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V.A. Pension, Aid and Attendance, and Housebound Benefits (2015)

Caution: As of April 30, 2015, proposed regulations are pending that would change how eligibility is determined. The proposed regulations are discussed in this memorandum.

This memorandum describes three benefits programs available to veterans. They are pension benefits, housebound benefits, and aid and attendance benefits.¹ Each builds upon the other. Initially, a veteran must be eligible for pension benefits. If the veteran has physical needs and is housebound, then housebound benefits are added to the pension. If the veteran's needs are even greater, or if the veteran is receiving health care in a facility, then aid and attendance benefits are added to the pension benefit.

What is VA Pension for veterans?

Pension is a benefit paid to wartime veterans who have limited or no income, and who are 65 of age or older, or, if under 65, who are permanently and totally disabled. Veterans who are more seriously disabled may qualify for Aid and Attendance or Housebound benefits. The housebound and Aid and Attendance rates include the basic pension rate.

What are Housebound benefits?

Housebound benefits are paid in addition to monthly pension. Like A&A, Housebound benefits may not be paid without eligibility for pension. A veteran may be eligible for Housebound benefits when:

- The veteran has a single permanent disability evaluated as 100-percent disabling AND, due to such disability, he/she is permanently and substantially confined to his/her immediate premises, OR,
- The veteran has a single permanent disability evaluated as 100-percent disabling AND, another disability, or disabilities, evaluated as 60 percent or more disabling.

¹ There are many other benefit programs under the VA that are not described in this memorandum. For example, Service-Connected Disability Compensation is available to veterans who have a disability caused by or exacerbated by military service.

What is Aid and Attendance?

Aid and Attendance (A&A) is a benefit paid in addition to monthly pension. This benefit may not be paid without eligibility for pension. A veteran may be eligible for A&A when:

1. The veteran requires the aid of another person in order to perform personal functions required in everyday living, such as bathing, feeding, dressing, attending to the wants of nature, adjusting prosthetic devices, or protecting himself/herself from the hazards of his/her daily environment, OR,
2. The veteran is bedridden, in that his/her disability or disabilities requires that he/she remain in bed apart from any prescribed course of convalescence or treatment, OR,
3. The veteran is a patient in a nursing home due to mental or physical incapacity, OR,
4. The veteran is blind, or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less.

Who is eligible for pension benefits?

The following criteria apply to each of the pension benefits categories described above. Generally, you may be eligible if:

- you were discharged from service under conditions other than dishonorable,²

AND

- you served at least 90 days of active military service 1 day of which was during a war time period. If you entered active duty after September 7, 1980, generally you must have served at least 24 months or the full period for which called or ordered to active duty (There are exceptions to this rule),

AND

- your countable family income is below a yearly limit set by law (The yearly limit on income is set by Congress),

AND

- you are age 65 or older, OR, you are permanently and totally disabled, not due to your own willful misconduct.

As discussed in this memorandum, there are a number of criteria that may affect your eligibility to pension benefits. The VA will determine if you are eligible and notify you. If

² There are five categories of discharge: (1) honorable discharge; (2) discharge under honorable conditions or general discharge; (3) discharge under other than honorable conditions or undesirable discharge; (4) bad conduct discharge; and (5) dishonorable discharge. The first two categories meet the eligibility requirements. The second two *may* meet the requirement after a character of service determination is completed. A veteran dishonorably discharged is not eligible.

you do not initially qualify, you may reapply if you have un-reimbursed medical expenses during the twelve month period after VA receives your claim that bring your countable income below the yearly income limit. (These are expenses you have paid for medical services or products for which you will not be reimbursed by Medicare or private medical insurance.)

What additional requirements apply to a surviving spouse?

Generally, you must be the surviving spouse of a deceased veteran who was eligible under the criteria listed above. If you divorced the veteran prior to his or her death, then you are not eligible. Additionally, the veteran and the surviving spouse must have been living together when the veteran died unless the separation was for medical, business or other reasons besides marital discord. If the reason was marital discord, the surviving spouse cannot be at fault.

What are the “war time” periods?

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|------------------|---|
| World War II | December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service. |
| Korean conflict | June 27, 1950, through January 31, 1955, inclusive. |
| Vietnam era | The period beginning on February 28, 1961, and ending on May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases. |
| Persian Gulf War | August 2, 1990, through date to be prescribed by Presidential proclamation or law. |

There is no requirement that the veteran serve overseas or in a combat zone. Any service during a war time period is sufficient. If you were never in the line-of-fire, then you made it possible for others to go so you are still eligible.

