



VETERANS BENEFITS

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MEMORANDUM REGARDING VETERAN BENEFITS

This memorandum is provided in part as a basic outline of Veteran's Benefits, which, in spite of being a major Federal program, remains one of the least utilized and least understood programs available to those who have served our Country.¹

WHO IS A VETERAN?

A veteran is a person who served as a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or as a commissioned officer of the Public Health Service, the Environmental Science Services Administration or the National Oceanic and Atmospheric Administration. The veteran's service must have been full time service, and the veteran's discharge must have been "other than dishonorable".

WHO ADMINISTERS THE PROGRAMS?

This Federal program is divided into three separate areas.

1. Veteran's Health Administration, which provides and oversees all of the Health Care facilities, such as V.A. Hospitals.
2. National Cemetery Administration maintains Arlington National Cemetery and provides burial benefits for veterans.
3. Veteran's Benefits Administration administers the balance of veteran's benefits, including education, readjustment, disability pensions and compensation.

NASSAU COUNTY

The Nassau County Veteran's Service Agency is an authorized agency that can advise, assist and represent you as your agent in filing for Veteran Benefits. It is located at 2201 Hempstead Turnpike, Building Q, East Meadow, New York 11554, telephone number 516-572-6565.

¹ There are approximately 24 million veterans. Many veterans are "baby boomers" who served in the Vietnam War and/or the Persian Gulf War. The Veteran's Administration ("V.A.") has stated that approximately 38% of veterans access benefit programs to which they may be entitled (<https://www.ssa.gov/policy/docs/rsnotes/rsn2001-01.html>).

SUFFOLK COUNTY

In Suffolk County, the Suffolk County Veteran's Service Agency can advise, assist, and represent you as your agent in filing for veteran benefits. It is located at the H. Lee Dennison Building, 100 Veteran's Memorial Highway, 3rd Floor, Hauppauge, New York 11788-0099, telephone number 631-853-VETS (631-853-8387).

NEW YORK CITY

For contact information for the boroughs of New York (and other New York counties) go to <http://veterans.ny.gov> or call 1-888-838-7697.

SERVICE-CONNECTED DISABILITY

A service-connected disability is recognized if the V.A. determines that the veteran's injury, disease, or condition was incurred or aggravated as a result of service in the U.S. Military. The benefits are income tax free.

There are three criteria to be met before a veteran can receive service-connected compensation from the V.A.:

1. There must be a current disability diagnosed by a medical professional. The veteran is presumed to have been in good health when he or she entered service. If there was a preexisting condition, there is a presumption that such condition was aggravated by the military service.
2. There must be evidence of some precipitating disease, injury or event while in service that is recorded in the military service records.
3. There must be a link between the current disability and the in-service disease, injury or event. The burden of proof is only that "it is as likely as not" that there is a link.

Certain medical conditions have been designated by the V.A. as being presumptively service-connected. For veterans exposed to Agent Orange, diabetes and certain types of cancer are presumptively service-connected. The same presumption exists for World War II veterans exposed to radiation in the Pacific Theatre. Continuity of symptomatology exists when the veteran can demonstrate that a condition that existed during service has been continually treated to the present. This will also establish the required link.

SECONDARY SERVICE CONNECTION

If a veteran has a service-connected condition, and later develops another condition as a result of the first condition, then the second condition will also qualify as a service-connected disability. One example that commonly occurs is a service-connected foot injury, which later causes a back injury because of the altered gait.

INCREASED DISABILITY RATINGS

A veteran with a service-connected condition can reapply to the V.A. at any time for an increase in rating based on the condition having become more disabling.

V.A. RATING SYSTEM

For service-connected conditions, the amount of compensation paid is based upon the percentage of disability, as determined by the V.A. This is referred to as the “rating” or the “rating system”. The disability rating assigned by the V.A. can vary from 0% to 100%, in 10% increments.

FINANCIAL REQUIREMENTS FOR SERVICE CONNECTED DISABILITY COMPENSATION

The Service-Connected Disability Compensation Program is not means-tested. The veteran’s income and assets are not related to the receipt of benefits.

