

DMNA Regulation Number 27-9

9/11 Pension Eligibility



**Division of Military and Naval Affairs
330 Old Niskayuna Road
Latham, New York 12110-3514**

**1 September 2025
UNCLASSIFIED**

SUMMARY

- DMNA Regulation Number 27-9, 9/11 Pension Eligibility, 1 September 2025.
- DMNA Regulation 27-9 is a new regulation.
- This regulation serves to establish policy and guidelines for all matters pertinent to the eligibility for, and administration of, the Division of Military and Naval Affairs' (DMNA) 9/11 Pension.
- Applicability: This regulation applies to members of the New York Army National Guard, the New York Air National Guard, the New York Naval Militia, and the New York Guard.

**STATE OF NEW YORK
DIVISION OF MILITARY AND NAVAL AFFAIRS
330 Old Niskayuna Road
Latham, New York 12110-3514**

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**9/11 PENSION
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CHAPTER 1 GENERAL

1-1. PURPOSE. The purpose of this regulation is to establish policy and guidelines for all matters pertinent to filing and qualifying for a World Trade Center performance of duty disability pension and/or assisting a service member's (SM) beneficiaries in becoming eligible for an accidental death benefit resulting from a qualifying World Trade Center condition as administered by DMNA.

1-2. AUTHORITY. This regulation is issued pursuant to New York State Military Law § 217 Pensions (NYS CLS MIL § 217). The Adjutant General (TAG) may waive any provision of this regulation when it is in the best interest of the organized militia and DMNA.

1-3. DEFINITIONS.

a. "Service Member" or "member" shall mean any member of the New York Organized Militia (organized militia: NY Army or Air National Guard, Naval Militia or NY Guard) that was activated on state active duty on or after September 11, 2001, to participate in World Trade Center site rescue, recovery, or cleanup operations as part of such state active duty, and who is determined to have incurred a qualifying World Trade Center condition and meets eligibility criteria as defined in this regulation.

b. "9/11 Pension Board" shall mean the 9/11 Pension Examining Board administered under DMNA Regulation Number 27-10.

c. "Qualifying World Trade Center condition" shall mean a qualifying condition or impairment of health resulting in disability to a member of the organized militia who participated in World Trade Center rescue, recovery, or cleanup operations for a qualifying period.

d. "Qualifying condition or impairment of health" shall mean a qualifying physical condition, or a qualifying psychological condition, or both.

e. "Qualifying physical condition" shall mean one or more of the following: (i) diseases of the upper respiratory tract and mucosae, including conditions such as rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, and upper airway hyper-reactivity, or a combination of such conditions; (ii) diseases of the lower respiratory tract, including but not limited to tracheo-bronchitis, bronchitis, chronic obstructive pulmonary disease, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic; (iii) diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure; (iv) diseases of the skin such as conjunctivitis, contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic or non-specific reactive in nature, caused by exposure or aggravated by exposure; or (v) new onset

diseases resulting from exposure as such diseases occur in the future including cancer, asbestos-related disease, heavy metal poisoning, and musculoskeletal disease.

f. “Qualifying psychological condition” shall mean one or more of the following: (i) diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; or (ii) new onset diseases resulting from exposure as such diseases occur in the future including chronic psychological disease.

g. “Participated in World Trade Center rescue, recovery, or cleanup operations” shall mean any member of the organized militia who: (i) participated in the rescue, recovery, or cleanup operations at the World Trade Center site; (ii) worked at the Fresh Kills Land Fill in New York; (iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan; (iv) manned the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York; or (v) repaired, cleaned or rehabilitated vehicles or equipment, including emergency vehicle radio equipment owned by the city of New York that were contaminated by debris in the World Trade Center site, regardless of whether the work on the repair, cleaning or rehabilitation of said vehicles and equipment was performed within the World Trade Center site, provided such work was performed prior to decontamination of such vehicles or equipment.

h. “World Trade Center site” shall mean anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

i. “Qualifying period” shall mean: (i) any documented period of time within the forty-eight hours after the first airplane hit the towers; or (ii) a total of forty documented hours accumulated any time between September 11, 2001, and September 12, 2002.

CHAPTER 2 OVERVIEW, ELIGIBILITY CRITERIA AND FILING REQUIREMENTS

2-1. OVERVIEW. SMs that participated in the World Trade Center rescue, recovery or cleanup efforts while activated on state active duty (SAD) on or after September 11, 2001, may be able to take advantage of the World Trade Center Presumption established under NYS CLS MIL § 217. It provides a presumption that, if a SM is or becomes permanently disabled due to certain conditions and is unable to perform their job, they can claim the condition was the result of their participation in the World Trade Center rescue, recovery or cleanup operations, unless it can be proven the condition was the result of other factors.

a. If a SM is permanently disabled, this law will help them qualify for a World Trade Center performance of duty disability pension equivalent to a maximum of three-quarters of the SM's final annual SAD pay as provided for under NYS CLS MIL § 217 (1)(b) and/or help their beneficiaries become eligible for an accidental death benefit resulting from a qualifying World Trade Center condition, as administered by DMNA.

b. The deadline for SM or their beneficiaries to file a notice with DMNA of their participation in the World Trade Center rescue, recovery or cleanup efforts is September 11, 2026.

