

# Consumers Guide to

*Health*



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## VETERAN'S BENEFITS

**Guide to Veteran's Benefits**

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## **Guide to Veteran's Benefits**

### **VA Aid and Attendance and Survivor's Pension**

#### The Widow's Pension

Someone you love desperately needs help! You had heard that there was some type of veteran's benefit available, but I didn't know exactly what it was or how to get it. That is how I felt when I was first introduced to the benefits available from the VA. I am a full-time lawyer, a "war time" veteran myself, who works with seniors, helping them with estate planning, disability issues and Medicaid assistance, a type of law practice called "elder law."

Our Government has erected a barrier around the VA benefits. The only people who are legally authorized to provide information to veterans about benefits are:

1. Federal Veterans Administration employees and employees of state Departments of Veteran's Affairs;
2. Authorized representatives of Veterans Service Organizations like the VFW, American Legion, among others; and
3. Attorneys licensed to practice law in the veteran's state, and have received "Accreditation" from the VA and individuals who have past a VA test and are non-lawyers or "Approved Agents".

Right! We lawyers are authorized to provide veteran's benefit information, but federal law prohibits a lawyer from charging a fee to actually assist a veteran in filing a claim for benefits.

The reason that Congress does not allow attorneys to charge a veteran to file a VA benefit claim form is based on the idea that:

- There are supposedly plenty of capable and trained VA employees available to help fill out VA claim forms for free;
- There are supposedly plenty of capable and trained VA volunteers available at the Veteran's Service Organizations to help fill out VA claim forms for free;
- Veterans should be protected from attorneys who would overcharge them by doing something as "simple" as completing and submitting a VA claim form.

The elder law attorney comes into the picture to help our clients and client families to get the best financial savings, best health care, and best protection for the client and other healthy family members.

Families call us because they are worried that unless they find some long term care help, they will soon be out of money, and when you're out of money, you're out of options!

Our job is to safeguard our client and our client's family, so that they will never be out of money, and never out of options. We are their trustworthy guide through the minefield of health care, insurance, taxes, finances, Medicare, Medicaid, Veteran's benefits, family dynamics, and end-of-life issues.

It is a high stakes game, and I learned long ago, there is one law for the unrepresented person and a totally different law for the empowered person who is represented by a capable advocate.

This pamphlet will begin to give you the "basics" of the VA benefit for the over 65 wartime veteran or survivor spouse who is medically and financially needy.

What you need to know is the gross household income of your loved one and to have an estimate of their regularly occurring monthly medical expenses for the next twelve months.

### **Official Dates for Periods of War**

**Mexican Border:** May 9, 1916 to April 5, 1917

**World War I:** April 6, 1917 to November 11, 1918 (April 1, 1920 if served in Russia)

**World War II:** December 7, 1941 to December 31, 1946

**Korean War:** June 27, 1950 to January 31, 1955

**Vietnam War:** August 5, 1964 to May 7, 1975 (February 28 1961 if served in Vietnam)

**Persian Gulf War:** August 2, 1990 to (date not yet determined)

### **The Calculation**

Most people think of veterans' benefits as being only for service men and women who were wounded or disabled while service in the armed forces. By and large, that is true. But we have learned that there are substantial benefits that may be available to wartime veterans who are now senior citizens and are facing the burden of long-term care due to a host of diseases such as Alzheimer's, Parkinson's, MS, Lou Gehrig's disease, and many others. In fact, the Veterans Administration estimates that millions of wartime veterans and their spouses may be eligible for Special Monthly Pension benefits, and not even be aware of it!

Wartime veterans, or their surviving spouses, become eligible for the Special Monthly Pension benefit when they are over 65 years of age, are permanently disabled and unable to work, are homebound, or need the regular aid and attendance of another person, whether at home, in assisted/supportive

living, or in a nursing home. The program is based on actual financial need for assistance, so there are income and asset limitations.

