Veterans Affairs Canada | Anciens Combattants Canada

Administration of Benefits

Issuing Authority: Director General, Policy
Effective Date: 28 November 2013
Document ID: 1187

This policy replaces the following PPM policies: Article 34(4) - Administration of Pension for a Child; Article 41(1)(a) - Administration of Pension.

Table of Contents

Purpose
Policy
General
Alternatives to Administration
Circumstances Requiring a Decision to Administer the Client's Account
Interim Administration by the Department
Annual Review
Other Monies under VAC Administration
Disposal of Estate Accounts
References

Purpose

To provide guidance on the limited circumstances in which the administration of benefits by the Department should be considered and the alternatives that are available.

Policy

General

1. The *Pension Act* permits that the Department may direct that the award payable to a person may be administered for the benefit of that person or any individual in respect of whom additional pension is payable, or both, by the Department or by a person or agency selected by the Department where it appears that the person to whom an award is payable is.
    a. incapable of managing their own affairs by reason of infirmity, illness or other cause; or,
    b. not maintaining an individual in respect of whom additional pension is payable in accordance with Schedule 1 of the *Pension Act.*
2. The *Pension Act* also permits that the Department may direct that the pension for a child may be paid to the child's mother or father, or to the child's guardian, or to any person approved by the Minister, or direct that the pension be administered by the Department.
3. There is no authority in the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* for the Department to appoint an Administrator or become the Administrator in any circumstance.

4. The independence of the individual must be respected and the Department should not interfere unless:
    a. the individual specifically requests that his/her account be administered; and/or,
    b. there is evidence that the individual is incapable of managing his/her own affairs.
5. Before Administration is considered, the individuals and/or their families should be provided information as to the various alternatives available.
6. The Department must not consider administration of pension until all alternatives have been explored and documented.

Alternatives to Administration

7. Public Trustee/Curator/Guardian or Committee
    a. The appointment of a trustee, guardian or committee by a court withdraws a fundamental freedom from individuals to control their own affairs (financial or otherwise). In these circumstances, Provinces/Territories have jurisdiction in matters regarding the management of an individual's personal care, finances and property.
    b. When the Department receives advice from one of the Offices of the Public Trustee/Guardian/Curator that they have been appointed to manage an individual's affairs, and obtains satisfactory evidence of the appointment, the Department should make payments payable to the client c/o the Public Trustee/Guardian/Curator.
    c. 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. In cases where the Public Trustee has been appointed, the Department must ensure that spousal benefits or any other additional benefits continue to be paid as required by our Act.
8. Power of Attorney
    a. A Power of Attorney exists when an individual (the donor or principal) appoints another person (the donee) to act on the donor's behalf in specific situations. Authority may be granted to make decisions on financial or non-financial matters
    b. For the purposes of the *Pension Act*, a Power of Attorney must confer authority with respect to the personal financial affairs of the donor
    c. A Power of Attorney remains in effect until it is voluntarily revoked by the donor or principle, or involuntarily revoked through bankruptcy, insanity, or death. In some provinces, a Power of Attorney may be established in such a manner that it "continues" or "endures" despite insanity or incapacity. A donor or principle cannot grant a Power of Attorney if, at the time of the grant, he or she is mentally incompetent
    d. The Department must investigate any instance where the Power of Attorney is granted by an individual whose mental competency at the time of executing the Power of Attorney is in question.
    e. A Departmental employee cannot, in the course of employment, become a power of attorney for a client
9. Joint Bank Accounts and Direct Deposits
    a. If an individual's mental competency is not in question, an alternative arrangement such as direct deposit should be explained to the client.
    b. Direct deposit must be to a bank account in the individual's name or a joint bank account for the individual and another person. In those cases where an individual and/or private agency is presently managing the Old Age Security (OAS)/ Guaranteed Income Supplement (GIS), Canada Pension Plan (CPP) of the individual, copies of the Certificate of Incapacity will suffice for evidentiary purposes, provided it has been signed by a physician. If the individual has been found mentally incompetent by provincial authorities, the certificate will be acceptable if it has been signed by a physician

10. Administration of Pension
    a. Where no other alternatives exist, the Department can render a decision and appoint, with the individual's agreement if possible, an Administrator if there is evidence that the individual is incapable of managing his/her affairs
    b. The Department may appoint either:
        i. a person or agency; or
        ii. the Department, itself.
    c. Appointment of the Department as the Administrator should only be considered as a last resort. When the Department does administer an account, every effort must be made to encourage individuals to resume responsibility for managing their own affairs.

Circumstances Requiring a Decision to Administer the Client's Account

11. Administration may be directed in two situations:
    a. Individual incapable of managing affairs
        i. The Department may exercise its discretion to appoint an Administrator when individuals are found incapable of managing their own affairs by reason of infirmity or illness or other cause, and a suitable alternative cannot be found.
        ii. The determining factor in ascertaining an individual's incapability is whether the individual is able to understand information that is relevant to making decisions regarding monies paid to them by Veterans Affairs Canada.
        iii. 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. Individual's consent/request:
        i. In this situation, the client is capable of consenting to/requesting Administration and such consent/request must be documented.
        ii. Individuals 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.
        iii. Individuals must be informed of all available alternatives and advised that Administration is acceptable only as a last resort.

Interim Administration by the Department

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

Annual Review

13. The Department must ensure that an annual review is completed and documented in all cases where an Administrator is appointed.

Other Monies under VAC Administration

14. Under the *Guardianship of Veterans' Property Regulations*, section 3, "the Deputy Minister may receive and retain any property of, or moneys payable to or on behalf or, any person who is being or has been cared for under the provisions of the Act (*Department of Veterans Affairs Act*) either by medical treatment, training or otherwise, or his dependants."

15. If the Department is administering an individual's account as a last resort, the Department may administer other payments to the client such as Old Age Security, Canada Pension, Supplement Benefits such as Guaranteed Annual Income System (GAINS), retirement pensions.
16. If the individual 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

17. The balance of the Administered account at the date of the individual's death will be distributed in accordance with the relevant legislation.

References

Veterans Well-being Act

Department of Veterans Affairs Act

Pension Act, subsections 34(4) and 41(1)

Guardianship of Veterans Property Regulations

Veterans Health Care Regulations