



GARNISHMENT OF VA BENEFITS

SUMMARY OF LAW – VA Office of the General Counsel

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STATUTORY PROVISIONS

- Section 5301(a)(1) of title 38, United States Code, generally exempts VA benefits from any legal or equitable process, such as garnishment.¹
- However, Congress created an exception to section 5301(a) for alimony and child support obligations by enacting the Child Support Enforcement Act, 42 U.S.C. § 659.
- Under section 659, VA disability compensation payable to a Veteran who has waived a portion of his or her military retired or retainer pay to receive the VA benefit could be subject to garnishment for alimony or child support obligations.
- Although Congress specified that such VA disability payments are considered “remuneration for employment” for purposes of garnishment under section 659,² this does not mean that Veterans receiving disability compensation are therefore considered employees of VA. Rather, this means that section 659 authorizes VA, pursuant to proper service of a valid state court order, to withhold, or garnish, a portion of a Veteran’s disability compensation for alimony or child support when a Veteran has waived a portion of his or her military retired or retainer pay to receive the VA benefit.³ The statute does not require that VA beneficiaries actually be employees of VA in order for garnishment to be authorized.

ROSE v. ROSE

- Although section 5301(a)(1) generally prohibits garnishment of VA benefits, the Supreme Court in *Rose v. Rose* held that state courts may enforce support orders against VA compensation payments under certain circumstances *after* a Veteran receives them.⁴

¹ Section 5301(a)(1) provides, in pertinent part, the following:


[p]ayments of benefits due or to become due under any law administered by [VA] shall not be assignable *except to the extent specifically authorized by law*, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

(Emphasis added.)

² See 42 U.S.C. § 659(h)(1)(A)(ii)(V).

³ See 5 C.F.R. §§ 581.301 (requiring “proper service of legal process”), 581.305 (requiring an agency that receives legal process for garnishment for alimony and/or child support to comply with such process unless it is facially invalid). The law also establishes a maximum limit of the amount of aggregate disposable earnings that is subject to garnishment. See 5 C.F.R. § 581.402.

⁴ 481 U.S. 619 (1987).

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- Under the *Rose* decision, state courts may consider the availability of VA benefits in determining the amount of a Veteran's child support obligation and, in fact, may set a support award in an amount that would necessarily require that part of the support award be paid out of VA benefits once they are received by the Veteran.
 - In reaching that determination, the Supreme Court found that states have independent authority to establish child-support obligations and that, because VA disability compensation is intended to benefit both the Veteran and his or her dependents, the states' consideration of such benefits in establishing child-support awards did not contravene Federal law.
 - Some state courts have interpreted *Rose* as carving out an exception to the prohibition of attachment of VA benefits under section 5301(a) for purposes of child support payments. Some state courts have extended the *Rose* holding to alimony payments.
 - *Rose* continues to be an authoritative precedent with regard to Veterans' disability compensation.⁵
 - A Veteran who disagrees with a state court decision on a child support or alimony matter may challenge the decision by pursuing reconsideration or appeal in state court.⁶ Any change in the current law would require legislative amendment of the pertinent federal statutes by Congress.

APPORTIONMENT

- VA benefits may also be apportioned upon application under certain circumstances to provide financial support for a Veteran's dependents.⁷ VA determines whether to apportion and the amount of any apportionment on the basis of the facts presented in each case.
- VA apportionment is a separate basis from garnishment for withholding VA benefits, is authorized under separate and distinct laws, and is reviewable by appeal to the Board of Veterans' Appeals.

⁵ We note that *Rose* is distinguishable from the Supreme Court's decision in *Mansell v. Mansell*, which held that the Former Spouses' Protection Act precludes states from treating as community property divisible upon divorce military retirement pay waived to receive Veterans' disability benefits. 490 U.S. 581, 594-95 (1989). The Court specifically noted that it was not addressing the issue discussed in *Rose*, i.e., whether section 5301(a) (formerly 38 U.S.C. § 3101(a)) independently protects Veterans' benefits from garnishment for the purpose of paying child support. *Id.* at 587 n.6.

⁶ This summary is not intended to provide legal advice or to be a comprehensive statement or analysis of applicable statutes, regulations, and case law governing garnishment. A Veteran in need of legal help may visit VA's website at <http://www.va.gov/OGC/LegalServices.asp>, which contains information about public sources of free legal assistance for Veterans.

⁷ Section 5307 of title 38, United States Code, provides VA with discretionary authority to apportion VA disability compensation benefits. The regulations implementing this law provide that all or any part of compensation payable to a Veteran may be apportioned to the Veteran's spouse, if he or she is not living with the Veteran, or for the benefit of the Veteran's minor children, if the Veteran's children are not in the Veteran's custody and the Veteran is not reasonably discharging responsibility for their support. See 38 C.F.R. §§ 3.450-3.458. While an apportionment to an ex-spouse who has been divorced from the Veteran is not authorized under section 5307, benefits may be apportioned to the children of a Veteran who are in the custody of the Veteran's ex-spouse.