

VA PENSION BENEFITS – AID & ATTENDANCE UPDATE

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On September 18, 2018, the Department of Veterans Affairs (the “VA”) published a final rule, bringing sweeping changes to the VA pension program, which helps eligible wartime Veterans and their survivors, primarily surviving spouses, pay for long-term care.¹ The final rule, entitled “Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits,” was designed to improve the integrity of the pension program by addressing inconsistencies in the handling of claims and to stop the targeting of Veterans by “pension poachers” who were taking advantage of Veterans and their families. The comprehensive changes became effective on October 18, 2018, and transformed the landscape of VA pension benefit planning by providing clear guidelines to ensure consistency and predictability.

Since the implementation of the 2018 rules, claimants and accredited representatives have struggled to interpret and work within those rules. Inconsistencies among the handling of claims by VA caseworkers remains a problem, particularly because the claims are now distributed to caseworkers across the country, rather than staying in the region in which the claim was filed. Prior to 2018, claims typically were processed in the regional office in which they were filed, thus enabling accredited representatives to have a better ability to predict outcomes. Currently, however, claims are placed within one pool and caseworkers take them in the order in which the claims were filed, rather than the region. Thus, a claim that might have been approved by a caseworker located in one region might be denied, based entirely on the policies of the region in which the caseworker is located.

Although most of the prior ways of handling claims for VA pension benefits are no longer relevant, it remains important to give advice about VA eligibility within the framework of other public benefits, including Medicaid. Each Veteran’s individual needs and circumstances will determine whether it is most appropriate to file for VA benefits or Medicaid benefits. And, any Veteran who needs and can qualify for VA benefits now might very well need Medicaid benefits in the near future, so care should be taken not to handle assets in such a way that would prevent the Veteran from qualifying for Medicaid.

I. BASIC ELIGIBILITY REQUIREMENTS

The VA pension benefit is a non-service connected disability pension that is federally funded and regulated. The Veteran must meet the following basic eligibility requirements:

A. Discharged from the service under other than dishonorable conditions.

There are many types of military discharge, other than just honorable or dishonorable, such as a medical separation. The important issue for this benefit is that the discharge be of a type other than dishonorable.

B. Served 90 days or more of active duty, with at least one day during an Eligible Wartime Period.

The Veteran’s military service must be active duty. Service in the Reserve or National Guard does not constitute active duty military service, even though those Veterans could have been deployed at any time. The minimum amount of time required for the benefit is a 90-day continuous period, with at least one day during an Eligible Wartime Period. It is not necessary that the Veteran be deployed to a combat area, only that the service is classified as “active duty.”

The Eligible Wartime Periods are as follows:

- Mexican Border Period (May 9, 1916 – April 5, 1917, for veterans who served in Mexico, on its borders, or adjacent waters)
- World War I (April 6, 1917 – November 11, 1918)
- World War II (December 7, 1941 – December 31, 1946)
- Korean conflict (June 27, 1950 – January 31, 1955)
- Vietnam era (August 5, 1964 – May 7, 1975, except for veterans who served in the Republic of Vietnam, whose period begins February 28, 1961)
- Gulf War (August 2, 1990 – through a future date to be set by law or Presidential Proclamation)

Veterans who entered active duty after September 7, 1980, must also have served at least 24 months of active duty, or if less, have completed their entire tour of active duty. Also eligible are Veterans who were officers and started on active duty after October 16, 1981, and had not previously served on active duty for at least 24 months.

C. At least 65 years old, permanently and totally disabled, blind, patient in a nursing home, or receiving Social Security disability benefits.

Because this is a disability benefit, the Veteran must meet one of the following criteria: (1) 65 years of age or older, (2) permanently and totally disabled, (3) patient in a nursing home for long-term care because of a mental or physical disability, (4) limited eyesight (5/200 or less in both eyes, even if corrected), or (5) receiving Social Security Disability Insurance or Supplemental Security Income (both of which require a disability determination by the Social Security Administration).

¹ 83 Fed. Reg. 47,246 (Sept. 18, 2018).