2-2. ELIGIBILITY CRITERIA. To be eligible for this presumption, a SM must have been activated on SAD on or after September 11, 2001, and:

a. Participated in the World Trade Center rescue, recovery, or cleanup operations for (i) any period within the forty-eight hours after the first airplane hit the towers; or (ii) a total of forty hours accumulated any time between September 11, 2001, and September 12, 2002.

b. Have been required to take, and then passed, a physical examination upon entry into SAD, which did not show a qualifying condition. If a SM was not required to take a physical examination, the member or beneficiary may authorize the release of all relevant medical records prior to September 11, 2001, showing no evidence of a qualifying condition.

c. Be found permanently incapacitated by the DMNA 9/11 Pension Review Board due to a qualifying condition or health impairment, and unable to pursue member's usual business or occupation.

2-3. FILING REQUIREMENTS. The deadline for SMs to file a notice (DMNA Form 9/11-A) with DMNA of their participation in the World Trade Center rescue, recovery or cleanup efforts is September 11, 2026.

a. Claimants that meet requirements a and b under 2-2 Eligibility Criteria, must file an Application for World Trade Center Accidental Disability Presumption (DMNA Form 9/11-B) to be considered for benefits under NYS MIL § 217.

b. Claimants may preserve their right to file at some time in the future if they are presently not disabled by filing an Application for World Trade Center Notice (DMNA Form 9/11-A) on or before September 11, 2026.

2-4. RECLASSIFICATION. All existing pension claims approved by DMNA's 9/11 Pension Review Board prior to May 2, 2023, will automatically be reclassified as a performance of duty disability pension equivalent to a maximum of three-quarters of the SM's final annual SAD pay as provided for under NYS CLS MIL § 217 (1)(b).

2-5. PROVISIONS FOR AN ACCIDENTAL DEATH BENEFIT. NYS CLS MIL§ 217 (2)(b) provides for an accidental death benefit equivalent to one-half of a SM's final annual SAD pay to the beneficiaries of any SM who participated in the World Trade Center rescue, recovery or cleanup and whose death is determined to be the result of incurring a qualifying World Trade Center condition. Only a spouse, dependent children or dependent parent, as defined in this regulation, are eligible to receive the accidental death benefit.

a. A claimant's beneficiaries may convert a performance of duty disability pension benefit to an accidental death benefit by filing an Application for Conversion of Service or Disability Retirement to Accidental Death Benefit for Victims of the 2001 World Trade Center Disaster (DMNA Form 9/11-D) if:

- (1) A claimant, or their eligible beneficiary in the event of the claimant's death, filed an Application for World Trade Center Notice (DMNA Form 9/11-A) by September 11, 2026;
- (2) The claimant has been retired 25 years or less at the time of their death; and
- (3) It is determined that the cause of death was the result of a qualifying condition.

b. The accidental death benefit can only be paid to the following beneficiaries, in this order:

(1) The SM's surviving spouse to continue during their widowhood. If the SM leaves no surviving spouse, or if their surviving spouse shall die or remarry before all their children shall have attained age twenty-one or sooner die, then to

(2) The SM's surviving child or children under age twenty-one, divided equally, unless unusual circumstances exist. In such instances, the benefits are to be divided in such manner as TAG, in their discretion, shall determine. Pensions shall continue as a joint and survivor pension until every such child shall have attained the age of twenty-one or sooner die. If no widow or widower or child under age twenty-one shall survive the service member, at the time of their death, then to

(3) The SM's dependent parent or dependent parents, as the SM shall have nominated by written designation duly acknowledged and filed with DMNA. Such pension shall continue for the life of the parent(s) so designated. If there is no such designation, then to

(4) The SMs dependent parent or dependent parents, divided equally, unless unusual circumstances exist. In such instances, the benefits are to be divided in such manner as TAG, in their discretion, shall determine. Such pension shall continue for the life of the dependent parent(s) so selected.

c. All the beneficiaries listed above are eligible for annual Cost-of-Living Adjustments after receiving the accidental death benefit for five years. The benefit will be divided equally among the beneficiaries in any one category if the SM has more than one child or dependent parent.

