

## Serving Veteran Clients

### Cultural Competency: Understanding Clients' Backgrounds and Cultural Contexts (15 minutes)

- I. Veteran Clients – Who They Are (2-3 minutes)
  - a. Service branches
  - b. Active v. reserve
  - c. Average servicemember characteristics
  - d. Motivation for joining
  - e. Hierarchy and rank
- II. Veteran Homelessness (1-2 minutes)
  - a. Percentage homeless
  - b. Women veteran percentage homelessness
  - c. Aging veterans percentage homelessness
- III. Post-Service Employment Challenges (1-2 minutes)
  - a. Skills translation
  - b. Overcoming stereotypes
  - c. Unemployment rates
- IV. Mental Illness and Substance Abuse (2-3 minutes)
  - a. PTSD
  - b. TBI
  - c. Substance abuse/Self-medication
- V. Military Sexual Trauma (2-3 minutes)
  - a. Sexual assault in military settings
  - b. Low percentage of reporting during service
- VI. Overall Demographics (1-2 minutes)
  - a. Gender and race
  - b. Age
  - c. Service periods
  - d. Residences
  - e. Education
  - f. Employment
- VII. Special Populations (2-3 minutes)
  - a. Women veterans
    - i. Percentage veterans
    - ii. Percentage active duty
    - iii. Percentage guard/reserves
  - b. Aging veterans
    - i. Percentage
    - ii. Demand on health services
  - c. Incarcerated veterans
    - i. Percentages
    - ii. Proportional to civilian population
  - d. LGBTQ veterans
    - i. Percentages
    - ii. Unique issues faced

## Legal Needs: Anticipating Common Legal Needs of Veteran Clients (20 – 25 minutes)

- I. Ordinary Legal Issues (3-4 minutes)
  - a. Housing
    - i. Landlord/tenant
    - ii. Foreclosure
    - iii. Specialized Housing (e.g. Nursing Homes)
  - b. Estate planning
    - i. Including issues common to elder law practices (e.g. guardianships)
    - ii. Competency can be an issue in accepting representations
  - c. Family law
    - i. Child Support, including issues with Child Support Enforcement and Taxation and Finance
    - ii. Custody and Visitation
  - d. Consumer law and non-consumer debts (i.e. taxes, child support arrears)
  - e. Social Security disability benefits
    - i. Denials
    - ii. Allegations of overpayments
  - f. Public assistance programs
    - i. Denials, terminations, etc.
- II. Servicemembers Civil Relief Act (2-3 minutes)
  - a. Special legal protections for servicemembers: potential defense in the above types of proceedings
  - b. Summary of main protections
- III. Veteran-Specific Legal Issues
  - a. Records Corrections and Discharge Upgrades (1-2 minutes)
    - i. Process for applying for corrections of military records
    - ii. Legal standard
  - b. Veterans benefits (10-12 minutes)
    - i. Non-Service-Connected Pension
      - 1. Eligibility Requirements
      - 2. Application Requirements (including specifying application for pension)
    - ii. Service-Connected Disability Benefits
      - 1. Elements of a Claim (note: VA medical treatment = in-service incident)
      - 2. Legal Presumptions
      - 3. Secondary Claims
      - 4. VA Duty to Assist and Claimant Requirements to Trigger It
      - 5. Multiple Claims for Individual Claimants (+ VA Math)
    - iii. Survivors Benefits: Accrued Benefits, DIC, and Survivors Pension
    - iv. Acquiring Records: Military Records, Claims Records, Medical Records
    - v. Legal Process

1. Notice of Disagreement; VA-9; Appeal to CAVC; Appeal to Federal Circuit
2. Reopening Claims with New and Material Evidence
3. Clear and Material Evidence Standard
- c. VA Health Coverage (< 1 minute)
- d. Financial Issues Related to the VA (1-2 minutes)
  - i. Overpayments and Debts
    1. Debt Management Center
    2. Repayment Plans, Waivers, and Challenges to Debt Allegations
  - ii. Payments by the VA
    1. Non-VA Medical Care (payment VA should make)
    2. Release of Retroactive Benefits to Creditors (payment VA should not make)
- e. Veteran Preferences (3-5 minutes)
  - i. Hiring
    1. Civil Service Preference
    2. Tax benefits for employers
  - ii. Housing, including Mitchell Lama
  - iii. Vending licenses
  - iv. Property tax credits
- f. HUD-VASH

Resources: Knowing About, and Assisting Clients with Accessing, Available Resources for Veterans (15 minutes)

- I. Other Benefits Available to Veterans (3-4 minutes)
  - a. State Benefits
    - i. Veteran hiring preference / tax breaks for employers
  - b. Federal Benefits
    - i. Education benefits, including post-9/11 GI Bill
    - ii. Home Loan benefits
    - iii. Health Care
    - iv. HUD-VASH
- II. Organizations that Provide Assistance to Veterans
  - a. Government Organizations (3-4 minutes)
    - i. State
      1. DVA
      2. VSAs
      3. Local government or Social Services offices (often have departments designated for veteran claimants)
    - ii. Federal (3-4 minutes)
      1. VA
        - a. Case managers / Social Workers
        - b. Other specialized staff: vocational trainers, home loan department, etc.
        - c. Vet Centers (quasi-independent)

- iii. State and Federal elected officeholders often have staff or departments designated for veterans' issues

- b. Non-Government Organizations (3-4 minutes)

- i. VSOs

- ii. SSVF grantees

- iii. Transitional and Permanent Housing Providers

- iv. Legal services organizations

- III. Accreditation (1 minutes)

