

Understanding the Veterans Pension Benefit

**(Commonly Called Aid
and Attendance Benefit
for Long Term Care)**



Compliments of

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Veterans Pension Benefit

Our veterans deserve special treatment in America. My job is to help get them the pension benefit they are entitled to.

Message from Fredrick P. Niemann, Esq.

In recognition of their sacrifice, I have prepared this informational booklet filled with lots of advice, helpful information and answers to the most frequently asked questions that I deal with as an attorney working daily in Veterans Pension Benefits.

Your inquiries are always welcome at Hanlon Niemann, a client friendly office with kind, patient and compassionate professionals. Let our experience guide and protect you.

Don't wait until your situation becomes over-whelming. We are here to help you with your Veterans pension benefit and elder law planning needs.

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Why is it important for government agencies, health care providers and eldercare advisers to know about this Pension?

The national care planning Council estimates that approximately 11.5 million seniors -- about 33% of all people over 65 -- could qualify for Pension or Death Pension by meeting the tests outlined in this booklet. That's how many wartime veterans or their living spouses we have in this country. Unfortunately, few people know how to get this benefit and currently only about 543,000 individuals are actually receiving it. This represents only 4.7% of those who could be eligible.

What is a Veterans Pension?

Improved Pension and Death Pension are disability income programs available to veterans or to the single surviving spouses of deceased veterans. The veteran had to have served on active duty at least 90 days with one of those days during a period of war. Service in combat is not required, only that the veteran was in the service during wartime and was honorably discharged. Charts showing the available amount of income

and the dates for wartime service are included below.

There is a sister benefit to Pension called Compensation. This is for veterans who are disabled because of injuries or illnesses incurred while on active duty. **Compensation is generally the more desirable benefit for a number of reasons we will not go into here. A veteran household generally cannot receive Pension and Compensation at the same time. A decision must be made as to which benefit is better and the veteran must choose only that benefit.**

| Period of War | Beginning and Ending Dates |
|----------------------|---|
| World War II | December 7, 1941 through December 31, 1946 |
| Korean Conflict | June 27, 1950 through January 31, 1955 |
| Vietnam Era | August 5, 1964 through May 7, 1975; for veterans who served “in country” before August 5, 1964, February 28, 1961 through May 7, 1975 |
| Gulf War | August 2, 1990 through a date to be set by law or Presidential Proclamation |

In order to receive the benefit, a veteran household must meet the criteria above as well as meeting an income and an asset test and, in most cases, a medical needs test.

The Medical Needs Test If the veteran is younger than age 65, he or she must be totally disabled to receive the benefit. Medical evidence must be submitted for these types of applications. At age 65 and older there is no requirement for disability. For a single surviving spouse applying for a Death Pension benefit, the deceased veteran did not have to meet any disability requirements nor does the surviving spouse need to meet any disability requirements, regardless of age.

VA will also provide additional income in the form of an allowance to the basic benefit if the veteran or the surviving spouse has a regular medical need for assistance or supervision due to disability. If the non-veteran spouse of a living veteran has a regular medical need for assistance or supervision, under certain conditions, a benefit (not an allowance) may be available for the veteran that otherwise would not have been available. Allowances are granted for the regular need for "aid and attendance" or if the beneficiary is "housebound."

A medical need for assistance or supervision due to disability is in most cases crucial to getting the Pension benefit or not getting it. A medical rating or a medical need for this disability care allows certain medical expenses and ancillary non-medical expenses to be annualized and subtracted from future annual income in order to meet the income test. Most veteran households could not get the Pension benefit without this special provision allowing the deduction of annualized medical and non-medical expenses associated with disability.

The high cost of medical and non-medical expenses associated with long term care such as home care, assisted living or nursing home care are usually the trigger that allows medical deductions to qualify a veteran household for Pension. That is why only 4.7% of all eligible individuals are actually receiving Pension. Other eligibles don't know about this special provision allowing them to meet the income test or they are currently not in need of long term medical care.

Most of those people currently receiving pension benefits have low incomes and few assets and have met both the income and asset tests without

the need for the special provision for medical expense deductions to reduce income.