CHAPTER 3 DETERMINATIONS OF QUALIFYING CONDITIONS

3-1. OVERVIEW. To be eligible for a World Trade Center performance of duty disability pension and/or an accidental death benefit resulting from a qualifying World Trade Center condition as set forth in NYS CLS MIL§ 217, DMNA requires a SM to have suffered a qualifying World Trade Center condition, impairment of health, or death as a result of participation in World Trade Center rescue, recovery, or cleanup operations. In most instances, DMNA's 9/11 Pension Board will rely on certification of an applicant's condition by Independent Medical Examiners. However, in limited circumstances, the 9/11 Pension Board may evaluate the eligibility of a qualifying condition through the private physician process, subject to verification by TAG.

3-2. INDEPENDENT MEDICAL EXAMINATIONS. Applicants may request an independent medical exam (IME) to certify a qualifying World Trade Center condition by completing a Request for Independent Medical Exam (DMNA Form 9/11-G). DMNA will refer applicants meeting the criteria set forth in the Request for Independent Medical Exam (DMNA Form 9/11-G) with a State contracted or State approved IME provider, who will schedule the exam with the applicant and ultimately provide all medical determinations directly to DMNA. Applicants are entitled to no more than one IME every twelve months and will incur no charges associated with the exam itself.

3-3. PRIVATE PHYSICIAN PROCESS. Determinations as to whether a claim is allowed to proceed under the private physician process, are under the sole discretion of TAG. Approval is typically limited to instances where an applicant is unable to participate in DMNA's IME process without incurring significant, demonstrable hardship. Under such circumstances, DMNA's 9/11 Pension Board may consider private physicians' determinations that predate a SM or beneficiaries' application for benefits under NYS CLS MIL§ 217.

CHAPTER 4 DOCUMENTATION ESTABLISHING PRESENCE

4-1. OVERVIEW. To be eligible for a World Trade Center performance of duty disability pension and/or an accidental death benefit resulting from a qualifying World Trade Center condition as set forth in NYS CLS MIL§ 217, a SM or their beneficiary must provide sufficient documentation establishing participation in World Trade Center rescue, recovery, or cleanup operations. In most instances, while Agency records may support a claim that an individual participated in World Trade Center rescue, recovery, or cleanup operations, they are not dispositive. Therefore, SMs or their beneficiaries, who claim presence based on work with New York's organized militia, will still need to submit other evidence demonstrating that they participated in World Trade Center rescue, recovery, or cleanup operations. In rendering a determination, the 9/11 Pension Board must consider the cumulative weight of all evidence of participation that is provided for its review as part of an application for benefits under NYS CLS MIL§ 217. There are three categories of documents the 9/11 Pension Board will collectively consider; they are: (i) Agency records; (ii) witness presence statements; and (iii) contemporaneous documents.

4-2. AGENCY RECORDS. The 9/11 Pension Board will consider all official DMNA records that are relevant to a SM's participation in World Trade Center rescue, recovery, or cleanup operations.

4-3. WITNESS PRESENCE STATEMENTS. The 9/11 Pension Board will consider statements from individuals with personal knowledge of a SM's participation in World Trade Center rescue, recovery, or cleanup operations. The exclusive method for filing a witness statement is the Witness Presence Statement (DMNA Form 9/11-E); the 9/11 Pension Board cannot consider witness statements filed in any other manner. Further, DMNA records must support service dates correspond with witness statements and timeline presented. Witness statements will not be a sole determining factor for the 9/11 Pension Board.

4-4. CONTEMPORANEOUS DOCUMENTS. The 9/11 Pension Board will consider documents created in real time or in the ordinary course of business between September 11, 2001, and September 12, 2002, that establish a SM's participation in World Trade Center rescue, recovery, or cleanup operations.

**CHAPTER 5
ELIGIBILITY REVIEW AND DETERMINATION**

5-1. PRELIMINARY REVIEW. Upon receipt of a claim, DMNA will confirm that all “minimally required” documents are present and properly executed.

a. World Trade Center Performance of Duty Disability Pension. DMNA requires the documents listed below before a claim can move forward for a substantive review by the DMNA 9/11 Pension Board:

(1) Application for World Trade Center Accidental Disability Presumption (DMNA Form 9/11-B).

(2) Authorization for Release of Health Information Pursuant to HIPAA (DMNA Form 9/11-C).

(3) Witness Presence Statement (DMNA Form 9/11-E) *where applicable

(4) Collateral Source Offsets Disclosure (DMNA Form 9/11-F)

b. World Trade Center Accidental Death Benefit. DMNA requires the documents listed below before a claim can move forward for a substantive review by the DMNA 9/11 Pension Board:

(1) Application for Conversion of Service or Disability Retirement to an Accidental Death Benefit (DMNA Form 9/11-D).

