



## The Nuts and Bolts Guide to Veterans Benefits:

Revised May 18, 2009

An introductory tour of the Special Monthly Pension available for wartime veterans and/or survivor spouses who are age 65 or older OR permanently and totally disabled.

Most people think of veterans' benefits as being only for servicemen and -women who were wounded or disabled while serving in the armed forces. By and large, that is true. But—we have learned that there are substantial benefits that may be available to wartime veterans who are now senior citizens and are facing the burden of long term care due to a host of diseases such as Alzheimer's, Parkinson's, MS, Lou Gehrig's Disease, and many others. In fact, the Veterans Administration estimates that millions of wartime veterans and their spouses may be eligible for Special Monthly Pension benefits, and not even be aware of it!

Wartime veterans, or their surviving spouses, become eligible for the Special Monthly Pension benefit when they are over 65 years of age, are permanently disabled and unable to work, are homebound, or need the regular aid and attendance of another—whether at home, in assisted/supportive living, or in a nursing home. The program is based on actual financial need for assistance, so there are income and asset limitations.

Unfortunately, there is widespread misunderstanding regarding how to determine qualification for this important benefit. It is the goal of this *Nuts and Bolts Guide* to give you a start in understanding the ins and outs and the ups and downs of the VA benefit maze commonly referred to as "Aid and Attendance." Even though finding your way through the maze can be extremely difficult, it is worth the effort to assist wartime veterans and their surviving spouses during times of great need.

**The maximum benefit available can provide significant help in paying for long term care costs, either for the homebound and/or nursing home veteran/surviving spouse.**

There are only three types of persons who are authorized to provide a veteran with assistance filing a claim for veterans benefits:

1. A VA accredited attorney
2. A veterans service organization such as VFW, American Legion, Amvets, etc.
3. A state or county official of the Dept. of Veterans Affairs in your state

Unfortunately, there are few attorneys who have knowledge in this particular area of legal practice due to the fact that it is illegal to charge a veteran a legal fee for providing assistance in filing a claim for benefits. Local offices of the Alabama Department of Veterans Affairs can be very helpful and can assist with VA applications. However, they are not allowed to assist veterans with legal issues nor plan for benefit eligibility.

The only other common source of information regarding this benefit generally comes from annuity salespeople who often offer to consult with veterans and their families for free. This “free” offer is based on the strategy of counseling the veteran to meet the asset and income limitations of the benefit by buying an annuity and giving away their assets to their children. The offer is that the annuity sales organization will assist the veteran in filing for the VA benefit claim. They also promise to provide any necessary estate planning work at no charge. In reality, the annuity salesperson is being compensated by the annuity company for selling a financial product to the veteran. An annuity may be an excellent financial decision or a poor one, depending on the facts and circumstances. All we are saying is this: You should seek independent advice before making a decision to purchase an annuity.

### **A Medicaid trap...**

Another important factor that one must consider when thinking about trying to meet the VA asset limitation test is that giving away cash or other things of value can create terrible problems for senior citizens if or when they later need to apply for Medicaid to assist them with skilled nursing home care. Giving away assets can create a long penalty period of ineligibility for Medicaid benefits. Any senior facing long-term care needs to seek capable legal advice from an attorney who is skilled in the areas of estate planning, financial planning options, Medicaid, Medicare, income tax, and gift tax, as well as having experience regarding VA rules.

The big question for many families will be, “What will it cost me to seek advice in this area?” Although an attorney who chooses to actually file a claim for veterans benefits must do that portion of his/her work for free, the attorney may charge the usual fees related to any estate planning, financial planning options, Medicaid, Medicare, income tax, or gift tax work, as well as the determination of the financial suitability of filing for a veterans benefit claim. No one should pay an attorney fee unless receiving a fair return on his/her investment.

#### ***The VA General Counsel’s advice regarding legal fees and VA claims:***

“To the extent that after consultation the veteran expressed to the attorney an intention to file a specific claim for VA benefits, if the attorney charged the veteran for preparing the claim, the attorney did so in violation of Section 5904... The better practice would have been to charge the veteran for the pre-filing consultation and simply prepare the claim on a pro bono basis.

