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CHAPTER 2

VETERANS AFFAIRS FINANCIAL BENEFITS

Pension and Compensation for Eligible Veterans and their Surviving Spouses

INTRODUCTION

The U.S. Department of Veterans Affairs (VA) provides two distinct financial benefit programs to qualified veterans or to their surviving spouses: 1) non-service-connected pension and 2) service-connected compensation. The VA pension is a needs-based benefit for disabled and elderly claimants who meet a specific set of financial and non-financial criteria. VA compensation, on the other hand, is a benefit for veterans who suffered a disabling injury during active military service.

Non-service-connected pension is a benefit that provides monthly payments to low-income war-time veterans, or their dependents, who are disabled or over the age of 65. The VA's pension is calculated to bring the claimant's total countable income to an amount established by Congress. The payment amount is the established pension rate less the claimant's other countable income [similar to how Social Security calculates its Supplemental Security Income (SSI) payment].

AID AND ATTENDANCE

Claimants entitled to a VA pension who are housebound or require the aid and attendance of another person with activities of daily living are entitled to a higher payment amount. This enhanced pension is commonly referred to as "Aid and Attendance." Aid and Attendance can serve as a critical source of income that can help veterans and their surviving spouses pay for home care, assisted living or nursing home care.

The maximum amount a claimant is eligible to receive for pension with Aid and Attendance is based on that claimant's payment category. A veteran, a veteran with a spouse, and a surviving spouse of a veteran fall into different payment categories. For 2018, the maximum monthly payment for pension with Aid and Attendance is \$1,830 for a single veteran, \$2,169 for a veteran with a spouse, and \$1,176

for a surviving spouse of a veteran. All VA pension payments are tax free.

FINANCIAL LIMITATIONS

The VA pension benefit is needs based and therefore the claimant must meet income and asset limitations. Income eligibility is driven by a formula that subtracts out-of-pocket medical expenses from gross income. If a claimant is married then the VA includes income and medical expenses of both spouses. All earned and unearned income is added together, such as Social Security, pension income, interest, dividends and business income. The claimant must also report lump-sum income, including inheritances, lottery winnings, gifts and awards.

All unreimbursed recurring medical expenses are used to offset gross income. These expenses can include nursing home costs, assisted living costs, home health services and health insurance premiums. These expenses, however, must be "out of pocket" and not reimbursable by insurance or a third party. The difference between gross income and unreimbursed medical expenses is the claimant's "Income for Veterans Affairs Purposes" (IVAP). If IVAP is less than zero (if medical expenses exceed gross income) then the claimant is eligible for the maximum pension payment.

The claimant must also have limited net worth, however, there is no defined asset limit. The VA's general standard is whether the claimant has sufficient assets to pay for medical expenses for the rest of his or her life. Practitioners generally use \$80,000 as a rough asset threshold, but this may vary depending on the age and income of the claimant. An older claimant with a shorter life expectancy may have a smaller asset limit than a younger claimant.

The claimant's primary residence, a vehicle and personal property are generally not counted when calculating net worth for VA pension. Life insurance that does not have a cash surrender value is not

a countable asset. All liquid assets, whether owned by the veteran or the veteran’s spouse, such as CDs, annuities, stocks, bonds, savings accounts, checking accounts and IRAs are included in the claimant’s net worth. Unlike SSI, or long-term Medicaid, there are currently no transfer penalties for the VA pension.

MILITARY REQUIREMENTS

The veteran must also meet specific military requirements to qualify for the VA pension. The veteran must have served at least 90 days active duty, one day of which was served during a period of war. Periods of war fall within the following time frames:

<p>World War II: Dec. 7, 1941 – Dec. 31, 1946</p>
<p>Korean War: June 27, 1950 – Jan. 31, 1955</p>
<p>Vietnam War: Aug. 5, 1964 (Feb. 28, 1961 for those who served “in country” before Aug. 5, 1964) – May 7, 1975</p>
<p>Gulf War: Aug. 2, 2000 – a date yet to be set by law</p>

Active duty does not include “reserve” duty. Finally, the veteran must have been discharged for conditions other than dishonorable.