The Income Test The household income of the veteran or the surviving spouse cannot exceed the Maximum Allowable Pension Rate (MAPR) for that category of application. (We list 9 categories of pension income applications in the section on how pension is calculated.) As an example, a husband and spouse with no medical rating cannot have a combined income of more than \$1,220 a month or \$15,493 a year from all sources. As another example, a single surviving spouse with an "aid and attendance" medical rating cannot make more than \$956 a month or \$12,144 a year from all sources.

If a potential applicant were to call a local regional office, the Veterans Service Representative (VSR) on the phone would typically ask about the amount of household income, the amount of assets and the medical status. The VSR would check his or her table similar to ours below and if the household income exceeds the MAPR for that particular type of application category, the person calling the office would probably be told there is no benefit. In many cases this is simply not true. Keep in

mind, however, some VSR's are aware of the special medical deduction and may not discourage callers in cases such as these.

The household income can be reduced to meet the Pension income test under the special conditions we have mentioned above. This allows households earning \$2,000 to \$6,000 or more a month to qualify even though their current non-adjusted income does not meet the income test.

Let's use an example to show how this works. Suppose a veteran and spouse earn \$4,000 a month. They do not meet the income test of making less than \$1,220 a month or \$14,643 a year for this particular MAPR. However, VA will allow the household income to be reduced by any un-reimbursed medical expenses that are incurred in the month of application or any expenses that recur regularly over the coming 12 months. A good example of a recurring expense is the cost of medical insurance such as Medicare Part B (\$96.40 a month)

In this example, VA will take all sources of income over the next 12 months and add them together. Assume that the only source of income is the

recurring \$4,000 a month from Social Security and retirement pensions. In this case, VA uses \$48,000 as the starting point for the income test. Next, medical expenses are added up. The family reports \$500 of medical expenses in the month of application and \$192.80 (the amount both are paying) a month for un-reimbursed Medicare Part B premiums. The veteran is also in an assisted living facility and is paying \$3,500 a month for this care which is also un-reimbursed. Payment for assisted living is coming from savings and income. Only recurring medical expenses can be deducted and the assisted living facility reports that medical services from the assisted living personnel are \$200 a month. The rest of the cost is for room and board. Assisted living medical expenses amount to \$2,400 a year.

All medical expenses in the month of application and those that are expected to recur every month over the next 12 months (beginning on the first day of the month following the month of application) are added together and they total \$5,213.60. Next, VA subtracts a deductible equal to 5% of the basic MAPR which is \$732. After the deduction, the allowable medical expense now totals \$4,481.60. This amount is subtracted from

the \$48,000 prospective 12-month income in order to arrive at a new income called "countable" income or IVAP. This new income will be used for the income test. It is obvious this \$4,481.60 of medical expense will not bring the household countable income below \$14,643 a year to pass the income test.

Before we give up with this example, we need to make you aware there is a special provision in the rules that allows all of the veteran's costs for assisted living to be counted as deductible medical expenses. This has to do with a so-called "rating." We won't go into the necessary evidence or paperwork required for a rating but assuming our veteran gets this rating, he can now count his entire cost of assisted living or \$42,000 towards determination of his income test. In this example, his rating is for "aid and attendance" and he gets an additional allowance that increases the family MAPR up to \$22,113.

Along with his other medical expenses he can now use \$46,881.60 towards his medical expenses — adjusted for the deductible. Subtracting that amount from his \$48,000 of income he now has a countable income of \$3,745.40 which puts him

well below the MAPR of \$22,113. Subtracting the countable income from MAPR gives him an award from VA of \$20,994.60 or \$1,749 a month in additional income. This is on top of the income he is already making and will help cover the cost of his assisted living.

This special provision for annualizing and deducting non-medical costs associated with a rating also applies to home care costs. Home care costs can include the costs of professional aides or money paid to members of the family (not including the spouse), friends or people hired independently to provide care in the home. The special provision also applies to the non-veteran spouse receiving assisted-living care or home care but in this case there is no rating. Another special rule allows the spouse to deduct non-medical costs associated with medical care for determining countable family income.

