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Who Can Legally Assist With Veterans Claims and Who Can Charge or Be Charged?

There has been much talk throughout the country about who can assist a veteran or veteran's family with a VA claim for benefits. There are many companies and individuals who are breaking the law. They do so by assisting with claims in violation of the law AND/OR by charging a fee in violation of the law.

The law is very specific. Only the following persons may legally assist a claimant in filing a claim for veterans benefits:

- A VA accredited attorney;
- A VA accredited agent;
- A Veterans Service Organization;
- A VA Regional Office representative;
- A private individual with one-time permission to assist only one claimant.

First, who is a Claimant? The law defines a Claimant as an individual who has expressed *an intent* to file a claim. This means that only the persons listed above may counsel, coach, or assist in any way whatsoever with an application for veterans benefits once the individual has expressed such an intention.

What does this mean in practical terms? Simply this: no person or organization, other than those listed above, may lend a helping hand with any application, including Pension plus Aid & Attendance Benefits.

Second, who can charge, or financially benefit in any way, for providing this assistance in filing a claim? Again, the answer is simple: No one!! The law is very specific. No individual or organization that has a financial interest of any kind in the outcome of a claim may be charged a fee (or pay a fee) for assistance with an initial application for benefits. This includes the claimant, his/her immediate family members, assisted living facilities, nursing homes, home care agencies, and virtually anyone who could gain financially from the outcome of the claim. This includes direct fees and indirect (or hidden fees). In other words, it is illegal for any person or organization that stands to gain (e.g., being able to provide services or additional services) to pay some other person or organization to assist the Claimant in filing a claim.

The only time a fee may be charged related to a claim is after the claim has been denied. Even then, only a VA accredited attorney or accredited agent may charge a fee and the fee must be approved by the Office of the General Counsel in Washington, D.C. Without such approval, no fee may be charged.

Third, what about using a "middle man", e.g., an organization calling itself a home health care organization, but is really just doing that for the purpose of assisting in the processing of a claim, then contracting with a local home health care company to perform the actual work?

Answer: absolutely not! This is a bad deal for the Claimant. Not only does the "middle man" get compensated by taking some of the benefit money for the "administrative" work involved in processing the claim, but since that middle man takes some of the money, there is less money that actually goes to the real provider of the services; hence, the Claimant does not get his or her money's worth from the total amount of benefits paid! If you see a situation like this, run the other direction and file a report with the Office of the General Counsel for the Department of Veterans Affairs [see below]. The same holds true for someone actually interested in selling a financial product, such as an annuity and who says they will not charge the family for assisting them in getting the claim filed; if they are getting anything of value in return for preparing the application, then they are breaking the law.

Finally, the reality is that well educated lawyers are truly the only accredited people who can offer the broad spectrum of assistance most often needed by a Claimant (e.g. making sure that the Claimant is able to qualify for both VA and Medicaid if Medicaid becomes necessary in the future). Unless a qualified lawyer is involved, the result often is a failure to adequately protect the Claimant's ability to get help with future nursing home placement.

At the Elder law practice, we have software in our lobby that is available to anyone, *without charge*, who wants to use it in preparing an application for veteran's benefits. We also have the experience to counsel you regarding a wide range of other estate planning issues that could impact your eligibility for other benefits.

If you have further questions or would like to check on whether or not an individual or company is operating legally, please contact the Office of the General Counsel at 202-461-7699.

The Elder Law Practice of David L. McGuffey is a Certified Elder Law Attorney, certified by the National Elder Law Foundation. He is a member of the National Academy of Elder Law Attorneys and is a member of the Special Needs Alliance.

The Elder Law Practice assists elders and special needs individuals in Georgia and Tennessee with a wide range of legal issues, including eligibility for Medicaid.