

**CHAPTER 9. PERSIAN GULF CONFLICT
VETERANS' BENEFIT PROGRAM**

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Authority

The provisions of this Chapter 9 issued under section 9 of the Persian Gulf Conflict Veterans' Benefit Act (51 P. S. § 20309).

Source

The provisions of this Chapter 9 adopted April 18, 2008, effective April 19, 2008, 38 Pa.B. 1823, unless otherwise noted.

§ 9.1. Purpose.

Section 9 of the act (51 P. S. § 20309) directs the Adjutant General to promulgate rules and regulations to implement, administer and enforce the act establishing the Program.

§ 9.2. Definitions.

In addition to the definitions in section 2 of the act (51 P. S. § 20302), the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Act—The Persian Gulf Conflict Veterans' Benefit Act (51 P. S. §§ 20301—20315).

Active duty—The meaning as defined in 10 U.S.C. § 101(d)(1) (relating to definitions).

Active service—

- (i) For a member of an active component of the armed forces of the United States, the time served on active duty for which the member has received or is eligible to receive the Southwest Asia Service Medal for service related to the Persian Gulf Conflict Theater; for a member of the Pennsylvania National Guard or a reserve component of the armed forces of the

United States, time served on active duty for the support of operations in the Persian Gulf Conflict Theater whether or not that service was in the Theater.

(ii) The term includes time spent in hospitals as a result of service-connected wounds, diseases or injuries sustained on active service. Proof of this service shall be the official military records of the United States or other evidence as deemed sufficient by the Adjutant General.

(iii) The term does not include time served on active duty for annual training or schooling, except for training and schooling in preparation for active duty in the Persian Gulf Conflict Theater.

Applicant—The individual who, or facility which, submits an application for payment under the Program.

Bonus—The benefit payment made to eligible veterans or their survivors under the act.

Bureau—The Bureau for Veterans' Affairs of the Department.

Department—The Department of Military Affairs.

Deputy Adjutant General for Veterans' Affairs—The Deputy Adjutant General of the Department with general responsibilities for administration of veterans programs who oversees the Bureau for Veterans' Affairs and exercises the powers and duties described generally in 51 Pa.C.S. Chapter 17, Subchapter B (relating to Deputy Adjutant General for Veterans' Affairs).

Facility—A mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center or other organizational unit, or treatment, care, rehabilitation or detention of mentally disabled persons.

Legal resident of this Commonwealth—A member of the United States Armed Forces, a reserve component of the United States Armed Forces or the Pennsylvania National Guard whose home of record at the time of the Persian Gulf Conflict was this Commonwealth or any specific place in this Commonwealth without regard to the place of enlistment, commission or induction.

Member—A member of the Armed Forces of the United States or a reserve component of the Armed Forces of the United States, including the Army National Guard of the United States or the Air National Guard of the United States.

Parent—

(i) The natural or adoptive parent of the veteran.

(ii) The term includes persons who, for a period of at least 1 year, acted in the capacity of a foster parent to the veteran immediately prior to the veteran having attained 18 years of age.

Persian Gulf Conflict Theater or Theater—The area defined as the Persian Gulf Conflict Theater of Operations as established by the United States Department of Defense for the awarding of the Southwest Asia Service Medal for the period of time from August 2, 1990, through August 31, 1991.

Program—The Persian Gulf Conflict Veterans' Benefit Program established by the act.

Veteran—

(i) A member or former member of the armed forces of the United States, including a member of the Army National Guard of the United States, the Air National Guard of the United States or a reserve component of the armed forces, who was ordered into or volunteered to serve on active duty in the Persian Gulf Theater of operations during the period from August 2, 1990, to August 31, 1991, and has received the Southwest Asia Service Medal established by Executive Order 12754, 12 March 1991.

(ii) The term does not include an individual who:

(A) At any time during the Persian Gulf Conflict or thereafter, was separated from the armed forces under other than honorable conditions.

(B) Has renounced his United States citizenship.

