

HEALTH ED

Louisiana Elder Law 2009

V.A. Benefits

Presented by:

Peter J. Losavio, Jr., JD

Kent S. DeJean

Christopher W. Nielson

Losavio & DeJean, L.L.C.

I. Veterans Benefits

A. VETERANS PENSION

There is one type of financial benefit that most veterans know nothing about. Yet, it is a primary source of income that we can help them receive.

Veterans or widow(er)s of veterans are entitled to an Improved Pension which will provide a Special Monthly Pension (SMP) to offset the cost of necessary health care. The three types of SMP available are called "Low Income Pension," "Housebound" benefits and "Aid and Attendance" benefits.

B. BASIC ELIGIBILITY CRITERIA FOR IMPROVED PENSION, HOUSEHOLD AND AID AND ATTENDANCE

1. All of the following criteria must be met before a veteran or widow(er) of a veteran can receive Improved Pension benefits:
 - Active Duty. The veteran must have served at least 90 days of consecutive active duty service, one day of which must have been during a wartime period.
 - Wartime. In general, wartime is:
 - World War I
 - World War II- Dec. 7, 1941-Dec. 31, 1946
 - Korean War-Jun. 27, 1950-Jan. 31, 1955
 - Vietnam War-Aug. 5, 1964-May 7, 1975
 - Gulf War- Aug. 2, 1990 through date to be set by law by Presidential Proclamation
 - Discharge. The veteran must have received a discharge other than dishonorable.
 - Financial. The claimant must have limited income and assets available.
 - Disability. The claimant must have a permanent and total disability at the time of application.
 - No Willful Misconduct. The disability was caused without willful misconduct of the claimant.
 - Signed Application. The veteran or widow(er) signs an application and provides the application to the Department of Veteran Affairs.

B. LOW INCOME PENSION

General. Low income pension is the VA's equivalent of SSI. The claimant must meet all the criteria above.

Financial. Permissible family income limits for 2009 to receive Low Income Pension:

Veteran with no dependents
\$985/mo. \$11,830/yr.

Veteran with one dependent
\$1,291/mo. \$15,493/yr.

Widow(er) with no dependents
\$661/mo. \$7,933/yr.

C. HOUSEBOUND BENEFITS

1. Disability. Housebound benefits are available to a veteran or widow(er) of a veteran who is determined to be disabled and is essentially confined to the home. The two ways to prove entitlement include:

- a single permanent disability rated at 100% disabling under the VA schedule and confined to the dwelling, or
- a 100% disability with another 60% disability, regardless of whether or not the person is confined to the dwelling.

A disability rating is not required for people aged 65 or older. People aged 65 or older are presumed to be disabled; however, the VA will require a physician's affidavit regarding the claimant's condition.

2. Income Limits. Permissible family income limits for 2009 to receive household benefits are:

Housebound veteran with no dependents
\$1,204/mo. \$14,457/yr.

Housebound veteran with one dependent
\$1,510/mo. \$18,120/yr.

Housebound widow(er) with no dependents
\$808/mo. \$9,696/yr.

D. AID AND ATTENDANCE

1. **Disability.** Aid and Attendance benefits are available to a veteran or widow(er) of a veteran who meets one of the following conditions:

- Claimant is blind;
- Claimant is living in a nursing home; OR
- Claimant is unable to:
 - dress/undress or keep self clean and presentable;
 - unable to attend the wants of nature; OR
 - has a physical or mental incapacity that requires assistance on a regular basis to protect claimant from daily environmental hazards.

2. **Income Limits.** The permissible family income limits for 2009 to receive Aid and Attendance benefits are:

Veteran with no dependents
\$1,644/mo. \$19,736/yr.

Veteran with one dependent
\$1,949/mo. \$23,396/yr.

Widow(er) with no dependents
\$1056/mo. \$12,681/yr.

3. **General.** The VA considers the net worth of the individual seeking benefits, excluding the value of the person's home. The standard as to whether a person will be eligible for benefits is whether the persona has "sufficient means" to pay for their own care.

4. **Age Analysis.** The VA has begun instructing caseworkers to perform an "age analysis" to determine financial need.

Sliding Limit. Thus, there is no specific limit on the amount of resources a person may or may not have; however, a commonly used measure, and an amount specifically listed in the M21-1, is \$80,000 or less in assets, whether married or single. This figure used to be \$50,000, and some advisors are still using the more conservative figure. Because of the age analysis, a person who is 98 years of age who has \$75,000 may not be eligible; whereas, a person who is 78 years of age who has \$75,000 may be considered eligible.

Assets that are counted toward the "sufficient means" fluid figure of \$80,000 include bank accounts, certificates of deposit, money market accounts, investment accounts, annuities, retirement accounts, life insurance cash surrender values, etc.

E. INCOME LIMITS

- 1. General.** With regard to income requirements, the applicant will be denied benefits if the veteran's or widow(er)'s countable income exceeds the maximum permissible family income limits. Countable income is all income attributable to the applicant, the applicant's spouse, and the applicant's dependent children.
- 2. Reduction of Income.** Although most veterans have income that exceeds the permissible family income limits, unreimbursed medical expenses paid by the claimant may be used to reduce the claimant's countable income. Unreimbursed medical expenses that may reduce income include: doctor's fees, dentist's fees, prescription glasses, Medicare premium deductions and copayments, prescription medications, health insurance premiums, transportation to physician offices, therapy, and funeral expenses. The most beneficial Unreimbursed expenses that may reduce countable income are the costs of home health care, assisted living facilities, or skilled nursing homes.

