

Appendix H

Transitional Compensation for Abused Dependents

H-1. Eligibility

a. Transitional compensation payments are authorized for dependents of Soldiers who have been on active duty for more than 30 days and who, after November 1993 are—

- (1) Separated from active duty under a court-martial sentence that convicted the Soldier of a dependent-abuse offense;
- (2) Administratively separated from active duty if the basis for separation includes a dependent-abuse offense; or
- (3) Sentenced to forfeiture of all pay and allowances by a court-martial which convicted the Soldier of a dependent-abuse offense.

b. Payments to abused Family members are made as follows:

(1) If the Soldier was married when the offense occurred, payment will be made to that spouse or former spouse to whom the Soldier was married at that time, including an amount for each, if any, dependent child of the Soldier who resides in the same household as that spouse or former spouse.

(2) If there is an eligible spouse or former spouse and if there is a dependent child or children of the Soldier who do not reside in the same household as the spouse or former spouse, payments will be made to both the eligible spouse and each such dependent child of the Soldier who does not reside in that household.

(3) If the spouse is ineligible to receive payment under the forfeiture provisions of paragraph H-5, (that is remarriage, cohabitation with the Soldier separated for the dependent-abuse offense, or active participation in the dependent-abuse offense), payments will be made to each dependent child of the separated Soldier who does not reside in the household of the separated Soldier or spouse.

(4) If there is no eligible spouse for reasons other than those in paragraph H-5, (for example, the Soldier has no dependent spouse or the spouse has died), payments will be made to the dependent children of the Soldier who do not reside in the household of the Soldier.

(5) For paragraphs H-1b(2), H-1b(3) and H-1b(4), status as a “dependent child” is determined as of the date of the Soldier’s conviction of the dependent-abuse offense, or as of the date on which the Soldier is administratively separated from active duty, whichever is applicable.

(6) Dependent children in utero.

(a) The National Defense Authorization Act for Fiscal Year 2013 revised the definition of a dependent child to include an unmarried child who was carried during pregnancy (in utero) at the time of the dependent-abuse offense resulting in the separation of the Soldier and was subsequently born alive to the eligible spouse or former spouse.

(b) This regulation implements DOD 7000.14-R, Volume 7B, Chapter 60, February 2015.

(c) Payments for dependent children in utero are effective retroactive to 2 January 2013 and will not cover any period prior to the birth of the child. There is no authority for payments prior to 2 January 2013.

(7) If a recipient is incapable of handling his or her own personal affairs, payments may be made to a court-appointed guardian on behalf of the recipient. In the case of a dependent child under 18 years of age, payments may be made only to a court-appointed guardian or a natural parent (who is not a spouse of the Soldier), if the natural parent has legal custody of the dependent child.

c. Dependents of Soldiers who have experienced a dependent-abuse offense, but who do not meet the criteria as outlined in H-1a, may qualify for exceptional eligibility. The 14 April 08, Department of Defense Policy Memorandum entitled “Exceptional Eligibility for Transitional Compensation for Abused Dependents” authorizes the Secretary of the Army to review and approve cases in which a Soldier was separated from the Army for a non-dependent abuse offense, even though the Soldier committed a dependent-abuse offense. The exceptional eligibility application package will consist of—

(1) DD Form 2698 completed by installation TC POC. The garrison commander must sign block 22a and include the words “Per the 14 Apr 08, DOD Policy Memorandum.” This authority cannot be delegated.

(2) A Memorandum requesting “Exceptional Eligibility” completed and signed by the garrison commander at the installation confirming that the former member engaged in a dependant-abuse offense consistent with the provisions of 10 U.S.C. 1059 and DODI 1342.24, and was separated from active duty other than as described under 10 U.S.C. 1059(b).

(3) A copy of the Soldier’s official Military Personnel Record or other documentation showing the Soldier’s date of entry on active duty and date of expiration of active obligated service.

(4) Official documentation confirming that the former member engaged in a dependent-abuse offense (such as, documentation of Case Review Committee findings, law enforcement records and/or all other relevant documentation regarding the alleged abuse), and the basis for the Soldier’s separation (for example, court-martial conviction that did not include conviction of a dependent-abuse offense or administrative separation that did not include the dependent-abuse offense(s)).