Cross References

This section cited in 43 Pa. Code § 9.3 (relating to veteran status).

§ 9.3. Veteran status.

(a) To qualify for payment of the bonus under the Program, an applicant shall establish to the satisfaction of the Department that the person for whom the bonus payment is sought is a veteran as defined in the act and § 9.2 (relating to definitions). The applicant shall show that the person to whom or on behalf of whom the bonus payment is sought meets the following requirements:

(1) Was a member of the armed forces of the United States or a reserve component of the armed forces, including the Army National Guard of the United States and the Air National Guard of the United States.

(2) Served on active duty in the Persian Gulf Theater during any part of the period from August 2, 1990, to August 31, 1991.

(3) Received the Southwest Asia Service Medal established by Executive Order 12754, 12 March 1991. Individuals authorized the Southwest Asia Service Medal shall have served in support of Operation Desert Shield or Desert Storm, in one or more of the following areas, between 2 August 1990 and 31 August 1991: Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10° North latitude and west of 68° East longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates. Individuals serving in Israel, Egypt, Turkey, Syria and Jordan (including the airspace and territorial waters) directly supporting combat operations between 17 January 1991 and 11 April 1991 are also eligible for this award.

(b) In addition, to be considered a veteran for purposes of the Program, the applicant shall certify that he:

- (1) Was not, at any time during the Persian Gulf Conflict or thereafter, separated from the armed forces under other than honorable conditions (including a bad conduct or dishonorable discharge or an administrative discharge under other than honorable conditions).
- (2) Did not, at any time, renounce United States citizenship.

§ 9.4. Legal residence.

(a) *Proof of residence.* In addition to establishing the veteran status of the person for or on behalf of whom the bonus payment is sought, the applicant shall establish to the satisfaction of the Department that the individual was a legal resident of this Commonwealth at the time of service qualifying for payment of the bonus during the period August 2, 1990, to August 31, 1991. The proof of residence shall be the official records of the United States or other evidence deemed sufficient by the Adjutant General. A legal resident of this Commonwealth is an individual for whom this Commonwealth was the state of domicile and who did not claim legal residence in any other state for any purpose. A service member's legal residence in this Commonwealth is not changed by virtue of military assignment to another state.

(b) *Home of record in this Commonwealth shown in official military records.* A veteran whose home of record is listed in this Commonwealth in official military records showing qualifying service during the period August 2, 1990, to August 31, 1991, will be considered a legal resident of this Commonwealth without regard to the veteran's place of enlistment, commission or induction.

(c) *Home of record in this Commonwealth not shown in official military records.* In making a determination of legal residence in cases where official military records do not show this Commonwealth as the applicant's home of record for the period of service, the Department will apply a rebuttable presumption that the veteran was not a legal resident of this Commonwealth. The applicant can rebut this presumption by showing facts and circumstances establishing that this Commonwealth was the applicant's legal residence in that it was his permanent place of abode to which the applicant had an intent to return.

(d) *Documentation.* If an applicant is unable to show legal residence in this Commonwealth by means of official military records showing a home of record in this Commonwealth during the period of service, the Department may consider the following documentation when determining whether sufficient evidence exists to show by a preponderance of the available evidence that the veteran was a legal resident of this Commonwealth who did not claim legal residence in any other state at that time:

- (1) Voter registration records for the period August 2, 1990, to August 31, 1991.
- (2) Proof of payment of State Income Tax as a resident for 1990 or 1991.
- (3) Pennsylvania driver's license or Pennsylvania Identification Card and similar documentation for 1990 or 1991.

(4) Other proof of Pennsylvania residence address in 1990 or 1991, including high school diploma or attendance record for Pennsylvania high school, real estate records, utility receipts and other records showing residence in this Commonwealth.

(5) An affidavit of residence submitted by the applicant under penalty of law in which the applicant swears or affirms that the veteran on whose behalf the bonus payment was sought remained a legal resident of this Commonwealth and did not claim legal residence in any other state for any purpose during the period August 2, 1990, to August 31, 1991. A service member's legal residence in this Commonwealth is not changed by virtue of military assignment to another state.

(e) *Exclusion.* An individual who received from any other state in the United States, a bonus, gratuity or compensation similar in nature or purpose to the bonus payable under the act is ineligible for a bonus payment under the act. Applicants shall certify as part of the application that the veteran did not receive the compensation or benefit payment from any other state. This exclusion does not apply to bonus, gratuity, compensation or benefit payments from the United States Government.

§ 9.5. Calculation of bonus payments based on months of active service.

(a) *Eligible veterans of Persian Gulf Conflict active service in the active armed forces.* Bonus payments, not to exceed \$525, will be calculated on the basis of \$75 for the first month for which the member completed 1 day of active service, as described in this chapter, and \$75 for each full month or major fraction of a month thereafter for which the eligible veteran completed active service. For eligible veterans of Persian Gulf Conflict service in the active armed forces, "active service" is considered:

(1) Active duty in the Persian Gulf Theater of Operations for which the member received or was eligible to receive the Southwest Area Service Medal for service related to the Persian Gulf Conflict Theater.

(2) Time spent in hospitals during the period August 2, 1990, to August 31, 1991 as a result of service-connected wounds, diseases or injuries sustained while on active duty in the Persian Gulf Theater.

(b) *Eligible veterans of Persian Gulf Conflict active service in reserve components.* Bonus payments, not to exceed \$525, will be calculated on the basis of \$75 for the first month for which the member completed 1 day of active service and \$75 for each full month or major fraction of a month thereafter for which the eligible veteran completed active service. For eligible veterans of Persian Gulf Conflict service in the reserve components of the armed forces, active service is considered:

(1) Active duty in the Persian Gulf Theater for which the member received or was eligible to receive the Southwest Area Service Medal for service related to the Persian Gulf Conflict Theater.

(2) Time spent in hospitals during the period August 2, 1990, to August 31, 1991 as a result of service-connected wounds, diseases or injuries sustained while on active duty in the Persian Gulf Theater.

(3) Time served on active duty during the period August 2, 1990, to August 31, 1991, for support of operations in the Persian Gulf Theater whether or not the service was in the Theater, provided that, to be considered eligible a reserve component, a veteran shall still demonstrate service in the Theater sufficient to qualify for award of the Southwest Asia Service Medal.

(4) Time served on active duty in training and schooling (other than annual training or schooling), during the period August 2, 1990, to August 31, 1991, when the applicant can demonstrate to the satisfaction of the Department that the training and schooling was in direct preparation for deployment on active duty to the Persian Gulf Theater. To be considered eligible, a reserve component veteran shall still demonstrate service in the Theater of Operations sufficient to qualify for award of the Southwest Asia Service Medal.

(c) *Documentation.* Completion of qualifying active service shall ordinarily be documented by official military service records showing dates and places of services. Evidence contained in official military service records will be deemed sufficient documentation. The Department will, upon request, consider documentary evidence submitted by applicants.

Cross References

This section cited in 43 Pa. Code § 9.6 (relating to compensation on behalf of deceased veterans); 43 Pa. Code § 9.7 (relating to compensation of prisoner of war); and 43 Pa. Code § 9.8 (relating to applicants on behalf of deceased veterans).

§ 9.6. Compensation on behalf of deceased veterans.

(a) *Compensation.* In addition to bonus payments calculated based on months of active service under § 9.5 (relating to calculation of bonus payment based on months of active service), the eligible survivors of a deceased veteran as described in section 5(b) of the act (51 P. S. § 20305(b)) shall be eligible for payment of \$5,000 when one of the following applies:

(1) The veteran died while in performance of “active service” as defined in section 2 of the act (51 P. S. § 20302) and § 9.5 during any part of the period from August 2, 1990, to August 31, 1991.

