

Guide to Applying for Veterans Benefits



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by

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CAUTION: The rules for qualifying for Veteran's benefits change frequently. Before you take any action, please consult a qualified attorney knowledgeable in veterans law and the legal implications of transfers, a County Veterans Services Office or the VA.

Introduction to Veterans Benefits

The U.S. Department of Veterans Affairs (VA) provides many benefits and services to veterans, their survivors and families. At the state level, New York has its own Department of Veterans Affairs agency that offers additional services to veterans. There is no official connection between the U.S. Department of Veterans Affairs and the

state agency. However, understanding the variety of federal benefits and services available to the elderly or disabled veteran requires understanding the basic function of both entities, as follows:

- VA benefits are federal benefits and are provided by the U.S. Department of Veterans Affairs.
- The New York Department of Veterans Affairs, through its various County Veterans Services Offices, provides information and assistance to New York State veterans seeking to procure federal VA benefits.



Federal Benefits

A veteran or family member may qualify for: (1) VA cash assistance; (2) medical care; and (3) other benefits. The information below focuses primarily on the “cash assistance” programs available to the elderly or disabled veteran or family member. In this respect,

assistance for the disabled veteran falls into two main categories: Service Connected Compensation and Non-service Connected Disability Pension.



Service Connected Compensation: This is one of the most widely known VA cash assistance programs. The fact that it is so widely known is one of the reasons many veterans don't know about, or misunderstand, other cash assistance programs that may be available to them. Service Connected Compensation benefits are paid to veterans who have a disability (or disabilities) incurred or aggravated during active military service. Based upon the degree or scope of the disability, the veteran's disability is rated in multiples of 10%, ranging from 0% to 100%. The amount of compensation paid depends upon the rating assigned. Unlike Non-service Connected

Disability Pension benefits (discussed below), Service Connected Compensation is paid without regard to financial need.

Qualifying for Service Connected Compensation benefits is easier when the veteran has specific disabilities. Certain presumptions exist where only evidence of the current disability and evidence of qualification for the presumption needs to be presented. Consequently, if the veteran provides medical support to show that he/she has an existing disability that relates to his/her military services, then he/she has met the presumption. A few of the categories to which the presumption for qualification applies are: (1) veterans with certain chronic diseases, such as diabetes and hypertension developed during military service, or shortly after discharge; (2) veterans exposed to certain herbicide agents in the Republic of Vietnam during military service and who have such ailments as Hodgkin's Disease, diabetes and certain cancers, among others; and (3) veterans who served in Southwest Asia during the Persian Gulf War and who became disabled with undiagnosed disabilities or chronic multi-symptom illnesses.

In general, veterans who have incurred a disability, or have aggravated a disability during active military service are well aware of their compensation

benefits under this program of assistance. However, they also need to be aware that veterans may file a claim for an increased rating if the condition worsens or request a secondary service connected condition for disabilities that are due to a service connected condition. Any increase in the disability rating is an increase in compensation. For example, a veteran who is rated 10% for hypertension but who later suffers a stroke as a result, may request a secondary service connected condition for the stroke, thereby increasing the disability rating and amount of compensation paid. Also, additional compensation may be available to veterans who are housebound or who are in need of “Aid & Attendance” as a result of their service connected disabilities, when such disabilities cause the veteran to be confined to his/her home or require the regular aid and attendance of another person. This is known as Special Monthly Compensation (SMC) and can greatly increase the amount of compensation received by the veteran. Finally, if a veteran has a disability rating of 70%, or can likely increase his rating to 70% by filing a claim, VA medical care benefits become accessible, such as payment toward nursing home care, which eliminate the need for other programs of government assistance, such as Medicaid. If a veteran has one or more service connected disabilities, then a new claim should be filed or the veteran should request an increased rating where the circumstances indicate potential eligibility.



Finally, Service Connected Compensation benefits are counted as income for determining eligibility for, and the amount of, benefits payable by needs-based governmental programs, such as Medicaid, Supplemental Security Income, Food Stamps, and federally assisted housing.

Non-service Connected Disability Pension: Non-service Connected Disability Pension benefits, in contrast to Service Connected



Compensation, is not widely known due to the widespread belief that the veteran must have been injured during military service to receive benefits. Very few of the thousands of elderly and disabled veterans who have served during wartime are aware of these benefits. Consequently, very few elderly and disabled veterans receive

these cash assistance benefits which could help keep them in their home, afford the cost of an assisted living facility, or minimize the erosion of assets that results from the extraordinary high cost of nursing home care.

Who is Eligible? There is widespread belief among veterans and their family members that the veteran must have been injured during active military service in order to qualify for any VA benefits. In other words, most veterans believe they must have a service connected injury assessed by a specific disability impairment rating to qualify. The result of this mistaken belief is many veterans simply forego making an inquiry to the local County Veterans Services Office. Consequently, they fail to obtain cash assistance to aid them with the costs of long-term care in their own home, within an assisted living facility, or in a skilled nursing facility.



