

**Department of  
Veterans Affairs**

# Memorandum

Date: October 21, 2021

From: Compensation Service

To: Philadelphia Regional Office

Subj: Payment of Survivor Benefits Under 38 CFR 3.816(f)(3)

## Background Information

This is directed specifically to the Philadelphia Regional Office as it is the only VA Regional Office currently handling payments that are the subject of this memorandum. To the extent other Regional Offices handle these payments in the future, the below guidance applies to those offices with equal force.

When VA readjudicates a claim under the *Nehmer* Consent Decree in favor of a Veteran who is deceased, it pays any resulting award to specified survivors, if any, of that Veteran. Specifically, VA is to pay the Veteran's spouse, the Veteran's children (in equal shares), or the Veteran's dependent parents, in that order of preference. See 38 C.F.R. § 3.816(f)(1). If no such survivors exist, VA makes payment to the Veteran's estate.

38 C.F.R. § 3.816(f)(3) details VA's efforts to identify payees in these cases. Currently, litigation is pending regarding the final sentence of section 3.816(f)(3), which states, "If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released."

VA is in the process of revising this portion of section 3.816(f)(3) through the rulemaking process. Procedures to address this regulatory requirement were contained in M21-1, Part VIII, Subpart i, Chapter 2, Section C ("*Authorization Under the Nehmer Stipulation*"). These procedures contain the following note: "Once benefits have been awarded in full to a payee, do not pay any portion of the benefits to any other individual, unless the payment previously released can be recovered." These procedures have been suspended.

## Purpose

This memorandum serves to notify the Philadelphia Regional Office to not apply the suspended guidance in a manner that would preclude payment to newly identified payees. Instead, any newly identified payees should be paid any benefits they are due. After the payee award has been processed, the Regional Office must then take the necessary steps to recoup the resulting overpayments of benefits paid to previous beneficiaries. This is consistent with VA's current interpretation of section 3.816(f)(3) to permit payment to a newly identified payee prior to recovery of an overpayment debt from the original payees.

**Note:** This memorandum supersedes the above referenced M21-1 guidance.

**Questions**

Contact the Compensation Service Policy mailbox at VAVBAWAS/CO/211\_Policy.

BETH A. MURPHY  
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Digitally signed by BETH A.  
MURPHY [REDACTED]  
Date: 2021.10.21 15:39:25 -04'00'

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Beth Murphy  
Executive Director, Compensation Service