Unfortunately, there is widespread misunderstanding regarding how to determine qualification for this important benefit. The VA benefits maze commonly referred to as “Aid and Attendance”, even though finding your way through the maze can be extremely difficult, it is worth the effort to assist wartime veterans and their surviving spouses during times of great need.

The maximum benefit available can provide significant help in paying for the long-term care costs of veterans/surviving spouses who are homebound or in a care facility.

The focus of this Guide is the non-service-connected pension which may provide money to assist a needy wartime veteran or surviving spouse who now faces substantial medical costs due to Alzheimer’s, Parkinson’s, arthritis, MS, or some other “non-service-connected” disease.

The wartime veteran has earned possible eligibility for this assistance by serving our country, even though their current disability is not connected to their military service. Nonetheless, I have learned that claims examiners sometimes view the benefits for veterans whose disability is connected to their service (disability compensation) to be similar to “worker’s compensation,” which is money that is paid to an employee who is injured on the job. For these Service-connected benefits, the VA has a system of rating an employee’s disability as a percentage. For example, VA examiners who rate someone as 10% disabled, and the injured serviceman/woman receives a check based on a rating and NOT based on need.

On the other hand, a VA examiner looks at non-service-connected pensions as a type of welfare. It is NOT welfare, but from the VA point of view, they are trying to provide a pension for a needy wartime veteran or survivor spouse. This pension is based on financial need and is not based solely on a percentage of disability. The maximum annual pension rate (MAPR) available per veteran is calculated by taking into consideration some of the following factors:

- Gross household income from all sources available to pay expenses:
- Gross savings, and other money available from IRAs, CDs, cash value of life insurance, stocks, bonds, annuities, rented real estate, vacation homes, and all other investments;
- Life expectancy of the veteran, to determine how long the veteran may live and have to pay medical expenses, and
- The cost of ongoing medical expenses that are not covered by Medicare, employee benefits, or insurance. Note: These are called “un-reimbursed medical expenses” or UME. This is a key factor to help determine if a veteran may qualify for a pension.

Based on the information above, the first step in determining if a wartime veteran may qualify for a pension based on need is the following formula:

Gross household annual income from all sources less regularly monthly recurring un-reimbursed medical expenses for the next 12 months will equal the Net income for Veterans Administration purposes and is referred to as IVAP. This figure is used to calculate how much money, if any, a veteran or the sole surviving spouse of the veteran will be awarded to a claimant.

Each category of need, such as housebound veteran, nursing home resident veteran, or veteran's spouse, has a maximum amount of pension dollars available per claimant. Because there is a maximum annual pension rate (MAPR) for each category of claimant, no one can receive a pension for more than the maximum, regardless of actual need.

Assemble the information to do the formula:

Gross household annual income from all sources;

Less: un-reimbursed regularly occurring monthly medical expenses for one year, equals the Net income for Veterans Administration Purposes or IVAP.

## VA Pensions

We have already introduced you to the VA view of the two major categories of veteran's benefits: "disability compensation" and "non-service connected pension". We will continue to focus on the non-service-connected pension veteran's benefits:

### **Table #1: Disability Compensation**

#### **VETERAN**

- Must have a disability caused by, or worsened by, military duty, there are some presumed conditions due to exposure to "Agent Orange" and will make the claim one of percentage of disability since you will not have to prove "service connected".
- The amount of money paid to the veteran is not based on need, income, or net worth of the veteran.

#### **SPOUSE/DEPENDENTS**

- Eligible for Dependency and Indemnity compensation (DIC), if 100% disabled for a period of 10 years, or if the veteran dies of the condition or it is a contributing factor, and the spouse has been married to the veteran for at least 1 year.