*(The above is a quote from a letter written by Tim S. McClain, General Counsel of the Dept. of Veterans Affairs, to The Honorable Lane Evans of the U.S. House of Representatives Committee on Veterans Affairs, dated May 24, 2004.)*

After reading this *Nuts and Bolts Guide*, we strongly recommend that you contact an elder law attorney such as those at ElderLaw Advocates to determine if you qualify. An elder law attorney can assist you and your family by explaining many difficult-to-understand things about long term care. Qualification for a VA benefit is only one of several concerns that must be considered. As you struggle to provide dignified long term care for a wartime veteran and/or surviving spouse, we can help you understand the options. We are your advocates, and we want to help you stretch your hard-earned dollars further. VA benefits are only one part of the puzzle. We will hold your hand and guide you every step of the way as we consider all of your family’s resources and needs.

## WHAT'S INCLUDED IN THIS GUIDE:

- ✓ Fact sheet: Veterans Administration compensation and pension benefits
- ✓ Veterans benefits at a glance
- ✓ More details
- ✓ The benefits available
- ✓ Who can help you file a claim?
- ✓ Official dates for periods of war
- ✓ Other eligible groups
- ✓ VA benefits checklist
- ✓ Listing of possible medical expenses
- ✓ The wrap-up

### Legal Disclaimer

This information has been provided for informational purposes only. It does not constitute legal advice. The receipt of this information does not establish attorney-client privilege. Proper legal advice can only be given upon consideration of all the relevant facts and laws. Therefore, you should not act upon any of the information contained herein without seeking appropriate counsel.

# Veterans Administration

## Compensation and Pension Benefits

There are many types of VA benefits available to veterans through the Veterans Administration for things such as education, life insurance, health care, home loans, and burial benefits. Two major categories of benefits, however, are compensation and pension.

### **Service-Connected Disability COMPENSATION**

Compensation is a benefit that veterans receive when the veteran has a disability caused by, or exacerbated by, military service. Disability compensation is available to a qualified veteran regardless of their level of income. Once a veteran can show that they are disabled because of their military service, their level of disability is rated by the Veterans Administration (for example, 20% disabled) and the amount of compensation paid depends on the rating assigned. A veteran can apply for increases in the percent rating if the condition worsens. A rating above 100% disabled will qualify the veteran for special monthly compensation that could more than double the normal benefit. During 2008, monthly compensation payments ranged from \$123 for a veteran with no dependents and a 10% disability rating, to \$2,673 for a veteran with a spouse and a 100% disability rating. Special monthly compensation benefits can raise the maximum monthly payment up to \$7,650.

Dependency and Indemnity Compensation (DIC) is paid to survivors of deceased veterans if the death was due to a service-related injury or illness. Eligible survivors include spouses who have not remarried and unmarried children under 18. Disabled children are also eligible, as are children up to 23 who are attending school. Monthly DIC payments are \$1,154 per month.

### **Non-Service-Connected Disability PENSION**

A pension is a benefit for veterans with low incomes who are permanently and totally disabled, when that disability is not related to military service. This is sometimes referred to as a “Special Monthly Pension” (or sometimes an “Improved Pension”). A veteran will be considered permanently and totally disabled if they are, (1) a patient in a nursing home for long-term care because of disability; (2) receiving Social Security disability benefits; (3) unemployable as a result of a disability that is reasonably certain to continue throughout their life; or (4) suffering from any disease or disorder that renders them permanently and totally disabled as determined by the Secretary of the Department of Veterans Affairs.

In 2009, the maximum disability pension rate for a veteran with no dependents is \$11,830, or \$985 per month. The rate for a veteran with one dependent or for two veterans married to each other is \$15,493, or \$1,291 per month. Each additional dependent child adds \$2,020, or \$168 per month, to the pension.

The VA pays a death pension to low-income surviving spouses and unmarried dependent children of deceased wartime veterans. In order to be eligible, a spouse must not have remarried, and a dependent must be under age 18, or must be under age 23 if attending a VA-approved school. Dependents who are permanently incapable of self-support because of disability before age 18 are also eligible for the death pension. For 2009, the maximum death pension for a surviving spouse is \$7,933, or \$661 per month. If the spouse has a dependent child, the maximum pension is \$10,385, or \$865 per month. If the spouse has more than one dependent child, the benefit

for each dependent child is \$2,020, or \$168 per month. The pension for a surviving child is \$2,020, or \$168 per month.

The amount of the Special Monthly Pension will be increased if the permanently disabled veteran is also housebound. A person is housebound if they are permanently and totally disabled and, either (1) have an additional disability or disabilities ratable at 60% or more; or (2) are substantially confined to their residence or the immediate premises due to a disability that is reasonably certain to remain throughout their lifetime. In 2009, the maximum pension for a housebound veteran with no dependents is \$14,457, or \$1,204 per month. If the housebound veteran has one dependent, the maximum pension is \$18,120, or \$1,510 per month. If a surviving spouse is housebound, the maximum pension is \$9,696, or \$808 per month. With a dependent child, the maximum pension is \$12,144, or \$1,012 per month. Again, each additional dependent will increase the pension \$2,020, or \$168 per month.

