

LEGAL EASE



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VA enacts new rules for Aid, Attendance Benefits

As of October 18, 2018, the Veterans Administration (VA) has put in place new rules in order to qualify for Aid and Attendance or Pension benefits. The VA has talked about changing the rules for a number of years, and had actually published proposed rules in 2015 only to withdraw them after a large number of unfavorable comments. The recently published rules went into effect on October 18, 2018.

The Veterans Administration has a multitude of benefits available to veterans. Many have heard of the benefits to pay for higher education costs, provide life insurance, or the ability to receive health care through the VA. However, when a young person is discharged from the service, they tend to ignore the benefit that could help with medical costs once one is 60 years old or disabled. This is different from "compensation" which can be available for those with a service connected injury. The benefit for older veterans is called "pension" or Aid and Attendance, and for those who meet the eligibility requirements, the result is tax free funds to help pay for care. It is a little known benefit; nevertheless the VA decided to change the rules of eligibility in order to "maintain the integrity of the pension program," and to respond to GAO (Government Accounting Office) recommendations.

The veteran, or his or her surviving spouse, must meet some basic requirements under the new and old rules. The veteran on whose service record the eligibility requirements are being based must have served at least one day during wartime (per dates set by Congress), served at least 90 days, and have been other than dishonorably discharged. Evidence of the service record and discharge date must be presented. The purpose of the benefit is to replace income that the veteran and/or the surviving spouse is using to pay for care. A good example is to help pay for care in personal care/assisted living facility.

The key to qualifying for the Pension benefit is eligibility. Beyond the eligibility requirements mentioned above, the updated regulations add some requirements that did not exist before. There is a net worth requirement that is equal to the maximum Community Spouse Resource Allowance if one were applying for Medicaid (\$123,600 in 2018). This gives clarity to the amount that the veteran applicant may keep and still qualify. This net worth amount applies to both spouses and sometimes to a dependent adult child, and includes assets and income other than the primary residence and family transportation vehicles. There is a "look back" period of 36 months for transfers after October 18, 2018, and a penalty is imposed starting the month after the transfer for less than fair market value is made. In no case the penalty is not to exceed five years. The penalty is calculated on the amount of the transfer in excess of the "net worth." There are significant restrictions on transfers to trusts and annuities. Adding owners to accounts will no longer work as strategy to reduce net worth.

There are deductions for medical expenses that are important to the veteran's case. There are also allowances for family caregivers, and clarification for licensure for custodial care.

For elder law attorneys who are accredited before the VA, there are important planning opportunities available to protect assets for the veteran and his family that can help also coordinate with future potential Medicaid benefits if needed. Although the rules do not seem as flexible as before, do not dismiss this benefit as being unobtainable with the proper advice and planning.