are also entitled to Dependency and Indemnity Compensation (DIC) from the Department of Veterans Affairs (VA). Under the previous law, a surviving spouse who receives DIC is subject to a dollar-for-dollar reduction of SBP payments, which can result in SBP being either partially or fully offset. The repeal will phase-in the reduction of this offset beginning on January 1, 2021, and culminating with elimination of the offset in its entirety on January 1, 2023. For the remainder of calendar year 2020, surviving spouses remain subject to the existing dollar-for-dollar offset of SBP payments by the amount of DIC paid by VA. After January 1, 2021, survivors subject to the “SBP-DIC Offset” will potentially see a change in their SBP payments.

SBP-DIC Offset Phased Elimination (Poll 4)

- If a surviving spouse previously received a refund of SBP premiums paid due to the SBP-DIC offset, you will the surviving spouse need to pay back that refund because of this change in the law?
- Yes or No

SBP-DIC Offset Phased Elimination (Poll 4)

- If a surviving spouse previously received a refund of SBP premiums paid due to the SBP-DIC offset, you will the surviving spouse need to pay back that refund because of this change in the law?
- No, will **not** need to pay back that refund because of this change in the law.

DIC Benefits

- **CHAMPVA**-<https://www.va.gov/health-care/family-caregiver-benefits/champva/>
- **RAPIDS DOD ID Card** - <https://idco.dmdc.osd.mil/idco/#/>
- **Property Tax Relief Program**-
<https://comptroller.tn.gov/content/dam/cot/pa/documents/tax-relief/TaxReliefBrochure2020.pdf>
- **VA Home Loan Guaranty benefits**

Questions?

