



Elder Law Update  
**VA BENEFITS:  
UPDATE IN PENSION BENEFITS**

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# Why is this relevant to your practice?

- You are estate planning attorneys
- Your clients are getting older
- In order to properly plan for your client's needs you need to be aware of how your planning affects long term care benefits
- Knowing about the benefits makes you a better planner
- Identifying your client's future needs makes you a better attorney and a better resource for your client's needs
- You can no longer assume that your clients (regardless of their net worth) won't need benefits to pay for the rising costs of long term care

# VA Benefits Basics

## Non-Service Connected Disability Pension

- Pension v. Compensation
- Federally funded and regulated
- Rules are same throughout the U.S.
- Pays up to \$2,230/month for a married Veteran
- Pays directly to Veteran to reimburse for any type of care – skilled, home, assisted living, memory care
- Needs-based benefits – evaluates income and net worth to determine eligibility

# Old v. New Rules Basics

- Big changes
- Old planning strategies won't work
- Evaluates income and assets to determine eligibility - unchanged
- Service Requirements are the same
- Net Worth limitations
  - New hard line asset limitations
  - Differs from old loose rules – which is good for planners
  - Transfer penalty up to 36 months now in effect
- Care Expenses to reduce income are expanded
- New planning strategies with other public benefits are available

# VA Pension Benefits

- Eligibility: 90 days continuous active duty
- Wartime period service requirement: 1 day only
  - World War II (December 7, 1941 – December 31, 1946)
  - Korean conflict (June 27, 1950 – January 31, 1955)
  - Vietnam era (February 28, 1961 – May 7, 1975 for Veterans who served in the Republic of Vietnam during that period; otherwise August 5, 1964 – May 7, 1975)
  - Gulf War (August 2, 1990 – through a future date)
- Provides benefits for surviving spouses (if not remarried)

# 2019 VA Benefits Rates

## Non-Service Connected Disability Pension

	Single Veteran	Married Veteran	Surviving Spouse
Basic Pension	\$1,127	\$1,477	\$756
Housebound	\$1,378	\$1,727	\$924
Aid & Attendance	\$1,881	\$2,230	\$1,209

# VA Income Analysis

- To determine amount of benefit VA looks at IVAP (Income for VA Purposes )
  - Monthly Recurring Income - Monthly Recurring Medical/Care Expenses = IVAP
- Example:
  - \$2,900 Income (Family Income) - \$5,000 Care Expenses = **(\$2,100) IVAP**
  - VA Pays Full Amount if IVAP less than or equal to Benefit Rate)
- If IVAP is positive, VA will pay the difference
- Example: \$2,900 Income (Family Income) - \$2,000 Care Expenses = \$900 IVAP
  - VA pays \$1,330 at Aid & Attendance level of care for married Vet

# Care Expenses

- Approved Care Expenses to Reduce IVAP
  - Assisted Living
  - In-home care (can include family caregivers, but beware)
  - Skilled Nursing (should evaluate with Medicaid benefits)
  - Medicare Premiums (and Supplements)
  - Prescriptions
  - Supplies (depends, etc.)
  - Nutritional Supplements (Ensure, Vitamins, Etc.)
  - Independent Living (under certain circumstances)
- More liberal than old rules, but still uncertain



# VA Net Worth

- Net Worth = FMV of all property owned by claimant and dependents + Annual Income
- Currently: \$127,061 cap for everyone
  - Increase from prior \$80,000 cap
  - In 2018, equal to maximum CSRA Amount (\$123,600)
  - Increases every year with SS COLA
  - Same for single or married, regardless of age and life expectancy
  - Annual Income reduced by Care Expenses
- Does NOT include value of house + 2 acres, multiple cars

# VA Asset Transfers

- 36 month “look back” period
- Does not apply to transfers made prior to October 18, 2018
- Only “Covered Assets” that are transferred will be penalized
  - “Covered Asset”: An asset that was part of the claimant’s net worth and if not transferred would have caused net worth to be over the \$127,061 cap
- Transfers of Covered Assets into Annuities or Irrevocable Trusts will be penalized if over the Net Worth Cap
- Prior planning techniques with transfers to Annuities and Irrevocable Trust must wait through the look back period before applying

