



Veteran's Benefits for Assisted Living

Long-term care costs quickly add up, but for veterans and their surviving spouses, assistance may be available to help with these costs. Unfortunately, it's hard to know what help is available, if you qualify, and how to apply. In fact, many veterans and their families struggle through the application process only to be denied. The information we've compiled in this document is based on the new law effective October 2018, so you have the most current data at your disposal.

Two main benefits are available under Title 38. You cannot get both at the same time. The best option is to file for the benefit that will bring you the highest amount. Many families need some help choosing their best option. The choices are:

- Service-connected disability benefits
- Veteran Pension/Survivor Pension

If you qualify, you can **add** special monthly benefits to these benefits stated above. The two most common include:

- Housebound
- Aid and Attendance

We're going to take a closer look at each option so you can easily determine which one, if any, applies to your specific situation. We'll highlight and address the most frequently asked questions. Our goal is to give you enough information to decide whether you want to pursue a veterans benefit claim.

Service-Connected Compensation

This is a monthly payment made to a veteran who suffered an injury while on active duty or had a pre-existing condition aggravated by his/her service. The severity of the disability is given a specific percentage rating. For example, you may have a single rating of 10% or multiple individual ratings adding up to 70% or more. Some individuals carry 120%+ ratings when totaled but will only be paid the 100% rate.

Each percentage rating carries a designated dollar value set by law. The ability to obtain this rating must come from a VA Medical Center (VAMC) exam and is called a C & P exam. You must be enrolled in the VA Medical System to request this exam. The VAMC will contact you for the exam, and it's critical to ***make sure you attend this appointment!*** If you have been seeing a PCP, take your medical history with you to support your claim for disability.

To enroll: www.va.gov/healthbenefits/apply/

You can enroll online, via phone or in person.



Married veterans with a dependent can have aid and attendance added for their spouse to their monthly payment if the spouse can demonstrate the need for aid and attendance. The veteran must be at least 30% rated for a spouse to claim aid and attendance benefits under the veteran's service-connected disability. Unfortunately, this is a small sum, and not enough to cover all care needs, but every dollar counts when it comes to care.

Examples for 2018:

30%

Veteran rated at 30% service-connected disabled. The spouse needs a third party aiding and attending her/his care needs. This is an additional \$46/mth.

80%

Veteran rated at 80% service-connected disabled. The spouse needs a third party aiding and attending her/his care needs. This is an additional \$122/mth.

100%

A 100% rated veteran can also have the housebound benefit or aid and attendance added to their income if they demonstrate the need for housebound or aid and attendance. This can add an additional \$500-\$700 or so to the household income. You can also receive 100% rated pay if you are granted IU – individual unemployable. This means your disability is so severe that you are unable to sustain gainful employment.

For IU to come into play, the following must apply:

60%

One disability rating of 60% or more **OR** multiple disabilities with one disability rated at 40% or higher and a total rating of 70% percent or more.

A compensation rating table can be found at:
www.benefits.va.gov/COMPENSATION/resources_comp01.asp

Dependency and Indemnity Compensation (DIC)/Surviving Spouses

This payment should be made automatically to a surviving spouse whose veteran spouse carried a 100% service-connected rating at the time of death and cause of death can be linked to why they were granted the 100% rating.

In 2018, this monthly payment was \$1238.11/mth*

If the veteran carried the 100% rating for the last 8 years of his/her life and was married to the same spouse those last 8 years, the spouse is entitled to an additional marriage stipend of \$272.46/mth*

If the surviving spouse needs a third party to attend to their personal care needs, an additional \$317.87* can also be added.

In total this can equate to \$1873.44/mth* if all conditions are met.

***Rate is subject to change**

Who is a Surviving Spouse?

- Married to the veteran at the time the veteran passed away
- Can produce a marriage certificate evidencing the marriage
- Claiming spouse is named on the deceased veteran's death certificate

If you divorced the veteran, you are NOT the surviving spouse even if neither party remarried. No VA disability benefits are available to surviving ex-spouses. This can be confusing as the SSA allows ex-spouses to claim on deceased spouses under certain circumstances. **VA law and SSA law are not the same.**



Veteran Pension/Survivor Pension – Used to be called Non-Service-Connected Basic Pension

The Language the Government proposed to help aged and disabled veterans. However, some qualifications must be met.

