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SPECIAL REPORT: Veteran Pensions and Benefits

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VETERAN PENSIONS AND BENEFITS

INTRODUCTION

“America’s veterans deserve the best health care and compensation system we can provide.” (Anthony Principi, Secretary of Veterans Affairs, News Release, February 3, 2003). While there are several different commonly known types of VA benefits available to veterans or widow(er)s of veterans, most people are unaware of the benefits available to our senior citizens who need health care assistance. Proper VA benefits planning is an important way to maximize one's income and help cover costly medical expenses; we strongly recommend you seek the counsel of an experienced elder law attorney to assist you in planning for these valuable benefits.

VETERANS PENSION

There is one type of financial benefit that most veterans know nothing about. Yet, it is a primary source of income that elder care attorneys can help them receive.

Veterans or widow(er)s of veterans are entitled to an Improved Pension which will provide a Special Monthly Pension (SMP) to offset the cost of necessary health care. The three types of SMP available are called “**Low Income Pension**,” “**Housebound**” benefits and “**Aid and Attendance**” benefits.

BASIC ELIGIBILITY CRITERIA FOR IMPROVED PENSION, HOUSEBOUND AND AID AND ATTENDANCE BENEFITS

All of the following criteria must be met before a veteran or widow(er) of a veteran can receive Improved Pension benefits:

- **Active Duty.** The veteran must have served at least 90 days of consecutive active duty service, one day of which must have been during a wartime period.
 - Wartime. In general, wartime is:
 - World War I
 - World War II: Dec. 7, 1941 – Dec. 31, 1946
 - Korean War: Jun. 27, 1950 – Jan. 31, 1955
 - Vietnam War: Aug. 5, 1964 – May 7, 1975
 - Gulf War: Aug. 2, 1990 through date to be set by law by Presidential Proclamation
- **Discharge.** The veteran must have received a discharge other than dishonorable.
- **Financial.** The claimant must have limited income and assets available.
- **Disability.** The claimant must have a permanent and total disability at the time of application.

- No Willful Misconduct. The disability must have been caused without willful misconduct of the claimant.
- Signed Application. The veteran or widow(er) signs an application and provides the application to the Department of Veterans Affairs.

LOW INCOME PENSION

General. Low income pension is the VA's equivalent of SSI. The claimant must meet all the criteria above.

Financial. Permissible family income limits vary by year. See the attached Appendix for the current figures.

HOUSEBOUND BENEFITS

Disability. Housebound benefits are available to a veteran or widow(er) of a veteran who is determined to be disabled and is essentially confined to the home. The two ways to prove entitlement include:

- A single permanent disability rated at 100% disability under the VA schedule and confined to the dwelling, or
- A 100% disability with another 60% disability, regardless of whether or not the person is confined to the dwelling.

A disability rating is not required for people aged 65 or older. People aged 65 or older are presumed to be disabled; however, the VA will require a physician's affidavit regarding the claimant's condition.

Income Limits. Permissible family income limits vary by year. See the attached Appendix for the current figures.

AID AND ATTENDANCE

Disability. Aid and Attendance benefits are available to a veteran or widow(er) of a veteran who meets one of the following conditions:

- Claimant is blind;
- Claimant is living in a nursing home; OR
- Claimant is unable to:
 - dress/undress or keep self clean and presentable;
 - unable to attend the wants of nature; OR
 - has a physical or mental incapacity that requires assistance on a regular basis to protect claimant from daily environmental hazards.

Income Limits. Permissible family income limits vary by year. See the attached Appendix for the current figures.

ASSET LIMITS

General. The VA considers the net worth of the individual seeking benefits, excluding the value of the person's home. The standard as to whether a person will be eligible for benefits is whether the person has "sufficient means" to pay for their own care.

Age Analysis. The VA has begun instructing caseworkers to perform an "age analysis" to determine financial need.