D. Meet the Net Worth requirements.

As set forth in further detail below, the Veteran's Net Worth (composed of countable assets and annualized income) must be less than \$130,773. This amount is adjusted each year by the same percentage as the Social Security cost-of-living increase.

E. Additional requirement for surviving spouse.

A surviving spouse must meet the additional requirement of having been married to the Veteran when the Veteran died and not having remarried, even if the remarriage was terminated by death or divorce. However, there are limited exceptions that allow surviving spouse eligibility to be reestablished if, between January 1, 1971, and November 1, 1990, the marriage was (1) annulled or declared void, or (2) terminated by death or divorce.

II. LEVELS OF PAYMENT

There are three levels of payments, depending on need: (1) Basic Service Pension, (2) Housebound, and (3) Aid & Attendance. Like the Net Worth limit, the payment levels increase each year in the same percentage as the Social Security cost-of-living increase. Unlike Medicaid benefits, the VA pension benefit is paid directly to the Veteran or surviving spouse as reimbursement for medical and other health care, rather than directly to a health care provider.

A. Basic Service Pension

Eligibility for the Basic Service Pension requires that the Veteran or surviving spouse meet the basic eligibility requirements. These individuals may still have the ability to handle many of their needs, but their unreimbursed medical expenses are high enough that they need some additional financial assistance. For 2021, the maximum benefit amounts for Basic Service Pension are as follows:

	<u>Monthly</u>	<u>Annually</u>
Single Veteran	\$ 1,161	\$ 13,931
Married Veteran	\$ 1,520	\$ 18,242
Surviving Spouse	\$ 779	\$ 9,344

B. Housebound

The Veterans or surviving spouses who are considered Housebound are those who, in addition to qualifying for the Basic Pension Benefit, are substantially confined to their homes because of a permanent disability. These individuals may still be able

to attend to many of their needs at home, but they are unable to transport themselves out of the home without assistance. For 2021, the maximum benefit amounts for Housebound are as follows:

	<u>Monthly</u>	<u>Annually</u>
Single Veteran	\$ 1,419	\$ 17,023
Married Veteran	\$ 1,778	\$ 21,337
Surviving Spouse	\$ 952	\$ 11,420

C. Aid & Attendance

The highest level of benefit, known as Aid & Attendance, is for Veterans and surviving spouses who, in addition to qualifying for the Basic Pension Benefit, require the assistance of another person to perform at least two activities of daily living, or are bedridden, a patient in a nursing home due to a mental or physical incapacity, or blind. For 2021, the maximum benefit amounts for Aid & Attendance are as follows:

	<u>Monthly</u>	<u>Annually</u>
Single Veteran	\$ 1,936	\$ 23,237
Married Veteran	\$ 2,296	\$ 27,548
Surviving Spouse	\$ 1,244	\$ 14,934

III. NET WORTH CALCULATION

Net Worth is defined as the sum of the claimant's assets and annual income.² The term "claimant" includes the applicant (Veteran or surviving spouse), a dependent spouse, and any dependent children.³ For purposes of asset and income calculations, the application must include assets and income in the individual or joint names of the applicant (Veteran or surviving spouse), the dependent spouse, and any dependent children (to the extent the qualified medical expenses of those children will be included to obtain a higher payment). Net Worth will be calculated as of the date of receipt of (1) an original pension claim, (2) a new pension claim after a period of non-entitlement, (3) a request to establish a new dependent, or (4) information that Net Worth has increased or decreased.⁴ If Net Worth increases after the granting of VA pension benefits, any reduction or discontinuance of benefits will not be effective until the last day of the calendar year in which Net Worth exceeds the limit.⁵

Under the rules implemented in 2018, Net Worth was set at the maximum spousal protected resource amount under the Medicaid rules, which is the maximum amount a community spouse can retain in assets to allow the institutionalized spouse to qualify for Medicaid benefits. When the 2018 rules became effective, that amount was \$123,600.⁶ However, the VA

² 38 C.F.R. §3.274(b)(1).

³ 38 C.F.R. §3.275(a)(2).

⁴ 38 C.F.R. §3.274(e).

⁵ 38 C.F.R. §3.274(h).

⁶ 38 CRF §3.274(a).

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