

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 17, and 21

RIN 2900-AJ25

Children Suffering from Spina Bifida Who Are Children of Vietnam Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) regulations concerning benefits for children suffering from spina bifida who are children of Vietnam veterans. This is necessary to implement statutory changes contained in the Veterans' Benefits Act of 1997.

DATES: Effective Date: October 1, 1997.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: Section 421 of Pub. L. 104-204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits to children suffering from spina bifida who are the natural children of Vietnam veterans. VA published three sets of regulations to implement the provisions of section 421 of Pub. L. 104-204, i.e. regulations concerning monetary allowances, provision of healthcare, and provision of vocational training and rehabilitation, in the Federal Register of September 30, 1997 (62 FR 51273-51296).

Section 404 of Pub. L. 105-114, the Veterans' Benefits Act of 1997, enacted on November 21, 1997, amended chapter 18 of title 38, United States Code. This document revises VA's regulations to implement those statutory amendments. The changes concerning the definition of "Vietnam veteran," the definition of "child," and the submission of social security numbers concern all three sets of regulations. The other changes made by this document only concern the monetary allowance regulations.

Public Law No. 104-204 defined the term "Vietnam veteran" as a "veteran" who performed active military, naval, or air service in the Republic of Vietnam "during the Vietnam era." Public Law No. 105-114 amended that definition to refer to an "individual" who performed active military, naval, or air service in the Republic of Vietnam "during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service." We are amending 38 CFR 3.814(c)(1) of the monetary allowance regulations accordingly. This change also affects the spina bifida regulations concerning provision of healthcare (see 38 CFR 17.901) and provision of vocational training and rehabilitation (see 38 CFR 21.8012).

Public Law No. 104-204 defined the term "child" as meaning a natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam "during the Vietnam era." Public Law No. 105-114 amended the definition of "child" by changing "during the Vietnam era" to "during the period beginning on January 9, 1962, and ending on May 7, 1975." We are amending 38 CFR 3.814(c)(2) of the monetary allowance regulations accordingly. This change also affects the spina bifida regulations concerning provision of healthcare (see 38 CFR 17.901) and provision of vocational training and rehabilitation (see 38 CFR 21.8012).

Public Law No. 105-114 revised 38 U.S.C. 1806 so that various administrative provisions of title 38, United States Code, including the following, are applicable to those applying for or receiving spina bifida benefits: 38 U.S.C. 5101(c), 5110(a), 5110(b)(2), 5110(g), 5110(i), 5111, 5112(a), 5112(b)(9), and 5112(b)(10). Accordingly, we are making the following changes.

<bullet> We are amending 38 CFR 3.216 to provide that anyone applying for or receiving benefits for a child suffering from spina bifida, as a condition for receipt or continued receipt of benefits, must furnish VA, upon request, his or her social security number, and the social security number of anyone based upon whom benefits are sought or received (38 U.S.C. 5101(c)).

<bullet> We are amending 38 CFR 3.814 of the monetary allowance regulations to provide that the effective date of a monthly award for a child suffering from spina bifida based on an original claim, a claim reopened after final adjudication, or a claim for increase will be fixed in accordance with the facts found, but will not be earlier than the date of receipt of the application for benefits (38 U.S.C. 5110(a)).

<bullet> We are amending 38 CFR 3.814 to provide that the effective date of an increased monthly award for a child suffering from spina bifida will be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received by VA within one year of that date (38 U.S.C. 5110(b)(2)).

<bullet> We are amending 38 CFR 3.114 to provide that any award or increase of a monthly award for a child suffering from spina bifida pursuant to any law or administrative issue will not be effective prior to the effective date of the law or administrative issue and will not be retroactive more than one year from the date of application or the date of administrative determination of entitlement, whichever is earlier (38 U.S.C. 5110(g)).