- a. Apply to VA

- b. CLE requirement

Q & A (10 minutes)

## Serving Veteran Clients

### **Cultural Competency: Understanding Clients' Backgrounds and Cultural Contexts**

#### 1. Veteran Clients – Who They Are

- a. The U.S. Department of Veteran Affairs (VA) defines “veteran” as a person who has served active military service with a discharge under conditions other than dishonorable.
- b. In the greater service provider arena, the definition of “veteran” may be quite broad and could apply regardless of discharge status or service period.
- c. The veteran and military service member population is characterized by a shared experience. This experience is significant enough that knowledge of military culture is necessary to adequately assist this client base.
  - i. Service branches
    1. The United States Armed Forces consists of five branches: Air Force, Army, Navy, Marine Corps, and Coast Guard
      - a. The Marine Corps and Coast Guard are special branches of the Navy
    2. The Army, Navy, Air Force, and Marine Corps are all under the authority of the Department of Defense (DoD)
      - a. The DoD also has authority over the Coast Guard in wartime
      - b. In times of peace, the Coast Guard is under the control of the Department of Homeland Security
    3. The President of the United States is Commander-in-Chief of all five branches.
  - ii. Active v. reserve
    1. Prior to discharge, a service member can be characterized as either active military or Reservist.
      - a. Active duty means one is engaged full-time in military service
        - i. A service member does not need to be deployed to be considered active duty.
      - b. Reservists are inactive members, who are prepared for duty in the event additional manpower is needed
        - i. Reservists may become active for training purposes but most usually hold full-time civilian jobs.
    2. The National Guard refers to state military members who are federally funded but state controlled.
      - a. National Guard members are also separated into active and reserve members.

- b. Generally, Guard members hold civilian jobs and are activated by their state governor in times of emergency, natural disasters, or civil disturbances such as riots.
    - c. In times of national emergency, POTUS can also exercise control over the National Guard.
  - 3. Less than 1% of Americans have served in the U.S. military. Of those that served, even less than that have been in combat.
- iii. Average service member characteristics
  - 1. The average soldier holds rank as an E-4 or Corporal/Specialist.
  - 2. Between age 22 and 28
  - 3. Hold a high school diploma
  - 4. Spend on average 4 years in military service
  - 5. Base Pay: \$1978.50/month
  - 6. Married with children
  - 7. 85% of military population are male and 15% are female
  - 8. For an active duty service member, the average work day is not based on an hourly scale but rather when the mission is complete
- iv. Motivation for joining
  - 1. Career opportunities
  - 2. Service and Honor
  - 3. Education or other benefits
    - a. The GI Bill is a general term used for various education assistance programs administered by the VA
    - b. This bill provides benefits to veterans, service members, and some dependents of disabled or deceased veterans
  - 4. Understanding the reason why a person joined the military may provide more insight into their military experience
- v. Hierarchy and rank
  - 1. Each military branch is heavily dependent on hierarchy and have their own pyramid of authority and responsibilities based on rank.
    - a. Reaching a higher level has more responsibilities, required training to meet those responsibilities, and authority to carry out those responsibilities.
  - 2. Unlike the civilian community, service members wear uniforms with their ranks clearly visible and are readily aware of who to report to and when
    - a. E1 to E3
      - i. enlisted members who perform very specific job functions
    - b. E-4 to E-9
      - i. Non-Commissioned Officers
    - c. W-1 to W-5
      - i. Warrant Officers

- ii. make up 2% of the military
    - iii. highly specialized experts in their field
  - d. O-1 to O-5
    - i. Commissioned Officers
    - ii. makes up about 14% of the military a
    - iii. take on leadership and management roles
    - iv. must have a bachelor's degree or higher

## 2. Veteran Homelessness

- a. In 2010 the White House in conjunction with the VA launched "Opening Doors"
  - i. Initiative created to prevent Veterans from becoming homeless and help those who are homeless find stable housing as quickly as possible.
    - 1. 2015 Point-in-Time Count showed that Veteran homelessness decreased by 36% since the start of "Opening Doors".
    - 2. New Orleans became the first major city to announce that it had ended veteran homelessness
    - 3. In December 2015, New York City Mayor Bill de Blasio stated that the metropolitan area had ended chronic veteran homelessness for those who had been homeless for a year or longer
  - ii. Despite gains, Veteran homelessness still remains due to poverty, lack of access to reasonably priced housing, isolation from family or friends, substance abuse, and mental health challenges
- b. Percentage homeless
  - i. The U.S. Department of Housing and Urban Development (HUD) estimates that 47,725 veterans are homeless on any given night
    - 1. About 1.4 million other veterans at risk of becoming homeless
    - 2. 13% of the homeless adult population are veterans
    - 3. 20% of the male homeless population are veterans
    - 4. Veterans aged 18 to 30 are more than twice as likely to be homeless compared to their non-veteran counterparts
    - 5. About 45% of all homeless veterans are African American or Hispanic, despite only accounting for 10.4% and 3.4% of the U.S. veteran population, respectively.
  - ii. Women veteran percentage homelessness
    - 1. Women veterans are more than twice as likely to be homeless as non-veteran women
    - 2. Female veterans account for 10% of the veteran homeless population
    - 3. Barriers facing homeless women veterans include limited housing for women with children, concerns about personal safety in shelters, and lack of awareness of available programs
  - iii. Aging veterans percentage homelessness
    - 1. 50% of the homeless veteran population are 51 years of age or older