# Example of Covered Assets

- Veteran has \$110,000 in total assets, \$12,000 in income
  - Total Net Worth = \$122,000
  - Transferred \$50,000 on 11.01.18
  - Applied for VA benefits 11.15.10
  - Veteran will be approved
- Amount transferred was not from assets over the net worth limit (“Covered Assets”) so no penalty is assessed

# Example of Covered Assets 2

- Veteran has \$115,900 and annual income of \$0 at the time of the VA application
- Veteran gifted \$30,000 prior to applying and after 10.18.18
  - If \$30,000 hadn't been transferred before application, net worth would have been \$145,900 and would have been excessive
  - Covered asset amount is \$18,839.00 ( $\$145,900 - \$127,061$ ) and will incur a penalty
- Veteran can gift homestead into an irrevocable trust without penalty and still maintain tax exemptions
- Veteran can gift non-covered assets into an irrevocable trust without penalty as long as the asset doesn't make the Veteran exceed the Net Worth Cap

# Penalty Period for Transfer of Covered Assets

- ❑ Penalty period based on maximum benefit for Aid and Attendance for Married Vet (\$2,230)
- ❑  $\$18,839/\$2,230 = 8.447$  months (VA will round down to an 8-month penalty period from the date of the transfer)
- ❑ Maximum 5-year penalty period
- ❑ If penalty period is more than 36 months then wait to month 37 to apply
- ❑ If apply before 36 month look-back period and penalty period is more than 36 months then have to wait the full penalty period before benefit will pay

# Exceptions to Transfer Penalty

- Beware!!!
- Fraud or unfair business practices
- Transfer to a trust established for a child incapable of self-support prior to 18
- Transfer of assets less than \$127,061 net worth cap

# Transfers no longer allowed

- Purchase of an annuity
  - Defined as “a financial instrument that provides income over a defined period of time for an initial payment of principal”
  - The uncompensated value is equal to the amount transferred

# Trusts

- Irrevocable Trusts – still ok for some things
  - Transfer into an irrevocable trust will be penalized if Covered Assets are transferred
    - House – not a covered asset (no cap)
    - Acreage – limited to 2 acres
    - Assets less than Net Worth Cap
- Revocable Living Trusts - Transfers into a Revocable Living Trust are considered assets and part of net worth



# VA Pension v. Medicaid

## Medicaid Rules Refresher

- Medicaid is federally funded and State regulated
- Needs-based. Income and Asset evaluation to determine eligibility
- 5 year look back period
- Covers mostly skilled nursing
- Waiting period for non-skilled nursing care (Star + Plus Waiver)
- Eligibility Requirements
  - \$2,000 individual assets
  - \$25,284 - \$126,400 married asset range

# Case Study #1 Facts

- George (89) and Betty (85)
  - Sally
  - Bobby
  - Chuck (disabled before 18)
- Live at home alone
- Betty diagnosed with Alzheimer's disease
- George is sole caregiver until ...
- George falls – goes to hospital
  - Admitted 3 midnights
  - Discharged for rehabilitation (SNF)

# Cost of Care

- Stay in Skilled Nursing ~ \$6,000+/month
  - Medicaid Coverage
  - VA Benefits
- Move to Assisted Living ~ \$5,000/month
  - Star+Plus Waiver
  - VA Benefits
- Home with Care ~ \$14,500/month (\$20/hour)
  - Community Attendant Services
  - VA Benefits

# Case Study

## George and Betty's Gross Income

- George SS: \$ 1,200
  - George Pension: \$ 1,100
  - Betty SS: \$ 600
- Total Income: \$ 2,900/month**

# George and Betty's Assets

- House & 4 Acres: \$ 250,000.00
- George IRA: \$ 50,000.00
- Betty IRA: \$ 60,000.00
- JTWRROS Account: \$ 15,000.00
- Life Insurance \$ 10,000.00 cash value

# How to Plan Options

- Spend down
  - Medicaid v. VA
- Revocable Trusts
- Transfers
- Owning real property options
- Identify needs of clients

# What not to do....

- Powers of Attorney – Standard Form is insufficient to plan
- Transferring Assets – Don't do it!
  - No annual gifting
  - No sale of residence without analysis
  - No annuities
  - Careful about revocable trusts

# What to do....

- Rely on resources and stay up to date on current issues within HHSC and VA
- Add language to POAs
- Assess long-term needs of clients
- Identify future needs and eligibility for public benefits
- Join NAELA or know when to refer to the experts



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