Is there a net worth (or assets) limit?

At present, there are general guidelines.³ Net worth means the net value of the assets of the veteran and his or her dependents. It includes such assets as bank accounts, stocks, bonds, mutual funds and any property other than the veteran's residence and a reasonable lot area.

³ See Proposed New Regulations for possible changes. If the proposed rules are adopted, the VA would impose a “bright line” limit on net worth.

There is no set limit on how much net worth a veteran and his dependents can have, but net worth cannot be excessive. As a general rule, net worth is considered excessive if the veteran (or a veteran and spouse) has more than \$80,000; for a single person, the application is more likely to be approved if assets are below \$50,000. The decision as to whether a claimant's net worth is excessive depends on the facts of each individual case. All net worth should be reported and VA will determine if a claimant's assets are sufficiently large that the claimant could live off these assets for a reasonable period of time. VA's needs-based programs are not intended to protect substantial assets or build up an estate for the benefit of heirs.

Is there an income limit?

Yes. Income must be below the Maximum Annual Pension Rate (MAPR) for veterans. Those limits are listed below.

What is countable income when applying for veterans pension?

Under the VA rules, any payment of any kind from any source is income. This includes income received by the veteran and his or her dependents, if any, from most sources. It includes earnings, disability and retirement payments, interest and dividends, and net income from farming or business.

The VA calculates income on an annual basis. Thus, although you receive less income per month than shown on the following tables, if you received a one-time payment that caused your annual income to exceed the limits, you would not be eligible for benefits unless you have medical expenses that cause the additional income to be excluded.

Are there any exclusions (or deductions) to countable income?

Yes, there are exclusions. The VA only counts the income remaining after permitted deductions are taken. The remaining income, which is known as "income for VA purposes" (IVAP) is the figure used in determining eligibility. The following are examples of what may be excluded:

- Public assistance such as Supplemental Security Income is not considered income.
- Many other specific sources of income are not considered income; however, all income should be reported. VA will exclude any income that the law allows.
- A portion of unreimbursed medical expenses paid by the claimant after VA receives the claimant's pension claim may be deducted. These are expenses you have paid for medical services or products for which you will not be reimbursed by Medicare or private medical insurance. To be deducted, medical expenses must exceed 5% of the maximum applicable pension rate.
- Certain other expenses, such as a veteran's education expenses, and in some cases, a portion of the educational expenses of a child over 18 are deductible.

How does the VA calculate your pension?

Your annual pension is calculated by first totaling all your countable income. Then any permitted deductions are subtracted from that total. The remaining countable income is deducted from the appropriate annual pension limit (see tables in this memorandum) which is determined by the number of your dependents, if any, and whether or not you are entitled to housebound or aid and attendance benefits. This amount is then divided by 12 and rounded down to the nearest dollar. This gives you the amount of your monthly payment.

What are the benefit rates (income limits)?

Each year Congress sets the Maximum Annual Pension Rate (MAPR) for veterans. The VA website updates this information as the rates change.⁴ The rates as of 2015 are as follows:

| If you are a veteran ... | Annual income must be less than ... | Monthly income must be less than ... |
|---------------------------------|--|---|
| MAPR without Spouse or Child | \$12,868 | \$1,072 |
| MAPR with One Dependent | \$16,851 | \$1,404 |
| Housebound Without Dependents | \$15,725 | \$1,310 |
| Housebound With One Dependent | \$19,710 | \$1,643 |
| A&A Without Dependents | \$21,466 | \$1,789 |
| A&A With One Dependent | \$25,448 | \$2,121 |
| Two Vets Married to Each Other | \$16,851 | \$1,404 |

What are the income limits for a surviving spouse?⁵

| | | |
|------------------------|---------|-------|
| MAPR Without Dependent | \$8,630 | \$719 |
|------------------------|---------|-------|

⁴ http://benefits.va.gov/PENSION/current_rates_veteran_pen.asp.

⁵ http://benefits.va.gov/PENSION/current_rates_survivor_pen.asp.

Child

| | | |
|-------------------------------|----------|---------|
| MAPR With One Dependent Child | \$11,296 | \$941 |
| Housebound Without Dependents | \$10,548 | \$879 |
| Housebound With One Dependent | \$13,209 | \$1,101 |
| A&A Without Dependents | \$13,794 | \$1,149 |
| A&A With One Dependent | \$16,456 | \$1,371 |

Applying for benefits if you are already eligible:

It is illegal to charge a fee to prepare, present or prosecute an application for VA benefits. 38 C.F.R. 14.636. Fortunately, there are organizations that will help you without charge. Among them is the Georgia Department of Veterans Service, which has field offices in many counties. <http://veterans.georgia.gov/>

You may apply for Aid and Attendance or Housebound benefits by writing to the VA regional office having jurisdiction of the claim. That would be the office where you filed a claim for pension benefits. If the regional office of jurisdiction is not known, you may file the request with any VA regional office. The address of the regional office for Georgia residents is: 1700 Clairmont Road, Decatur, GA 30033. The mailing address is P.O. Box 100026, Decatur , GA 30031-7021.

Veterans apply on Form 21-527EZ.⁶

Surviving spouses apply on Form 21-534EZ.⁷

You should include copies of any evidence, preferably a report from an attending physician validating the need for Aid and Attendance or Housebound type care. The report should be in sufficient detail to determine whether there is disease or injury producing physical or mental impairment, loss of coordination, or conditions affecting

⁶ http://www.va.gov/vaforms/form_detail.asp?FormNo=21-527EZ

⁷ http://www.va.gov/vaforms/form_detail.asp?FormNo=21-534EZ

the ability to dress and undress, to feed oneself, to attend to sanitary needs, and to keep oneself ordinarily clean and presentable.

You should also provide the following additional information:

- Discharge/Separation Papers (DD-214). If you do not have your discharge papers, you can request a copy at <http://www.archives.gov/st-louis/military-personnel/standard-form-180.html>.
- Copy of Marriage Certificate.
- Copy of the Death Certificate (surviving spouses only).
- Copy of current Social Security Award Letter (you should receive a letter each January telling you the amount of your monthly benefit for that year).
- Net worth information, including bank accounts, CDs, Trusts, Stocks, Bonds, Annuities, etc.
- Proof of all income from pensions, retirement, interest income from investments, annuities, etc.
- If you are a court-appointed guardian of the veteran or surviving spouse, a certified copy of the court order of the appointment is required.
- Proof of insurance premiums, medications, medical bills or any other medical expenses that are not reimbursed by insurance, Medicare, or Medicaid.
- Physician statement on Form 21-2680.⁸
- Form 21-0779 if you are in a nursing home.⁹
- Banking information for Direct Deposit of A&A monthly payments (include a voided check).
- Employment history (does not apply if you are over 65).

If you are seeking homebound benefits or aid and attendance, the physician statement should indicate your physical limitations and your need for assistance with activities of daily living.

You may phone the VA at 1-800-827-1000 to ask questions.

Proposed Regulations that Change the Rules

On January 23, 2015, the Department of Veterans Affairs proposed new regulations that would change how the VA approaches Aid and Attendance.¹⁰ According to a VA spokesperson (as of April 25, 2014), “the VA does not have any sense of when the rule will be finalized.” The proposed rules are highly controversial. An article published in Forbes (3/10/2015) quotes one advocate as saying “The proposed VA rules are an attack on our nation’s veterans and their families.” Thus, it is impossible to predict what the final regulations will look like.

⁸ http://www.va.gov/vaforms/form_detail.asp?FormNo=21-2680

⁹ <http://www.vba.va.gov/pubs/forms/vba-21-0779-are.pdf>

¹⁰ 80 Federal Register 3840 (January 23, 2015).

Under the existing rule, there is no “bright line” for determining whether an applicant’s net worth is within the eligibility rules. Instead, the regulations state that net worth cannot be so great that under the circumstances, it is reasonable that the claimant or beneficiary use some portion of the applicable net worth for his or her maintenance. Vagaries in interpretation have led to inconsistent results. Under the proposed rule, the VA would adopt a bright line standard by borrowing the resource standard that applies to a community spouse under the Medicaid rules. There, the healthier spouse (known as the Community Spouse) is entitled to a resource allowance from countable assets. Currently, that allowance is \$119,220. One difference is that Medicaid has a separate income standard, while the proposed VA rule would add annual income to other countable resources in calculating net worth.