(2) The veteran died as result of service-connected wounds, diseases or injuries incurred during the period of “active service” as defined in section 2 of the act and § 9.5. The cause of death shall be documented by the United States Armed Forces or the United States Department of Veterans’ Affairs to be the direct and proximate result of the service-connected wounds, diseases or injuries, and there may be no intervening cause of death.

(b) *Documentation.* Official military records of the United States Armed Forces or the United States Department of Veterans Affairs describing the circum-

stances of the death of an eligible veteran while performing active service or as result of service-connected wounds, diseases or injuries incurred in active service will be considered sufficient documentation.

Cross References

This section cited in 43 Pa. Code § 9.7 (relating to compensation of prisoner of war); and in 43 Pa. Code § 9.8 (relating to applicants on behalf of deceased veterans).

§ 9.7. Compensation of prisoner of war.

(a) *Compensation.* Consistent with section 3(d) of the act (51 P. S. § 20303(d)), a veteran who was declared and recognized as a prisoner of war as a result of active service during any part of the period from August 2, 1990, until August 31, 1991, shall be eligible for a bonus payment of \$5,000 in addition to any compensation paid under § 9.5 or § 9.6 (relating to calculation of bonus payment based on months of active service; and compensation on behalf of deceased veterans) and regardless of the duration of imprisonment.

(b) *Documentation.* Official military records of the United States Armed Forces designating the eligible veteran as a prisoner of war during the Persian Gulf Conflict will be considered sufficient documentation.

§ 9.8. Applicants on behalf of deceased veterans.

(a) *Payment.* Consistent with section 5(b) of the act (51 P. S. § 20305(b)), the following individuals shall be eligible for payment of compensation on behalf of eligible deceased veterans. Eligible deceased veterans may include eligible veterans who died in performance of active service or as a result of service-connected wounds, diseases or injuries as described in § 9.6 (relating to compensation on behalf of deceased veterans), and veterans who would, but for their death prior to submission of an application for benefits, been eligible for bonus payments based on active service under § 9.5 (relating to calculation of bonus payment based on months of active service). Applicants will be considered in the following order:

(1) The surviving spouse of the eligible veteran unless the surviving spouse was living separate and apart from the veteran at the time the veteran commenced active service. Proof of spousal status shall be the same as would be accepted by the United States Department of Veterans Affairs. The surviving spouse shall certify that he was not living separate and apart from the eligible veteran when the veteran commenced active service. If a surviving spouse applies or is qualified to apply, the entire payment shall be made to the surviving spouse.

(2) The surviving children of the eligible veteran in equal shares, share and share alike, provided there is no eligible surviving spouse. The surviving children shall certify that there is no eligible surviving spouse as part of the application for the benefit.

(3) The surviving parents of the eligible veteran in equal shares, share and share alike, provided there is no eligible surviving spouse and no eligible surviving children. The surviving parents shall certify that there are no eligible surviving spouse or children as part of the application for the benefit.

(b) *Disputes.* If the eligibility of a surviving spouse, surviving children or surviving parents is disputed, the Department will defer payment of the bonus until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue.

§ 9.9. Applicants on behalf of incompetent veterans.

(a) *Payment.* Consistent with section 5(a) of the act (51 P. S. § 20305(a)), the following individuals shall be eligible for payment of compensation on behalf of eligible incompetent veterans. A veteran shall be considered as an incompetent veteran if he has been so declared by a court of competent jurisdiction. Payments shall be used for the benefit of the incapacitated veteran. Applicants will be considered in the following order:

(1) Court-appointed guardian of the eligible veteran.

(2) The surviving spouse of the eligible veteran unless the spouse was living separate and apart from the veteran at the time the veteran commenced “active service” as defined in section 2 of the act (51 P. S. § 20302). Proof of spousal status shall be the same as would be accepted by the United States Department of Veterans’ Affairs. The spouse shall certify that he was not living separate and apart from the eligible veteran when the veteran commenced active service. The spouse shall certify that there is no court-appointed guardian of the eligible veteran.