- Must be age 65; or
- If you are under age 65 you must be receiving SSD and/or SSI; or
- Be a long-term resident in skilled nursing

2019 Pension Rates	*Rates are tied to COLA and are subject to change
Surviving Spouse	\$756
Single Veteran	\$1128
Married Veteran	\$1477

Examples:

- Veteran is aged 72 and has an income of \$800/mth. The VA promised a minimum income of \$1128/mth. The VA will currently pay \$328/mth to bring the veteran's income up to basic pension of 1128/mth.
- Surviving spouse is 62 but is on SSI and has an income of \$550/mth. The VA will pay \$206/mth to bring the surviving spouse's income up to basic pension rate of \$756/mth.

Aid and Attendance Rates 2019

Surviving Spouse	\$453/mth
Single Veteran	\$753/mth
Married Veteran	\$753/mth

Add the basic pension rate above with the aid and attendance rate and you get the **maximum potential payout** per month as follows:

Surviving Spouse	\$1209/mth
Single Veteran	\$1881/mth
Married Veteran	\$2230/mth



There are three criteria which must be met to qualify for pension plus aid and attendance

- Military service time
- Medical need – assistance with personal care needs
- Monetary need – demonstrate a limited net worth

Military Time:

Veteran needs to have 90 consecutive days of active duty service with 1 day falling in a time of declared conflict and honorably discharged.

WWII	12.7.41 – 12.31.46
Korea	6.27.50 – 1.31.55
Vietnam I	2.28.61 – 8.4.64 (must have been boots on the ground in Vietnam or brown water Navy)
Vietnam II	8.5.64 – 5.7.75
Mideast	8.02.90 – present (Two years active duty with 1 day falling during declared time of conflict and honorably discharged)



Medical Need:

Let's look at aid and attendance for a minute and the qualifiers. The VA says you must need assistance with 2 Activities of Daily Living (ADLs), **OR** be legally blind (5/200 visual acuity)) **OR** have cognitive impairment where one would be unsafe living alone and for their safety should be in a supervised custodial setting.

ADLs are as follows and are delivered on a regular basis:

- Assistance bathing/showering
- Assistance dressing
- Assistance with incontinence concerns
- Assistance transferring (getting up or down, or in and out of bed, for example)
- Assistance with ambulation
- Assistance with eating

Assistance with medications if claimant is in a custodial care setting (not at home): Medication administration, if performed by a health care provider, would be a health care expense under § 3.278(c)(1). A medication

reminder from a provider who is not a health care provider would not be a medical expense unless the individual requires custodial care and the provisions of final § 3.278(d) apply.

A claimant can be paid as little as a \$1 up to the full amount based on deductible medical expenses or, in VA vernacular unreimbursed Medical Expenses (UME).

Monetary Need:

Annual income + countable assets - unreimbursed medical expenses
= / < \$123,600



How do you receive the full award/amount to help with long-term care costs?

Primarily if the monthly cost of your care exceeds your income by 5%, then the full award is made. One may deduct dollar for dollar of unreimbursed, recurring, predictable care costs from one's income. VA does deduct unreimbursed medical expenses that exceed 5% of the maximum annual pension rate (MAPR) allowed by Congress, to reduce income for VA purposes.

Examples:

- Surviving spouse income is \$1600/mth, and her cost of care in assisted living is \$1800/mth. She effectively has a negative monthly income. ($\$1600 - \$1800 = \text{negative } \200 .) The VA said if her income fell beneath \$756 they would pay the difference. In this case, since she has a negative income and she would receive the full \$757, and since her income was driven down by her need for care (aid and attendance) they will add \$453 to the payment for a total monthly payment of \$1209.
- Veteran has an income of \$2600/mth. His cost of care is \$2400/mth. Since the veteran is not spending all of his income on deductible medical expenses, the award would be approximately \$1587/mth.

The more unreimbursed, predictable, recurring medical expenses the claimant has each month, the closer they are to being awarded the maximum amount.

In order to receive an award of pension **plus** aid and attendance, you must be able to show evidence that you are incurring unreimbursed medical expenses as defined by the VA.

The claimant can't share with the VA what the care plan **would** be if they had the benefit. One must evidence that the claimant is actively engaged in a care plan and incurring unreimbursed care costs that are being financed out of the claimant's personal income.

Some examples of unreimbursed medical expenses:

- Monthly fees from an assisted living community, supplemental medical insurance premiums, monthly fees from home care agencies, unreimbursed diabetic supplies, incontinence supplies, custodial care in a retirement community, etc.

To be clear, the VA does not count your mortgage, lawn service, pet grooming, credit card debt, or groceries as unreimbursed medical expenses.