If the veteran is in need of regular aid and attendance, the maximum Special Monthly Pension is increased further to \$19,736, or \$1,644 per month if the veteran has no dependents. With one dependent, the maximum pension is \$23,396, or \$1,949 per month. If the surviving spouse is in need of regular aid and attendance, the maximum pension is \$12,681, or \$1,056 per month. If the surviving spouse has a dependent child the maximum pension is \$15,128, or \$1,260 per month. Again, each additional dependent will increase the pension \$2,020, or \$168 per month. To be in need of regular aid and attendance, the veteran or spouse must be permanently and totally disabled and (1) a patient in a nursing home; (2) blind, or nearly blind; or (3) needing the regular aid and attendance of another person to perform basic activities of daily living, such as dressing, bathing, and attending to the wants of nature.

### **Attaining age 65 – Service Pension**

A low-income, wartime veteran who attains the age of 65 is also entitled to a pension, known as a Service Pension, whether or not they are disabled. The amount of the maximum pension is the same as the Special Monthly Pension.

### **Low Income and Net Worth Requirements**

In order to be eligible to receive any of the above non-service connected **PENSIONS**, the veteran must meet income and net worth requirements. First, the annual maximum pension amount is decreased, dollar for dollar, by the veteran's countable income. Income that is countable is, in general: all the veteran's income, including that of a spouse or any dependents, MINUS unreimbursed medical expenses. Unreimbursed medical expenses include doctor's fees, dentist's fees, Medicare premiums and co-payments, insurance premiums, transportation to physicians' offices, and the costs of assisted living facilities or in-home aides.

So, for example, if a veteran has \$20,000 in income and \$10,000 in unreimbursed medical expenses, their countable income is \$10,000. Their \$10,000 in countable income is deducted from the maximum annual Special Monthly Pension of \$11,830 for a benefit of \$1,830. As another example, suppose the veteran is in a nursing home (and so qualifies for the additional pension for aid and attendance) and has an income of \$50,000. If their unreimbursed medical expense for the nursing home are \$5,000 per month, or \$60,000, the veteran's countable income is negative \$10,000. Any negative income is counted as an income of \$0 and the veteran will be eligible for the maximum annual Special Monthly Pension for aid and attendance of \$19,736.

In addition to low income, the veteran must also have a limited net worth. The VA has not specifically defined “limited net worth”—however, a general guide is that the veteran must have a net worth lower than \$50,000 if single or \$80,000 if married. Recent rulings from the VA indicate that they are using life expectancies and unreimbursed medical expenses to determine whether or not the veteran has excess assets. In many cases the assets are required to be lower than \$50,000 and \$80,000 respectively. A veteran’s net worth is calculated by adding all the value of all personal and real property owned by the veteran (and their spouse), not including a home and car. Items included in the calculation of a veteran’s net worth would include things such as CDs, savings accounts, and bonds.

# Veterans Benefits at a Glance:

The focus of this *Nuts and Bolts Guide* is the “non-service-connected pension” which may provide money to assist a wartime veteran or surviving spouse who now faces substantial medical costs due to Alzheimer’s, Parkinson’s, MS, or other “non-service-connected” diseases.

**Table 1: Disability Compensation**

**VETERAN**

- Must have a disability caused by, or worsened by, military duty
- The amount of money paid to the veteran is not based on need/income/net worth of the veteran

**SPOUSE/DEPENDENTS**

- Eligible for Dependency and Indemnity Compensation (DIC)

**Table 2: Non-Service-Connected Pension**

**VETERAN**

- Must be permanently and totally disabled, or 65 or older
- Disability does not have to be related to military duty
- Pension is needs-based—must meet income and net worth requirements; or
- If the veteran has too much income or too many assets, he/she will not qualify for the pension
- A higher pension is awarded if the veteran is housebound
- An even higher pension if the veteran is in need of regular aid and attendance

**SPOUSE/DEPENDENT**

- Eligible for Death Pension
- A higher pension is awarded if the spouse/dependent is housebound
- An even higher pension if the spouse/dependent is in need of regular aid and attendance

## More Details...

### Who is eligible for the non-service-connected pension?

- Honorably discharged veterans, surviving spouses, or dependent children of any military, naval, or air service. Also includes certain other special groups such as:
  - Women's Army Auxiliary Corps (WAAC)
  - Merchant Marines from WWII
  - U.S. civilians of the American Field Service
  - Plus 30 more! See list later in this guide.
- Served in active duty 90 consecutive days, one of which was during a period of war
- *At least 65 years old OR Permanently and Totally Disabled*

### “Permanently and Totally Disabled” is defined as:

- Receiving long-term nursing home care; or
- Receiving Social Security disability benefits; or
- Unemployable as a result of disability reasonably certain to continue throughout the life of the person.

