

**38 CFR Parts 3, 8, and 20****[Docket No. VA-2024-VBA-0008]****RIN 2900-AR32****Clarification of VA's Processing of Survivors Benefits Claims****AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its adjudication regulations concerning survivors benefits claims to ensure that VA provides the most beneficial outcome for surviving spouses and children. This final rule clarifies that a surviving spouse or child claimant for either Survivors Pension or dependency and indemnity compensation (DIC) is entitled to the greater benefit. Thus, with respect to claims processing, VA will concurrently deny Survivors Pension and award DIC, except where paying Survivors Pension would be more beneficial to the claimant, which will only be the case if the claimant is the veteran's surviving spouse and the claimant's application indicates that the claimant does not have any dependents, is currently in a nursing home, and has applied for or is currently receiving Medicaid.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Eric Baltimore, Management and Program Analyst, Pension and Fiduciary Service, Veterans Benefits Administration, (202) 632-8863.

**SUPPLEMENTARY INFORMATION:** VA has express statutory authority to prescribe regulations regarding "the manner and form of adjudications and awards." 38 U.S.C. 501(a)(4). Pursuant to this authority, on March 11, 2024, VA published a proposed rule in the Federal Register at 89 FR 17354, to (1) amend 38 CFR 3.5, 3.152, 3.402, 3.502,

3.658, and 3.702 to streamline the process by which VA adjudicates certain claims for VA survivors benefits while ensuring that claimants receive the greatest benefit allowed by law, and to (2) replace references to “death pension” with “survivors pension” in 38 CFR part 3, and §§ 8.4 and 20.104, to align with VA’s current usage.

VA provided a 60-day public comment period, which closed on May 10, 2024, and received four comments in response to the proposed rule. Three comments were from individuals, and one comment was from The City Bar Justice Center. All comments generally agreed with the goal of the amendments in the proposed rulemaking. As one commenter explained, “[t]he proposal aims to accelerate the disbursement of compensation to eligible survivors and potentially reduce administrative complexities by simplifying the adjudication process for survivors benefits. In addition, this could translate to quicker access to financial assistance for vulnerable survivors, providing relief during a challenging time.” VA appreciates the support from these commenters.

Three of the four commenters also offered additional suggestions with respect to VA’s administration of survivor benefits. VA appreciates the additional suggestions. However, VA believes that the comments are outside the scope of the rulemaking and VA will not make any changes to the rule, as proposed, based on the comments received. VA will respond to the comments for the limited purpose of demonstrating that the comments are outside the scope of the rulemaking.

One commenter explained “[m]y husband recently passed. He was receiving \$5,400.00 a month for benefits. I had to retire to take care of him. All I am receiving is \$1,850.00 for DIC and my retirement. So anything would be appreciated to help spouses.” VA provides sincere condolences for the loss of the commenter’s husband. VA notes that this rule is focused on streamlining the adjudication of survivors’ claims processing with the goal of delivering decisions on claimed benefits timelier to beneficiaries in need during a difficult time. Benefit rates are not the subject of this rule,

nor would the intent of this rule allow for an expansion to address benefit rates. VA can only pay monetary benefits in accordance with the express terms of specific statutes. *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 432 (1990). VA will not make any changes to the rule, as proposed, based on the comment received.

One commenter suggested an area of improvement to “automatically evaluate DIC applicants for all potential entitlements” to “alleviate the burden on survivors by reducing the complexity and emotional strain of navigating the benefits process during a period of grief.” VA notes that, in the notice of proposed rulemaking, VA expressly stated that “[t]his proposed rule would only address VA's processing of the survivors pension claims of surviving spouses and children whom VA has determined are eligible for DIC.” 89 FR 17354. VA would like to highlight that, once a complete claim for DIC or Survivors Pension is received from a surviving spouse or child, VA is statutorily required to determine entitlement to DIC and Survivors Pension (as well as accrued benefits) under 38 U.S.C. 5101(b). Claimants are not required to file separate claims for those benefits. To the extent the commenter’s concern relates to other survivor benefits, the commenter’s concern is outside the scope of this rulemaking. Furthermore, in certain situations VA will determine entitlement to service-connected burial benefits without a specific claim for VA burial benefits following a grant of DIC benefits. Public Law (Pub. L.) 114-315 allows VA to grant a service-connected burial allowance to a surviving spouse without a claim when DIC benefits are granted and the veteran’s death occurred on or after December 16, 2016, which is the enactment date of Pub. L. 114-315. VA will not make any changes to the rule, as proposed, based on the comment received.

