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VETERAN'S "PENSION": NON-SERVICE CONNECTED VETERAN'S BENEFITS FOR THE ELDERLY AND DISABLED

Alice Reiter Feld*

One of the best kept secrets: An excellent potential source of funds for the elderly long-term care (either at home or in a facility) is veteran's benefits. These benefits can be a blessing for the eligible incapacitated veterans and widow(er)s who are not ready or who want to avoid a nursing home.

The benefits provided by the Department of Veteran's Affairs (still typically designated the VA) generally fall into two categories: service connected and non-service connected. Statutes regulating veteran's benefits can be found in Title 38 of the United States Code and the Federal Regulations. In addition, M21-1, the Veteran's Adjudications Procedures Manual, deals specifically with the adjudication of claims for compensation, pension, and related benefits within the province of the veterans' service center. It applies to all VA regional offices, including centers with regional office activities and the VA Records Management Center in St. Louis, Missouri.¹

This article will focus on non-service connected benefits since these are the benefits most likely to be available to our clients. These benefits are called "pension." This term tends to be confusing because it has nothing to do with years of service, as we normally think of a pension. Instead, it is available to certain wartime² veterans (or their dependents) in financial need who are totally disabled³ because of a non-service connected condition.⁴ The program is also referred to as "improved pension". This simply applies to the program that came into

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1. Veteran's Adjudications Procedures Manual, M21-1 § 3.04a.

2. 38 U.S.C. § 1521(j).

3. 38 U.S.C. § 1521(a).

4. 38 U.S.C. § 1522; 38 C.F.R. § 3.274.

effect after 1979 in which all assets and income of the veteran are considered for eligibility. Once the veteran's eligibility requirements are met, the family member may be able to obtain benefits based on his or her status as the veteran's dependent. If the applicant is the widow or widower of the veteran, the applicant must have been validly married to the veteran at the time of the veteran's death. If the widow remarries after the death of the veteran, eligibility is terminated.

Pension is a need-based program. The veteran's income cannot exceed the maximum annual pension rate (MAPR), which in 2003 is \$9,304 per year or approximately \$775 per month. The pension that the veteran is entitled to is the difference between his or her income and the MAPR. Additional dependents will increase the MAPR amount.

An important pension program benefit comes with eligibility. The program of "Aid and Attendance" is available to a veteran who is not only disabled but also needs another person in order to avoid the hazards of his or her daily environment.⁵ For those who qualify, the amount of assistance the veteran can receive can be higher because certain unreimbursed medical expenses are deducted from income. Therefore, in 2003, a veteran can receive a maximum of \$1,575 per month in benefits, and a widow(er) can receive up to \$851 per month. Although the surviving spouse or other dependents may receive the benefit of pension, this article will refer to the recipient of the benefit as the applicant, which is the beneficiary or disabled person.

SERVICE REQUIREMENTS

A veteran is a person who served in the active military, naval or air services and who was discharged or released under conditions other than dishonorable.⁶ Generally, to qualify, the veteran must have ninety days or more of active duty, other than dishonorable conditions, and one day of active duty.⁷

DISABILITY REQUIREMENTS

The applicant must be considered "permanently and totally disabled." The VA will generally accept a letter from the person's personal doctor as to the veteran's disability. This can be filed instead of a 21-2680 form. The letter should state that the person has an incapacity that requires care or assistance on a regular basis to protect the claimant

5. 38 U.S.C. § 1502(b).

6. 38 U.S.C. § 101(2).

7. 38 U.S.C. § 1521(j).

from the hazards or dangers of daily living. The applicant does not need to be helpless – he or she must show only a need for aid and attendance on a regular basis.

A patient in an assisted living facility (ALF) is presumed to be in need of aid and attendance. In some states, the facility will have completed a health assessment form that describes the diagnosis and need and is signed by the doctor or nurse practitioner. Any advocate can and should get a copy from the facility.

NET WORTH REQUIREMENTS

The VA will consider the net worth of the applicant and will deny the application if the net worth is such that part of it could be consumed for the applicant's care.⁸ As a rule of thumb, the cutoff is \$80,000. In other words, the VA will rarely deny a claim if the net worth is below this amount. The home is not counted and there is no penalty period for transfer of assets. The application asks for the net worth of the applicant on the date of the application and does not inquire as to previous transfers.

INCOME REQUIREMENTS

As a general rule, even if the applicant fulfills all of the above requirements, the application will be denied if the applicant's countable income exceeds the maximum annual pension rate, which is currently \$1,575 per month. Countable income is all income of any kind attributable to the veteran.⁹ However, in computing the income, certain items can be deducted. Specifically, unreimbursed medical expenses paid by an applicant may be used to reduce the applicant's income.¹⁰

Many items constitute unreimbursed medical expenses. Included in this list are: doctor's fees, dentist's fees, glasses, medicare deductions, co-payments, prescriptions, transportation to doctors, therapy, health insurance, and funeral expenses. Also included in unreimbursed medical expenses are the costs of the ALF or in home aid. Obviously, these can make up a big portion of the unreimbursed medical expenses.

A deduction for medical expenses can only be made if the expenses have actually been paid.¹¹ Expenses must also be

8. Veteran's Adjudications Procedures Manual, M21-1, Part IV § 16.39e.

9. 38 C.F.R. §§ 3.262, 3.271.