F. HELPFUL HINTS

- 1. Which Benefit to Choose.** When applying for Improved Pension benefits, either Housebound or Aid and Attendance, be aware that Aid and Attendance provides a greater income benefit to the eligible applicant; however, the standards of qualification are higher.
- 2. Physician's Report.** Although a person is presumed to need Aid and Attendance if living in an assisted living facility or nursing home, Form VSO-3 is a document that a primary physical completes outlining the applicant's current condition and health care needs. If a person lives at home and is homebound, that person will need the VSO-3 form completed by their physician to bolster the applicant's claim for benefits.
- 3. Proof of Medical Expenses.** When presenting the application to the VA, give the VA a copy of any medical bills or expenses that claimant pays on a regular basis, including the cost of home health aides, or assisted living facility charges. Moreover, it may be helpful to detail all non-medical expenses as well. Providing the information at the time of the application will increase the likelihood of increased monthly benefits.

G. APPLICATION PROCESS

To file for VA Improved Pension benefits, an applicant must present an application to the Veterans Affairs Office. Applications are now available online, however, the supporting documentation must be sent separately to the VA. Each state has a Regional Office and satellite service offices.

The New Orleans Regional Office (RO) is located at 671A Whitney Avenue, Gretna, LA 70056

H. SUPPORTING DOCUMENTATION FOR VA SPECIAL MONTHLY PENSION APPLICATIONS

It is imperative that the applicant obtain copies of certain information to present to the VA along with their application. Documents that should always be included are:

- Income statements, Social Security New Benefit Amount Letters, pension statements, copies of pay checks/stubs, all other verification of any other type of income (interest on securities, rental income, etc.).
- Latest bank statements from all financial institutions.
- Retirement account statements.
- Life insurance policies.
- Marriage licenses, divorce decrees, and/or death certificates for all prior and current spouses of the applicant and the dependent spouse.
- Printout from the pharmacy for all medication of applicant and spouse (and other household members).
- All other medical expenses paid on behalf of applicant and spouse, including the fees for home health care, assisted living, and skilled nursing facility.
- Military discharge papers (DD 214).
- Birth certificate.

I. APPEALING VA DECISION

After the Regional Office issues a determination, the applicant can request an evidentiary hearing at the Regional Office in front of a hearing officer. To do so, the applicant files a notice of disagreement to the Regional Office, which is typically in letter form. The VA then issues a statement of the case. The applicant must file a substantive appeal within 60 days of mailing the statement of the case or within one year of filing the claim, whichever is later.

If the appeal to the Regional Office is not successful (and it usually isn't), the applicant can appeal

to the Board of Veterans Appeals (BVA). The Board of Veterans Appeals is the highest tier in the VA adjudication system. The review is de NOVO and new evidence can be presented.

If the applicant is still not satisfied with the result of the adjudication by the BVA, the applicant can appeal to the U. S. Court of Appeals for Veterans Claims (CAVC). The Court of Veterans Appeals for Veterans Claims is an appellate court in Washington D. C.. Very few cases are taken to the CAVC. The CAVC review is of the administrative record created by the BVA, therefore, no new evidence may be presented. At this level, the attorney is mainly drafting briefs and motions. There is a relatively high success rate at the CAVC level.

J. CONCLUSION

A veteran or widow(er) of a veteran who needs additional health care assistance at home, in an assisted living facility, or in a skilled nursing home should seek all VA benefits which may be available. Often times the additional income received by the VA will allow the person to stay at home or in assisted living longer and avoid going to a nursing home before it is medically necessary. Moreover, the additional income may help the person preserve life savings which can then be used to supplement a spouse's income so the spouse can maintain the same standard of living and quality of life.

NON-SERVICE CONNECTED CLAIMS

(Effective 12-1-08)

	Maximum Annual Rate	Maximum Monthly Rate
<u>Veteran</u>		
Independent Veteran, no dependents	\$11,830	\$985
Independent Veteran, one dependent	\$15,493	\$1291
Housebound Veteran, no dependents	\$14,457	\$1204
Housebound Veteran, one dependent	\$18,120	\$1510
Aid & Attendance Veteran, no dependents	\$19,736	\$1644
Aid & Attendance Veteran, one dependent	\$23,396	\$1949
Each additional child	\$2020	\$168
<u>Widowed Spouses</u>		
Independent Widow, no dependents	\$7933	\$661
Housebound Widow, no dependents	\$9696	\$808
Aid & Attendance Widow, no dependents	\$12,681	\$1056
Each additional child	\$2020	\$168
<u>Veteran Married to Veteran</u>		
Both Aid & Attendance	\$30,480	\$2,540
Each additional child	\$2020	\$168

Peter J. Losavio, Jr. is a Louisiana Elder Law Attorney certified by the National Elder Law Foundation. He graduated from Louisiana State University Law School in Baton Rouge, and received his LL.M. in taxation from the University of Florida. He is a certified tax specialist and a certified estate planning and administration specialist by the Louisiana Board of Legal Specialization with over 30 years of experience.

Kent S. DeJean has 20 years of experience in Social Security, Family Law, Adoption, Worker's Compensation, Successions, Personal Injury, Bankruptcy, and General Practice.

Accredited attorneys with the U.S. Department of Veterans Affairs

LOSAVIO & DEJEAN, LLC
8414 Bluebonnet Blvd., Ste. 110
Baton Rouge, LA 70810

Telephone: (225) 769-4200 or (800) 769-3522 Toll-free/Nationwide

Facsimile: (225) 769-2864

Email: pete@losaviolaw.com or Email: kdejean@losaviolaw.com

Visit our website:

www.losaviodejean.com