VA received a comment from The City Bar Justice Center which expressed support for VA’s efforts in the proposed rule and shared additional recommendations for areas of further improvement. The commenter’s recommendations and VA’s response are highlighted below.

## Risk of Delaying Benefits if Entitlement Rules Change

The commenter noted that it is “possible that the rules relating to DIC and survivors pension could change in the future, including changes that could allow some access to both DIC and survivors pension”. To avoid “delaying their receipt of increased or additive benefits,” the commenter encourages VA to consider a method in which claimants are “approved for both DIC and survivors pension on their first claim.”

VA understands there is a possibility that legislative amendments to statute in the future may provide simultaneous grants to both DIC and Survivors Pension benefits. However, VA is bound by current statutes when providing regulatory guidance. Any amendments to these statutes would require action by Congress. Following any legislative change, VA would amend its regulations to align with the statute; however, VA is unable to alter its regulations in any manner that would conflict with an existing statute. VA will not make any changes to the rule, as proposed, based on the comment received.

DIC and Survivors Pension are both periodic monetary benefits. 38 U.S.C. 101(14) and (15). Thus, receipt of those benefits involves payment. By statute, “payment of monetary benefits [is] based on an award.” 38 U.S.C. 5111(a). Under existing regulations, “not more than one award of pension . . . or [DIC] may be made concurrently to a dependent” even in the event the veteran in question had multiple periods of service. 38 CFR 3.700; *see also* 38 U.S.C. 5304. Therefore, if, as in the commenter’s hypothetical, “a surviving spouse or child currently entitled to DIC . . . later prefer[s], or [is] additionally entitled to, a survivors pension,” VA would have to “award” Survivors Pension before the claimant would begin receiving Survivors Pension.

While VA has express statutory authority to promulgate regulations with respect to the “manner and form of . . . awards,” 38 U.S.C. 501(a)(4), VA must exercise that authority within the bounds established by the “best” reading of the pertinent statutes.

See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). The best reading of a statute “is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” *Valladares v. Ray*, 130 F.4th 74, 80 (4th Cir. 2025) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)); see *Loper Bright*, 603 U.S. at 408 (A statute’s “best meaning” is “necessarily discernible” “deploying [the] full interpretive toolkit.”).

Black’s Law Dictionary defines “award” as a “grant by formal process or by judicial decree.” AWARD, Black’s Law Dictionary (12th ed. 2024); see *Glover v. Ocwen Loan Servicing, LLC*, 127 F.4th 1278, 1286 (11th Cir. 2025) (recognizing that, where a statutory term is undefined, dictionary definitions provide useful guidance). Under current statute, an “award [is] based on an initial claim [] or a supplemental claim.” 38 U.S.C. 5110(a). Moreover, when VA issues a decision on a claim, the claim is either “allowed” or “disallowed”, 38 U.S.C. 7104(b), and the benefits sought by the claimant are either “granted” or “denied”, *Maggitt v. West*, 202 F.3d 1370, 1376 (Fed. Cir. 2000); see also 38 U.S.C. 5104(b) (distinguishing “denial” and “grant” in delineating the information that must be included in a decision notice). To “allow” means “to recognize as a right or privilege; to accord as a legal entitlement.” ALLOW, Black’s Law Dictionary (12th ed. 2024), while to “disallow” means “[t]o officially reject,” DISALLOW, Black’s Law Dictionary (12th ed. 2024). To “grant” means “to approve, warrant, or order,” GRANT, Black’s Law Dictionary (12th ed. 2024), while to “deny” means “to refuse to allow,” DENY, Black’s Law Dictionary (12th ed. 2024).

With respect to DIC and Survivors Pension specifically, 38 U.S.C. 1317(a) states “[e]xcept as provided in subsection (b), no person eligible for [DIC] by reason of any death occurring after December 31, 1956, shall be eligible by reason of such death for any payments under [] provisions of law administered by the Secretary providing for the payment of . . . death pension.” Subsection (b) states “[a] surviving spouse who is

eligible for [DIC] may elect to receive death pension instead of such compensation.” Black’s Law Dictionary defines “[e]ligible” to mean “fit or proper to be selected or to receive a benefit; legally qualified for an office, privilege or status,” ELIGIBLE, Black's Law Dictionary (12th ed. 2024), and defines “elect” to mean to “choos[e] from several different rights or remedies in a way that precludes the use of other rights or remedies,” ELECTION, Black's Law Dictionary (12th ed. 2024). This language makes clear that, under existing law, no person is legally entitled to both benefits for concurrent periods. Therefore, VA is without authority to award or otherwise approve both benefits in the first instance. Rather, the allowance of one requires the disallowance of the other.