PHARMACY BENEFITS

Veterans receiving service-connected disability compensation are eligible for pharmacy benefits. There is a co-pay of \$5.00 - \$11.00 for each 30-day supply for a treatment of conditions that are not service connected for enrolled veterans with a maximum of \$700 per year (for 2022).

Certain veterans have no co-payment and receive free pharmacy services:

- a) Veterans with a service-connected disability rating of 50% or higher
- b) Former prisoners of war,
- c) Certain veterans receiving medication for service-connected conditions,
- d) Veterans exposed to Agent Orange who now suffer from head or neck cancer,
- e) Veterans receiving medication for a V.A. approved research project; and
- f) Veterans whose income is below the maximum annual rate for a V.A. pension.

For veterans not entitled to free pharmacy services, the co-pay listed above applies. The V.A. prescription drug formulary has approximately 1,300 drugs as compared with certain Medicare Part D plans that have approximately 4,500 different drugs.

V.A. FACILITIES

There are 13 medical centers in New York State. Additionally, there are 54 V.A. clinics throughout the state. These facilities provide hospital care, nursing home care, and out-patient medical care. Together, they are one of the largest health care providers in the country.

Admission into a V.A. nursing home requires a disability rating of 70% or higher. Despite this high admission standard, there are virtually no existing vacancies in V.A. nursing homes. Beds are filled as quickly as they are vacated.

There are currently five (5) Veterans Homes in New York State. The two (2) local homes are:

New York State Veterans Home at St. Albans
178-50 Linden Boulevard
Jamaica, New York 11434-1467
(718) 481-6268

Long Island State Veterans Home
100 Patriots Road
Stony Brook, New York 11790-3300
(631) 444-8606

NON SERVICE-CONNECTED PENSIONS

Non service-connected benefits are called “pensions” whereas service-connected benefits are referred to as “compensation”. One major difference is that pension benefits are means tested, with income and asset limits, whereas compensation benefits are not limited by income or assets.

MILITARY SERVICE REQUIREMENTS – PENSION

War time service in the Military is a requirement for pension benefits. Following are the designated war time service periods:

- Mexican Border War – May 9, 1916 to April 5, 1917
- World War I – April 6, 1917 to November 11, 1918
- 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*
- Persian Gulf War – August 2, 1990 to date to be determined by Presidential proclamation or law

*Beginning date is February 28, 1961 for a veteran who served in the Republic of Vietnam during that period

Eligibility for pension benefits require 90 days of continuous active duty before 1980 with at least one (1) day served during a declared period of wartime, or 24 months of continuous active duty after 1980, with at least one (1) day served during a declared period of wartime.

There is no requirement that any of the Veteran's required active service be in a combat zone or even outside the United States.

HOMESTEAD

A single family home, which is the residence of the veteran or the spouse, is an exempt asset as long as land is 2 acres or less. Home contents and personalty are also exempt, and therefore not considered when eligibility for pension benefits is determined.

ASSET LIMITS

The Veteran (and spouse) cannot have assets in excess of \$138,489 (2022), excluding the homestead to qualify for benefit. The value of the assets can no longer be excluded based on an age analysis. The V.A. will consider the liquidity and availability of the assets in order to determine eligibility for the pension.

ASSET TRANSFERS

The V.A. is imposing a penalty period on the transfer of assets within a three-year time frame than can last up to five years.

BASIC PENSION BENEFITS

A veteran who is disabled or is over the age of 65 and meets the above mentioned service and asset tests can receive a basic monthly pension of up to \$1,229 per month. A married veteran can receive an unrated pension up to \$1,610 per month. These amounts can be reduced by available income on a dollar for dollar basis. Protecting the pension in spite of available income is discussed below. There is no medical requirement for a basic pension, as long as the veteran is age 65 or older. If under age 65, the veteran must be permanently and totally disabled.

ADDITIONAL ALLOWANCES TO BASIC PENSIONS

There are two allowances to a Basic Pension claim:

1. Aid and Attendance; and
2. Housebound Allowance.

In order to qualify for either allowance, the veteran must meet medical requirements in addition to the service and asset requirements outlined above.