2. This is compared to 19% of homeless non-veterans within the same age range
3. Post-Service Employment Challenges
  - a. Skills translation
  - b. Overcoming stereotypes
  - c. Unemployment rates
    - i. In 2015, the unemployment rate for all veterans was at 4.6%
    - ii. Post 2001 veterans have an unemployment rate of 5.7% among men and 6.4% among women
4. Mental Illness and Substance Abuse
  - a. PTSD
    - i. Post-Traumatic Stress Disorder (PTSD) can occur after having been through a traumatic event in which grave physical harm occurred or was threatened
    - ii. Not everyone gets PTSD. However, it may be PTSD if stress-related actions do not go away over time (more than 3 months) and this stress disrupts an individual's life
      1. An estimated 11%-20% who served in Operation Iraqi Freedom (OIF) or Enduring Freedom (OEF) have PTSD in a given year
      2. 12% of Gulf War Veterans have PTSD in a given year
      3. 30% of Vietnam Veteran have had PTSD in their lifetime
      4. 58% of Post-2001 veterans seen at the VA have been diagnosed with a mental disorder including 32 percent with PTSD and 26 percent with depressive disorder
    - iii. PTSD can contribute to less than honorable discharges and may play a role in high rates of veteran incarceration
  - b. TBI
    - i. Traumatic Brain Injury (TBI) is acquired when a sudden trauma causes damage to the brain
    - ii. This may happen as a result of falls, car accidents and assault
      1. For a veteran, TBI may be from exposure to blasts from explosive devices, grenades, bullets, or mines
    - iii. More than 330,000 service members have been diagnosed with TBI since 2000
    - iv. In 2014, about 33 service members per day had a brain injury
    - v. 22% of all combat casualties from recent conflicts are brain injuries
    - vi. Symptoms of TBI may mimic symptoms of PTSD making it difficult to diagnose
    - vii. Veterans may experience both TBI and PTSD at a given time
  - c. Substance abuse/Self-medication
    - i. Substance abuse can lead to a discharge from the military with an other-than-honorable characterization



- ii. More than 20% of veterans with PTSD also suffer from an addiction or dependence on drugs or alcohol
  - iii. 70% of homeless veterans also experience a substance use disorder
  - iv. In Iraq and Afghanistan, about 1 in 10 returning soldiers seen in the VA have a problem with alcohol or other drugs
  - v. Veterans with PTSD and alcohol problems tend to be binge drinkers
- 5. Military Sexual Trauma
  - a. Sexual assault in military settings
  - b. Low percentage of reporting during service
- 6. Special Populations
  - a. Women veterans
    - ([http://www.va.gov/vetdata/docs/SpecialReports/Women\\_Veterans\\_2016.pdf](http://www.va.gov/vetdata/docs/SpecialReports/Women_Veterans_2016.pdf))
    - i. 2 million of the 21.9 million Veterans are women, or about 9% of the Veteran population are women
    - ii. Female veterans are younger than men Veterans, with a median age of 49 and 64 respectively
    - iii. 14.6% of active duty military are women and that number is estimated to increase to 16% by 2035
    - iv. Women comprise about 10% of the National Guard with more than \$35,000 soldiers
    - v. Women make up nearly 11.6% of Operation Enduring Freedom, Operation Iraqi Freedom, and Operation New Dawn veterans
  - b. Aging veterans
    - i. Demand on health services
  - c. Incarcerated veterans
    - (<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=808>; [http://justiceforvets.org/sites/default/files/files/Veterans%20in%20Jail%20or%20Prison\\_0.pdf](http://justiceforvets.org/sites/default/files/files/Veterans%20in%20Jail%20or%20Prison_0.pdf))
  - d. LGBTQ veterans (<http://www.diversity.va.gov/programs/lgbt.aspx>)
    - i. Percentages
      - 1. There are very few statistics regarding this demographic
      - 2. It is estimated that over 134,000 veterans are transgender and over 15,000 are serving in the military today
      - (<http://www.transequality.org/issues/military-veterans>)
    - ii. Unique issues faced
      - 1. Discrimination
      - 2. Discharge Upgrades
      - 3. Name changes

## **Legal Needs: Anticipating Common Legal Needs of Veteran Clients**

- I. **Ordinary Legal Issues**
  - a. Housing
    - i. Landlord/tenant

- ii. Foreclosure
  - iii. Specialized Housing (e.g. Nursing Homes)
- b. Estate planning
  - i. Including issues common to elder law practices (e.g. guardianships)
  - ii. Competency can be an issue in accepting representations
- c. Family law
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- e. Social Security disability benefits
  - i. Denials
  - ii. Allegations of overpayments
- f. Public assistance programs
  - i. Denials, terminations, etc.

## **II. Servicemembers Civil Relief Act**

Special legal protections for servicemembers: potential defense in the above types of litigation

*What is The Servicemembers Civil Relief Act (SCRA)?*

Protects service members by providing temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of SM during their military service.

*Major Benefits of The SCRA*

- Stays any civil and administrative proceeding for at least 90 days upon application.
- Allows SM to reopen a default judgment and present a defense.
- Tolls statutes of limitations.
- Reduction of interests of debts entered into before active duty to six percent.
- Protects against evictions and foreclosures.
- Allows for termination of certain leases and service contracts (automobile, residence, business).

*What The SCRA Does Not Do*

- Stay criminal proceedings.
- Permanently relieve SM from most of the financial obligations (rent, child support)
- Shield co-defendants who are not SM.
- Provide extra protection where “an interest, property, or contract” has been “transferred merely to take advantage of the Act.”

*Who is Covered by The SCRA?*

- 1) Active duty military

2) Members of the Reserves during annual training (AT), or if converted to active status.

3) Members of the National Guard, only if converted to federal active duty status or 30+ days of state active duty under direction of the president for a national emergency,

Note: Many states have laws that extend SCRA-like coverage to National Guard members on State active status in New York it is the Soldiers and Sailors Civil Relief Act

4) Civilian contractors performing military-like duties with allied military forces

#### *Other SCRA Provisions/Protections*

- Termination of cell phone contracts
- Protection of existing life-insurance policies at the time of beginning military service
- Prohibition against decreasing amount of life insurance or banning activities that military service require
- Preservation of land rights
- Validly executed Powers of Attorney are automatically extended while SM is in a “missing” status
- Private right of action for all provisions, AND the Attorney General can commence a civil action against violators, in certain cases

### **III. Veteran-Specific Legal Issues**

#### **a. Records Corrections and Discharge Upgrades**

i. Process for applying for corrections of military records

The Secretary of each respective service department (Army, Air Force, Navy/Marine Corps, Coast Guard) has the authority to review and correct personnel records for current and former SMs. The venue to apply for a correction is that branch’s Board For Correction of Military Records.

ii. Legal standard is different for each department, and there is a heightened standard if the records sought to be corrected are old

#### **b. Veterans benefits: Non-Service-Connected Pension**

##### *Supplemental Income for Wartime Era Veterans*

Veterans Pension Program

- Tax-free disability benefit for eligible wartime era veterans
- Needs-based program - VA calculates the benefit based on several factors including countable income, the number of dependents, and the deductible expenses.

##### *Who Qualifies?*

VA’s definition of veteran:

1. Active military service, and

2. A discharge that is not dishonorable
3. Minimum service time
  - a. **If entered active duty before 9/7/1980, must show:**
    - i. at least 90 days of active duty service and
    - ii. you served at least one day during a wartime period
  - b. **If entered active duty after 9/7/1980, must show:**
    - i. at least 24 months of active duty service OR
    - ii. completed the full period that ordered to active duty (mostly applies to Reservists and National Guardsman activated on federal orders) and
    - iii. served at least one day during a wartime period

*Wartime Service:* must have served at least one day within a wartime period:

**Persian Gulf War**

August 2, 1990 – present

**Vietnam Era:**

Service in the Republic of Vietnam: February 28, 1961 – May 7, 1975

All others: August 5, 1964 – May 7, 1975

**Korean Conflict**

June 27 1950 – January 31, 1955

**World War II**

December 7, 1941 – December 31, 1946

DD Form 214 is the easiest way to verify service era

*Who Does VA Consider Disabled?*

- Standard is **permanently and totally disabled** by non-service connected medical conditions or a combination of non-service and service connected conditions.
- Presumption of permanent and total disability if:
  - Age 65 or older
  - Already receiving SSD and/or SSI
  - Patient in a nursing home receiving skilled nursing care
- If no presumption, VA will evaluate severity and duration by with substantially gainful work activity and prognosis
- VA can order a professional medical exam (*aka “Comp and Pen” or “C&P”*) to evaluate the disability

*Financial Need*

- VA will consider regular income and may consider net worth. The

pension limit, or **Maximum Annual Pension Rate (“MAPR”)**, is an amount set by Congress and is subject to change. The pension award is the difference between the pension limit and the countable hh income.

- *Countable Income* - all household earnings from employment, disability benefits retirement, annuities, and net income from a business or farming.
- *Net Worth* - all assets, i.e. bank accounts, stocks, bonds, mutual funds, annuities, and property other than your residence and a reasonable lot. Net worth is factored on a case by case basis.
- *VA Won't Count:* Welfare, Fire insurance proceeds, Profit from sale of property, Funds in joint accounts acquired by death, Interest from retirement annuity accounts
- *Deductions* - You can reduce countable income and increase your benefit amount by writing off certain expenses. Qualifying expenses include:
  - Unreimbursed medical expenses in repayment
  - Expenses of last illness and burials
  - Educational Expenses

#### ***\*\*Reporting Income***

Vet must report income, asset and HH composition changes as they occur. Failure to report could result in an **overpayment case**.

#### ***Special Monthly Pension***

Additional benefits when the disability is greater than permanent and total

#### ***Aid & Attendance***

When the veteran need the help of another in doing ADLs, is immobile, a patient in a nursing home, blind or your vision is severely limited

#### ***Housebound Benefits***

When the veteran is mostly confined to the home because of their disabilities.

#### ***How To Apply***

##### ***Letter Of Intent***

- VA [“Intent To File”](#) form, available online
- vet can also file intent on [eBenefits.va.gov](https://eBenefits.va.gov)
- Notice of Intent preserves the effective date for back payment for time that passed while the claim was being submitted and processed.

- One year deadline to file the claim using this effective date

#### *Gather Evidence*

- Medical records, doctor statements
- Service records (DD 214)
- Proof of SSI/SSDI
- Net income/net worth info
- Info regarding marriage(s) and dependents

#### *File the Claim*

- VA [“Application For Pension”](#) form, available online
- Veteran can also apply on [eBenefits.va.gov](https://eBenefits.va.gov).
- If the vet is not applying for benefits online, it is best to communicate with VA using **certified mail, return receipt requested or fax**

### **c. Veterans Benefits: Service-Connected Disability Benefits**

- monthly tax-free payment for eligible veterans who were injured while in service
- Award is based on VA’s rating of the severity of the disability (how that disability impacts the average person’s ability to work)
- Each disability is rated in increments of 10 (10%, 20%, etc.)
- Not means tested, no income or asset limit, can earn income or collect another disability benefit
- Additional benefits available for veterans who have dependents, who are homebound, need of aid and attendance, or lost the ability to have children.

#### 1. Eligibility Requirements

- *Qualifying “Veterans”*
  - To meet VA criteria for veteran status, you must generally have:
    - Active military service, and
    - A discharge that is not dishonorable
  - *\*Note about Reserves and National Guard*
    - May qualify as a veteran under certain circumstances, i.e., a federal (“Title 10”) activation to serve in combat. State active duty orders for National Guardsmen do not count as active duty for VA purposes.
    - A reservist counts as a veteran for VA purposes if the injury that caused the claimed disability occurred *in the line of duty* while you were on orders for active duty for training or inactive duty training (i.e. drilling). If you suffer

an injury on state active duty orders (Title 32) in the National Guard, you may be entitled to healthcare for that injury, but not VA Disability Compensation.

- *Discharge Status*
  - “other than honorable” or “bad conduct” - VA has discretion to offer medical treatment for service related disabilities. Upon application, VA can weigh the veteran’s circumstances in a Character of Discharge Determination (“COD”) proceeding. If VA finds the service was overall honorable, it can deem a veteran “honorable for VA purposes.”

#### *When To File*

- may apply for VA compensation at any time for any condition caused or aggravated while in service.
- file a claim while still in service or at any time after leaving
- no limit on number of claims a vet can file, no time limit to file
  - VA generally requires new evidence in order to reopen a claim that was previously denied.

#### *How To Apply*

##### *Letter Of Intent*

- VA [“Intent To File”](#) form, available online
- vet can also file intent on [eBenefits.va.gov](https://eBenefits.va.gov)
- Notice of Intent preserves the effective date for back payment for time that passed while the claim was being submitted and processed.
- One year deadline to file the claim using this effective date

##### *Gather Evidence*

- Medical records, doctor statements
- Service records (DD 214), in service medical records

##### *File the Claim*

- VA [“Application For Disability Compensation”](#) form, available online
- Veteran can also apply on [eBenefits.va.gov](https://eBenefits.va.gov).
- If the vet is not applying for benefits online, it is best to communicate with VA using **certified mail, return receipt requested or fax**

#### *Emergency Situations, Expediting the Claim*

VA has a policy of fast tracking certain claims.

- Terminal illness, let VA know this with doctor’s note
- Homelessness

- Psychiatric conditions (PTSD) with attempted suicide

## 2. Elements of a Claim

Veteran must show currently living with a medical condition that arose during service or that was caused by an incident that occurred while in service.

### *I) A Current Disability*

The veteran is living with or died from a diagnosable medical condition. This condition may have started in service or it may not have discovered it until years later. VA generally requires medical proof

*Proof of Disability:* treatment records, a statement by provider, a [Disability Benefit Questionnaire](#);

### *II) In-Service Incident*

The evidence must show that the medical condition started in service or that some in-service incident occurred that could have caused or aggravated the condition. Neither the event nor condition need be directly related to duty. Vet could have become injured or ill while in training, performing routine duties, in combat, in a car accident off base or playing sports while on leave from duty.

### *Vet Cannot Cause Own Injury - Wilful Misconduct*

VA will not compensate for an injury or disease that is the result of the vet's "willful misconduct." This is intentional wrongdoing where he knew or should have known the possible consequences. Examples of willful misconduct are drug and alcohol use, driving under the influence, or committing a crime. Suicide and contracting an STI generally not willful misconduct.

### *Proof of Incident*

If the claimed incident is not combat related, you must offer corroborating evidence. Service Medical Records, a Line of Duty Report, an investigation or a civilian accident report, news report, a "buddy statements" by witnesses, a letter home or a journal entry, testimony from a friend or loved one in whom the vet confided at the time.

If the incident is combat-related, the vet's statement is generally enough so long as there is no contradictory evidence



Note: VA medical treatment = in-service incident

### *III) Service Connection (“Nexus”)*

The evidence must show that it is as likely as not that the current condition is connected to service incident .

#### *Proof of Nexus*

Usually, there must be medical evidence, e.g. an opinion letter from a physician that connects the veteran’s disability or death to the occurrence or aggravation of the disease or injury to an in service event

### *3. Legal Presumptions*

Presumptive condition to be related to military service, even if they don’t arise for years after separating from service. These are known as [presumptive conditions](#).

### *4. Secondary Claims*

Secondary conditions that stem from service connected disabilities are also compensable, i.e. depression caused by loss of a limb.