Documentation should provide details which enable Department of the Army authorities to understand how the Soldier was separated from the Army.

(5) A Standard Form (SF) 1199A (Direct Deposit Sign-up Form) completed by the applicant and the financial institution or a voided check/deposit slip with written authorization for direct deposit of payments. If the applicant does not have an account with a financial institution, the applicant may waive direct deposit of payments in writing.

(6) A copy of court orders for custody or guardianship of a dependent child in the case of the applicant being the non-parental legal representative of a dependent child eligible to receive TC benefits.

(7) As the approval authority is the Secretary of the Army, all applications for Transitional Compensation under Exceptional Eligibility circumstances must be forwarded to Headquarters, DA for review regardless of any local recommendations for approval or disapproval.

H-2. Commencement and duration of payments

a. Eligibility for payment will commence on the date a court-martial sentence is adjudged if the sentence includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; or on the date the Soldier's commander initiates administrative separation action. Concurrent payment of transitional compensation and waived forfeitures is authorized for Soldiers receiving a punitive discharge. If the Soldier did not receive a punitive discharge, but did receive total forfeitures, transitional compensation is not authorized for the period in which forfeitures are waived.

b. For applicants whose eligibility for payment, as defined in paragraph H-2*a*, commences prior to 21 January 2011, the duration of payments will be 36 months unless the unserved portion of the Soldier's obligated active duty service is less than 36 months, as of the starting date of payment. In these instances, the duration of payment will be the greater of the unserved portion or 12 months.

c. For applicants whose eligibility for payment, as defined in paragraph H-2*a*, commences on or after 21 January 2011, the duration of payments will be 36 months.

d. No payment will be made for any period before 30 November 1993.

H-3. Monthly payment amounts

a. Monthly payments to a spouse will be at the rate in effect for the payment of Dependency and Indemnity Compensation under 38 USC 1311. If the spouse has custody of a dependent child or children of the Soldier, the amount of monthly compensation to the spouse will be increased for each child by the amount under 38 USC 1311. If payments are made to a child or children pursuant to paragraphs H-1*b* (2), H-1*b*(3) or H-1*b*(4) above, such compensation will be paid in equal shares at the rate in effect under 38 USC 1313.

b. Payments will be prorated for months when payments start or stop in the middle of a month.

(1) When calculating payments for dependent children, if the payment amount does not divide evenly, the youngest child will receive the odd cent.

(2) If the recipient dies, arrears of pay will not be paid.

H-4. Cessation of payments

a. Any payment of transitional compensation that started under H-2 above, will stop effective as of the first day of the first month following the month in which IMCOM notifies the recipient in writing that payment of transitional compensation will cease because—

(1) The court-martial sentence of the separated Soldier was remitted, set aside, or mitigated to a lesser punishment that does not include a dismissal or dishonorable or bad conduct discharge.

(2) The proposed administrative separation was disapproved by competent authority under applicable regulations.

b. The recipient will not be required to repay amounts of transitional compensation received before the effective date of cessation determined under paragraph H-4*a*, except as necessary to recoup any amount that was erroneous when paid.

H-5. Forfeiture provisions

a. Remarriage. If a spouse receiving payments remarries, payments terminate as of the date of the remarriage. Payment will not be renewed if such remarriage is terminated. A dependent child not living in the same household as the remarried spouse or Soldier will remain eligible for transitional compensation payments and benefits.

b. Cohabitation. If the Soldier resides in the same household as the spouse or dependent child to whom compensation is otherwise payable under this section, payment will terminate as of the date the Soldier begins residing in such household. Once payment is terminated for this reason, payment will not resume if the Soldier subsequently moves out of the household. Compensation paid to the dependent spouse prior to the Soldier residing in such a household shall not be recouped.

c. Active participant. If the victim was a dependent child, and the spouse has been found by the garrison commander or designee in the rank of O-4 or higher to have been an active participant in the conduct constituting the dependent-abuse

offense, or to have actively aided or abetted the Soldier in such conduct against that dependent child, the spouse or dependent child living with the spouse will not be paid transitional compensation.