Any veteran discharged (except those dishonorably discharged) with wartime service may be eligible for veteran benefits to help aid with the cost of long-term care expenses. The veteran must have had ninety days of active military service with at least one day of service occurring during specific wartime service periods. The geographic location where

the veteran served is irrelevant. It is only the time period in which the veteran served that is important. These wartime service period are set forth as follows:

World War I	April 6, 1917 - November 11, 1918*
World War II	December 7, 1941 - December 31, 1946**
Korean Conflict	June 27, 1950 - June 7, 1957
Vietnam Era	August 5, 1964 - June 7, 1975***
Persian Gulf	August 2, 1990 - yet to be determined
* If in Russia, ending date is April 1, 1920.	
** Extended to July 25, 1947, if the veteran was in service on December 31, 1946. Continuous service before July 26, 1947 is considered World War II service. Merchant Marines: December 7, 1941 - August 15, 1945.	
*** Also from February 28, 1962 - May 7, 1975 for a veteran who served in the Republic of Vietnam during that period.	

Although to qualify for the program the disability does not need to be connected to the military service of the veteran, the veteran must



currently suffer from permanent and total disability. The VA will generally accept a letter from the veteran’s physician substantiating the disability. In lieu of the physician’s letter, a support medical assessment or medical statement can be provided on V.A. Form 21-2680, obtainable from the local County Veterans Service Office.

Financial Need (Income Requirements): The general rule is that even if the veteran (or veteran’s spouse or dependents) fulfills all of the above requirements, the application will be denied if the veteran’s countable income exceeds the maximum annual pension rate, which is currently \$1,644.00 per month. Countable income is all income of any kind attributable to the veteran.

In computing the income of the veteran, certain items may be deducted from income. Specifically, unreimbursed medical expenses (UME's) paid by the veteran may be used to reduce the veteran's income.



Many items constitute unreimbursed medical expenses. Included in this list are: doctor's and dentist's fees, eyeglasses, Medicare deductions, co-payments, prescriptions, transportation to doctors, therapy, health insurance, and funeral expenses. Also included in unreimbursed medical expenses are the cost of the skilled nursing facility, assisted living facility, or in-home aide. Obviously, these can make up a sizeable portion of the unreimbursed medical expenses.

A deduction for the medical expense can only be made if the expense has actually been paid. They must also be unreimbursed medical expenses; that is, the beneficiary will receive no payment for out-of-pocket expenses paid by the beneficiary. The unreimbursed medical expenses can be incurred by either the beneficiary or a relative of the beneficiary who lives in the same household. This person does not have to be a dependent of the veteran.



Insurance premiums paid by the beneficiary or member of the household are allowable medical expenses. Insurance includes health insurance (including Medigap policy premiums) and long-term care policies. If a physician directs a beneficiary to take nonprescription drugs, the cost of such over-the-counter medicines is an allowable medical expense deduction. Mechanical and electronic devices that compensate for a claimant's or dependent's disabilities are deductible medical expenses to the



extent that they represent expenses that would not normally be incurred by non-disabled persons. Medicare premiums paid to the Social Security Administration are deductible as medical insurance premiums. The costs of an adult day care center, rest home, group home or similar facility or program is an allowable medical expense as long as the facility provides some medical or nursing services for the disabled. The services do not have to be paid to a licensed health care professional. An Alzheimer's day care program would be an example of this.

The costs of long-term care may, and often will, be the largest unreimbursed medical expense. A medical expense deduction may be allowed for unreimbursed nursing home fees even though the nursing home may not be licensed by the state to provide skilled or intermediate level care. The definition of a "nursing home", for purposes of the medical expense deduction, is not the same as the definition of nursing home set forth in the federal regulations. A nursing home, for the purposes of the medical expense deduction, is any facility which provides extended term inpatient medical care.

In-home attendants (i.e. aides) are an allowable medical expense deduction as long as the attendant provides some medical or nursing services for the disabled person. The attendant does not have to be a licensed health professional. All reasonable fees paid to the individual for personal care of the disabled person, and maintenance of the disabled person's immediate environment, may be allowed. This



includes services such as cooking and housekeeping for the disabled person. It is not necessary to distinguish between “medical” and “non-medical” services. For example, the veteran pays an attendant to administer medication and provide for the veteran’s personal needs. The attendant also cooks the veteran’s meals and cleans their house. The entire amount paid to the attendant may be allowed as a deductible medical expense. It makes no difference if the attendant is a licensed health professional.



The cost of an assisted living facility, nursing home or even part or all of the cost in an independent living facility may be an allowable medical deduction. The facility must show that it is providing “managed health care assistance” or “medical management”. If the beneficiary is maintained in a home or other institution because he/she needs to live in a protected environment, fees paid to the institution are deductible expenses to the extent they represent payment for medical treatment. The beneficiary’s doctor is your best ally in showing the need for facility care.



Financial Need (Net Worth Requirements):

In addition to the income requirement, the veteran’s net worth should not exceed \$80,000. Assets of the veteran, or if married, the veteran and spouse, are counted with the primary residence and one vehicle being excluded.

Coordination of Federal VA Benefits with Medicaid Benefits

Usually, VA compensation and pension payments are counted as income for Medicaid eligibility purposes. The

portion of the benefit that is Aid & Attendance benefits, however, is specifically excluded from the definition of income. After eligibility, if the single veteran resides in a nursing home, the Aid & