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# bulletin

National Veterans Affairs and Rehabilitation Commission

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## Widows Tax Ends For Some But Not All

A recent federal court ruling voted in favor of restoring Survivor Benefit Plan (SBP) annuities that were wrongly withheld from the surviving spouses of disabled military retirees. The decision in Sharp, et al v. United States, handed down by the U.S. Court of Federal Claims ordered the Department of Defense (DOD) to refund military retiree SBP annuities that were withheld from three widowed spouses who also received veterans' dependency and indemnity compensation (DIC) from the Department of Veterans Affairs. The court found that the DOD's dollar-for-dollar deduction of DIC payments from SBP benefits was based on a faulty interpretation of federal law.

It is important to realize that while this is good news, it only effects widows who remarried after the age of 57.

Before 2003, the DIC program was structured so that a surviving spouse would stop receiving DIC payments if and when a widow remarried. In 2003, though, Congress enacted the Veterans Benefits Act of 2003, Pub. L. No. 108-183, 117 Stat. 2651 (2003), which restored DIC benefits to some surviving spouses who chose to remarry—those surviving spouses who remarried after the age of 57. This provision became effective January 1, 2004.

As previously stated, it was found by the court that DOD was wrong to continue withholding SPB annuities to widows who remarried after age 57 who were receiving DIC because the Veterans Benefits Act of 2003 "modifies or partially repeals" the law that would have enforced the 'widows tax'. American Legion Departments and DSO's now have the hard task of reaching out to possible eligible widows to inform them that this injustice has been righted so they can apply for the benefit. The Defense Department is expected to appeal the ruling.

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