The Asset Test

As a general rule, cash-equivalent, household assets cannot exceed \$80,000 for a married couple, or \$40,000 for a single person. But there is no specific test in the regulations. Veterans Service Representatives in the regional office are

required to file paperwork justifying their decision if they allow assets greater than \$40,000/ \$80,000. Thus this amount has become a traditional ceiling. Concerning the asset test, the service representative is encouraged to analyze the veteran's household needs for maintenance and weigh those needs against assets that can be readily converted to cash and whether the income from that cash will cover the difference in the household income and the cost of medical care over the care recipient's remaining life span.

In the end, the decision as to allowable assets is a subjective decision made by a service representative. In certain cases a benefit award could be denied unless assets are below \$20,000 or even \$10,000.

A personal residence, a reasonable amount of land on which it sits, personal property and automobiles for personal use are exempted from the asset test.

Assets can be gifted to someone who does not live in the household or a portion of assets can be converted into income through an immediate income annuity. Care must be taken not to create so much income as to reduce the available pension income benefit. Currently, there is no

penalty from VA to rearrange assets in this manner as there is with Medicaid. Once the assets have been rearranged or reallocated, the veteran household can apply for the benefit.

The law firm Hanlon Niemann, PC is eager to work with veteran households to help them rearrange assets, to set up legal work for transfers and to help with other estate planning needs in order to qualify a veteran household for a pension benefit.

It is also extremely important that if assets have been moved or otherwise rearranged, a competent Medicaid planning practitioner should be involved. It is very likely that the veteran or the spouse may end up in a nursing home or end up paying more for care than the current income and veteran benefit combined. Nursing homes are very expensive and the individual's income and the veterans benefit rarely pay for the cost of a nursing home. This means the beneficiary may have to rely on Medicaid to cover the deficit. Assets reallocated to qualify for VA benefits could create penalties for Medicaid eligibility. It is vital that the possibility of needing Medicaid should be planned for.

How is VA pension calculated?

The VA Pension offers 9 different maximum benefit amounts based on whether the award is for a veteran with a spouse, a single veteran or the single surviving spouse of a deceased veteran. There are also rates associated with additional dependent children. Typically, an older veteran household will have dependent children if they have one or more totally disabled or incapacitated adult children living in the home. Or the older veteran may be married to a young woman. If the household has such a situation, the additional dependent child rates are listed in Table 1 below.

The calculation of each of these different categories of Pension income will allow for a benefit from zero dollars all the way up to the Maximum Allowable Pension Rate or MAPR for that category. We have listed 9 categories below along with the minimum and maximum monthly Pension income for that category.

The table on the next page lists current maximum allowable pension rates for 2009 by category of rating or no rating. The medical deductions mentioned in the example above are also listed here. Please go to next page for chart of benefits.

**Special Monthly Pension Rates Paid to
Veterans Age 65 or Older OR
Permanently and Totally Disabled**

| | | |
|--|----------|---------|
| Qualified disabled veteran | \$11,830 | \$ 985 |
| With one dependent | \$15,493 | \$1,291 |
| Qualified disabled veteran and also housebound | \$14,457 | \$1,205 |
| With one dependent | \$18,120 | \$1,510 |
| Qualified disabled veteran and in need of regular aid and attendance | \$19,736 | \$1,645 |
| With one dependent | \$23,396 | \$1,950 |
| Increase for each additional dependent child | \$ 2,020 | \$ 168* |

**Death Pension Rates Paid to
Veteran's Surviving Spouse**

| | | |
|---|----------|---------|
| Surviving spouse | \$ 7,933 | \$ 661 |
| With one child | \$10,385 | \$ 865 |
| Surviving spouse is permanently housebound | \$ 9,696 | \$ 808 |
| With one dependent child | \$12,144 | \$1,012 |
| Surviving spouse is in need of regular aid and attendance | \$13,195 | \$1,100 |
| With one dependent child | \$15,128 | \$1,261 |
| For each additional child | \$ 2,020 | \$ 168* |
| Pension for each surviving child | \$ 2,020 | \$ 168* |

CONCLUSION

As you can see, the benefits to veterans and their surviving spouses eligible for a pension benefit is significant. The rules and regulations for being approved are complex. Going it alone can be very risky, if you are not familiar with the Veterans Administration. This booklet contains complicated information. Please feel free to call Fredrick P. Niemann, Esq. at Hanlon Niemann to set up a consultation to discuss the aid and attendance pension benefit. He can be reached at

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