Sliding Limit. There is no specific limit on the amount of resources a person may or may not have; however, a commonly used measure, and an amount specifically listed in the M21-1, is \$80,000 or less in countable assets, whether married or single. This figure used to be \$50,000, and some advisors are still using the more conservative figure. Because of the age analysis, a person who is 98 years of age and has \$75,000 in countable assets may not be eligible, whereas a person who is 78 years of age and has \$75,000 in countable assets may be considered eligible.

Assets that are counted toward the "sufficient means" figure of \$80,000 include bank accounts, certificates of deposit, money market accounts, investment accounts, annuities, retirement accounts, life insurance cash surrender values, etc.

INCOME LIMITS

General. With regard to income requirements, the applicant will be denied benefits if the veteran's or widow(er)'s countable income exceeds the maximum permissible family income limits (see attached Appendix for current figures). Countable income is all income attributable to the applicant, the applicant's spouse, and the applicant's dependent children.

Reduction of Income. Although most veterans have income that exceeds the permissible family income limits, unreimbursed medical expenses paid by the claimant may be used to reduce the claimant's countable income. Unreimbursed medical expenses that may reduce income include: doctor's bill, dentist's bills, prescription glasses, Medicare premium deductions and copayments, prescription medications, health insurance premiums, transportation to physician offices, therapy, and funeral expenses. The most beneficial unreimbursed expenses that may reduce countable income are the costs of home health care, assisted living facilities, or skilled nursing homes.

HELPFUL HINTS

Which Benefit to Choose? When applying for Improved Pension benefits, be aware that Aid and Attendance provides a greater income benefit to the eligible applicant; however, the standards of qualification are higher.

Physician's Report. Although an individual is presumed to need Aid and Attendance if living in an assisted living facility or nursing home, Form 21-2680 is a document that a primary physician completes outlining the applicant's current medical condition and health care needs. If an individual lives at home and is housebound, that person will need Form 21-2680 completed by his or her physician to bolster his or her claim for benefits.

Proof of Medical Expenses. When presenting the application to the VA, give the VA a copy of any medical bills or expenses that claimant pays on a regular basis, including the cost of home health aides, or assisted living facility charges. Moreover, it may be helpful to detail all non-medical expenses as well. Providing the information at the time of the application will increase the likelihood of increased monthly benefits.

APPLICATION PROCESS

To file for VA Improved Pension benefits, an applicant must present an application to the Veterans Affairs Office. Applications are now available online; however, the supporting documentation must be sent separately to the VA. Each state has a Regional Office and satellite service offices.

SUPPORTING DOCUMENTATION FOR VA SPECIAL MONTHLY PENSION APPLICATIONS

It is imperative that the applicant obtain copies of certain information to present to the VA along with his or her application. Documents that should always be included are:

- Income statements, Social Security new benefit amount letters, pension statements, copies of pay checks/stubs, all other verification of any other type of income (interest on securities, rental income, etc.).
- Latest bank statements from all financial institutions.
- Retirement account statements.
- Life insurance policies.
- Marriage licenses, divorcee decrees, and/or death certificates for all prior and current spouses of the applicant and the dependent spouse.
- Printout from the pharmacy for all medication of applicant and spouse (and other household members).
- All other medical expenses paid on behalf of applicant and spouse, including fees for home health care, assisted living, and skilled nursing facility.
- Military discharge papers (DD 214).
- Birth certificate.

APPEALING A VA DECISION

After the Regional Office issues a determination, if the applicant disagrees with the determination, he or she can request an evidentiary hearing in front of a hearing officer at the Regional Office. To do so, the applicant files a notice of disagreement to the Regional Office, which is typically in letter form. The VA then issues a statement of the case. The applicant must file a substantive appeal within 60 days of mailing the statement of the case or within one year of filing the claim, whichever is later.

If the appeal to the Regional Office is not successful (and it usually is not), the applicant can appeal to the Board of Veterans' Appeals (BVA). The Board of Veterans' Appeals is the highest tier in the VA adjudication system. The review is de novo and new evidence can be presented.

If the applicant is still not satisfied with the result of the adjudication by the BVA, the applicant can appeal to the U.S. Court of Appeals for Veterans' Claims (CAVC). The Court Appeals for Veterans' Claims is an appellate court in Washington D.C. Very few cases are taken to the CAVC. The CAVC review is of the administrative record created by the BVA; therefore, no new evidence may be presented. At this level, the attorney is mainly drafting briefs and motions. There is a relatively high success rate at the CAVC level.

CONCLUSION

A veteran or widow(er) of a veteran who needs additional health care assistance at home, in an assisted living facility, or in a skilled nursing home should look into whether VA benefits may be available. The additional income an individual receives from the VA may assist him in staying at home or in assisted living for a longer period of time and to avoid going to a nursing home before it is medically necessary. Moreover, the additional income may help the individual preserve his life savings, which can then be used to supplement his spouse's income and assist her in maintaining the same standard of living and quality of life.

We strongly recommend that you seek the assistance of an experienced elder law attorney in applying for these Veterans Benefits. With proper planning, we can help you maximize the benefits to which you may be entitled.

APPENDIX

2017 Virginia Medicaid Information

Divestment Penalty Divisor		Community Spouse Resource Allowance (CSRA)	
Northern Virginia	\$7,734.00	Minimum	\$24,180.00
All Other	\$5,933.00	Maximum	\$120,900.00
Resource Allowance		Monthly Maintenance Needs Allowance (MMNA)	
Individual	\$2,000.00	Minimum	\$2,002.50
Couple - both residing in facility	\$3,000.00	Maximum	\$3,022.50
Monthly Personal Needs Allowance		Standard Allowance	
Nursing Home	\$40.00	Shelter	\$600.75
Auxiliary Grant	\$82.00	Utility	\$287.00
Community Based Care (CBC)	\$1,213.00		

2017 Veteran Benefits Information

WARTIME VETERAN		SURVIVING SPOUSE	
Low Income/Service Pension		Death Benefit	
Veteran with no dependents	\$1,075/mo. \$12,907/yr.	Spouse with no dependents	\$721/mo. \$8,656/yr.
Veteran with one dependent	\$1,408/mo. \$16,902/yr.	Spouse with one dependent	\$944/mo. \$11,330/yr.
Housebound Benefits		Housebound Benefits	
Veteran with no dependents	\$1,314/mo. \$15,773/yr.	Spouse with no dependents	\$881/mo. \$10,580/yr.
Veteran with one dependent	\$1,647/mo. \$19,770/yr.	Spouse with one dependent	\$1,104/mo. \$13,249/yr.
Aid and Attendance		Aid and Attendance	
Veteran with no dependents	\$1,794/mo. \$21,531/yr.	Spouse with no dependents	\$1,153/mo. \$13,836/yr.
Veteran with one dependent	\$2,127/mo. \$25,525/yr.	Spouse with one dependent	\$1,375/mo. \$16,506/yr.
Veteran married to Veteran	\$2,846/mo. \$34,153/yr.		
Each Additional Dependent	\$183/mo. \$2,205/yr.	Each Additional Dependent	\$183/mo. \$2,205/yr.

2017 Tax Information

Annual Gift Tax Exclusion	\$14,000	Federal Estate Tax Exemption	\$5,490,000
Gifts to Non-Citizen Spouse	\$149,000	Personal Exemption	\$4,050

ABOUT THIS HANDOUT

This handout is a summary of the current rules and regulations. This explanation is provided as a courtesy to help you recognize potential elder law problems. It is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent elder law attorney. While every precaution has been taken to make this explanation accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this explanation.



Hook Law Center focuses its practice on estate and tax planning, planning for long-term care and aging, retirement and investment advice, trust and estate administration and probate, guardianships for those unable to make sound decisions, and the unique situations associated with special needs.

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