10. Veteran's Adjudications Procedures Manual, M21-1 Part IV § 16.31.

11. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(1).

unreimbursed; that is, the beneficiary will receive no reimbursement from insurance of any source.¹² Either the beneficiary or a relative of the beneficiary who lives in the same household can incur the unreimbursed medical expenses. This person does not have to be a dependent of the veteran.¹³

Insurance premiums paid by the beneficiary or member of the household are allowable medical expenses.¹⁴ Insurance includes medigap policy premiums, and long-term care policies. In addition, if a physician directs a beneficiary to take nonprescription drugs, the cost of such over-the-counter medicines becomes an allowable medical expense deduction.¹⁵ Mechanical and electronic devices that compensate for claimant or dependent's disabilities are deductible medical expenses to the extent that they represent expenses that would not normally be incurred by non-disabled persons.¹⁶ Medicare premiums paid to the Social Security Administration are deductible as medical insurance premiums.¹⁷ The costs of an adult day care center, rest home, group home or similar facility or program is an allowable medical expense as long as the facility provides some medical or nursing services for the disabled. The services do not have to be provided by a licensed health care professional.¹⁸ An Alzheimer's day care program would be an example of a service not provided by a licensed health care professional.

The costs of long-term care can and often will be the largest unreimbursed medical expense. A medical expense deduction can be allowed for unreimbursed nursing home fees even though the nursing home may not be licensed by the state to provide skilled or intermediate level care. The definition of a "nursing" home for purposes of the medical expense deduction is not the same as the definition of nursing facility set forth in the federal regulations. A "nursing" home for the purposes of the medical expense deduction is any facility that provides extended term inpatient medical care.¹⁹

In-home attendants (i.e. aides) are also considered an allowable medical expense deduction, as long as the attendant provides some

12. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(2). The rule differs from Medicaid rules that require only that the medical expense be incurred, not paid. See 42 C.F.R. § 435.4.

13. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(3).

14. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(4).

15. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(7).

16. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(8).

17. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31a(9).

18. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31b(10)(a).

19. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31b(1).

medical or nursing services for the disabled person. The attendant does not have to be a licensed health professional. All reasonable fees paid to the individual for personal care of the disabled person and maintenance of the disabled person's immediate environment may be allowed. This includes such services as cooking and housecleaning for the disabled person. It is not necessary to distinguish between "medical" and "non-medical" services.²⁰ For example, the veteran pays an attendant to administer medication and provide for the veteran's personal needs. The attendant also cooks the veteran's meals and cleans the veteran's house. The entire amount paid to the attendant may be allowed as a deductible medical expense. It makes no difference if the attendant is a licensed health professional.

The cost of an assisted living facility and even part or all of the cost in an independent living facility can be an allowable medical deduction. If the beneficiary is maintained in a home or other institution because the individual needs to live in a protected environment, the fees paid to the institution are deductible expenses to the extent it represents payment for medical treatment.²¹ The beneficiary's doctor is the best ally in showing the need for a facility.

Two simplified examples show how this program can help:

Example No. 1

Mr. Smith can no longer live at home, but he does not require nursing home care. His doctor says he needs to live in an assisted living facility in order to protect himself from the hazards of daily living and because he needs the aid and attendance of another person on a regular basis. His income consists only of Social Security of \$950 per month; his assets are \$45,000. He would like to move into the Happy Times ALF where the monthly fee is \$2,500.

To calculate the pension benefit due to Mr. Smith, the VA deducts the cost of the ALF (an unreimbursed medical expense) from Mr. Smith's income of \$950. He has a deficit of \$1,550 per month. He is entitled to the maximum benefit of \$1,575 per month. This payment is made directly to the veteran.

Example No. 2

Mr. and Mrs. Smith live in the Sunshine Condos. Their combined

20. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31b(2)(a).

21. Veteran's Adjudications Procedures Manual, M-21-1 Part IV § 16.31b(6)(a).

Social Security income is \$1,400 per month; they also have \$48,000 in assets. Mr. Smith, a veteran, requires the aid and attendance of another person on a regular basis; therefore, he requires an aide in his home. The cost is \$500 per week or \$2,150 per month.

Additionally, Mr. and Mrs. Smith have the following as unreimbursed medical expenses: health insurance for \$150 per month, transportation for \$50 per month, prescriptions for \$700 per month, and funeral plan payments for \$100 per month. Their unreimbursed medical expenses total \$3,150. Their income being only \$1,400 per month means that they have a deficit of \$1,750 and are entitled to the full \$1,575 per month.

I suggest that legal counselors, advocates, or capable clients make a trip to the local VA office and pick up a set of the forms and list of supporting documentation needed and chat with one of the VA service officers to get some general information.²² The application is filed at your local VA office. However in order to establish the earliest possible date, a letter to the VA requesting pension will suffice. It takes approximately two to four months to be approved but is retroactive from the first of the month after the month of application.

²² The forms include: Form 21-526 (Veteran's Application for Compensation or Pension); and Form 21-534 (Spouse's Application for Benefits); and Medical Expense form 21-8416. The medical expense form allows you to amplify the answer to Question 41 regarding unreimbursed medical expenses. A doctor's letter can substitute for form 21-2680 (Examination for Regular Aid and Attendance). The veteran or agent signs form 21-4138 (Statement in Support of Claim).