HOUSEBOUND ALLOWANCE

To be eligible for a V.A. rating of a housebound allowance the veteran must be over the age of 65 and substantially confined to the home due to disability. If the veteran is under the age of 65, the veteran must meet the federal standard of being permanently and totally disabled. The V.A. no longer defines housebound as bedbound or requiring that the veteran not leave the home. The current standard allows a veteran to leave the home, with assistance, for medical care or rehabilitation.

The maximum housebound allowance for a married veteran is \$1,883 per month. For an unmarried veteran, the maximum housebound allowance is \$1,502 per month. As with all pensions, the maximum allowance will be reduced on a dollar for dollar basis or completely eliminated if the income exceeds the maximum pension allowance.

AID AND ATTENDANCE

A V.A. rating for aid and attendance is granted only if the veteran meets certain medical requirements. These medical requirements are waived if the veteran is a patient in a nursing home. The basic requirement is that the veteran requires ongoing aid and attendance from someone else for the performance of the activities of daily living (ADLs). These include toileting, feeding and dressing. The current maximum aid and attendance monthly pension amount is \$2,431 for a married veteran and \$2,051 for a single veteran. The maximum monthly amount may be reduced or eliminated by monthly household income. Income offsets to protect the pension are discussed below.

INCOME DISREGARDS

The most notable income disregard is Supplemental Security Income (“SSI”). SSI payments do not count as income for V.A. purposes.

The most significant and valuable income disregard is a category labeled as non-reimbursed medical expenses. One type of non-reimbursed medical expense is the cost of health insurance. This even includes indemnity policies that don’t pay medical bills but pay the insured an amount based on the treatment received.

All non-reimbursed medical expenses will reduce income. The most valuable non-reimbursed medical expense is those that recur on a regular basis. For veterans rated for aid and attendance or a homebound allowance, assisted living expenses, home care expenses, and nursing home expenses are all recurring medical costs. As a recurring cost the V.A. will annualize the cost, in advance of its being paid.

Thus, if a veteran is in an assisted living facility with a non-reimbursed cost of \$3,500 per month, the V.A. will deduct \$42,000 per year from the veteran’s annualized income. The same approach is used for non-reimbursed nursing home costs which results in an even higher deduction from income based upon higher nursing home costs. Home care costs incurred by licensed or unlicensed providers, as well as services provided by relatives, can be annualized, and used to reduce income. Home care can include medical and non-medical services such as cooking and house cleaning. The only requirement is that some medical care be provided. Reminding a veteran to take his medicine is defined by the V.A. as medical care.

Relatives and family members must be paid in order for the income to be annualized. The V.A. will view payment to family members who reside in the home with more scrutiny than those who reside outside the home.

ASSISTED LIVING FACILITIES AID AND ATTENDANCE PENSION BENEFITS

The V.A. considers assisted living costs medical expenses. For the vast majority of people, assisted living expenses are non-reimbursed expenses. For rated veterans, these are non-reimbursed medical expenses. With the cost of assisted living averaging between \$4,000 to \$10,000 per month, the impact on the veteran’s countable income will be significant. If the assisted living expenses and the health insurance deductions can reduce the countable income, the aid and attendance pension will be the maximum allowable benefit which the veteran can use toward the cost of the assisted living facility. The veteran can then use the disregarded income to help with the cost of the assisted living or any other living or recreational expenses.

For the veteran who can meet the eligibility requirements of the pension program, the aid and attendance benefit will provide a significant economic advantage. A veteran receiving service related compensation benefits is not eligible for aid and attendance pension benefits.

NOTE: The above is merely informational and not legal advice. This guide was published in January 2022 and based on New York law. You should contact us for any changes or updates in the law or long term care planning. Future changes in law may render the above information inaccurate. If you have any questions regarding this guide, please do not hesitate to call RUSSO LAW GROUP, P.C. at (516) 683-1717 or contact us at www.VJRussoLaw.com.

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