The veteran's current disability does not need to have any connection to the veteran's actual time in the armed forces. (Non-service-connected disability can be Alzheimer's, Parkinson's, etc.)

### Other requirements:

This is a needs-based program with income and asset tests.

- Income limitation
  - Gross income MINUS certain expenses
    - Unreimbursed medical expenses of veteran and his/her household
    - Certain educational expenses
  - After reducing gross income by the above expenses, net income must be lower than \$11,830 to \$23,396, depending on your circumstances
- Net worth limitation
  - In addition to your house, car, life insurance, burial policies, and annuities in payout status, you can generally have between \$50,000 and \$80,000\* in assets, including CDs, stocks, bonds, etc.
  - If your net worth is higher, consult with a qualified attorney for an appropriate tax analysis to see if transferring some of your assets may qualify you.

\* These numbers are only guidelines. VA appears to be calculating resource levels by using life expectancy and unreimbursed medical expenses.

# The Benefits Available

(2009 figures)

**Table 1:  
Special Monthly Pension Rates  
Paid to veterans age 65 or older OR  
Permanently and Totally Disabled**

Situation	Maximum Annual Pension Rate	Maximum Monthly Check
Permanently and totally disabled veteran	\$11,830	\$985
With one dependent	\$15,493	\$1,291
Permanently and totally disabled and also housebound	\$14,457	\$1,204
With one dependent	\$18,120	\$1,510
Permanently and totally disabled and in need of regular aid and attendance	\$19,736	\$1,644
With one dependent	\$23,396	\$1,949
Increase for each additional dependent child	\$2,020	\$168 additional

**Table 2:  
Death Pension Rates  
Paid to Veteran's Surviving Spouse**

Situation	Maximum Annual Pension Rate	Maximum Monthly Check
Surviving spouse	\$7,933	\$661
With one dependent child	\$10,385	\$865
Surviving spouse is permanently housebound	\$9,696	\$808
With one dependent child	\$12,144	\$1,012
Surviving spouse is in need of "regular aid and attendance"	\$12,681	\$1,056
With one dependent child	\$15,128	\$1,260
For each additional dependent child	\$2,020	\$168 additional

## Who can help you file a claim?

- Recognized Veterans Service Organizations, like the VFW or American Legion
- An accredited agent, such as an employee of the State of Alabama Department of Veterans Affairs
- An attorney accredited by the VA.

Only accredited agents and attorneys can receive fees for their services. *HOWEVER*, no one can receive a fee for filling out forms or actually filing a claim for you once you have decided to make a claim!

ElderLaw Advocates offers pre-filing and asset protection consultation to veterans who may qualify for a pension. Our consultation is part of our overall long-term care planning practice.

**Contact us today!**

Phone (205) 970-9325

## Official Dates for Periods of War

<b>Mexican Border:</b>	<b>May 9, 1916 to April 5, 1917</b>
<b>World War I:</b>	<b>April 6, 1917 to November 11, 1918 April 1, 1920 if served in Russia</b>
<b>World War II:</b>	<b>December 7, 1941 to December 31, 1946</b>
<b>Korean War:</b>	<b>June 27, 1950 to January 31, 1955</b>
<b>Vietnam War:</b>	<b>August 5, 1964 to May 7, 1975 February 28, 1961 if served in Vietnam</b>
<b>Persian Gulf War:</b>	<b>August 2, 1990 to [date not yet determined]</b>

## In addition to active duty vets from the armed services, these little-known groups also meet the active duty qualification for VA benefits

If you belong to any of these groups and received a discharge by the Secretary of Defense, your service meets the active duty service requirement for benefits:

- Recipients of the Medal of Honor
- Women Air Force Service Pilots (WASPs)
- WWI Signal Corps Female Telephone Operators Unit
- WWI Engineer Field Clerks
- Women's Army Auxiliary Corps (WAAC)
- Female clerical employees of the Quartermaster Corps serving with the American Expeditionary Forces in WWI
- Civilian employees of Pacific naval air bases who actively participated in defense of Wake Island during WWII
- Reconstruction aides and dietitians of WWI
- Male civilian ferry pilots
- Wake Island defenders from Guam
- Civilian personnel assigned to OSS secret intelligence
- Guam Combat Patrol
- Quartermaster Corps members of the Keswick crew on Corregidor during WWII
- U.S. civilians who participated in the defense of Bataan
- U.S. merchant seamen who served on block ships in support of Operation Mulberry in the WWII invasion of Normandy
- American merchant marines in oceangoing service during WWII
- Civilian Navy IFF radar technicians who served in combat areas of the Pacific during WWI
- U.S. civilians of the American Field Service who served overseas under U.S. armies and U.S. army groups in WWII
- U.S. civilian employees of American Airlines who served overseas in contract with the Air Transport Command between 12/14/41 and 8/14/45
- Civilian crewmen of certain U.S. Coast and Geodetic Survey vessels between 12/7/41 and 8/15/45
- Members of the American Volunteer Group (Flying Tigers) who served between 12/7/41 and 8/14/45
- U.S. civilian flight crew and aviation ground support of TWA who served overseas between 12/14/41 and 8/14/45
- U.S. civilian flight crew and aviation ground support of Consolidated Vultee Aircraft Corp. who served overseas between 12/14/41 and 8/14/45
- Honorably discharged members of the American Volunteer Guard, Eritrea Service Command, between 6/21/42 and 3/31/43
- U.S. civilian flight crew and aviation ground support of Northwest Airlines who served overseas between 12/14/41 and 8/14/45
- U.S. civilian female employees of the U.S. Army Nurse Corps who served in the defense of Bataan and Corregidor from 1/2/42 to 2/3/45
- U.S. civilian flight crew and aviation ground support of Braniff Airways who served overseas in the North Atlantic between 2/26/42 to 8/14/45
- Chamorro and Carolina former native police who received military training in the Donnal area of central Saipan and were placed under command of Lt. Casino of the 6<sup>th</sup> Provisional Military Police Battalion to accompany U.S. Marines on active, combat patrol from 8/19/45 to 9/2/45
- The operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from 12/7/41 through 8/15/45
- Honorably discharged members of the Alaska Territorial Guard during WWII
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# VA Benefits Checklist

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## Items you'll need if you are a:

### Veteran Only:

	DD-214 or Discharge Papers
	Annual Social Security Award Letter received in January OR other documentation to verify your income
	A printout from your pharmacy of 3 months of expenses
	Copies of all your latest financial statements

### Veteran and Spouse:

	All of the above for you and your spouse, PLUS
	Marriage certificate
	Death certificate or divorce decree if either spouse was previously married

### Widow/er of Veteran:

	The veteran's DD-214 or Discharge Papers
	Annual Social Security Award Letter received in January AND other documentation to verify your income
	A printout from your pharmacy of 3 months of expenses
	Marriage certificate
	Veteran's death certificate
	Death certificate or divorce decree related to any previous marriages of either you or the veteran
	Copies of all your latest financial statements

## Additional forms that will need to be filled out and filed with the claim for benefits:

	Statement of Attending Physician
	VA Form 21-0779 – Nursing Home Information Report OR Care Provider Report
	Authorizations and Consent to Release Information to the VA for each physician of the veteran or spouse
	Statement Regarding Claimant's IRA
	VA Form 8416 Medical Expense Report



# The Wrap-up: You made it to the end!

After reading this *Nuts and Bolts Guide*, you may have enough information to file a claim on your own. If you do decide that you need the help of attorneys who are concentrated in the area of assisting senior citizens, then please contact us at ElderLaw Advocates. Our goal is to make sure that our clients make the most of their financial and family resources so that they are *never out of money and never out of options for as long as they live*. If you are like most people, then we believe that you will need guidance to apply the information in this guide to your life or the life of your loved one.

We are here to provide guidance to you in the following areas:

- Basic estate plan documents such as powers of attorney, wills & possibly trusts
- Basic analysis of any income tax, estate tax, and gift tax issues
- Care options available in the local community for both the Veteran and spouse
- A review of Medicare and Medicaid as it applies to your circumstances
- A comprehensive understanding of availability and extent of personal and financial, as well as family resources to pay for care
- Analysis of financial suitability of any asset protection tools
- Analysis of both positive and negatives of all tools and planning options
- A calculation of the actual dollar benefit and/or cost of any helpful idea that is discussed
- Possibly completing and submitting the VA claim form

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