

HELPING VETERANS PAY FOR LONG-TERM CARE

There are currently over twenty-one million veterans living in the United States, and over nine million are age sixty-five or older. Many of these veterans and their surviving spouses are receiving long-term care or will need some type of long-term care in the near future, and there are funds available from the Department of Veterans Affairs (“VA”) to help pay for that care. Unfortunately, many of those who are eligible have no idea that any type of benefits exist for them or that an attorney can help them become eligible.

VA Benefits in Nursing Homes

Veterans who have a service-connected disability rating of 70% or higher can receive care in nursing homes operated by the VA free of charge. In Maine, the only VA-operated nursing home is Togus, located in Augusta. A limited number of community nursing homes have contracts with the VA whereby a veteran with a 70% rating can receive free care.

In conjunction with the states, the VA has built and supported state veterans homes, including the Maine Veterans’ Homes in Bangor, Augusta, Machias, Caribou, Scarborough, and South Paris. State veterans homes are not free, but there is a subsidy of \$107.16 a day for nursing home care and \$46.25 a day for assisted living care (as of October 1, 2017) for each veteran, which reduces the expense. Most of these facilities offer nursing home care, and some offer assisted living and day care. They are generally available to any veteran and sometimes to spouses of veterans.

Service-Connected Disability Compensation

The VA provides a monthly benefit to veterans with at least a 10% disability rating that is the result of a disease or injury incurred or aggravated during active military service. The disability can be a physical condition or mental health condition such as post-traumatic stress disorder. The benefit amount increases according to the degree of the veteran’s disability and the number of dependents.

To be eligible for disability compensation, the veteran must: have served in the Uniformed Services on active duty, active duty for training, or inactive duty training; have been discharged under other than dishonorable conditions; and have at least a 10% disability rating by an injury or disease that was incurred in or aggravated during service. There is no length of service, income, or asset requirement.

Veterans Improved Pension

There are also three types of benefits available that provide a monthly cash payment to veterans who have long-term health care and financial needs: basic service pension, pension with housebound allowance, and pension with aid and attendance. These pension benefits

are available whether or not there was a service-connected disability, but the following criteria must be met:

- The veteran must have been discharged under other than dishonorable conditions.
- The veteran must have served ninety days of active duty with at least one day beginning or ending during a period of war. After September 1, 1980, the active duty requirement increased to 180 days. Refer to Table 1 below for eligible periods of war.
- The claimant (either the veteran or the surviving spouse applying for the benefit) must be permanently and totally disabled, or age sixty-five or older. Permanent and total disability includes a claimant who is:
 - In a nursing home or assisted living facility,
 - Determined disabled by the Social Security Administration,
 - Unemployable and reasonably certain to continue so throughout life, or
 - Suffering from a disability that makes it impossible for the average person to stay gainfully employed.

To receive an improved pension benefit, the claimant must also meet certain financial requirements. It is important to note that these rules are in flux, and this article only provides the current rules. The VA published proposed rules in 2015 that establish a clear net worth limit, create a thirty-six-month look-back period for transfers of assets, and impose a penalty period if transfers are made in the look-back period. Final rules have not been published.

Currently, to be eligible for pension benefits, a married veteran and spouse should have no more than \$80,000 in countable assets (less for a single veteran or surviving spouse), which includes retirement assets but excludes a home and vehicle. The \$80,000 limit, however, is only a guideline. The VA looks at a claimant's total net worth, life expectancy, income and medical expenses to determine whether the veteran or surviving spouse is entitled to special monthly pension benefits.

Planning Note. Many times, the most difficult challenge for a veteran seeking to qualify for pension benefits is to reduce his or her assets to the applicable level. The assistance of legal counsel is important to ensure that the strategies used have minimal impact on future eligibility for Medicaid (called MaineCare in Maine). For example, unlike Medicaid, currently there is no look-back period and no penalty for giving assets away for VA benefits. But gifting to qualify for VA benefits could disqualify the individual from much-needed Medicaid long-term care benefits.

A veteran or surviving spouse must have an Income for VA Purposes (IVAP) that is less than the benefit for which he or she is applying. IVAP is a claimant's gross income from all sources, less countable medical expenses—that is, recurring, out-of-pocket medical expenses that can be expected to continue. If the claimant's IVAP is equal to or greater than the annual benefit amount, the veteran or surviving spouse is not eligible for benefits. Table 2

below shows the applicable income and pension amounts for both veterans and surviving spouses.

1. Basic Service Pension

The VA provides a basic pension to veterans and surviving spouses that meet the above service and financial eligibility requirements. An unmarried veteran can receive up to \$1,097 per month, a married veteran can receive up to \$1,436 per month, and a surviving spouse can receive up to \$735 per month (with additional payments available if dependent children are present in the home).