<bullet> We are amending 38 CFR 3.814 to provide that a monthly award for a child suffering from spina bifida benefits based on a disallowed claim reopened on the basis of a correction of military records will be effective on the date application was made for the correction, or the date the disallowed claim was filed, whichever is later, but not retroactive for more than one year from the reopening of the disallowed claim (38 U.S.C. 5110(i)).

<bullet> We are amending 38 CFR 3.31 to provide that the payment of a monthly award for a child suffering from spina bifida may not be made for any period before the first day of the month following the month in which the award or increase became effective (38 U.S.C. 5111).

<bullet> We are amending 38 CFR 3.814 to provide that the effective date of a reduction or discontinuance of a monthly award for a child suffering from spina bifida will be fixed in accordance with the facts found, that reduction or discontinuance of such benefits by reason of beneficiary error will be the

effective date of the award, and that reduction or discontinuance of such benefits by reason of administrative error will be effective as of the date of last payment (38 U.S.C. 5112(a), (b) (9), (b) (10)).

Public Law No. 104-204 provided that the amounts of the monthly monetary allowance to a child with spina bifida are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). 38 U.S.C. 5312(c) (2) provides that whenever rates are so increased, the Secretary may round those rates in such manner as the Secretary considers equitable and appropriate. The Secretary has determined that since all other benefits administered under VA's adjudication regulations (38 CFR part 3) are paid in even dollar amounts, for ease of administration it is appropriate to round rate increases concerning the spina bifida monetary benefit.

Under procedures established at 38 CFR 3.29, when adjusting the annual basic benefit rates for the pension programs and parents' dependency and indemnity compensation, if the resulting amounts are not even dollar amounts, VA rounds them to the next higher dollar. In computing monthly rates from the adjusted annual rates, if the resulting amounts are not even dollar amounts, VA rounds to the next lower dollar. Since Pub. L. 104-204 authorized the monetary allowance for spina bifida at a monthly rate rather than an annual rate, it is necessary to round only one time when determining a revised rate. Under 38 CFR 3.29, if rounding is necessary after the first calculation, the resulting rate is always rounded up. We believe therefore that since only one rounding is required to revise the monetary allowance for spina bifida, it is both equitable and appropriate to round up. We are amending Sec. 3.29 accordingly.

Public Law No. 105-114 provides that the amendments to chapter 18 of title 38, United States Code, are effective as of October 1, 1997.

This final rule reflects statutory requirements and reflects issues relating to agency management. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

No regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601-612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. The final rule will not directly affect any small entities. Only VA beneficiaries are directly affected.

The Catalog of Federal Domestic Assistance program number is 64.127.

List of Subjects 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Reporting and recordkeeping requirements, Veterans, Vietnam.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training

programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 2, 2000.
Togo D. West, Jr.,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR parts 3, 17, and 21 are amended as follows:

PART 3--ADJUDICATION

Subpart A--Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In Sec. 3.29, paragraph (c) is added, to read as follows:

Sec. 3.29 Rounding.

* * * * *

(c) Monthly rates under 38 U.S.C. 1805. When increasing the monthly monetary allowance rates under Sec. 3.814 for children suffering from spina bifida (see Sec. 3.27(c)), VA will round any resulting rate that is not an even dollar amount to the next higher dollar.

Authority: 38 U.S.C. 1805(b)(3), 5312(c)(2)).

3. Section 3.31 is amended as follows:

a. The introductory text is amended in the first sentence by removing ``compensation, pension or dependency and indemnity compensation'' and adding, in its place, ``compensation, pension, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran''; and b. Paragraph (c)(4)(ii) and the authority citation at the end of the section are revised to read as follows:

Sec. 3.31 Commencement of the period of payment.

* * * * *

(c) * * *

(4) * * *

(ii) Increases in Improved Pension, parents' dependency and indemnity compensation, or the monetary allowance for children suffering from spina bifida pursuant to Sec. 3.27, or

Authority: 38 U.S.C. 1806, 5111.

