

Veteran's Benefits

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Who is a Veteran?

- ☐ Active vs. Reservist
- ☐ Wartime vs. Peacetime
 - ☐ Date and Length of Service
- ☐ Character of Discharge
 - ☐ Other than Dishonorable

Improved Pension/Death Pension

- ☐ Major Changes effective as of 10/18/18
- ☐ Stated Purpose: "Maintain the integrity of the pension program"
- ☐ Made changes (both good and bad) to net worth, transfer of assets penalties, and medical expense deductions
- ☐ Still have to be a wartime veteran or the surviving spouse of a wartime veteran

Purpose of the Pension Program

- ❑ To ensure that wartime veterans and/or their spouses have sufficient funds to allow for them to care for themselves
- ❑ Specifically not to help preserve wealth or ability to pass an inheritance.
- ❑ Different qualifications based on whether claimant is "disabled", "housebound", or requires "Aid and Attendance"
- ❑ Commonly used as long term care (unreimbursed) expenses start to appear

Net Worth Test

- ❑ Old law- no one knew for sure!
- ❑ New Law- bright line tests- \$127,061
 - Tied to maximum community spouse resource allowance from Medicaid
 - Both old and new law exclude the primary residence as an asset
 - ❑ Now there is a 2 acre limitation on the size of the lot surrounding the residence
 - Income (IVAP) is an offset to net worth
 - ❑ \$125,000 and \$0 IVAP= OK!
 - ❑ \$125,000 and \$5,000 IVAP= Denied!

Lookback/Penalty Period

- ❑ 36 month lookback period
 - Triggered by the receipt of an original claim OR a new claim following a period of non-entitlement
- ❑ Will not apply to transfers made prior to 10-18-18
- ❑ Only "covered assets" that are transferred will be penalized
 - An asset that was part of the claimant's net worth and if not transferred would have caused net worth to be over the limit

Covered Assets

- ❑ Was it part of net worth?
- ❑ Did it help you become eligible for benefits?
- ❑ Was it transferred for less than fair market value?

Penalty Calculation

- ❑ Amount of covered assets transferred/max pension rate for a veteran with a dependent
- ❑ Example: Veteran transfers \$100,000 of his \$150,000 of covered assets to son in November 2018 and applies in March 2019.
- ❑ Only \$22,039 is covered/\$2,230= 9.88
- ❑ =9 months beginning in December 2018
- ❑ Maximum penalty period is 5 years

Penalty Exceptions

- ❑ The result of fraud or unfair business practice
- ❑ Transfer to a trust established for a child incapable of self-support prior to 18
 - No circumstances that the Veteran, Veteran's spouse or surviving spouse can benefit
- ❑ Transfer was from assets that were not over the \$127,061 limit

Cures

- Penalties can be recalculated for whole or partial returns of gifts
 - Must either be done before application OR
 - Within 60 days of notice of penalty, and evidence submitted within 90 days of notice

Annuities and Trusts

- Proposed reg. was very strict with transfers to trusts or purchases of annuities
- Final Reg softened considerably.
 - Can funds be returned to claimant/spouse?
 - Was transfer to annuity for fair market value?

Why are Medical Expenses Important?

- Just like under old pension law, medical expenses are an offset of income (IVAP) to extent they exceed 5% of Maximum Base Pension Rate (based on household size)
- Both proposed and final regulation had substantial changes to what was a qualifying medical expense (deduction for IVAP)
 - Generally, proposed law was more restrictive than before (i.e. cap on payment rate)
 - Final Regulation is typically more generous than before (300 comments submitted)

Where to find the new rules

- Deductible Medical expenses are part of 38 CFR 3.278
 - (b) defines terms
 - (c) broad strokes of medical expenses
 - Care, Medications, Supplements, Adaptive Equipment, Transportation expenses, Insurance premiums
 - (d) details in-home care and facility expenses
 - (e) exclusions from deductible expenses

ADL vs. IADL

- Comments requested expansion of ADLs to include IADL (like medication reminders)
 - VA declined to expand to include all IADL's, but did allow expansion in some cases. See 38 CFR 3.278(d)
 - Added ambulating to traditional list of bathing, dressing, eating, toileting and transferring
 - Medication Administration- licensed caregiver unless satisfied conditions of 3.278(d)

Do caregivers need to be licensed?

- Proposed Rule often required a care giver to be licensed for medical expense to count
- Final Rule clarifies a important exception to licensure requirement for custodial care
 - Either assistance with 2 or more ADLS (like before)
 - Certification by health professional that due to a physical, mental, or cognitive disorder the individual requires [the custodial care]- 3.278(d)(2) and (3)(iv)(4)

Nursing homes and "other than nursing homes"

- ❑ No real change for skilled nursing care (still valid expense)
- ❑ Other facilities get a specific section in 3.278(d)(3). This represents expansion from Fast Letter 12-23
 - Family members are OK to provide care (no pay requirement)
 - Licensed caregiver required unless claimant is housebound or needs A&A and is receiving medical care or custodial care (See (d)(3)(iv))

What about the old cases?

