

The US Department of Justice (DOJ) has received requests to provide statements of policy on the use of Veteran Benefits within the legal processes of establishing and enforcing child and spousal support awards. The DOJ's mandate requires enforcement of federal criminal code. This includes violations covered under Title 18 USC Chapter 31 - Embezzlement and Theft. Policy is important to prevent unlawful use of all federal benefit funds and programs.

Under the 1987 Supreme Court of the US ruling of *Rose v. Rose* - 481 U.S. 619, the Veterans Administration clearly did not have sole authority under Title 38 USC § 211. Under this ruling as long as the DOJ did not comment on decisions of eligibility, the DOJ would have the same authority as a state court to provide decisions and policy on these matters. However, the US Congress directly responded to this case and made their intentions of sole authority clear.

In 1988, the 100th Congress dissolved the Veterans Administration and created the Department of Veteran Affairs (VA). 38 USC § 211 was repealed and replaced with 38 USC § 511 under pl 102-83. This new language clearly provides the Secretary and/or his authorized representatives with sole authority over any decision on these matters as well as any others which may affect veteran benefits.

The language of the code with this demonstration of intent by Congress prohibits any official or court within the state or federal governments, including the DOJ, from making any decision which might affect benefits provided under Title 38. This includes decisions on the interpretation of the USC and providing policy. No use may be assumed without an explicit affirming statement by the VA. For the enforcement of misuse, the DOJ must rely on the VA Secretary's interpretation or appeal using the provisions of 38 USC § 511 subsection (b).

In 1997 the US Congress repealed 42 USC § 662 and the VA issued new policy. The repeal nullifies the *Rose v Rose* ruling in respects to garnishments sent directly to a veteran. The VA along with the Department of Health and Human Services (HHS) routinely provide this policy to directly address these issues. The VA and HHS have consistently provided this same policy since the repeal. There have been no other amendments which would required a change in policy.

VA policy provides requirements of specific conditions when a garnishment may be sent to the VA. All other uses are prohibited for the reason that no authority exists. The policy provides two examples where dependents of a veteran are authorized to use the Apportionment process. The VA provides forms and instructions for the states to use when participating in the process.

The processes in this policy are sanctioned by the USC. The VA is not failing to extend authority endorsed by the USC. The DOJ is not appealing the VA policy. If anyone wishes to use benefits in a way the VA policy does not provide, they should contact the VA and request additional policy. If the VA does not approve that use in writing, the provisions of 38 USC § 511(b) may be used to file an appeal. The VA appears amicable and cooperative on the issues.

## 18 U.S. CODE § 641 - PUBLIC MONEY, PROPERTY OR RECORDS

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

## OFFICE OF CHILD SUPPORT ENFORCEMENT

An Office of the Administration for Children & Families

<http://www.acf.hhs.gov/programs/css/resource/financial-support-for-children-from-benefits-paid-by-veterans-affairs>

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### Financial Support for Children from Benefits Paid by Veterans Affairs

IM-98-03

September 25, 1998

Information About: State/Local Child Support Agencies

Topics: Case Management, Enforcement, Family Services & Referrals, Military & Veterans

Types: Policy, Information Memorandums (IM)

#### 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 "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



THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON  
January 8, 2010

The Honorable Eric J.J. Massa  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Massa:

This is in response to your recent request for information regarding the nonassignability and exempt status of Veterans' benefits, specifically service-connected disability compensation.

The Department of Veterans Affairs (VA) administers Veterans' benefits in accordance with the provisions of title 38, United States Code (U.S.C.). Section 5301(a)(1) states that:

"Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever...."

Consequently, courts or other legal entities are prohibited from attaching, diverting, or garnishing a Veteran's service-connected disability compensation payments. An exception to 38 U.S.C. 5301(a)(1) occurs when a servicemember waives military retired pay in order to receive VA compensation. In these cases, VA compensation may be attached up to the amount of military retired pay waived, but only for purposes of alimony or child support pursuant to a court order. Absent these circumstances, section 5301(a)(1) prohibits VA from complying with a state court garnishment order. VA does not have the authority to change this through regulation. A change in the law would be required to prohibit the attachment of VA compensation in all circumstances.

Thank you for your continued support of VA's mission.

Sincerely,

A handwritten signature in black ink that reads "Eric K. Shinseki".

Eric K. Shinseki