d. Notification. The spouse is required to notify IMCOM and the Defense Finance and Accounting Service-Cleveland Center (DFAS-CL), Transitional Compensation Claims, PO Box 998011, Cleveland, OH 44199-8011, within 30 calendar days of remarriage or the date that the Soldier began to reside with the spouse or dependent child. Dependent children (or, if applicable, the individual receiving payment under paragraph H-1b(5)) are required to notify IMCOM and DFAS-CL within 30 calendar days after the Soldier or ineligible spouse begins to reside in the same household.

e. Annual certification. The spouse will be required to certify annually, through completion of a certificate of eligibility issued by DFAS-CL to all recipients, that he or she has not remarried and is not residing with the Soldier. The certificate of eligibility is sent to the spouse to DFAS-CL annually. Dependent children (or, if applicable, the individual receiving payments under paragraph H-1b(5)) are required to certify annually through completion of the certificate of eligibility, that they are not cohabitating with the Soldier or ineligible spouse. DFAS-CL will notify IMCOM in a timely manner of the recipients who are no longer eligible to receive payments as a result of not completing the annual certification.

H-6. Commissary and exchange benefits

a. While receiving their payments, recipients are entitled to the same commissary and exchange privileges as a dependent of a member of the Armed Forces on active duty for a period of more than 30 days. For overseas installations, the use of commissary and exchanges is subject to host nation agreements in force.

b. If a recipient is eligible or entitled to use the commissary and exchange stores and is also eligible or entitled under another provision of law, eligibility and entitlement will be determined under the other provision of law and not in accordance with this paragraph.

H-7. Identification cards

The recipient of transitional compensation is entitled to receive a Family member identification (ID) card through a military ID card facility. The recipient should present the payment authorization letter from the IMCOM to the chief or designee of the ID card facility to request the issuance of the ID card for the purpose of eligibility. The Army Project Office maintains oversight of the issuance of ID cards for recipients of transitional compensation, and will address questions from the ID card facility chief or designee about policy and procedures for issuance of ID cards.

H-8. Medical and dental benefits

a. A dependent of a Soldier who has received a dishonorable or bad conduct discharge, was dismissed from a uniform service, or was administratively discharged from a uniform service as a result of a dependent-abuse offense, may receive medical or dental care in facilities of the Uniformed Services on a space available basis. In addition, dependents are eligible to receive medical care as TRICARE beneficiaries.

b. Eligible dependents of a member who is eligible for retirement, but who loses eligibility for retired pay because of dependent-abuse misconduct, may receive medical and dental care in accordance with 10 USC 1408(h).

H-9. Claims submission

a. The installation FAP manager or victim advocate or designee will assist the applicant in completing DD Form 2698 and obtain the required documentation. The application and documentation will be mailed or sent via facsimile to IMCOM G-9, Building 2266, 2455 Reynolds Road, Fort Sam Houston, TX 78234-7588.

b. The application package will consist of—

(1) DD Form 2698, on which the applicant will provide the information in section I and in section II, item 23. The applicant must sign and date item 12, Section I. The garrison commander or designee in the rank of O-4 or higher must complete section II and sign and date item 22 to certify the application.

(2) A copy of the Soldier's official military personnel record or other documentation showing the Soldier's date of entry on active duty and date of expiration of active obligated service.

(3) A copy of the court martial promulgating order or the memorandum of intent to initiate an administrative separation, whichever is applicable.

(4) A copy of the charge sheet in the case of a court-martial or in the case of an administrative separation documentation that clearly establishes the offense and the relationship between the offender and the victim.

(5) A SF 1199A, completed by the applicant and the financial institution or a voided check/deposit slip with a written authorization for direct deposit of payments. If the applicant does not have an account with a financial institution, the applicant may waive direct deposit of payments.

(6) A copy of court orders for custody or guardianship of a dependent child in the case of the applicant being the nonparental legal representative of a dependent child eligible to receive benefits.

H-10. Change of eligibility status

The garrison commander or designee in the rank of O-4 or higher will notify IMCOM (IMCOM G-9, Family and MWR Programs) immediately by memorandum or electronically when there is knowledge of any actions identified in paragraphs H-4a(1) and H-4a(2) or H-5a and H-5b that result in a change of eligibility status for a recipient of transitional compensation. IMCOM G-9, Family and MWR Programs will forward this information to DFAS-CL for appropriate action in accordance with H-4a and H-4b and H-5d.