

(i) Eighth Street—one prolonged blast followed by one short blast.

(ii) Tenth Street—two short blasts followed by one prolonged blast.

(4) When signal is given by car ferry or other large vessel to pass either of the two bridges, the remaining bridge shall open promptly so that such vessels shall not be held between the two bridges.

(b) The draw of the Wisconsin Central railroad bridge, mile 0.91 at Manitowoc, shall open on signal except that:

(1) From April 1 through October 31 between the hours of 10:30 p.m. and 4:30 a.m., the draws shall open on signal if at least a 6 hour advance notice is given.

(2) From November 1 through March 31 the draw shall open on signal if at least a 12 hour advance notice is given.

(3) Opening signal for this bridge is two short blasts followed by one prolonged blast.

Dated: February 20, 2001.

**James D. Hull,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Ninth Coast Guard District.*

[FR Doc. 01-5443 Filed 3-5-01; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AJ51

#### Revised Criteria for Monetary Allowance for an Individual Born With Spina Bifida Whose Biological Father or Mother Is a Vietnam Veteran

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the evaluation criteria that the Department of Veterans Affairs (VA) uses to determine the amount of the monthly monetary allowance that it pays to an individual born with spina bifida whose biological father or mother is a Vietnam veteran. The intended effect of this amendment is to clarify the criteria to ensure that they are applied consistently and to add a provision allowing the Director of the Compensation and Pension Service to adjust the payment level for individuals with disabling impairments due to spina bifida that are not addressed in the evaluation criteria.

**DATES:** *Effective Date:* This amendment is effective April 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** Caroll McBrine, M.D., Consultant, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration,

Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273-7230.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 13, 2000 (65 FR 13254), we published a proposal to revise the criteria for determining the level of payment for an individual born with spina bifida whose biological father or mother is a Vietnam veteran. The proposed revisions were developed based on VA's review of a sample of adjudicated spina bifida claims to determine the effectiveness of the evaluation criteria and how they were applied, a further review of the medical literature, and suggestions from several veterans service organizations. The proposed evaluation criteria were based on certain medical impairments due to spina bifida and on the disabling effects of those impairments on ordinary day-to-day activities. We also proposed to allow the Director of the Compensation and Pension Service to increase the payment level for an individual with spina bifida who has such impairments as blindness, uncontrolled seizures, or renal failure.

In addition, we proposed to change the references to "child" and "children" to "individual" and "individuals" throughout 38 CFR 3.814 and to define the word "individual" to make it clear that the regulation applies to eligible individuals regardless of age.

We received one comment, which was from the Veterans of Foreign Wars.

Under VA's initial evaluation criteria for individuals with disabilities due to spina bifida, the effects of bowel and bladder impairment were evaluated as follows: Level I if "continent of urine and feces"; Level II if "requires drugs or intermittent catheterization or other mechanical means to maintain proper urinary bladder function, or mechanisms for proper bowel function"; and Level III if "has complete urinary or fecal incontinence." We proposed that the effects of bowel and bladder impairment be evaluated as follows: Level I if "continent of urine and feces without the use of medication or other means to control incontinence"; Level II if "requires medication or other means to control the effects of urinary bladder impairment and is unable no more than two times per week 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 daily wearing of absorbent materials"; and Level III if "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 daily wearing of absorbent materials; or, regularly requires manual evacuation or digital stimulation to empty the bowel."

The commenter suggested that we change the Level III requirement for "daily wearing of absorbent materials" to "wearing of absorbent materials on most days" because a requirement for daily wearing of absorbent materials is too stringent, considering that constipation may occur intermittently and absorbent materials not be necessary for a day or two.

On further consideration, we agree that the commenter's suggested change would be an improvement, in view of the fact that when constipation is present, the individual might feel comfortable not wearing absorbent materials for a day or so, although they would ordinarily wear them on most days and be incontinent a substantial part of the time. We have therefore revised the criteria for Level III by changing "daily wearing of absorbent materials" to "wearing of absorbent materials at least four days a week" and revised the Level II criteria accordingly.

The commenter also felt that Level III should be assigned for those who undergo a surgical procedure that permanently alters the structure and/or function of the bowel or bladder, for example, a colostomy, because these surgical alterations and appliances disrupt day-to-day activities as much as the frequent need to wear absorbent materials.

