



NEW YORK STATE BAR ASSOCIATION

ELDER LAW AND
SPECIAL NEEDS SECTION

Benefits for Veterans and Their Families



Benefits for Veterans and Their Families

There are two major financial benefits programs available to Veterans through the Department of Veterans Affairs ("VA"): Disability Compensation and the Improved Pension program. To be eligible for Disability Compensation benefits, also known as service-connected benefits, a Veteran must have a physical or mental medical condition directly related to his/her military service. By contrast, eligibility for Pension benefits is based on a Veteran's financial need rather than whether his or her condition is connected to service. A Veteran cannot receive both Disability Compensation and Pension, so it is important to determine which program best fits the unique circumstances and needs of each individual Veteran.

Disability Compensation (Service-connected disability)

Disability Compensation pays a monthly, tax-free amount to eligible Veterans for disabilities that are service-connected. A disability is considered "service-connected" by the VA when it was sustained during the Veteran's active duty military service, or when a pre-existing condition was aggravated by service beyond its natural progression. Additionally, the condition cannot have been caused by the Veteran's own misconduct, and it must interfere with the Veteran's ability to earn gainful employment. Some diseases and disabilities are presumptively related to a Veteran's service, if the service meets certain criteria. For example, Vietnam era Veterans who served "in country" from January 9, 1962 through May 7, 1975, who have specified diseases which the VA has recognized as being related to exposure to Agent Orange, need only prove that they have a diagnosis of that disease and that they served in country in Vietnam during the requisite period. Some such diseases include ischemic heart disease, diabetes type 2, multiple myeloma, and certain cancers. There are also presumptions that apply to former prisoners of war and some Gulf War Veterans.

The amount of monthly compensation can range from \$130 to nearly \$3,400 depending on how many service-connected disabilities a Veteran has, the severity of the disabilities, and whether the Veteran has dependents. In order to qualify for Disability Compensation, Veterans with service-con-

nected disabilities must also have been discharged under “other than dishonorable” conditions as determined by the VA. Compensation is counted as income by Medicaid.

Special Monthly Compensation

A Veteran whose service-connected disabilities render the Veteran housebound or necessitate the aid and attendance of another person, may be eligible for an additional monthly amount referred to as special monthly compensation.

Non-Service Connected Benefits

Veterans or widow(er)s of Veterans are entitled to an Improved Pension which also provides a Special Monthly Pension (“SMP”) to offset the cost of necessary health care.

The following criteria are necessary before a Veteran or widow(er) of a Veteran can receive Improved Pension benefits:

1. The Veteran must have served at least 90 days of active duty service, one day of which must have been during a war-time period:
World War II - Dec. 7, 1941 - Dec. 31, 1946,
Korean War - June 27, 1950 - Jan. 31, 1955,
Vietnam Conflict - Aug. 5, 1964 - May 7, 1975
Gulf War - August 2, 1990 through date to be set by law by Presidential Proclamation.
2. The Veteran must have received a discharge other than dishonorable.
3. The claimant must have limited income and assets available.
4. The claimant must have a permanent and total disability at the time of application.
5. The disability was caused without willful misconduct of the claimant; and
6. The Veteran or widow signs an application and provides the application to the Veteran’s Administration.

Special Monthly Pension Benefits – Low Income combined with disability

A. Housebound Benefits

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:

- (1) a single permanent disability rated as 100% disabling under the VA schedule and confined to the dwelling, or
- (2) 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.

The maximum permissible income limits for Housebound Pension benefits are detailed below.

B. Aid & Attendance

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

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

Most recent pension amounts, which are also the MAPR for the basic pension range from \$12,652.00 for a single Veteran, \$16,569.00 for a Veteran with a dependent; Housebound - \$15,462.00 for a single Veteran, \$19,380.00 for a Veteran with a dependent; Aid and Attendance \$21,107.00 for a single Veteran, \$25,022.00 for a Veteran with a dependent. Please consult the VA website for updates: www.va.gov.

C. Income Limits

The claimant will be denied benefits if the Veteran's or widow(er)'s countable income exceeds the Maximum Annual Pension Rate ("MAPR"). (Please see paragraph above.) 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. Countable income is all income attributable to the

applicant, the applicant's spouse, and the applicant's dependent children. 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 fees, dentist's fees, prescription glasses, Medicare premium deductions and co-payments, 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.

D. Asset Requirements

The VA considers the net worth of the individual seeking benefits, excluding the value of the person's home, furnishings, and car. 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. The net worth of both the Veteran and the Veteran's spouse are considered when determining eligibility.