Another net worth rule change relates to the home. Although an applicant’s home would continue to be exempt from the net worth calculation, if the contiguous land surrounding the home is larger than 2 acres, then the extra land would count toward the resource limit.

Under the proposed rule, if a home is sold, then the proceeds are countable assets unless they are reinvested in another home within the calendar year.

Even if you pass the net worth test, you still have to pass the income test described above. As described above, necessary medical expenses reduce income. However, the proposed rule limits which medical expenses reduce income. Payments to health care providers, medications, medical supplies, adaptive equipment, transportation to health providers, and health related insurance premiums (e.g., health insurance and long-term care insurance) will still reduce countable income for VA purposes. Long-term care reduces income only if the applicant requires custodial care or assistance related to a mental disorder. Payment for institutional or in-home services may only be made to a health care provider unless the applicant establishes that he or she:

1. Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or
2. Is a patient in a nursing home because of mental or physical incapacity; or
3. Establishes a factual need for aid and attendance under the criteria set forth in §3.352(a). That regulation provides that the following will be accorded consideration in determining the need for regular aid and attendance:
 - a. inability of claimant to dress or undress himself (herself),
 - b. inability to keep himself (herself) ordinarily clean and presentable;
 - c. frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);
 - d. inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness;

- e. inability to attend to the wants of nature; or
- f. incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment.
- g. "Bedridden" will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed.

Payments to a home health worker will be limited to a maximum hourly rate. The proposed regulations indicate that rate will be based on survey results from the Metlife Market Survey of Long-Term Care Costs.

If assets are transferred within three years prior to an application for benefits, the proposed rule imposes a transfer penalty if excess assets are conveyed for less than fair market value. The period of time the VA second-guesses transfers (known as the look-back period) is 36 months from the date of application. If excess assets, known as the covered asset amount, were transferred for less than fair market value during the look-back, then a period of ineligibility (the penalty) is calculated. The period of ineligibility cannot exceed 10 years. The penalty is calculated by dividing the covered asset amount by the applicable maximum annual pension rate at the aid and attendance level.

The following examples appear in the proposed regulations:

Calculation of the covered amount

Example 1. The net worth limit under Sec. 3.274(a) is \$115,920. A claimant's assets total \$113,000 and his annual income is zero. However, the claimant transferred \$30,000 by giving it to a friend. If the claimant had not transferred the \$30,000, his net worth would have been \$143,000, which exceeds the net worth limit. The claimant's covered asset amount is \$27,080, because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered asset.

Example 2. The net worth limit under Sec. 3.274(a) is \$115,920. A claimant's annual income is zero and her total assets are \$117,000, which exceeds the net worth limit. In addition, the claimant transferred \$30,000 by giving \$20,000 to her married son and giving \$10,000 to a friend. The claimant's covered asset amount is \$30,000 because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered assets alone.

Example of penalty period calculation

VA receives a pension claim in November 2014 The claimant's net worth is equal to the net worth limit. However, the claimant transferred covered

assets totaling \$10,000 on August 20, 2014, and September 23, 2014. Therefore, the total covered asset amount is \$10,000, and the penalty period begins on October 1, 2014. The claimant is a surviving spouse with no dependents, so the applicable MAPR is \$13,563, and the monthly penalty rate is \$1,130. The penalty period is $\$10,000 / \$1,130$ per month = 8 months. The eighth month of the penalty period is May 2015. The surviving spouse may be entitled to pension effective May 31, 2015, with a payment date of June 1, 2015, if other entitlement requirements are met.

At this time, there is no allowance for tithing or other charitable gifts. Although it would become a political nightmare for the VA if enforced, technically the proposed rules do not permit an applicant to “spend-down” excess resources on anything except “basic living expenses such as food, clothing, shelter or health care; or education or vocational rehabilitation.”

Planning if you are not eligible:

David L. McGuffey is certified by the National Elder Law Foundation as an Elder Law Attorney. He is also an accredited attorney with the VA.

The Elder Law Practice of David L. McGuffey offers a wide range of estate planning and public benefits planning services. We assist families with holistic estate planning matters, such as planning to pay for nursing home care, and getting the right care, without going broke. Other services we provide are described on our website. Contact us at (706) 428-0888 for a free telephone consultation.