(3) The surviving children of the eligible veteran. The children shall certify that there is no court-appointed guardian or eligible spouse as part of the application for the benefit.

(4) The surviving parents of the eligible veteran provided there are no court-appointed guardian, eligible spouse and no eligible children. The parents shall certify that there are no eligible court-appointed guardian, spouse or children as part of the application for the benefit.

(5) The facility, as defined in section 5(c) of the act, providing care and services to the eligible veteran, provided that there are no court-appointed guardian, eligible spouse, children or parents and the facility so certifies. The bonus payment shall be used for clothing and incidental needs of the veteran and may not be used to pay for the maintenance of the veteran in the facility.

(b) *Disputes.* If the eligibility of an applicant under subsection (a) is disputed, the Department will defer payment of the bonus until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue.

§ 9.10. Compensation of eligible veterans who die after submitting application but before payment.

(a) An applicant for compensation under the Program shall, in the application, set forth the name and address of one or more designated beneficiaries who would receive compensation in the event the applicant dies before payment.

(b) If an applicant dies after applying for the bonus but before payment and has designated a beneficiary as part of the application for the benefit, the Department will pay the designated beneficiary the benefit upon proof of identity.

(c) If an applicant fails to designate a beneficiary or no person designated as a beneficiary survives the applicant, payment will not be made and the right to compensation under the Program will cease.

§ 9.11. Penalty for charging fees.

In the event the Department receives a complaint under section 8 of the act (51 P. S. § 20308) that a person has charged a fee for assisting a veteran in applying for the benefits provided by the act, the Department will refer the complaint to the appropriate district attorney or law enforcement agency.

§ 9.12. Application procedures.

(a) *Forms.* Application for benefits under the Program must be made on forms provided by the Department. Forms may be obtained from the Department, county directors of veterans' affairs, veterans' services organizations and on-line at the Department's web site at www.dmva.state.pa.us.

(b) *Submission.* Applications shall be submitted to the address designated by the Department on the application form.

(c) *Additional documentation.* Applications must be accompanied by copies of supporting documentation from official military records of the United States Armed Forces or its reserve components including DD Form 214s or similar documentation showing periods of active service, military orders, certificate of award of Southwest Asia Service Medal, documentation of home of record, and other documentation specified in this chapter and the application form.

(d) *Review of applications.* The Department, or a contractor or designee, will conduct a review of applications for completeness. If the application is deemed complete, the Department, or a contractor or designee, will review the application to determine eligibility for the benefits provided by the Program and to calculate the amount of compensation.

(e) *Incomplete applications.* Incomplete applications will be returned to the applicant, but the date of receipt of the incomplete application will be noted and considered the date of application provided a completed application is submitted within 6 months after the return of the incomplete application.

(f) *Denial.* The Bureau will review and approve all denials of benefits proposed by a contractor or designee before notice of the denial is sent to an applicant.

(g) *Time.* The Department will, by notice published in the *Pennsylvania Bulletin*, provide official notice of when applications will be available and when they may be submitted. Notice will also be provided by news release and by publication on the DMVA web site at www.dmva.state.pa.us. Applications will not be accepted after August 31, 2015.

§ 9.13. Reconsideration and appeals.

(a) *Reconsideration.* An applicant who is dissatisfied with the disposition of the application may ask the Deputy Adjutant General for Veterans' Affairs to reconsider the disposition. A request for reconsideration shall be filed within 30 days of receipt of the initial disposition of the application. The request for reconsideration, which may be in the form of a letter or memorandum, should state why the applicant is dissatisfied with the disposition and state the reasons, including facts and circumstances, why the applicant believes the disposition should be altered. The Deputy Adjutant General will respond in writing to requests for reconsideration within 60 days of receipt.

(b) *Appeal.* A person aggrieved by decision of the Deputy Adjutant General for Veterans' Affairs after reconsideration under subsection (a) may, within 30 days of receipt of the decision, appeal in writing to the Adjutant General. The Adjutant General will adjudicate the appeal in accordance with the 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

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