(2) Witness Presence Statement (DMNA Form 9/11-E) *where applicable.

(3) Collateral Source Offsets Disclosure (DMNA Form 9/11-F)

c. DMNA Notice of Intention to File a World Trade Center Claim. In order to be eligible for the benefits set forth in NYS CLS MIL§ 217 in the future DMNA must receive an Application for World Trade Center Notice (DMNA Form 9/11-A) prior to September 11, 2026. Filing this Notice will protect a SM’s rights, and the rights of their beneficiaries to apply for benefits in the future. Once an initial determination as to sufficiency and completeness of the aforementioned documents is complete, DMNA will notify the applicant via mail and/or telephone. If any of the above documents are missing or insufficient, DMNA records do not support SAD service for the eligible period, or if an Independent Medical Examiner notifies DMNA that an applicant’s disability or death are determined not to be the result of incurring a qualifying World Trade Center condition, DMNA will send the applicant a notice stating the same. Once the required documents are received and verified as sufficient DMNA will notify the applicant that their claim is ripe for a substantive eligibility review.

5-2. SUBSTANTIVE ELIGIBILITY REVIEW. All substantive eligibility reviews are conducted by the DMNA 9/11 Pension Board in accordance with DMNA Regulation 27-10. The Board will review the claim to determine if the applicant meets the eligibility criteria set forth in the NYS CLS MIL § 217 and DMNA's implementing regulations based on the information and/or documentation in the claim file. This includes confirming that: (i) the claim was registered by the applicable deadline; (ii) the applicant has/had an eligible 9/11-related physical condition; and (iii) there is sufficient documentation to demonstrate the SM participated in World Trade Center rescue, recovery, or cleanup operations.

5-3. NOTICE OF DETERMINATIONS. Applicants will receive a letter from the DMNA 9/11 Pension Board explaining the eligibility decision on their claim. If an applicant is found to be eligible for compensation, the letter will list the physical injury or conditions for which they have been found eligible. If eligibility is denied, the letter will explain how to appeal the decision or how to amend your claim in the future when you are able to provide additional information for consideration.

CHAPTER 6

CLAIMS FILED ON A SERVICE MEMBER'S BEHALF

6-1. OVERVIEW. Individuals filing a claim on behalf of a SM must demonstrate they have the legal authority to do so. This includes appointed Personal Representatives, Executors of Wills or Administrators of Estates filing a claim for a deceased victim, and court appointed guardians filing a claim for an incapacitated adult.

6-2. LEGAL AUTHORITY. Only individuals authorized by law, or a court order, may pursue a claim on behalf of a SM. In order to process a claim filed by someone other than the SM, DMNA must first validate the individual's authority to represent the SM for the claim. Different types of documentation are required depending on the representative's relationship to the SM. Individuals filing a claim on a SM's behalf must submit the documents that are required for DMNA to validate their authority as an authorized representative. The list of required documents is explained below according to the type of claim you are filing. DMNA does not require applicants to submit original documents.

a. Personal Representative of a Deceased Victim

(1) Death Certificate: If possible, applicants should submit the "long form" version of the death certificate, which lists the cause of death.

(2) Letters of Administration, Letters Testamentary, or other Court Order showing the appointment as the Personal Representative, Executor of Will, or Administrator of the Estate.

i. Court orders may include limitations. Some limitations do not interfere with DMNA's ability to validate the Personal Representative, while other limitations may impact DMNA's ability to process the claim.

ii. If a Letter of Administration, Letter Testamentary, or other Court Order that includes limitations that interfere with DMNA's ability to process or pay a claim, DMNA will advise the applicant in writing and allow for time to obtain the appropriate documentation.

b. Proof of Cause of Death: This may be included on the SM's death certificate. If it is not included on the death certificate, other documents sufficient to show proof of cause of death may include a hospital discharge summary, or the SM's final medical records.

c. Claims with Co-Personal Representatives: If the court has appointed multiple individuals as co-Personal Representatives for the victim's estate, the co-Personal Representatives must designate among themselves who will serve as the Lead Personal Representative ("Lead PR"). The Lead PR is the individual who DMNA will primarily communicate with regarding a claim, and the individual to whom DMNA will issue any payment on the claim.

d. Guardian of an Incapacitated Adult. If the court has appointed a guardian for an incapacitated adult, the applicant must provide a Court Order Appointing Guardianship. DMNA does not generally accept Powers of Attorney to fulfill this requirement.

The proponent office of this regulation is the Legal Affairs Directorate (MNLA). Users of this regulation are invited to send comments and suggested improvements in letter format, directly to The Adjutant General, Division of Military and Naval Affairs, ATTN: MNLA, 330 Old Niskayuna Road, Latham, New York 12110-3514.

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