VA PENSION

The VA pension is “non-service connected” because the claimant, whether the veteran or the surviving spouse, does not need to prove that the veteran incurred a disability during military service. The disability is therefore “not connected” to the veteran’s service. To medically qualify for base pension, claimants must be either age 65 or older, totally and permanently disabled, a resident in a nursing home, or a recipient of SSI or Social Security Disability Insurance (SSDI). To receive the enhanced pension with Aid and Attendance, the claimant must require the aid of another person in order to perform personal functions required in everyday living.

The pension benefit paid to a surviving spouse is referred to as Survivor’s Pension or Death Pension. In order for a surviving spouse of a veteran to qualify, the spouse must also satisfy certain marital requirements. The surviving spouse must have

been married to the veteran for at least one year, or, in the alternative, had a child with the veteran. The surviving spouse must also have remained married to the veteran and cohabitated with the veteran continuously until the veteran’s death. A divorce or separation from the veteran terminates the former spouse’s entitlement to Survivor’s Pension. Likewise, a surviving spouse, who remarries after the veteran’s death, terminates survivor’s eligibility off of the veteran’s service record.

SERVICE-CONNECTED COMPENSATION

The VA’s service-connected compensation is distinct from the VA’s non-service-connected pension in several ways. Unlike the VA pension, VA compensation is not based on financial need and there is no income or asset test to qualify. The compensation is a monetary benefit paid to a disabled veteran whose disability was incurred or aggravated while serving in active military service. Incurred in the line of duty does not mean combat related, and unlike the VA pension, wartime service is not required. For example, a veteran who suffers from post-traumatic stress disorder (PTSD) during the Vietnam conflict could qualify for compensation, as well as a veteran who severely injured his back on a military base during peacetime.

The VA pays compensation on a scale from 10 percent to 100 percent in increments of 10 percent. In 2018, the VA pays a veteran with no dependents rated at 10 percent disability \$136.24 per month, while the VA pays the same veteran rated at 100 percent disability \$2,973.86 per month. The veteran will receive a higher amount if he or she has a spouse and/or children.

The key component with compensation is establishing the nexus between the veteran’s disability with the veteran’s military service. Eligibility must be established with sufficient medical evidence. There are some disabilities, however, that are presumed to be caused by a veteran’s military service. This presumption relieves the claimant from the burden of proving the connection between the disability and the veteran’s military service. For example, the VA presumes that a veteran with respiratory cancer who was exposed to Agent Orange during the Vietnam War has a service-connected illness and may qualify for compensation.

A surviving spouse of a veteran may also qualify for compensation under certain conditions. This survivor's benefit is called "Dependency and Indemnity Compensation" (DIC). To qualify for DIC, the spouse must have been married to a veteran who died while in the service, or married to a veteran who was rated as 100 percent disabled for at least 10 years prior to the veteran death (other conditions may apply as well). If the surviving spouse remarries, then potential eligibility to DIC is terminated.

Receipt of payment from the VA may take anywhere from two months to more than a year. Payments are made retroactively from the first day of the month following the application filing date. A claimant may submit a certain document that states an intention to file a claim for pension or compensation before submitting the fully developed application to lock in an eligibility date.

If the applicant has a mental incapacity and cannot manage his or her financial affairs, it is likely that the VA will appoint a fiduciary to manage the claimant's VA payments. This, unfortunately, will extend the time before which the VA will release the retroactive lump-sum payment owed to the veteran.

APPEALS

Claimants are also entitled to an extensive appeal process if they receive a denial on a VA application for benefits. An initial denial for benefits can be appealed by submitting new and material evidence to the VA or by filing a "Notice of Disagreement," or both, within one year from the date of the denial. If the VA issues another denial, then the claimant has 60 days to file an appeal with the Board of Veterans Appeals. If you have exhausted all of your appeals with the VA, you may file an action with the United States Court of Appeals for Veterans Claims in Washington, D.C. This court has the authority to overturn the VA's internal decisions. You can locate an attorney at the court's website.

You will need an attorney admitted to practice before this court to argue your case. If you financially qualify, the Veterans Pro Bono Consortium, also located in Washington, D.C., will assign an experienced attorney to handle your case without charge.

If you need assistance with the VA benefit application process, or with any other veterans benefits issues, you may consult your local VA office or a certified veteran's agent for assistance.