Pursuant to statute, a claim is deemed disallowed once “sufficient notice has been provided so that a [claimant] would know, or reasonably can be expected to understand that [the claimant] will not be awarded [the] benefits . . . asserted in [the] pending claim.” *Jones v. Shinseki*, 619 F.3d 1368, 1373 (Fed. Cir. 2010) (addressing decisions of the Board of Veterans’ Appeals); *see also Deshotel v. Nicholson*, 457 F.3d 1258, 1261 (Fed. Cir. 2006) (reaching the same conclusion with respect to decision of an agency of original jurisdiction). Thus, the commenter’s characterization of the principle that an award of DIC will result in a denial of Survivors Pension as a “new rule[] of adjudication” is not accurate. Rather, the principle reflects the natural effect on a Survivors Pension claim of notice informing a claimant that VA has awarded DIC and that DIC and Survivors Pension cannot be paid concurrently. In this rulemaking, VA is simply stating this principle explicitly.

#### Burden on Surviving Spouses and Children to File Multiple Claims

The commenter also states that “[i]t is very possible that a surviving spouse or child currently entitled to DIC may later prefer, or be additionally entitled to, a survivors pension. As we have laid out, the Proposed Rule currently contemplates that should their needs or eligibility change, a surviving spouse or child would need to reapply for

the benefits that they were automatically denied under the new rules of adjudication. We again applaud the intent of expediting the processing of claims for DIC and survivors pension, and understand the intent behind a system that would automatically deny benefits that such claimant would not be entitled to receive today, regardless of the determination, but want to ensure that the burden of such subsequent reapplication process (should benefit entitlements change) is properly understood and considered by the VA before enacting the Proposed Rule.” The commenter suggests that “modification of the proposed rule” to “allow[] for the eventual full adjudication of both DIC and survivors pension claims for all who apply. The result will be that there is no longer a requirement to submit a subsequent claim, and no delay in receiving benefits should entitlements later change.” VA appreciates the commenter’s concern. However, VA does not agree with the commenter’s premises that, under the proposed rule, claims may remain unadjudicated indefinitely or that the proposed rule creates a new obligation to reapply for benefits if entitlements change.

In a VA decision, benefits are either “awarded” or they are “denied”. See *Jones*, 619 F.3d at 1373; *Deshotel*, 457 F.3d at 1261. When making decisions on claims for benefits, “[t]he Secretary shall decide all questions of law and fact necessary to a decision.” 38 U.S.C. 511(a). Yet, a “decision regarding a claim for benefits might not resolve, or even address,” all questions that must be resolved in order for benefits to be awarded. *Grantham v. Brown*, 114 F.3d 1156, 1158 (Fed. Cir. 1997). This is so because, if a particular question is resolved in a manner that bars entitlement, it is not “necessary,” to address other questions before concluding that the claim must be denied. 38 U.S.C. 511(a).

Based on this principle, with respect to Survivors Pension, VA has promulgated other regulatory provisions that “prevent[] VA from developing a case when the evidence clearly shows that a claimant is not entitled to the benefit.” Net Worth, Asset

Transfers, and Income Exclusions for Needs-Based Benefits, 80 FR 3840, 3844 (January 23, 2015). Basic entitlement to Survivors Pension exists if the veteran had qualifying wartime service and the surviving spouse or child has an annual income not in excess of the applicable maximum annual pension rate and a net worth within the applicable limit. 38 CFR 3.3(b)(4). Under existing regulations, VA will “deny” pension if any one of these criteria is not satisfied. See 38 CFR 3.274(b) (“VA will deny . . . pension . . . if a claimant or beneficiary’s net worth exceeds the net worth limit.”); 38 CFR 3.274(e) note (“If the evidence shows that net worth exceeds the net worth limit, VA may decide the pension claim before determining if the claimant meets other entitlement factors.”); 38 CFR 3.274(e)(2) (recognizing that VA is not required to calculate net worth if the claimant or beneficiary does not satisfy the other eligibility factors in § 3.3(b)(4)). In this rulemaking, VA is simply explicitly stating that the same principle also applies to cases in which a Survivors Pension claimant has already been found entitled to DIC: once the claim for DIC is allowed, no further findings are necessary to determine that the survivors claim must be disallowed.

