

**Department of
Veterans Affairs**

Memorandum

Date: September 23, 1998

VAOPGCPREC 13-98

From: Acting General Counsel (022)

Subj: Surviving Spouse's Eligibility for Benefits--38 U.S.C.
§ 1311 (e) --Pub. L. No. 105-178, § 8207

To: Director, Compensation and Pension Service (21)

QUESTION PRESENTED:

Does a surviving spouse who regains eligibility for dependency and indemnity compensation (DIC) under 38 U.S.C. § 1311(e) as added by section 8207 of the Transportation Equity Act for the 21st Century also regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits?

COMMENTS:

1. The definition of "surviving spouse" in 38 U.S.C. § 101(3), which applies generally to determinations of eligibility for benefits under title 38, United States Code, excludes a person who has remarried or, since the veteran's death, has lived with another person and held himself or herself out openly to the public to be such other person's spouse. Section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 8207, 112 Stat. 107, 495 (1998), added a new subsection (e) to 38 U.S.C. § 1311, which governs the payment of DIC to a surviving spouse. Section 1311(e)(1) provides that remarriage shall not bar a surviving spouse's eligibility for DIC if the remarriage is terminated by death, divorce, or annulment (unless VA determines that divorce or annulment was secured through fraud or collusion). Section 1311(e)(2) provides that DIC is not barred if a surviving spouse ceases living with another person and holding himself or herself out openly to the public as that person's spouse.

2. By its express terms, the amendment made by section 8207 applies to restoration of eligibility for DIC. Section 8207 did not amend any statute governing benefits other than DIC. Nor did it change the generally applicable definition of "surviving spouse" in 38 U.S.C. § 101(3).

Therefore, a surviving spouse who regains eligibility for DIC under 38 U.S.C. § 1311(e) does not regain eligibility for benefits other than DIC, including medical care under CHAMPVA, dependents' educational assistance, and loan guaranty benefits. Eligibility for those benefits is not based on eligibility for DIC, but rather on the claimant's status as a "surviving spouse" as defined in 38 U.S.C. § 101(3). See 38 U.S.C. §§ 1713(a)(2) and (3), 3501(a)(1)(B) and (D), and 3701(b)(2) (including a "surviving spouse" as a person eligible for CHAMPVA, dependents' educational assistance, and loan guaranty benefits, respectively).

HELD:

A surviving spouse who regains eligibility for dependency and indemnity compensation under 38 U.S.C. § 1311(e), as added by section 8207 of the Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, § 8207, 112 Stat. 107, 495 (1998), either upon the termination of remarriage by death, divorce, or annulment, or upon the cessation of living with another person and holding himself or herself out openly to the public as that person's spouse, does not regain eligibility for medical care under the Department of Veterans Affairs Civilian Health and Medical Program (CHAMPVA), for dependents' educational assistance, or for loan guaranty benefits.

John H. Thompson