

§ 3.814

38 CFR Ch. I (7-1-02 Edition)

onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by VA (except chapters 11 and 13 of title 38 U.S.C.), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Authority: Pub. L. 98-542)


[50 FR 34460, Aug. 26, 1985]

§ 3.814 Monetary allowance under 38 U.S.C. 1805 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

(a) VA will pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for an individual who it has determined is suffering from spina bifida and whose biological father or mother is or was a Vietnam veteran. Receipt of this allowance will not affect the right of the individual or any other related individual to receive any other benefit to which he or she may be entitled under any law administered by VA. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled "Application for Spina Bifida Benefits":

OMB Approved No. 2900-0372
Respondent Burden: 10 Minutes

 Department of Veterans Affairs		APPLICATION FOR SPINA BIFIDA BENEFITS	
<p>PRIVACY ACT INFORMATION: The social security number and other information on this form is requested under 38 U.S.C. chapter 18, which provides benefits to Vietnam veterans' children with spina bifida. Any information on this form may be disclosed outside VA only if authorized under 38 U.S.C. 5701 and the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. Routine disclosures may be made for the following purposes: Debt collection, civil or criminal law enforcement, communications with members of Congress or other representatives, benefits delivery, administration of programs, and personnel administration. Disclosure of the social security numbers and other requested information is voluntary; however, failure to furnish that information would impose administrative difficulties which may result in a delay in processing your application for spina bifida benefits.</p> <p>RESPONDENT BURDEN: VA may not conduct or sponsor, and respondent is not required to respond to this collection of information unless it displays a valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have comments regarding this burden estimate or any other aspect of this collection of information, call 1-800-829-1000 for mailing information on where to send your comments.</p>			
1. NAME OF CLAIMANT-CHILD (First, middle, last)		2. SOCIAL SECURITY NUMBER OF CLAIMANT-CHILD (If available)	
3. CLAIMANT-CHILD'S DATE OF BIRTH (Mo., day, yr.)		4. CLAIMANT-CHILD'S PLACE OF BIRTH (City and state)	
5. ADDRESS OF CLAIMANT-CHILD (Include number and street or rural route, city or P.O., State and ZIP Code)		6. TELEPHONE NUMBER OF CLAIMANT-CHILD (Include Area Code)	
7. NAME(S) OF NATURAL PARENT(S) (Please provide information for both)			
A. FATHER (First, middle, last)		B. MOTHER (First, middle, last)	
8. ADDRESS, TELEPHONE NUMBER AND VETERAN STATUS OF NATURAL PARENT(S)			
A. FATHER (Include number and street or rural route, city or P.O., State and ZIP Code)		C. MOTHER (Include number and street or rural route, city or P.O., State and ZIP Code)	
B. VIETNAM SERVICE? (If "Yes," provide dates below)		D. VIETNAM SERVICE? (If "Yes," provide dates below)	
<input type="checkbox"/> YES <input type="checkbox"/> NO (From: _____ To: _____)		<input type="checkbox"/> YES <input type="checkbox"/> NO (From: _____ To: _____)	
9. SOCIAL SECURITY NUMBER(S) OF NATURAL PARENT(S)			
A. FATHER		B. MOTHER	
10. VA CLAIM NUMBER(S) OF NATURAL PARENT(S) (If veteran previously applied to VA for any benefit)			
A. FATHER		B. MOTHER	
11. IF CHILD IS UNDER AGE 18 WHO HAS CUSTODY, IF OTHER THAN NATURAL PARENT? (Complete Items 11A, 11B and 11C)			
A. NAME OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD	B. RELATIONSHIP TO CHILD		C. ADDRESS OF CUSTODIAN/GUARDIAN OF CLAIMANT-CHILD
	<input type="checkbox"/> ADOPTIVE PARENT <input type="checkbox"/> GUARDIAN <input type="checkbox"/> OTHER (Specify) _____		
12A. IF CLAIMANT-CHILD IS AGE 18 OR OLDER HAS THE CLAIMANT-CHILD BEEN DECLARED INCOMPETENT?			
<input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 12B and 12C)			
12B. NAME AND ADDRESS OF THE COURT WHICH MADE THE FINDING OF INCOMPETENCY?		12C. NAME AND ADDRESS OF THE GUARDIAN	
13. NAME AND ADDRESS OF PRIMARY HEALTH CARE PROVIDER FOR THE CLAIMANT-CHILD			
14A. HAS THE CHILD BEEN DIAGNOSED WITH SPINA BIFIDA?		14B. DATE OF DIAGNOSIS (Mo., day, yr.)	
<input type="checkbox"/> YES <input type="checkbox"/> NO (If "Yes," complete Items 14B and 14C)			
14C. IF THE CLAIMANT-CHILD HAS BEEN TREATED/HOSPITALIZED FOR SPINA BIFIDA RELATED DISABILITIES WITHIN THE LAST YEAR, PLEASE PROVIDE THE NAME AND ADDRESS OF EACH HOSPITAL OR OTHER INSTITUTION WHERE THE TREATMENT WAS PROVIDED (Use reverse or attach a separate sheet if more space is needed)			
I/We, the undersigned, hereby authorize the hospital or physician shown in Items 13 and 14C to disclose and release to the Department of Veterans Affairs (VA) any information that may have been obtained in connection with the physical examination or treatment of the child.			
15A. SIGNATURE(S) OF PARENT/GUARDIAN/ADULT CHILD		15B. DATE SIGNED	
16A. SIGNATURE OF WITNESS (Required)		16B. DATE SIGNED	
I/We, the undersigned, declare under penalty of perjury that the information provided is true and correct and that the child named in Item 1 above is the natural child of the person(s) named above in Item 7.			
17A. SIGNATURE		17B. DATE SIGNED	
18A. SIGNATURE		18B. DATE SIGNED	

VA FORM 21-0304
JUL 1997

(c) *Definitions*—(1) *Vietnam veteran.* For the purposes of this section, the term "Vietnam veteran" means 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.

Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Individual*. For the purposes of this section, the term “individual” means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era. Notwithstanding the provisions of §. 3.204(a)(1), VA shall require the types of evidence specified in §§3.209 and 3.210 sufficient to establish in the judgment of the Secretary that an individual’s biological father or mother is or was a Vietnam veteran.

(3) *Spina bifida*. For the purposes of this section, the term “spina bifida” means any form and manifestation of spina bifida except spina bifida occulta.

(d)(1) Except as otherwise specified in this paragraph, VA will determine the level of payment as follows:

(i) *Level I*. The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairment of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

(ii) *Level II*. Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual: walks with braces or other external support as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; or, has an IQ of at least 70 but less than 90; or, requires medication or other means to control the effects of urinary bladder impairment and no more than two times per week is unable to remain dry for at least three hours at a time during waking hours; or, requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require wearing of absorbent materials at least four days

a week; or, has a colostomy that does not require wearing a bag.

(iii) *Level III*. The individual uses a wheelchair as his or her primary means of mobility in the community; or, has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; or, has an IQ of 69 or less; or, despite the use of medication or other means to control the effects of urinary bladder impairment, at least three times per week is unable to remain dry for three hours at a time during waking hours; or, despite bowel management techniques or other treatment to control the effects of bowel impairment, has fecal leakage severe or frequent enough to require wearing of absorbent materials at least four days a week; or, regularly requires manual evacuation or digital stimulation to empty the bowel; or, has a colostomy that requires wearing a bag.

(2) If an individual who would otherwise be paid at Level I or II has one or more disabilities, such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida, or from treatment procedures for spina bifida, the Director of the Compensation and Pension Service may increase the monthly payment to the level that, in his or her judgment, best represents the extent to which the disabilities resulting from spina bifida limit the individual’s ability to engage in ordinary day-to-day activities, including activities outside the home. A Level II or Level III payment will be awarded depending on whether the effects of a disability are of equivalent severity to the effects specified under Level II or Level III.

(3) VA may accept statements from private physicians, or examination reports from government or private institutions, for the purpose of rating spina bifida claims without further examination, provided the statements or reports are adequate for assessing the level of disability due to spina bifida under the provisions of paragraph (d)(1) of this section. In the absence of adequate medical information, VA will schedule an examination for the purpose of assessing the level of disability.

(4) VA will pay an individual eligible for a monetary allowance due to spina

Department of Veterans Affairs

§ 3.850

bifida at Level I unless or until it receives medical evidence supporting a higher payment. When required to reassess the level of disability under paragraph (d)(5) or (d)(6) of this section, VA will pay an individual eligible for this monetary allowance at Level I in the absence of evidence adequate to support a higher level of disability or if the individual fails to report, without good cause, for a scheduled examination. Examples of good cause include, but are not limited to, the illness or hospitalization of the claimant, death of an immediate family member, etc.

(5) VA will pay individuals under the age of one year at Level I unless a pediatric neurologist or a pediatric neurosurgeon certifies that, in his or her medical judgment, there is a neurological deficit that will prevent the individual from ambulating, grasping a pen, feeding himself or herself, performing self care, or from achieving urinary or fecal continence. If any of those deficits are present, VA will pay the individual at Level III. In either case, VA will reassess the level of disability when the individual reaches the age of one year.

(6) VA will reassess the level of payment whenever it receives medical evidence indicating that a change is warranted. For individuals between the ages of one and twenty-one, however, it must reassess the level of payment at least every five years.

(Authority: 38 U.S.C. 501, 1805).

(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 §§ 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.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0572.)

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

[62 FR 51279, Sept. 30, 1997, as amended at 65 FR 35282, June 2, 2000; 66 FR 13436, Mar. 6, 2001]

INCOMPETENTS, GUARDIANSHIP AND INSTITUTIONAL AWARDS

§ 3.850 General.

(a) Payment of benefits to a duly recognized fiduciary may be made on behalf of a person who is mentally incompetent or who is a minor; or, payment may be made directly to the beneficiary or to a relative or other person for the use of the beneficiary, regardless of legal disability, when it is determined to be in the best interest of the beneficiary by the Veterans Services Officer.

(Authority: 38 U.S.C. 5502)

(1) Unless otherwise contraindicated by evidence of record payment will be made direct to the following classes of minors without any referral to the Veterans Services Officer:

(i) Those who are serving in or have been discharged from the military forces of the United States; and

(ii) Those who qualify for survivors benefits as a surviving spouse.

(2) Unless otherwise contraindicated by evidence of record, immediate payment of benefits may be made to the spouse of an incompetent veteran having no guardian for the use of the veteran and his or her dependents prior to