

Apportionment of the Veteran's Benefits to Dependents

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What is apportionment of Veteran's benefits?

The Department of Veterans Affairs may pay a portion of a Veteran's service-connected disability compensation or non-service connected disability pension directly to the Veteran's dependents. This is referred to as apportionment of the Veteran's benefits.

Information Not Legal Advice

This pamphlet is for informational purposes only and is not a substitute for the advice of an attorney.

Why can the Department of Veterans Affairs take a portion of my disability benefits? I thought my Veteran's benefits could not be garnished?

Generally, a Veteran's benefits are exempt from taxation, exempt from the claim of creditors, and cannot be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt of the benefits by the Veteran.

However, the Department of Veterans Affairs may apportion a Veteran's benefits under special circumstances. This is allowed by Federal Law.

Under what circumstances would the Department of Veterans Affairs pay a portion of my disability benefits to my dependents?

The Department of Veterans Affairs will apportion a Veteran's monthly disability benefits when a Veteran is not living with his or her spouse, or the Veteran's children are not living with the Veteran and the Department of Veterans Affairs determines that the Veteran is not **reasonably discharging** his or her **responsibility for support** of his or her spouse and/or dependent children.

The Department of Veterans Affairs may also apportion the Veteran's monthly disability benefits when the Veteran is incompetent and is receiving hospital treatment, institutional care, or domiciliary care by the United States.

Who can receive a portion of my disability benefits?

- ❖ An estranged spouse and child(ren);
- ❖ A child(ren) in an estranged spouse's custody; or
- ❖ A child(ren) not living with the Veteran or surviving spouse of a Veteran and to whom the Veteran or surviving spouse of a Veteran is not reasonably contributing to the child(ren) support.

Can a court order from a Texas court force the Department of Veterans Affairs to apportion my disability benefits?

No. A court order from a Texas court may be used as support for a claim that a Veteran's benefits should be apportioned, but the order is not binding on the Department of Veterans Affairs.

Will the Department of Veterans Affairs withhold a portion of my monthly benefits without my permission?

Yes, if the claimant [person filing the claim] can show with supporting documents that:

- ❖ The estranged spouse and/or child(ren) live apart from the Veteran;
- ❖ The Veteran is not reasonably contributing to their support; and
- ❖ The estranged spouse and/or child(ren) have a financial need for a portion of the Veteran's benefits.

Will the Department of Veterans Affairs take my financial needs into consideration?

Yes. The Department of Veterans Affairs' primary obligation is to the Veteran. Even if the estranged spouse and/or child(ren) can show a financial need, the Department of Veterans Affairs cannot impose an **undue hardship** on the Veteran.

Will the Department of Veterans Affairs take into consideration any other income and resources available to my estranged spouse and/or child(ren)?

Yes. The Department of Veterans Affairs will determine if a special apportionment is needed based on the amount of Department of Veterans Affairs benefits payable to the Veteran; other resources and income of the Veteran and his or her dependents in whose behalf apportionment is claimed; and special needs of the Veteran, his or her dependents, and the apportionment claimants?

How much money will the Department of Veterans Affairs give to my estranged spouse and/or child(ren)?

The Department of Veterans Affairs will not approve an apportionment that results in an undue hardship to the Veteran or is not a reasonable amount payable to the apportionee.

Ordinarily, apportionment of more than 50 percent of the Veteran's benefits would constitute undue hardship on him or her. An apportionment of less than 20 percent of the Veteran's benefits generally does not provide a reasonable amount for any apportionee.

For more information...

The Department of Veterans Affairs website has useful information about apportionment of Veteran's benefits. Go to <http://www.va.gov/>.

Veterans' Legal Assistance Project: 1-800-622-2520

Call our attorney-staffed legal hotline. Advice is free for low to moderate income Texas veterans earning up to twice the federal poverty limit, as well as their spouses, dependents, and survivors.