2. Pension with Housebound Allowance

A slightly higher monthly payment is available to wartime veterans or surviving spouses who meet the same service requirements as the basic service pension, but who are confined to their homes for medical reasons. The VA defines housebound as being substantially confined to the home or immediate premises due to a disability that will likely remain throughout the claimant's lifetime.

An unmarried veteran can receive up to \$1,340 per month, a married veteran can receive up to \$1,680 per month, and a surviving spouse can receive up to \$899 per month (with additional payments available if dependent children are present in the home).

Unreimbursed medical expenses will reduce a claimant's income dollar-for-dollar after a small copay (5% of the annual pension amount) is met. But to be eligible for a special monthly pension for being housebound, the claimant's IVAP must be less than the annual income threshold. To illustrate, a veteran with exactly \$16,089 in annual income would not be eligible for a special monthly pension for being housebound. However, if that veteran was able to show annual income of \$20,000 and unreimbursed medical expenses of \$25,000, the veteran would be eligible for \$16,089 in special annual pension (paid on a monthly basis) because the veteran has negative IVAP.

3. Pension with Aid and Attendance

The highest monthly benefit is available when a wartime veteran or surviving spouse can show, through medical evidence provided by a primary care physician or facility, that the claimant requires the aid and attendance of another person to perform activities of daily living. The VA defines the need for aid and attendance as: requiring the aid of another person to perform at least two activities of daily living, such as eating, bathing, dressing, or undressing; being blind or nearly blind; or being a patient in a nursing home.

This benefit, often referred to simply as "Aid and Attendance," is the most widely known and talked-about benefit as it offers the highest possible monthly payment. An unmarried veteran can receive up to \$1,830 per month, a married veteran can receive up to \$2,169 per month, and a surviving spouse can receive up to \$1,176 per month (with additional payments available if dependent children are present in the home).

The Application Process

While the application process for pension benefits can be agonizingly slow—some applications take over a year before the VA makes a decision—the benefit is retroactive to the month after submission of the application. Having the proper documentation in place at the time of application (for example, discharge papers, medical evidence, proof of medical expenses, death certificate, marriage certificate, and a properly completed application) can reduce the processing time.

Conclusion

Time is of the essence for veterans or surviving spouses who may be eligible for VA benefits. It is imperative for those who work with veterans or surviving spouses of veterans to be aware of these benefits and to help potential claimants obtain legal help to qualify for pension benefits. You should consult an elder law attorney to determine what benefits best meets your needs and concerns and how qualifying for benefits will impact your other long-term care planning objectives.

This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.

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Table 1: Wartime Periods

World War I	April 6, 1917, through November 11, 1918, inclusive. If the veteran served with the U.S. military forces in Russia, the end date is April 1, 1920. Service after November 11, 1918, and before July 12, 1921, is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917, and before November 12, 1918.
World War II	December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is also considered.
Korean Conflict	June 27, 1950, through January 31, 1955, inclusive.
Vietnam Era	August 5, 1964, through May 7, 1975, inclusive. February 28, 1961, through May 7, 1975, inclusive, if the veteran served in the Republic of Vietnam during that period.
Gulf War	August 2, 1990, through date to be prescribed by Presidential proclamation or law.

Table 2: Pension Rates

Pension Benefit Figures – Wartime Veteran (Effective December 1, 2017)		
Type of Benefit	Maximum Annual Pension Rate (Income Limit)	Maximum Monthly Pension Rate (Income Limit)
Service Pension	\$13,166 (medical expenses must exceed \$659 to be deducted)	\$1,097 (medical expenses must exceed \$55 to be deducted)
• One dependent	\$17,241 (medical expenses must exceed \$863 to be deducted)	\$1,436 (medical expenses must exceed \$72 to be deducted)
Housebound	\$16,089	\$1,340
• One dependent	\$20,166	\$1,680
Aid and Attendance	\$21,962	\$1,830
• One dependent	\$26,036	\$2,169
• Each additional child	\$2,250	\$187
Pension Benefit Figures – Surviving Spouse (Effective December 1, 2017)		
Type of Benefit	Maximum Annual Pension Rate (Income Limit)	Maximum Monthly Pension Rate (Income Limit)
Death Pension	\$8,830 (medical expenses must exceed \$442 to be deducted)	\$735 (medical expenses must exceed \$37 to be deducted)
• One dependent child	\$11,557	\$963
Housebound	\$10,792	\$899
• One dependent child	\$13,514	\$1,126
Aid and Attendance	\$14,113	\$1,176
• One dependent child	\$16,837	\$1,403
• Each additional child	\$2,250	\$187