### **Table #2: Non-Service-Connected Compensation**

#### **VETERAN**

- Must be permanently and totally disabled, or 65 or older
- Disability does not have to be related to military duty, and the veteran did not have to serve in combat or in a combat zone.
- Pension is needs-based, must meet income and net worth requirements; or
- If the veteran has too much income or too many assets, he/she will not qualify for the pension
- A higher pension is awarded if the veteran is housebound
- An even higher pension is awarded if the veteran is in need of regular aid and attendance

## **SPOUSE/DEPENDENTS**

- Eligible for Death Pension
- A higher pension is awarded if the veteran is housebound
- An even higher pension is awarded if the veteran is in need of regular aid and attendance

Now we are going to look at some of the requirements for eligibility for a non-service-connected pension for a wartime veteran who needs long-term care.

Who is eligible for the non-service-connected pension:

- Discharged veterans with greater than a dishonorable discharge, surviving spouses, or children of any military, naval, or air service. Also includes certain other special groups such as:
  - Women's Army Auxiliary Corps (WAAC)
  - Merchant Marines from WWII
  - U.S. civilians of the American Field Service
  - And 30 others!
- Served in active duty 90 consecutive days, one of which was during a period of war
- At least 65 years old OR permanently and totally disabled.

“Permanently and Totally Disabled” is defined as:

- Receiving long-term nursing home care; or
- Receiving Social Security disability benefits; or
- Unemployable as a result of disability reasonably certain to continue throughout the life of the person
- Disability is NOT required to have been caused by injury during the veteran’s wartime service (non-service-connected).

Other requirements:

This is a needs-based program with income and asset tests.

- Income limitations
- Gross income MINUS certain expenses (Un-reimbursed medical expenses of veteran and his/her household or certain educational expenses)
- After reducing gross income by the above expenses, net income must be lower than \$10,929 to \$21,616, depending on your circumstances
- Net worth limitations
- In addition to your house, car, life insurance, burial policies and annuities in payout status, you can generally have up to \$80,000.00 in assets, including CDs, stocks, bonds, etc.
- If your net worth is higher, consult with a qualified elder law attorney for appropriate tax analysis to see if transferring some of your assets may qualify you

Review the various requirements that I have shown you and begin to ask yourself:

1. Where can I find Mom or Dad’s discharge papers?
2. Did my loved one actually serve in the wartime period of WWII, Korea, or Vietnam?
3. Did my loved one receive a discharge greater than dishonorable?
4. Can I prove that my loved one is over 65 or permanently and totally disabled?



5. Do I know what 12 months of un-reimbursed medical expenses will be (or have been)?

6. Do I know my loved one's household income?

7. Do I know (roughly) my loved one's dollar amount of investments?

### **How Much Money Can the Veteran Get?**

Okay, I know that you really want to know the maximum annual pension rate! (From now on, I am going to call this the **MAPR**.)

The MAPR is adjusted every year by an inflation index. Please view the following figures of the monthly pension rates for veterans and surviving spouses.

#### For Veterans

Housebound, one dependent	\$ 1,591.00
"Aid and Attendance," one dependent	2,054.00
Housebound, no dependents	1,269.00
"Aid and Attendance," no dependents	1,732.00

#### For Surviving Spouses

Death Benefit w/ household allowance	851.00
Death Benefit w/ "Aid and Attendance"	1,113.00

Now I have a surprise for you. From the Veterans Administration point of view, they can "truthfully" tell you that there is no such thing as VA "aid and attendance" benefits. They do not call it by that name. The public and the media refer to the benefits as either "aid or attendance," "widow's pension," or "widow's award." Unfortunately, many people have been denied an opportunity to file a claim because they did not know that the VA refers to these benefits as either a "Special Monthly Pension" or "Death Pension."

In the case of the benefit for a surviving spouse, the award is called a "Death Pension."

It's the VA, and they deal with death every day... In fact, 1,900 veterans die every day and over 1,000 of them are World War II veterans. That means that every day is Memorial Day for the VA. Every Monday they start the day with a new backlog of Death/Funeral claims from Saturday and Sunday-- 3,800 deaths. No wonder they use blunt language to describe the widow(er) award. It is properly called the "Death Pension for the Veteran's Surviving Spouse."

