



Finding Untapped Monetary VA Benefits for Surviving Spouses

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It is an unfortunate truth that millions of Americans have to struggle to make ends meet. But some of these citizens may not realize that they are now entitled to at least \$15,300 per year in tax-free financial assistance from the federal government. All they need to do is file a simple VA application.

Who are the people unaware of their entitlement to this money? Tens of thousands of surviving spouses of veterans who served in Vietnam and who are now deceased. The reason these survivors now qualify for these benefits relates to Agent Orange, the toxic herbicide used by the U.S. Government more than four decades ago during the Vietnam War to clear vegetation in areas where enemy troops were hiding. 2.7 million veterans of the U.S. Armed Forces served in Vietnam between 1962 and 1975. The overwhelming majority of them are men, and many of them were exposed to this toxic herbicide.

Until the 1990s, the VA took the position that the only adverse health effect of exposure to Agent Orange was chloracne, a skin condition. In 1991, Congress required the VA to contract with an independent agency, the National Academy of Sciences (NAS), to review the emerging scientific studies on the adverse health effects of exposure to this herbicide and to prepare a report for the VA every two years with its conclusions.

Slowly but surely, the NAS reported over the years, and the VA agreed that many serious disabling diseases are associated with Agent Orange exposure. By 2010, here's the list of diseases that the VA has officially recognized as linked to Agent Orange:

- Prostate Cancer
- Non-Hodgkin's lymphoma
- Soft Tissue Sarcomas
- Lung Cancer
- Trachea Cancer
- Larynx Cancer
- Multiple Myeloma
- Hodgkin's Disease
- Type 2 Diabetes
- Chronic Lymphocytic Leukemia
- AL Amyloidosis
- Ischemic Heart Disease
- Parkinson's Disease
- Chronic B-Cell Leukemia

Whenever the VA added a disease to its list, it amended its regulations to provide that a veteran who contracted one of these diseases is entitled to service-connected disability benefits, as long as the veteran set foot in Vietnam or served on the inland waterways. No proof of exposure is necessary because VA's rules contain a presumption that all of these veterans were exposed to Agent Orange.

The word has gotten out to many in the Vietnam veteran community about the changes in law regarding disability benefits for Vietnam veterans. While hundreds of thousands of Vietnam veterans who suffer from one of these diseases have applied to the VA for these benefits, thousands of other veterans and their families remain unaware of their entitlement.

The same VA rules that provide disability benefits to these Vietnam veterans also provide service-connected death benefits (known as DIC) to surviving spouses of Vietnam veterans who died from one of these diseases. Unfortunately, many of these veterans died from one of these diseases before the VA recognized the disease as Agent Orange-related. The surviving spouses would have had no reason to believe at the time of death that the death was due to Agent Orange, and even if they did, the VA would have told them that they were not entitled to benefits. These survivors have gone on with their lives, and many of them are unaware that the rules have changed since their spouse died, and they now qualify for tax-free death benefits of at least \$15,300 per year.

Surviving spouses who have never remarried are not the only survivors of a Vietnam veteran who died of an Agent Orange-related disease who qualify for these benefits; many of those who have remarried are entitled. For a surviving spouse to qualify for VA death benefits (known as DIC), the spouse must have been married to the veteran for at least one year prior to the veteran's death and meet one of the following requirements:

- The surviving spouse has not remarried since the veteran's death;
- The surviving spouse remarried, but that remarriage ended by divorce, annulment, dissolution, or the death of the second spouse; or
- The surviving spouse is currently married, and that remarriage occurred both after December 16, 2003 and after the surviving spouse reached the age of 57.

The application process for these survivors is simple. All a surviving spouse would need to do is to complete and sign **VA Form 21-534EZ** and mail it to:

**Department of Veterans Affairs
Claims Intake Center
PO Box 4444
Janesville, WI 53547-4444**

This form can be downloaded from www.benefits.va.gov/BENEFITS/Applying.asp

The sooner the VA receives this application the better, since benefits will generally be awarded retroactive to the date the VA receives the VA Form 21-534EZ.

After submitting this application, the VA will typically ask the surviving spouse to submit several documents, including the veteran's death certificate, and a marriage certificate. If the death certificate does not list one of the diseases that the VA now recognizes as Agent Orange-related, then in order to be granted benefits, the survivor will need to obtain and submit a

medical opinion explaining in detail why the physician believes that an Agent Orange-disease was a principal or contributory cause of the veteran's death, even though it was not listed on the death certificate.

After receipt of the application, the VA will review the veteran's military personnel and medical records to determine whether the veteran served at least one day on land in Vietnam or its inland waterways. If the VA makes a positive determination on this issue and agrees that an Agent-Orange related disease was the principal or a contributory cause of the veteran's death, then if the death occurred on or after January 1, 1993, the survivor will begin to receive monthly payments of at least \$1,281 tax-free. If the death occurred before 1993, the amount of the monthly payment depends on the base pay of the veteran while in service. No matter when the veteran died, the monthly payment will be higher if the survivor is in need of aid and attendance or is housebound.

Some of the surviving spouses who now qualify for VA death benefits on a prospective basis are also entitled to many years of retroactive benefits. They may qualify for retroactive benefits if (1) they previously applied in writing to the VA for death pension or death compensation, (2) they previously applied in writing to the Social Security Administration for survivor's benefits based on the death of the veteran, or (3) while the veteran was alive, he applied to the VA for disability compensation for a disease that is now recognized as Agent-Orange related and the VA denied the claim.

These retroactive payments can be quite high. For example, the VA recently paid a widow from Alabama \$247,508 in tax-free retroactive benefits. Her husband had served in Vietnam and died in 1983. His death certificate stated that the cause of death was cardiac ischemia (heart attack) and coronary atherosclerosis. In 1985, the widow filed a form asking the VA to award her widow's pension, which the VA denied in 1986. Twenty-four years later, the VA added ischemic heart disease as an Agent-Orange related disease. With the help of the National Veterans Legal Services Program, the widow convinced the VA that her 1985 widow's pension claim qualified her for this high award of retroactive benefits.

Although the quality of VA decision-making is relatively high for claims based on Agent Orange exposure, the VA sometimes makes mistakes on the amount of retroactive benefits that are owed. Survivors who believe they are entitled to retroactive benefits can contact the National Veterans Legal Services Program (NVLSP) for help. NVLSP is a nonprofit veterans service organization that does not charge veterans or survivors any money for its services. NVLSP represented Vietnam veterans and their survivors in the class action lawsuit that resulted in the requirement that VA pay retroactive benefits.

Survivors can contact NVLSP by email at agentorange@nvlsp.org or through its toll-free telephone number, **855-333-0677**.

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