Presumption of Sufficient Means

The VA assigns no specific dollar amount, rather stating, "[w]hen the corpus of the estate of the Veteran or, if the Veteran has a spouse, the corpus of the estates of the Veteran and of the Veteran's spouse is such that under all the circumstances, including consideration of the annual income of the Veteran, the Veteran's spouse and Veteran's children, it is reasonable that some part of the corpus of such estate be consumed for the Veteran's maintenance". 38 C.F.R. § 3.27(b). Excessive net worth is a question of fact for resolution after considering the facts and circumstances in each case. A number of variables must be taken into consideration when making a net worth determination: 1. income from other sources; 2. family expenses; 3. claimant's life expectancy, and, 4. convertibility into cash of the assets involved." 38 USCS § 1522, § 1543 A commonly used measure for assets and an amount specifically listed in the M21-1, is \$80,000 or less in assets, whether married or single.

Qualifying Family Members

There are three main categories that qualify as "family members" of a Veteran for VA benefit purposes: Spouses, Children, and Parents. Spouses

must be able to provide proof that they were validly married to the Veteran at the time of the Veteran's death, which generally requires no more than a written statement but can sometimes require production of a marriage license or certificate, or other documentation that would prove the marriage was valid. A surviving spouse must have been married to the Veteran for at least one year prior to the Veteran's death and must not have remarried after the Veteran's death. A surviving child can be either the biological, adopted, or step-child of the deceased Veteran, as long as there is adequate proof or documentation of the parent-child relationship. Surviving parents are eligible for a very limited subset of benefits that require them to have been financially dependent on the Veteran and require the aid and attendance of another person due to their advanced age or failing health.

Accrued Benefits

Due to the length of time it can take from the time a Veteran files an application for benefits to the time when the VA makes a decision on the claim, the Veteran may pass away before receiving a decision or award. In such cases, the VA may subsequently review the deceased Veteran's claim file and determine that the claim would have been granted if the Veteran were still alive. The benefits the Veteran would have been awarded are called Accrued Benefits, and can be paid directly to a surviving family member instead as long as the qualifying survivor files a claim to substitute into the place of a Veteran. The VA will only consider the evidence that was in the file at the time of the Veteran's death.

Dependency and Indemnity Compensation (DIC)

When a Veteran's death is service-connected, monthly benefits may be paid to a qualifying surviving family member. A Veteran's death will be considered service-connected if it occurred in the line of duty, resulted directly or contributorily from a service connected disability, or was the result of negligent VA medical treatment. DIC benefits may also be due where a Veteran's death was not related to his or her service but the Veteran was service connected for his/her disabilities at a rate of 100% for the 10 or more years preceding death or since the Veteran's release from active duty and for at least five years immediately preceding death, or for at least one year before death if the Veteran was a former prisoner of war who died after

September 30, 1999. A qualifying surviving spouse is considered "first in line," to receive DIC benefits. However, in cases where there is not surviving spouse, the benefits may be awarded to a qualifying surviving child.

Long Term Health Care Benefits

Residential Care

New York State Veterans Homes

New York State owns and operates four homes, recognized by the VA, and receive some VA aid to cover a portion of the cost of a Veteran's care. These state-run facilities are called state Veterans homes and are located in Genesee, Chenango, Westchester, Queens and Suffolk counties. Some state Veterans homes may also provide care to spouses and surviving spouses of Veterans. The aid provided by the VA to state homes is called per diem aid.

The per diem aid must not be greater than one-half of the cost of caring for the Veteran. Veterans, their families, or Medicaid are responsible for the remaining charges because the VA will only pay a portion of the cost of daily care of the Veteran. The state may collect from any other income of the Veteran, with the following exception: Medicaid beneficiaries receiving aid and attendance pension benefit cannot be required to use that money to pay toward the cost of care. CMS State Medicaid Manual 3705(A).

NYS Veterans Homes also provide day care programs – these can benefit Veterans of all ages especially younger Veterans with traumatic brain injuries.

Community Based Care

Home care benefits are available as an alternate to nursing home care or when the Veteran needs assistance but does not meet nursing home level of care. Community based services available to Veterans, depending on need, include: hospice, palliative care, community residential care, personal care, community residential care, adult day health care and geriatric evaluation and management. Medicaid covers the cost for individuals eligible for adult day health care, hospice, personal care and palliative care.

Death Pension

There are technically three types of death pension programs, but only one of the three is available for claims filed after January 1, 1979. Called the "Improved Pension Program" or IPP, these benefits are

meant to help surviving spouses of Veterans whose deaths are not service-connected. The Veteran must have served at least 90 days of active duty if he or she entered service prior to September 7, 1980, or at least 24 months of continuous active duty if enlistment was after September 7, 1980. Like Disability Pension for Veterans, Improved Pension is based on the survivor's financial need, which is determined by the VA by calculating the survivor's income and net worth. Although Improved Pension benefits are generally only available to the Veteran's surviving spouse, they can sometimes be awarded to the guardian of the Veteran's surviving child when the guardian is an individual other than the surviving spouse.

Summary

Understanding the benefits and services available to Veterans and their families is a critical component of elder law practice. Attorneys practicing in this area are encouraged to include in the initial client conference whether the individual or the individual's spouse served in the armed forces. Veterans' benefits can maximize resources and in some cases protect the income and resources of a Veteran or family member. Additional information is available on the Department of Veteran's Affairs website www.va.gov.



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