

DATE: 10-13-92

CITATION: VAOPGCPREC 20-92  
Vet. Aff. Op. Gen. Couns. Prec. 20-92

**TEXT:**

**QUESTIONS PRESENTED:**

- a. Is the clothing allowance authorized by 38 U.S.C. § 1162 subject to the provisions of 38 U.S.C. § 5313, which limit the payment of certain benefits to veterans incarcerated for conviction of a felony?
- b. If not, would the Secretary have other authority to similarly limit payment of the clothing allowance to incarcerated veterans?

**COMMENTS:**

1. Under 38 U.S.C. § 1162, VA is authorized to pay a clothing allowance, in an annual amount of \$436, to veterans whose service-connected disabilities require them to wear or use prosthetic or orthopedic appliances (including wheelchairs) which tend to wear out or tear their clothing. Since 1989, the allowance is also payable if a veteran, due to a service-connected skin disorder, uses prescribed medication which causes irreparable damage to outer garments. Sec. 112, Pub. L. No. 101-237 (1989).

2. Your first question is whether 38 U.S.C. § 5313 limits the Secretary's authority to pay the clothing allowance to incarcerated veterans. It does not. This section, by its terms, limits the Secretary's authority only with respect to making payments of "compensation or dependency and indemnity compensation" to certain incarcerated veterans. Compensation is a defined term for title 38 purposes:

The term "compensation" means a monthly payment made by the Secretary to a veteran because of a service-connected disability, or to a surviving spouse, child or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

38 U.S.C. § 101(13). The term compensation is further defined for purposes of 38 U.S.C. § 5313 as including "disability compensation payable under section 1151 of title 38 ." 38 U.S.C. § 5313(e)(1). The annual clothing allowance provided for by 38 U.S.C. § 1162, which is not paid monthly (see 38 C.F.R. § 3.810(a)), clearly is not compensation within the contemplation of these statutory definitions and so section 5313 does not operate to restrict eligibility for it.

3. Section 1162 is directory ("The Secretary ... shall pay a clothing allowance" to each eligible veteran) rather than permissive, hence even though it would seem a

windfall to provide the allowance to individuals who do not pay for their institutional clothing, there is no latitude given VA in this regard.

**HELD:**

Section 5313 of title 38 U.S. Code, which operates to restrict entitlement to disability and death compensation and dependency and indemnity compensation, does not restrict entitlement to the clothing allowance payable under 38 U.S.C. § 1162, and VA is not otherwise authorized to restrict entitlement to the clothing allowance on the basis of incarceration.

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