You need to use the proper terms when dealing with the VA. The VA employees speak their own language. If you do not know how to speak their language, then you need a "translator." The only translators who are authorized to speak for you are the following:

Who can help you file a claim:

- Recognized Veterans Service Organizations, like the VFW or American Legion
- An accredited agent, such as an employee of the State of Texas
- A licensed attorney who is accredited with the VA or an accredited agent, the names of both are listed on the VA web site, [www.va.gov](http://www.va.gov).

Only accredited agents and attorneys can receive fees for their services. **HOWEVER**, no one can receive a fee for filling out forms or actually filing a claim for you once you have decided to make a claim!

We offer pre-filing and asset protection consultation to veterans who may qualify for a pension. Our consultation is part of our overall long-term care planning practice.

### **VA Words and Their Meanings**

As we have previously seen, the formula for determining the income eligibility for the Special Monthly Pensions for housebound and/or regular aid and attendance is as follows:

Gross household annual income;

Less: Un-reimbursed medical expenses (UME)

Equals: Net income for Veterans Administration purposes (IVAP)

Let's check out how the VA defines each one of those concepts. I am going to apologize to you right now... you are entering the VA language zone. The words that follow do not necessarily have the same meaning in plain English.

Remember, one of our jobs as elder law attorneys is to be a translator of "government-speak." A great attorney should be able to take complicated language and ideas and translate them so that you can understand what they mean and why they are important to you.

Here we go....

**Gross Household Income:** all payments of any kind, from any source, for everyone in the household-veteran, spouse, and any dependents

**Un-reimbursed medical expenses (UME):** out-of-pocket costs for medical equipment, supplies, prescriptions, or care, etc. for everyone in the household

**Housebound:** someone who is substantially confined to their home or area where they are living

**In need of regular aid and attendance:** someone who needs the regular aid and attendance of another person to attend to their regular activities of daily living, like eating, bathing, or dressing, etc.

Okay--now you start to see that the VA benefit can help a wartime veteran who needs prescribed medical care at home or in assisted living or at a nursing home. This is a really big deal! People want to stay home for as long as reasonably possible, I know of no other government benefit that helps pay for health care at home. VA benefits make my clients very happy.

Review the facts that you have gathered, now that you have a clearer understanding of some critically important VA eligibility terms.

### **Beware of Medicaid Eligibility!**

“What can we do to qualify for the VA benefit if the veteran is otherwise eligible for a Special Monthly Pension but they have more than the allowable \$50,000 to \$80,000 in assets?”

This truly is the “million dollar question,” and I have to tell you that with one wrong move, danger and disaster lurk close by. A veteran and spouse who might be eligible for \$2,054 monthly in aid and attendance benefits or \$1,591 in housebound benefits might be considering the idea of gifting excess assets to their children. But there are several problems that must be faced before doing that:

1. What is the tax impact of such gifting?
2. What is the net financial benefit or net financial loss caused by gifting excess assets so that a veteran can turn on the VA benefit revenue stream?
3. What is the impact to the receiver of any gift?
4. What penalty does the VA impose against the veteran if they know that the vet has given away excess assets to qualify?
5. How long does it take to get the VA to approve a claim?
6. How likely is it that the VA will approve the claim?
7. What amount will the VA approve?
8. How soon can the veteran get a check?

A much less obvious but important issue is what I call the “Medicaid Eligibility Trap.” The VA does not have a penalty period of ineligibility for VA benefits, not yet, even if the veteran gives away all of his / her excess assets immediately before filing a claim.

BUT--

Most housebound and assisted living veterans do not realize that their health care needs and expenses are NOT going to stay the same very long. Unfortunately, the aged and frail veteran has begun an end-of-life journey that is reasonably predictable.