### *5. VA Duty to Assist and Claimant Requirements to Trigger It*

- VA has a duty to assist in the development of a “substantially complete application,” meaning the claimant generally qualifies for the benefit and additional evidence could make the claim meritorious.
- VA will not assist if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim
- VA is supposed to help gather things like
  - VA medical records, service medical records, private medical records
  - Social Security records or evidence from other Federal agencies
  - state and local government records
  - lay and non-governmental evidence (i.e. employer’s records)
- The Medical Exam (aka “Comp and Pen” or “C&P”) - If VA needs an examination or a medical opinion to make a decision, VA’s duty to assist includes ordering a medical examination/opinion from VHA or a contracted provider. The examiner forwards the findings to the claim rating officer for consideration

#### 6. Multiple Claims for Individual Claimants

- An individual can be deemed disabled for two different conditions (e.g. PTSD and back pain)
- Each condition will be deemed disabling / compensable in 10% increments from 0% to 100%
- For individuals with more than one disabling condition, the total disability rating is based on regulations for combining ratings, and can be calculated using a “VA Math” calculator: [http://www.vvaarizona.org/combined\\_disability.php](http://www.vvaarizona.org/combined_disability.php)

#### 7. Survivors Benefits: Accrued Benefits, DIC, and Survivors Pension

- **Accrued Benefits**  
Accrued benefits are benefits that are due to the beneficiary based on an existing decision on a claim for benefits or evidence in the Veteran’s claim file at the date of death, but not paid prior to death.
- **DIC Benefits**  
Dependency and Indemnity Compensation (DIC) is a tax free monetary benefit paid to eligible survivors of military Servicemembers who died in the line of duty or eligible survivors of Veterans whose death resulted from a service-related injury or disease.
- **Survivors Pension**  
The Survivors Pension benefit, which may also be referred to as Death Pension, is a tax-free monetary benefit payable to a low-income, un-remarried surviving spouse and/or unmarried child(ren) of a deceased Veteran with wartime service.

#### 8. Acquiring Records

- In any VA claims case, it is important to gather all available documents relating to the claim:
  - **Military Records**
    - Can be requested from the National Archives using a Form SF-180
    - For recently separated veterans, can be accessed online using eBenefits
    - For veterans who have previously filed applications for benefits, should be included as part of the veteran’s Claims File

- Note: military hospital records are maintained at the military hospital, not with the veteran's military records, and they must be requested separately
- Claims Records
  - Can be requested from the Regional Office that handled the application, using a Form VA-21-0845
- Medical Records
  - Can be requested from any VA medical facility where treatment was received, using a Form VA-10-5345

## 9. Legal Process

### *The Decision*

After the VA rating officer has attempted to collect all of the relevant evidence, s/he reviews the file and makes a decision according to the law and facts.

VA must provide a written rating decision, which should state the evidence VA considered, the decision and the reason(s) for the decision.

### *What If I Disagree With VA's Decision?*

If VA made a mistake in deciding a claim, there are further levels of review available. You can challenge virtually any aspect of the decision including eligibility, presence of a disability, correct consideration of income, a rating, the effective date, etc.

### *Notice of Disagreement*

To invoke appeal process, you must file a Notice of Disagreement within one year of the date of decision.

### *De Novo Review - Decision Review Officer*

- A claimant who files an NOD may obtain de novo review of the initial decision, occurring between the filing of the NOD and the VA's issuance of the statement of case.
- The claimant may initiate a de novo review by either requesting it in the NOD, or requesting it within 60 days after the VA sends notice of the right to the de novo review.
- A de novo review by a DRO suspends the traditional appeals process.

### *Statement of the Case*

Upon receipt of the NOD, the RO must review the claims file and either grant or deny a claim. After reviewing the claims file, the RO will issue a Statement of the Case (SOC).

A SOC must contain a summary of the evidence, the applicable law/regulations, and VA's reasons for denying the claims with respect to the issues raised by the NOD.

### *Substantive Form 9 Appeal*

This is the one instance where the veteran must set forth specific arguments relating to the errors of fact or law in the RO's initial decision denying benefits.

The Form 9 must be submitted within 60 days of the date of the SOC or SSOC

Form 9 appeals go before the Board of Veterans' Appeals (BVA), the final step of the administrative process before an appeal to the Court of Appeals for Veterans Claims. BVA has jurisdiction to review all questions of fact and law regarding claims for VA benefits. BVA considers each case *de novo*. The veteran may present new evidence and testimony. The BVA must remand to the agency of original jurisdiction if it needs further evidence or clarification of a procedural defect.

### *10. Reopening Claims with New and Material Evidence*

Claims for VA disability benefits may be reopened at any time based on the submission of new and material evidence.

## **IV. Financial Issues Related to the VA**

### **i. Overpayments and Debts**

Occurs whenever VA alleges it disbursed a benefit to which the recipient was not entitled. VA will send a notice stating the debt amount. It may propose to adjust a future benefit to repay the debt.

First, you can call VA and request an audit by VA Debt Management Center (DMC)

It will follow up with a letter stating the debt amount and the date it plans to begin withholding benefits. If at this point, the veteran doesn't dispute the debt, negotiate a repayment plan.

#### *Requesting A Waiver*

If you don't dispute the existence of the debt, but are unable to repay, you can request a "waiver." This is like asking VA to forgive the debt and remove it from your file. You should do this within **30 days** of the date of DMC's letter to avoid benefit termination. Technically you have up to 180 days to file a waiver.

#### *How To Write And Submit A Waiver*

- ["Statement in Support of Claim" - VA Form 21-4138](#)
  - This is the form you should use to request the waiver and explain why it is warranted. It should include why VA should forgive the debt and any reason that the withholding of benefits will cause you and your family undue hardship, for example,

you would be unable to afford your rent, mortgage, food, or other living expenses (see the factors below).

- [“Financial Status Report” VA Form 5655](#)
  - VA requires this form in order to process your request. It contains income and job information to help the VA in making a determination on the waiver request. Any waiver request without this form will be denied.

