Administration of Allowance - War Veterans Allowance Program

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Purpose

This policy describes the circumstances upon which the allowance payment may be administered by the Minister or a person or agency selected by the Minister.

Policy

General

1. The Department recognizes the independence of its clients and will not interfere with a client's wishes unless the client specifically requests that his/her account be administered and/or there is evidence that the client is incapable of managing his/her own affairs.
2. The Department will first provide information to clients and/or their families as to the various alternatives available. The Department will not consider administration of an allowance until all alternatives have been explored and documented. (See paragraph 12 for “Alternatives to Administration”.)
3. Where no other alternatives exist, the Department will render a decision under this subparagraph and will appoint, with the client's agreement if possible, an administrator.

Administration of Allowance

4. Under subsection 15(2) of the *War Veterans Allowance Act*, the Department may appoint either:

a. a person or agency; or
b. the Department, itself. This type of appointment would only be considered as a last resort. When the Department does administer an account, every effort will be made to encourage clients to resume responsibility for managing their own affairs.

Circumstances Requiring a Decision to Formally Administer a Client's Account

5. Administration may be directed in either of the following scenarios:
   a. *Client incapable of managing affairs:* The Department may exercise its discretion to appoint an administrator when clients are found incapable of managing their own affairs by reason of disability or illness or other cause, and a suitable alternative cannot be found. The determining factor in ascertaining client incapability is whether the client is able to understand information that is relevant to making decisions regarding monies paid to them by Veterans Affairs Canada. Administration may be authorized in such circumstances if it is determined that provincial authorities have not intervened and alternative arrangements cannot be put in place.
   b. *Client consent/request:* In this scenario, the client is capable of consenting to/requesting formal administration, and such consent must be documented. Clients should be asked to demonstrate why they are incapable of managing their own affairs and explain why they cannot locate an alternative individual or agency before the Department will agree to administration. Clients must be informed of all available alternatives and advised that administration is acceptable only as a last resort.

Interim Administration by the Department

6. In cases where the Department is concerned about the monies being administered for the client, it may appoint itself as administrator pending a review of the client's circumstances.

Annual Review

7. The Department will ensure that an annual review is completed in all cases where an administrator is appointed.

Other Monies under VAC Administration

8. Under the *Regulations Respecting the Guardianship of Veterans' Property*, section 3, "the Deputy Minister may receive and retain any property of, or moneys payable to or on behalf of, any person who is being or has been cared for under the provisions of the Act ('DVA Act') either by medical treatment, training or otherwise, or his dependants."
9. If the Department is administering a client's account **as a last resort**, the Department may administer other payments to the client such as Old Age Security, Canada Pension Plan, Supplement Benefits such as Guaranteed Annual Income System (GAINS), retirement pensions.
10. If the client is no longer eligible to receive payments from VAC but is eligible for treatment benefits under the *Veterans Health Care Regulations*, the Department must review the circumstances of the case and make a determination as to whether it will continue to administer.

Disposal of Estate Accounts

11. The balance of the administered account at the date of the client's death will be distributed in accordance with the relevant legislation.

Alternatives to Administration of Allowance

12. Clients and/or their families are to be informed regarding the various alternative arrangements such as Public Trustee, joint bank accounts, guardianship, or powers of attorney.
    a. Public Trustee/Curator (in Quebec, “Curateur public”), Guardian or Committee (in Quebec, “Tuteur”, and “Comité”):
        i. The appointment of a trustee, in effect, withdraws a fundamental freedom from individuals to control their own affairs (financial or otherwise). Such appointment takes place when individuals have been found, pursuant to provincial legislation or as a result of a finding by a court, to be incapable of managing their affairs.
        ii. Provinces/territories have jurisdiction in matters regarding the management of an individual's personal care, finances and property. The Department should bear in mind that relying on decisions rendered in accordance with provincial legislation present the minimum risk of legal liability to the Minister.
        iii. Therefore, when the Department receives advice from one of the Offices of the PublicTrustee/Curator that they have been appointed to manage an individual's affairs, and obtains satisfactory evidence of the appointment, then without compelling evidence to the contrary, the Department should make payments payable to the client c/o the Public Trustee/Curator. As well, similar action should be taken by the Department once evidence is received that an individual or agency has been duly appointed trustee, guardian or committee by order of the court.
        iv. In cases where the Public Trustee has been appointed Trustee, the Department must ensure that spousal benefits or any other additional benefits continue to be paid as required by our Act.
    b. Power of Attorney (in Quebec, “Procuration”):
        i. A power of attorney exists when an individual (the donor or principal) authorizes another person or agency (the donee) to act on one's behalf in specific situations. Authority may be granted to make decisions on financial or non-financial matters.
        ii. A power of attorney remains in effect until it is voluntarily revoked by the donor or principal, or involuntarily revoked through bankruptcy, insanity or death. It should be noted that, in some provinces, a power of attorney may be established in such a manner that it continues or endures despite insanity/incapacity.
        iii. A donor or principle cannot grant a power of attorney if, at the time of the grant, he or she is mentally incompetent. The Department must investigate any instance where the power of attorney is granted by a client whose mental competency at the time of executing the power of attorney is in question

            A departmental employee cannot, in the course of doing his/her job, become a power of attorney for a client.
    c. Joint Bank Accounts & Direct Deposits:
        i. If the client’s mental competency is not in question, an alternative arrangement such as direct deposit should be explained to the client. Direct deposit must be to a bank account in the client’s name or a joint bank account for the client and another person.

References

War Veterans Allowance Act

Pension Act - articles 31(1), 31(2) and 41(1)

Department of Veterans Affairs Act - 5.1(4)

Financial Administration Act

Guardianship of Veterans' Property Regulations – articles 3 and 12

Veterans Health Care Regulations

Payments to Estates Regulations, 1996