A housebound or assisted living facility resident has a 90% probability of needing to go on to skilled nursing home care within two to three years. The cost of skilled nursing home care can easily run from \$5,000 to \$10,000 per month. The veteran will be in the nursing home an average of 2.5 years prior to death. It is highly likely that the veteran's family will need to apply for Medicaid benefits to pay the nursing home costs.

Medicaid now has a penalty period of ineligibility if a senior has given away any assets within five years of applying for Medicaid assistance.

As you can now see, 90% of VA claimants will need Medicaid in less than five years.

Beware: Any time a veteran gives away assets to qualify for VA benefits, the veteran is setting a Medicaid penalty booby trap. Do not give away any assets without seeking the advice and counsel of an elder law attorney who has substantial experience with the Medicaid eligibility rules for your state!

By now you are thinking: What about legal fees? What will it cost me to seek advice in this area?

Although an attorney who chooses to actually file a claim for veteran's benefits must do that portion of his/her work for free, the attorney may charge the usual fees related to any estate planning, financial planning options, Medicaid, Medicare, income tax or gift tax work, as well as for the determination of the financial suitability of filing for a veterans benefit claim. No one should pay an attorney fee unless receiving a fair return on his/her investment.

The VA General Counsel said this about legal fees:

"To the extent that after consultation the veteran expressed to the attorney an intention to file a specific claim for VA benefits, if the attorney charged the veteran for preparing the claim, the attorney did so in violation of Section 5904. The better practice would have been to charge the veteran for the pre-filing consultation and simply prepare the claim on a pro bono basis." The above is a quote from a letter written by Tim S. McClain, General Counsel of the Dept. of Veterans Affairs, The Honorable Lane Evans of the U.S. House of Representatives Committee on Veterans Affairs, dated May 24, 2004.

As an elder law attorney, my job is to provide my clients with the best financial solutions, the best health care solutions, and with peace of mind. We know the honest ways to protect our clients' homes, their loved ones, and their health care options.

**The Elder Care Journey: Have an Expert Guide!**

The VA benefit can provide a substantial monthly benefit for a frail, disabled veteran or survivor spouse. As an elder law attorney, I recognize the enormous benefit it is to stay home longer with the financial assistance of the VA. Unfortunately, it is our experience that 90% of the individuals who qualify for VA benefits will decline significantly over the next two to three years. That's right-90% of the folks who qualify for VA benefits while they are either housebound or in assisted living facilities will move to full skilled nursing facility care. Sure, some people will die during their declining period, but 90% survive and they will need skilled nursing care 24/7.

An elder law attorney is a trustworthy guide for the client and the client's family for all of the significant problems that will arise as the senior travels this pathway. It is our job to counsel our clients so that they are never out of money and never out of options as they take the elder care journey.

We are available to assist you and your family to avoid the land mines that lie along the elder care pathway. Our goal is to provide our clients who face long-term disability care with:

The best financial results;

The best health care options;

Peace of mind; and

Preservation of personal dignity.

If you are a senior facing long-term care or someone who loves a senior dealing with long-term care issues, then contact us today for a free no-obligation discussion of your heartfelt concerns and care-giving burdens.

We walk alongside of our fragile clients and shine a light ahead into the darkness. We have walked this path before as elder law attorneys serving seniors and those who love them.

After reading this information, we strongly recommend that you contact an elder law attorney such as Richard M. Barron to determine if you qualify. An elder law attorney can assist you and your family by explaining many difficult-to-understand things about long-term care. Qualification for a VA benefit is only one of several concerns that must be considered. As you struggle to provide dignified long-term care for a wartime veteran and/or surviving spouse, we can help you understand the options.

We are your advocates, and we want to help you stretch your hard-earned dollars further. VA benefits are only one part of the puzzle. We will hold your hand and guide you every step of the way as we consider all of your family's resources and needs.

Thank you,  
Texas Elder Law Attorney  
Richard M. Barron

To contact us, please visit:

<http://www.TexasElderLawAttorney.com> or call us at

**1-800-939-9093.**

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