



VETS HELPING VETS SINCE 1974

INFORMATION FOR INCARCERATED VETERANS

Are you eligible for VA benefits while you're incarcerated?

For starters, there's no problem unless you've been convicted. If you're in jail awaiting trial, you're presumed innocent, and you're still entitled to VA benefits.

But what happens if you've been convicted?

What happens on the 61st day of incarceration depends upon your disability rating.

DISABILITY COMPENSATION

If you're receiving service-connected disability compensation, you're still eligible for payment if you've been convicted of a **misdemeanor**.

You also remain eligible during your first 60 days of incarceration following conviction of a **felony**. What happens on the 61st day depends upon your disability rating. If your rating is 20 percent or higher, your payments will be reduced to the 10 percent rate, starting on that day. If your rating is currently 10 percent, you'll be paid at one-half of the ten percent rate.

PENSION

If you're receiving nonservice-connected pension, you're still eligible for payment for the first 60 days of incarceration following conviction. But you lose your eligibility altogether starting on the 61st day of incarceration. **It doesn't matter whether you were convicted of a felony or a misdemeanor.**

SUBSISTENCE ALLOWANCE

The rules are different for veterans receiving a subsistence allowance as part of a VA vocational rehabilitation program.

If you're in a work-release program following a felony conviction, you can get a subsistence allowance. That's also true if you're living in a halfway house and participating in a rehab program following a felony conviction.

Once the VA learns that you're incarcerated, it will assume that you remain incarcerated until you submit proof of when you were released.

FAMILY MEMBERS

Can your family members get some of your VA benefits while you're incarcerated?

If the VA reduces your disability compensation or subsistence allowance because you're incarcerated, your spouse, dependent child(ren), and dependent parent(s) may be able to receive the money that you don't get. This process is called "apportionment." The VA will determine the individual needs of your dependents.

Applying for apportionment can be complicated. Your relatives may want to ask a Veterans Service Organization (VSO) for help. There is a list of VSO's at www.stp-sf.org/guides/vsos.

NOTIFYING THE VA

If you're receiving VA benefits, federal regulations say that you must notify the VA immediately if you're incarcerated. If you don't, the VA will almost certainly learn about the incarceration sooner or later, by checking state and federal databases. If you received VA payments you weren't entitled to, the VA will notify you that you've been overpaid. For information about dealing with overpayments, visit www.stp-sf.org/guides/overpay.

Once the VA learns that you're incarcerated, it will assume that you remain incarcerated until you submit proof of when you were released.

If you were released on parole, ask your parole agent for a letter showing the date you were incarcerated and the date you were released, and stating whether you were convicted of a felony or a misdemeanor.

The letter must be on government stationery, must be signed and dated, and must include the parole agent's telephone number. Ask your agent for an original

letter, because the VA will almost never accept a photocopy, fax, or e-mail for this purpose.

Your parole agent may want to give you a copy of your “movement history” within the prison system instead of writing a letter for you. Be warned: the VA is almost never willing to accept a “movement history” as sufficient proof of your release date.

If you weren't released on parole, you'll need to contact the jail or prison where you were incarcerated, asking for a letter identical to the one described above.

For help in submitting proof of your release, check with a VSO.

Disclaimer

This memorandum provides general information only. It does not constitute legal advice, nor does it substitute for the advice of an expert representative or attorney who knows the particulars of your case. Any use you make of the information in this memorandum is at your own risk. We have made every effort to provide reliable, up-to-date information, but we do not guarantee its accuracy. The information in this memorandum is current as of December 2012.

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