4. Section 3.114 is amended as follows:

a. Paragraph (a) introductory text is amended by removing ``Where pension, compensation, or dependency and indemnity compensation'' in each place it appears and adding, in its place, ``Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran''; and

b. The authority citation at the end of paragraph (a) is revised to read as follows:

Sec. 3.114 Change of law or Department of Veterans Affairs issue.

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Authority: 38 U.S.C. 1806, 5110(g)).

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5. In Sec. 3.216, the section heading is amended by removing ``number'' and adding, in its place, ``numbers''; the first sentence is amended immediately following ``of this part'' by adding `` , or the monetary allowance for a child suffering from spina bifida who is a child of a Vietnam veteran under Sec. 3.814 of this part,''; and the authority citation is revised to read as follows:

Sec. 3.216 Mandatory disclosure of social security numbers.

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Authority: 38 U.S.C. 1806, 5101(c)).

6. Section 3.814 is amended as follows:

a. Paragraph (c)(1) is amended by removing ``a veteran'' and adding, in its place, ``an individual''; by removing ``during the Vietnam era'' and adding, in its place, ``during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the individual's service'';

b. Paragraph (c)(2) is amended by removing ``during the Vietnam era'' and adding, in its place, ``during the period beginning on January 9, 1962, and ending on May 7, 1975''; and

c. Paragraphs (e) and (f) are added immediately following paragraph (d)(5) and the authority citation at the end of the section is revised to read as follows:

Sec. 3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.

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(e) Effective dates. Except as otherwise provided, VA will award the monetary allowance for children suffering from spina bifida based on an original claim, a claim reopened after final disallowance, or a claim for increase as of the date VA received the claim or the date entitlement arose, whichever is later.

(1) VA will increase benefits as of the earliest date the evidence establishes that the level of severity increased, but only if the beneficiary applies for an increase within one year of that date.

(2) If a claimant reopens a previously disallowed claim based on corrected military records, VA will award the benefit from the latest of the following dates: the date the veteran or beneficiary applied for a correction of the military records; the date the disallowed claim was filed; or, the date one year before the date of receipt of the reopened claim.

(f) Reductions and discontinuances. VA will generally reduce or discontinue awards according to the facts found except as provided in Secs. 3.105 and 3.114(b).

(1) If benefits were paid erroneously because of beneficiary error, VA will reduce or discontinue benefits as of the effective date of the erroneous award.

(2) If benefits were paid erroneously because of administrative error, VA will reduce or discontinue benefits as of the date of last payment.

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Authority: 38 U.S.C. 1805, 1806, 5110, 5112.

PART 17--MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721 unless otherwise noted.

2. The authority citation at the end of Sec. 17.901 is revised to read as follows:

Sec. 17.901 Definitions.

Authority: 38 U.S.C. 101(2), 1801-1806, Pub. L. 105-114.

3. The authority citation at the end of Sec. 17.902 is revised to read as follows:

Sec. 17.902 Preauthorization.

Authority: 38 U.S.C. 101(2), 1801-1806, Pub. L. 105-114.

4. The authority citation at the end of Sec. 17.903 is revised to read as follows:

Sec. 17.903 Payment.

Authority: 38 U.S.C. 101(2), 1801-1806, Pub. L. 105-114.

PART 21--VOCATIONAL REHABILITATION AND EDUCATION
Subpart M--Vocational Training and Rehabilitation for Vietnam Veterans'
Children With Spina Bifida

1. The authority citation for part 21, subpart M continues to read as follows:

Authority: 38 U.S.C. 101, 501, 512, 1151 note, 1801-1806, 5112, unless otherwise noted.

2. The authority citation at the end of Sec. 21.8012 is revised to read as follows:

Sec. 21.8012 Definitions and abbreviations.

Authority: 38 U.S.C. 101(2), 1801, 1804, Pub. L. 105-114.

3. The authority citation at the end of Sec. 21.8014 is revised to read as follows:

Sec. 21.8014 Application.

Authority: 38 U.S.C. 101(2), 1801, 1804, Public Law 105-114).