#### *How Will VA Decide My Request?*

VA will not waive a debt if there is indication of fraud, misrepresentation, or bad faith by the veteran (i.e. knowingly failing to report a new source of income or a change in your marital status)

- **Was the veteran at fault?**
- **Was VA at fault?**
- **Would withholding benefits cause “undue hardship”** (loss of basic necessities like housing or food)
- **Would recovering the overpayment defeat the purpose of the benefit?** A VA Pension, for example, is provided to allow a veteran to support their basic needs; would these be unsupported if the benefit was withheld?
- **Would the veteran be “unjustly enriched”?**
- **Did relying on the benefits cause the veteran detriment?**

Send the request with any evidence to VA’s Debt Management Center

#### *After The Decision*

If VA denies the request you can still negotiate a monthly payment or Can also make a “Compromise Offer.” write a letter explaining why you cannot pay the full amount due. State the amount you wish to pay in total and send this offer with another Financial Status Report.

#### *Disputing The Overpayment Or The Amount*

If the veteran believes VA made a mistake in creating a debt, challenge the existence of the debt or the amount.

may request a debt waiver at the same time.

can also ask VA for for a hearing to present evidence and orally explain why you believe it made a mistake.

## **ii. Non-VA Medical Care**

1. Payment VA is responsible for making to non-VA medical facilities
2. Only applies in certain circumstances, and with strict time limits for requesting payment

### **iii. Retroactive Benefits**

1. Lump sum awards following the grant of disability benefits
2. Benefits are protected and should not be subject to seizure by judgment creditors

## **V. HUD VASH Section 8**

The HUD-Veterans Affairs Supportive Housing (HUDVASH) program combines Housing Choice Voucher (HCV) rental assistance for homeless Veterans with case management and clinical services provided by the Department of Veterans Affairs.

### *VA Eligibility Requirements*

To meet VA requirements, an applicant:

- Must be eligible for VA Health Care Services
- Need case management services
- Meet the McKinney-Vento Homeless Assistance Act, as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009

These are the only criteria the VA considers. VA case manager makes these determinations. If an applicant is deemed eligible by the VA case manager, he or she will refer the case to the local PHA.

### *PHA Eligibility Requirements*

PHAs will only consider two criteria:

- The veteran must meet HUD criteria for income
- The veteran cannot be a lifetime sex offender under a State sex offender program registration program

If a veteran satisfies these criteria, he or she is eligible for participation in HUD-VASH PHAs do not consider any other criteria because they relinquished their authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies by agreeing to administer the HUD-VASH program.

### *Limitation on Rental Payments*

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family/individual. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. Tenant shares are generally 30% of the family's adjusted income.

### *Voucher Holder Rights:*

- Landlords cannot discriminate against voucher holders
- Housing Quality Standards must be met

- Barclay consent decree: In NYC NYCHA must process interim re-certifications within 60 days of submission of documentation

- Pre-Subsidy Termination Due Process Rights

- Notice Requirements
- Hearings
- Art 78

- Eviction Proceedings:

- Must plead section 8 status
- Tenant only responsible for their share
- Williams Consent Decree (In NYC where NYCHA is PHA)

- Succession Rights

## **VI. Other Federal Benefits**

- i. Education benefits, including post-9/11 GI Bill
- ii. Home Loan benefits
- iii. Health Care

## **VII. VETERAN-BENEFITING STATE LAWS IN NEW YORK**

Types of Veteran Benefiting Laws:

- 1) Exemptions
- 2) Priority/Preference
- 3) Financial Benefit
- 4) Laws Honoring Service
- 5) Assistance

### **1) Exemptions**

Property Tax Exemption:

- There are three different property tax exemptions available to Veterans who have served in the United States Armed Forces. The exemption applies to county, city, town, and village taxes. Exemptions other than the Cold War Exemption may apply to school district taxes.

- Veterans can receive one of the three following exemptions:

#### **1. Alternative Veterans' Exemption:**

Available only on residential property of a Veteran who has served during a designated time of war or received an expeditionary medal.

Currently available in over 95 percent of the county, city, town, and village taxing jurisdictions across the state. The remainder of these jurisdictions may choose to offer this exemption in the future. Veteran applicants should check with the assessor or clerk in the municipalities in

which they reside to see whether the Alternative Veterans' Exemption is offered. Extra tax reductions available for combat and United States Department of Veterans Affairs service-connected disabilities. May be available for school district taxes. School districts must elect to offer the exemption

## 2. Cold War Veterans' Exemption

Available only on residential property of a Veteran who served during the Cold War period. Counties, cities, towns, and villages have the option to offer this exemption to qualified Veterans. Extra tax reductions available for United States Department of Veterans Affairs service-connected disabilities. Check with your assessor or clerk to see whether the Cold war Veterans' exemption is offered.

## 3. Eligible Funds Exemption

Provides a partial exemption. Applies to property that a Veteran or certain other designated person purchases. Such owners must purchase the property with pension, bonus, or insurance monies. May be available for school district and other taxes.

## **2) Priority/Preferences**

- **Mitchel-Lama Housing Veterans Preference:**  
A preference is provided to veterans who served in a time of war and who were honorably discharged or released under honorable circumstances from the military.
- **Vending License Veterans Preference:**  
Preference provided to veterans in obtaining vending licenses statewide and special vending licenses available to disabled veterans in New York City.
- **Credits on Civil Service Exams:**  
Additional credits are awarded to qualified veterans on civil service exams.