Once a claim is disallowed, benefits generally will not be awarded absent another filing by the claimant, generally either an action in continuous pursuit of the prior claim in accordance with 38 U.S.C. 5110(a)(2), or a subsequent claim based on either new evidence, 38 U.S.C. 5108, or a change in law, see *Frederick v. Shinseki*, 684 F.3d 1263, 1272 (Fed. Cir. 2012) (Applicable statute contemplates that VA may identify and grant previously filed claims that benefit from a new law upon its own initiative, but it does not relieve claimants from having to file a claim for benefits under a new law when the VA does not do so.). More specifically, in the event a surviving spouse eligible for DIC had been previously denied pension but needed to reapply based on being in a nursing home at Medicaid expense, this fact alone would be new and relevant evidence and a sufficient predicate for a supplemental claim under 38 U.S.C. 5108. Thus, while

the commenter is correct that, if a change in entitlement occurs, the claimant would have to reapply, the obligation already exists under current law and flows from the fact that the prior claim was disallowed as a matter of law. To the extent the commenter asks VA to reconsider these settled aspects of law, that request is outside the scope of this rulemaking. See *Kennecott Utah Copper Corp. v. U.S. Dep't of Interior*, 88 F.3d 1191, 1213 (D.C. Cir. 1996) (recognizing that an agency does not “reopen an issue by responding to a comment that addresses a settled aspect of some matter”).

The commenter also expressed concern that “often the veteran, surviving spouse or child is in the best position to apply for all benefits in the first instance, ideally as soon as possible after they conclude their service. Required evidence and documentation becomes much more difficult to procure or maintain as time goes on.” VA appreciates this concern. However, the premise that this rulemaking creates additional evidentiary obligations appears to be based on a misunderstanding of current law. All relevant evidence that is submitted to VA prior to the issuance of a decision is part of the record for that decision. See *Veterans Just. Grp., LLC v. Sec'y of Veterans Affs.*, 818 F.3d 1336, 1356 (Fed. Cir. 2016). Therefore, any evidence submitted by the claimant in connection with an earlier claim for DIC and Survivors Pension would be considered in the adjudication of the later claim for those benefits. Therefore, the fact that the initial claim was denied does not create an obligation to submit duplicative evidence.

In addition, VA notes that eligibility factors pertaining to relationship, income and net-worth for Survivors Pension are subject to change over time. By statute, “as a condition of granting or continuing pension” VA “shall require that any such applicant or recipient promptly notify the Secretary whenever there is a material change” in income, net worth, or dependency status. 38 U.S.C. 1506. Under the commenter’s proposal, these obligations would exist from the date of the grant of DIC, regardless of whether the individual ever actually becomes entitled to Survivors Pension. Under VA’s

proposal, however, VA would only require a surviving spouse or child to submit annual income and estate information for subsequent periods if the individual files a new claim. VA respects and appreciates the recommendations proposed by this commenter; however, VA will not make any changes to the rule, as proposed, based on the comment received.

Based on the foregoing, VA adopts the proposed rule as final, without changes.

#### Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. This final rule is a deregulatory action under Executive Order 14192.

*Economic Impact:* VA has determined that there are no transfers or costs associated with this rulemaking. Moreover, it will help VA deliver decisions on claimed benefits and services timelier to beneficiaries in need and reduce the burden on claimants to submit additional information that was omitted from their original submission for a benefit they may not even be claiming. VA has also determined this rule is deregulatory as it streamlines the adjudication of survivors benefits by reducing duplicative claims processing and eliminating unnecessary determinations for a lesser VA benefit when entitlement to a greater benefit is established.

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). There are no small entities involved with

the process and/or benefits associated with this rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

#### Paperwork Reduction Act

Although this final rule contains a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521), there are no provisions associated with this rulemaking constituting any new collection of information or any revisions to the current collection of information. The collection of information for 38 CFR 3.152 is currently approved by the Office of Management and Budget (OMB) and has a valid OMB control number of 2900-0004.

#### Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

#### **List of Subjects**

##### **38 CFR Part 3**

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

**38 CFR Part 8**

Life insurance, Military personnel, Veterans.

**38 CFR Part 20**

Administrative practice and procedure, Claims, Veterans.

**SIGNING AUTHORITY**

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on September 30, 2025 and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Gabriela DeCuir,**

*Alternate Federal Register Liaison Officer, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA amends 38 CFR chapter 1 as set forth below:

### **PART 3—ADJUDICATION**

#### **Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.5 by revising paragraph (c) to read as follows:

#### **§ 3.5 Dependency and indemnity compensation.**

\* \* \* \* \*

(c) *Exclusiveness of remedy.* (1) Except as provided in paragraph (c)(2) of this section, no person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for survivors pension or death compensation under any other law administered by the Department of Veterans Affairs.

