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THE OFFICE OF CHILD SUPPORT ENFORCEMENT

Giving Hope and Support to America's Children

Information Memorandum IM-98-03**DATE:** September 25, 1998**TO:** STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS.**SUBJECT:** Obtaining financial support for children from benefits paid by the Department of Veterans Affairs.**ATTACHMENT:** VA Form 21-4138

BACKGROUND: Section 459 of the Social Security Act, as amended, provides for the garnishment of certain Federal payments for the enforcement of child support and alimony obligations. However, benefits paid by the Department of Veterans Affairs (VA) are specifically excluded with one exception [42 U.S.C. 659(h)(1)(B)(iii)]. The test to determine if a payment is subject to garnishment is whether the payment is remuneration for employment as defined in section 459 [42 U.S.C. 659(a) and (h)]. While Federal salaries fit this test, and Title II Social Security Old-Age, Survivors, and Disability Insurance benefits (OASDI) can be garnished (entitlement to these benefits is based on employee contributions into FICA), VA monetary benefits, entitlement to which is generally based on either the veteran's disability and wartime service (pension) or disability from service-connected injury or disease (compensation), is generally not considered remuneration for employment.

However, the Social Security Act and the statutes governing benefit payment by the Department of Veterans Affairs do provide for processes by which dependents may obtain financial support from veterans' benefits under certain circumstances. Below are two examples highlighting the laws or regulations under which benefits paid by the Department of Veterans Affairs can be paid to dependents to fulfill child support obligations.

Example #1: The Social Security Act [42 U.S.C. 659(h)(1)(A)(ii)(V)] provides that if a veteran is eligible to receive military retired/retainer pay and has waived a portion of his/her retired/retainer pay in order to receive disability compensation from VA, that portion of the VA benefit received in lieu of retired/retainer pay is subject to garnishment.

Example #2: The Department of Veterans Affairs has issued regulations pursuant to 38 U.S.C. 5307 that provide for an apportionment of VA benefits between the veteran and his/her dependents under certain circumstances. VA regulations at 38 CFR Section 3.450(a)(1)(ii) provide that, if the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support, all or any part of the veteran's pension, compensation, or emergency officers' retirement pay may be apportioned.

Additionally, where a hardship is shown to exist, 38 CFR Section 3.451 authorizes a special apportionment of a beneficiary's pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation between the veteran and his or her dependents. The apportionment is based on the facts in the individual case, and may not cause undue hardship to the other persons in interest. Factors which determine the basis for special apportionment include the amount of veteran benefits payable, other resources and income of the veteran and those dependents in whose behalf apportionment is claimed, and special needs of the veteran, the dependents, and those applying for apportionment. Ordinarily, the VA considers that an apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on the veteran, while an apportionment of less than 20 percent would not provide a reasonable amount for any apportionee.

GARNISHMENT: To arrange for garnishment, contact the VA Regional Office that provides the non custodial parent's benefits. VA provides a toll free number to help in determining which regional office is appropriate (1-800-827-1000), or refer to 5 CFR Part 581 - (Appendix A). The VA office will determine if the veteran has waived any portion of his/her retired/retainer pay in order to receive VA benefits. Send service of process for garnishment to the regional office serving the veteran.

SPECIAL APPORTIONMENTS:

1. The IV-D agency (state child support enforcement office) should write the Department of Veterans Affairs using agency letterhead to request an apportionment review. The letter should be signed by both the appropriate IV-D official and the custodial parent. The letter should be addressed to the VA Regional Office servicing that veteran's benefits. Use the toll free number to determine which regional VA office is appropriate (1-800-827-1000).

2. Complete and attach VA Form 21-4138 (copy attached) "Statement in Support of Claim." The normal VA procedure is to request this after receiving an apportionment application, so time can be saved by doing this as part of the first step. This is where information regarding income and net worth may be provided.

3. Attach a copy of the current support order, to assist VA in the development of the apportionment award.

4. Attach a copy of the arrearage determination sheet, payment ledger, payment records, etc.

CONTACTS: For more information on obtaining payments from veterans benefits, contact your ACF regional office.

David Gray Ross
Commissioner
Office of Child Support Enforcement

cc: Regional Administrators
Regional Program Managers

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