## **3) Financial:**

### New York State Supplemental Burial Allowance

To honor servicemembers who gave their lives in combat, New York State offers surviving family members a Supplemental Burial Allowance of up to \$6,000. Eligible individuals must prove their relationship to a servicemember who:

(1) Is a New York State resident at the time of his/her death, OR was a member of the New York Army National Guard or New York Air National Guard at the time when he/she entered active duty status, during which period of service he or she died. -- AND --

(2) Either:



Passed away in a combat zone;

Passed away while receiving hazardous duty pay, pursuant to Title 37, Section 310 (a)(4) of the United States Code; or

Passed away from wounds sustained in a combat zone or while receiving hazardous duty pay.

This money is used to defray funeral and interment costs not covered by the federal government. A family member must bear part or all costs of the servicemember's funeral and/or interment to be eligible.

#### **4) Honoring Service**

- Veteran Designation on License Plates
- Veteran Designation on ID Cards
- ID NYC is the only municipal ID card with a veteran designation

#### **5) Assistance:**

- Assistance with applications and claims to the VA through New York State Division of Veterans Affairs and the Mayors Office of Veterans Affairs New York City funding of legal services, social services, job training, mental health programs and housing programs for veterans.
- Veteran Treatment Courts

### **Resources: Knowing About, and Assisting Clients with Accessing, Available Resources for Veterans**

#### Organizations that Provide Assistance to Veterans

##### Government Organizations

##### i. State

##### 1. DVA

- a. The New York State Division of Veterans' Affairs advocates on behalf of New York's Veterans and their families to ensure they receive benefits granted by law
  - i. Offers free VA benefits advising
  - ii. Assists in benefit appeals
  - iii. Administers Blind Annuity Program
    - 1. This program provides a monthly stipend to visually impaired Veterans and eligible surviving spouses
- b. To learn more about the DVA, you go to their website at [www.veterans.ny.gov](http://www.veterans.ny.gov)

- c. To refer a veteran seeking assistance, call the New York State Division of Veterans' Affairs Help Line at 1-888-838-7697 (VETSNYS)
  - 2. VSAs
    - d. County government offices that assist veterans with accessing state and federal benefits and entitlements
- ii. Federal
  - 1. VA
    - e. Case managers / Social Workers
    - f. Other specialized staff: vocational trainers, home loan department, etc.
    - g. Vet Centers (quasi-independent)
      - i. Community based VA centers that provide readjustment counseling to Veterans, service members, and their families
      - ii. To be eligible for Vet center services, a veteran or a family member must have served in any combat zone and received a military campaign ribbon
      - iii. Vet center staff are available 24 hours a day, 7 days a week at 877-WAR-VETS (927-8387)
- iii. State and Federal elected officeholders often have staff or departments designated for veterans' issues

#### Non-Government Organizations

##### i. Grants and Per Diem

Funding provided to organizations providing temporary housing (18-24 months) to homeless veterans. Often coupled with supportive services. Case study on veterans rights in these programs: McCormick, v. Resurrection Homes, 956 N.Y.S.2d 844 (2012)

##### ii. VSOs

- 2. Veteran service Officers are veterans who help other veterans navigate the many federal, state, and local resources and benefits available to them. VSO are liaisons for all veteran issues including program and benefits veterans may be eligible for. VSOs are trained and accredited by the VA and are under the authority of the New York State Division of Veterans Affairs.

##### iii. Supportive Services for Veteran Families

VA awards grants to private non-profit organizations who provide supportive services to very low-income Veteran families residing in or transitioning to permanent housing.

Through the SSVF Program, VA aims to improve very low income Veteran families' housing stability. The first core concept is that SSVF programs utilize a Housing First approach. The essential idea of Housing First is that people's need for housing is a basic need that should be met as quickly as possible, without any preconditions. To meet this goal, grantees (private non-profit organizations and consumer cooperatives) provide eligible Veteran families with outreach, case management, and assistance in obtaining VA and other benefits, which may include:

- Daily living services
- Health care services
- Personal financial planning services
- Transportation services
- Fiduciary and payee services
- Legal services
- Child care services
- Housing counseling services

In addition, grantees also provide time limited payments to third parties (e.g., landlords, utility companies, moving companies, and licensed child care providers) if these payments help Veterans' families stay in or acquire permanent housing on a sustainable basis. The program is offered to single Veterans or Veteran families where the head of the household or spouse is a Veteran. In addition, eligible participants must have a household income that does not exceed 50 percent of the median area income. Lastly, Veterans and their families may be eligible for the SSVF program if they have recently lost their home, are struggling to keep their current home, or are currently homeless but expect to be in permanent housing within the next 90 days.

iv. Transitional and Permanent Housing Providers

3. e.g. Breaking Ground is a Veterans Transitional Residence on the grounds of the Montrose VA campus

v. Legal services organizations

Accreditation

To apply for accreditation with the VA, you must first complete VA Form 21a. It is recommended that you also attach any necessary documents to VA Form 21a. These documents include a recently dated certificate of good standing from all state bars, courts, Federal or state agencies to which you are admitted. In addition, if you answer "yes" to question 13A, 14A, 15A, 16 -18, 20, 22, 23A, or 24A, you should also attach a detailed explanation surrounding those circumstances. You

can then submit you VA Form 21A and any other documents to the Office of General Counsel (OGC). You can mail your documents to RM 022D, 810 Vermont Avenue, NW, Washington, DC 20420 or send them via fax to (202) 273-0197. Attorney applications generally take 60 to 120 days from the date of submission to process.

In order to maintain VA accreditation, you must first complete 3 hours of qualifying continuing legal education (CLE) requirements during the first 12-month period