We agree in part with the commenter. There are a number of surgical procedures and appliances that may be used to improve bowel and bladder function. At times they make an individual continent or at least decrease the extent or frequency of incontinence; however, they are not always successful. For example, an artificial bladder sphincter that is implanted for urinary incontinence might result in improved bladder function with diminished incontinence or no incontinence at all, but it might also fail to improve bladder function significantly. When an individual must use appliances or undergo surgical procedures, at least a Level II assignment would be warranted because such use or procedure is akin to the use of medication or other means to control the effects of urinary bladder impairment. If the device or surgery does not restore continence sufficiently,

a Level III assignment would be warranted. However, the presence of an appliance or history of a surgical procedure does not necessarily mean an individual will have the extent of functional impairment contemplated by the Level III criteria. If incontinence is diminished by a surgical procedure or appliance, day-to-day functioning should be improved, and a Level III payment would not be warranted. Therefore, no overall change in criteria is needed to assure the assignment of an appropriate payment level to individuals who must wear an appliance or who have undergone a surgical procedure that alters the structure of the bowel or bladder.

In the case of a colostomy, as with other procedures, some individuals are helped more than others. Some become continent of feces with a colostomy and may not need to wear a bag. In this case, the resulting impairment is contemplated by the criteria listed under Level II. Individuals who have a colostomy have required surgery but may not have fecal leakage severe or frequent enough to require wearing of absorbent materials on most days. In fact, they may not need to wear absorbent materials at all. Others with a colostomy remain incontinent and must wear a bag. In our judgment, the need to wear a bag is akin to the Level III criteria, specifically, the need to wear absorbent materials. To assure consistency of evaluations for a relatively common procedure with different possible outcomes, we have added "a colostomy that requires wearing a bag" to the Level III criteria and "a colostomy that does not require wearing a bag" to the Level II criteria. Impairment resulting from other procedures and the use of other appliances can be assessed using the existing criteria to determine whether Level II (which would be the minimum) or Level III is appropriate, according to the extent of urinary or fecal incontinence.

VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the amendments noted above.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory

Planning and Review, dated September 30, 1993.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

(The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

#### List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: February 15, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 3 is amended as set forth below:

#### 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 § 3.814, the heading for the section and paragraphs (a), (c)(2), and (d) are revised to read as follows:

##### **§ 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.

\* \* \* \* \*

(c) \* \* \*

(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.

\* \* \* \* \*

(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 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)

[FR Doc. 01-5450 Filed 3-5-01; 8:45 am]

**BILLING CODE** 8320-01-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 19

**RIN 2900-AK61**

#### Appeals Regulations: Title for Members of the Board of Veterans' Appeals—Rescission

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** In a document published in the *Federal Register* on September 14, 2000 (65 FR 55461), we amended the Department of Veterans Affairs (VA) Appeals Regulations by providing that a Member of the Board of Veterans' Appeals (Board) may also be known as a Veterans Law Judge. Consistent with legal authority, we published the amendment without providing an opportunity for notice-and-comment.

On October 27, 2000, six veterans service organizations wrote to the Acting Secretary, opposing the amendment and arguing that they should have been provided an opportunity to comment before we made such a change. Under these circumstances, we agreed to rescind the amendment and propose to reestablish the amendment. Accordingly, this document rescinds the amendment. In a companion document in the "Proposed Rules" section of this issue of the *Federal Register*, we are proposing to amend the regulations to again provide that a Member of the Board may also be known as a Veterans Law Judge.

**DATES:** *Effective Date:* March 6, 2001.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-565-5978).

**SUPPLEMENTARY INFORMATION:** This final rule concerns agency organization, procedure or practice and is not a substantive rule. Accordingly, this final rule is exempt from the notice-and-comment requirements and the delayed effective date provisions of 5 U.S.C. 553.

### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

### Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

### Regulatory Flexibility Act

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, 5 U.S.C. 601-612. This rule will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

### List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Dated: February 21, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 19 is amended as set forth below:

### PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

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

2. Section 19.2 is revised to read as follows:

#### § 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members and professional, administrative, clerical and stenographic personnel. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

**Authority:** 38 U.S.C. 501(a), 512, 7101(a)

[FR Doc. 01-5451 Filed 3-5-01; 8:45 am]

**BILLING CODE** 8320-01-P