Recent Changes in Law Affecting Eligibility:

The pension benefit was always intended to be need-based to assist veterans and their surviving spouses in paying for long-term care. Due to years of abuse within the financial industry and targeting veterans to artificially create eligibility through sales of financial products and the creation of trusts for this financial need-based pension, the laws have changed. One can no longer sequester funds or buy your way into eligibility. It is reasonable to expect those who are financially able to pay for their care until they reach the new net worth limit recently established.

The highlights of the new law are:



Your primary residence is exempt.

This is defined as your home and 2 acres. If your home is on 10 acres, then the fair market value of the additional 8 acres will be counted in tabulating your net worth. If you can evidence that any additional land you own is exempt, this will be considered. For example, the land may be landlocked and inaccessible. The fair market value of a second residence will also be included in tabulating net worth. If you are receiving rent from your primary residence, the rent will count as income, and the fair market value of the home will also be tabulated in your net worth. It can be argued this is now investment property and not your primary residence.



Net worth limit: There is a \$123,600 net worth limit regardless of age, married, single veteran or a surviving spouse. This is a highly technical figure, Do not rule out benefits until you have spoken with someone knowledgeable in VA law.



Net worth: Defined as the sum of the claimant's net annual income plus all countable assets.



Countable assets is another highly technical

term: Principal balances in annuities (unless mandated at retirement – the payment still counts as income), liquid assets in revocable and irrevocable trusts (if created in the last 36 months), IRA principal, checking, savings, CDs, stocks, bonds, etc. plus marketable real property.



Look back period: There will be a 36-month “look back” period from the date of the pension application for any transferred assets (homes quitclaimed, trusts created, purchased financial products). Any transfers made before the look back date are exempt.



Countable deductions: Unreimbursed medical expenses, health insurance premiums, cost of care (i.e. assisted living monthly fees, private care, custodial care, home care, etc.). These amounts are deducted from your net worth and eligibility may exist if the deductions bring your net worth to \$123,600 or lower.



Penalties for transfers: The penalty is **\$2230 per month for 2019** (veteran plus one dependent pension plus aid and attendance rate) per month for transferred assets - not to exceed 5 years. Similar to pre – 2006 Medicaid rules, a penalty applies and begins to run on the date of the most recent transfer, not on the date of the application. Any penalty remaining on the application will result in no pension until it expires.



Penalty cures: If a penalty is imposed, the claimant has 60 days to cure the transfer and 90 days to notify the VA of the cure.



We've worked hard to reduce volumes of material concerning VA law into just a handful of pages. Only the highlights have been noted so you can quickly look through and determine if one of these two benefits can be used to cover long-term care costs. It is not meant to thoroughly discuss or demonstrate all portions and nuances of VA law. This is not legal advice. It is merely a general guide.

Who Can Help You?

As tens of thousands of families can share with you, it's not easy to make this trek alone. Many are denied, and others just give up. In October 2018, the application has gone from roughly 6 pages to 26 pages as has the burden of evidence that must now be met and supplied.

If you want to discuss where or even if you are on the eligibility spectrum for benefits, Seniorly has worked with **Veterans Benefits Aid Counsel** on the creation of this document. You can call them at **(888) 388-1404**. They would be proud to conduct a **no-cost** pre-filing consultation. Contacting them in no way is an expression of your intent to file, but to learn.



Make sure that anyone or any organization assisting or advising you with a claim holds current VA Accreditation by the Office of General Counsel. The VA accredits attorneys, veteran service officers and claims agents only. If they are not accredited and/ or are unable to produce their accreditation, then be very circumspect of their advice and offer of assistance. An individual is in violation of federal law if they assist someone with filing and are not accredited by the VA.

This violation also applies to individuals who state or give the false impression that they are accredited, and they offer to help prepare and give advice on a claim, but ***the actual claim itself is filed by an accredited individual***. There is a reason the OGC accredits individuals and it is to ***protect the claimant***.

OGC accreditation can be checked by using this site:
www.va.gov/ogc/apps/accreditation/index.asp

As authors of this booklet, you can see Mr. Fincher's accreditation under the attorney section.



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Please visit www.veteransbenefitsaidcounsel.com if you would like to learn more about the firm's quality service and expeditious assistance. All staff work under Mr. Fincher's direct supervision as law specifies and are co-located in his office.

You can also visit www.va.gov where you can find forms to download or visit your county Veterans Service Officer who will submit an application for you at no cost, but is unable to give you a legal opinion on its viability.

In conjunction with:



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Veterans Benefits Aid Counsel

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