- ❑ Comments are clear that intent was not to cause any previously approved claimant to see a reduction in benefits
- ❑ Trap is if the care provider changes, then subject to re-evaluation
 - Shouldn't be overly problematic because of ability to use certification letter

Service Connected Compensation

- ❑ Veteran was injured, or injury was contributed to as a result of military service
- ❑ Must prove nexus between injury and time in the military
- ❑ Illness can manifest itself after discharge
- ❑ If on active duty, any injury suffered is service connected, unless willful misconduct

Rating Percentage

- ❑ Based on objective tests
- ❑ Private physician evidence can be used
- ❑ The higher percentage, the more \$\$
- ❑ Boost based on unemployability
- ❑ If 60%+, also get long term care supports
- ❑ Also possible to have home modifications, some in home care

Survivor's Benefits

- ❑ Who is a surviving spouse?
- ❑ Veteran must either have:
 - Death contributed to by service connected condition
 - 100% disabled for at least 10 years prior to death
 - 100% disabled for 1 year prior to death, and a POW AND death after 1999
 - 100% disabled for at least 5 years immediately upon leaving active duty

Survivor's Benefits

- ❑ Monthly compensation
- ❑ Can be increased if there are dependent children
- ❑ Can also be increased if spouse requires aid of others
- ❑ CHAMPVA benefits

VA Health System

- ❑ Different than ChampVA or Tricare for Life
- ❑ All veterans theoretically eligible, but subject to priority groups
- ❑ VA hospitals and clinics
- ❑ Prescription Drug Benefits
- ❑ Veteran must register- Form 10-10EZ
 - ❑ Lower Priority Groups are frequently ineligible
 - Difficulties with emergency care and billing

Accreditation and Fees

Who can represent a claimant before the VA?

- ❑ Veterans Service Organizations (VSO)
- ❑ Accredited Agents
 - Must take a test and score 75%
- ❑ Agents with respect to one claim
 - Family members
- ❑ Attorneys
- ❑ <http://www.va.gov/ogc/apps/accreditation/>

When must an agent be accredited?

- ❑ The 3 Ps of touching an application:
 - Preparation
 - Presentation
 - Prosecution
- ❑ PLUS 3 Hours of CLE
 - 1st 12-month period after accreditation
 - Also need 3 hours on Veteran's law every 2 years after

Fees

- ❑ NO ONE may charge a fee for the preparation, prosecution, or presentation of an application for veteran's benefits
- ❑ Fees for ancillary services are OK
- ❑ Reasonable fee for a general education about veterans' benefits is OK, but not specific to that veteran.
- ❑ Fees are allowable after a notice of disagreement is filed
- ❑ Fees can either be paid direct by veteran or through withholding- need to submit fee agreements

Random Issues- Fiduciary Cases

- ❑ For recipients who can't manage their own affairs
- ❑ Great concept, poor execution
- ❑ Get ready to add months onto your backpay award
- ❑ What if recipient dies?

Random Issues- Accrued Benefits and Substitution

- ❑ Accrued Benefits is to get money that should have already been paid
 - Can be paid to spouse/dependent kids
 - If none, can be paid to whoever paid for final illness/burial costs up to their costs or amount due
 - ❑ Need proof of payment- PLANNING OPPORTUNITY
- ❑ Substituted Claimant is to finish the claim off
 - Only available for spouse and dependent kids

Requests for Information

- For many claims where claimants have made previous transfers, the VA sends a letter requesting additional information for income not reported on the application because the claimant is no longer receiving this income
 - Use a Form 21-4138 to respond to these requests
 - Request the claimant's prior tax year's IRS Form 1099's to match up with the VA's letter (we are now requesting these for all applications to complete the new 21P-0969)
 - Send same spreadsheet that was completed for tracking the transfers/gifts
 - Send verification of transfers (statements showing funds leaving and statements showing where funds went)
 - VA will often also ask for a 21-8049 with these requests. Make sure your estimated cost of medical expenses on this form (section 7a) matches the same annual total on your medical expense report submitted with the original application

Case Studies

- Sam is an 83 year old veteran, whose wife has advanced dementia. They have care coming into the home at a cost of \$1,500 per month. The family income is \$4,000 per month. They have savings of \$120,000 and the family home.
 - Is Sam eligible for Pension benefits?
 - What is their current IVAP (Income for VA purposes)
 - What if they move into an independent living facility
 - What about the house?

#2- Surviving Spouse

- Annette had a stroke and recently moved into the skilled nursing facility, where she will likely need care for the remainder of her life. She has \$20,000 of savings and a small life insurance policy. She has \$1,500 of monthly social security.
 - Is Annette eligible for Pension benefits?
 - Should she apply? Why not?
 - Would her ability to handle her own funds affect the decision? What about hospice?
 - What if she had \$350,000 of savings?