(2) A surviving spouse who, but for the surviving spouse's eligibility for dependency and indemnity compensation, would be eligible to receive survivors pension at the rate provided for in 38 U.S.C. 5503(d) will receive survivors pension instead of such compensation.

(Authority: 38 U.S.C. 1317)

\* \* \* \* \*

3. Amend § 3.152 by:

- a. Redesignating paragraph (b)(1) as paragraph (b)(1)(i); and
- b. Adding paragraph (b)(1)(ii).

The addition reads as follows:

#### **§ 3.152 Claims for death benefits.**

\* \* \* \* \*

(b)(1)(i) \* \* \*

(ii)(A) Except as provided in paragraph (b)(1)(ii)(B) of this section, an award of dependency and indemnity compensation to a surviving spouse or child will result in the denial of survivors pension.

(B) With respect to a claim by a surviving spouse, if the evidence establishes that, but for the surviving spouse's eligibility for dependency and indemnity compensation, the surviving spouse would be eligible to receive survivors pension at the rate provided for in 38 U.S.C. 5503(d), survivors pension will be paid instead of such compensation.

(Authority: 38 U.S.C. 1317)

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4. Amend § 3.402 by adding paragraph (d) to read as follows:

**§ 3.402 Surviving spouse.**

\* \* \* \* \*

(d) *Medicaid-covered nursing home care.* (1) If a surviving spouse described in § 3.152(b)(1)(ii)(B) stops receiving Medicaid-covered nursing home care, dependency and indemnity compensation, if otherwise in order, will be effective as of the date Medicaid coverage ceased, if a claim for dependency and indemnity compensation is received within one year of the date Medicaid coverage ceased; otherwise, it will be effective as of the date of receipt of claim or date entitlement arose, whichever is later.

(2) If a surviving spouse who is receiving dependency and indemnity compensation and who, but for eligibility for dependency and indemnity compensation, would be eligible for survivors pension, begins receiving Medicaid-covered nursing home care, survivors pension will be effective as of the first day of the month after dependency and indemnity compensation was discontinued, if a claim for survivors

pension is received within one year of the date dependency and indemnity compensation was discontinued; otherwise, it will be effective as of the date of receipt of claim or date entitlement arose, whichever is later.

5. Amend § 3.502 by revising the heading of paragraph (f) to read as follows:

**§ 3.502 Surviving spouses.**

\* \* \* \* \*

(f) *Medicaid-covered nursing home care.* \* \* \*

\* \* \* \* \*

**§ 3.658 [Amended]**

6. Amend § 3.658 by, in paragraph (b), removing the words “or compensation” and adding, in their place, the words “or death compensation”.

7. Amend § 3.702 by revising paragraph (d) to read as follows:

**§ 3.702 Dependency and indemnity compensation.**

\* \* \* \* \*

(d) *Finality of election.* (1) Except as noted in paragraphs (d)(2) and (g) of this section, an election to receive dependency and indemnity compensation in lieu of death compensation is final, and the claimant may not thereafter reelect death compensation in that case. An election is final when the payee (or the payee’s fiduciary) has negotiated one check for this benefit or when the payee dies after filing an election but prior to negotiation of a check.

(2) A surviving spouse’s receipt of survivors pension at the rate provided for in 38 U.S.C. 5503(d) in lieu of dependency and indemnity compensation will not be a bar to the surviving spouse’s receipt of such compensation in the event the surviving spouse becomes ineligible for survivors pension at the rate provided for in 38 U.S.C. 5503(d).

\* \* \* \* \*

8. Amend part 3, by removing the words “death pension”, wherever it appears,

and adding, in its place, the words “survivors pension”.

## **PART 8—NATIONAL SERVICE LIFE INSURANCE**

9. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901-1929, 1981-1988, unless otherwise noted.

### **§ 8.4 [Amended]**

10. Amend § 8.4, in the introductory text and paragraph (b), by removing the words “death pension” and adding, in their place, the words “survivors pension”.

## **PART 20—BOARD OF VETERANS’ APPEALS: RULES OF PRACTICE**

11. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

### **§ 20.104 [Amended]**

12. Amend § 20.104, in paragraph (a)(4) by removing the words “death pension” and adding, in their place, the words “survivors pension”.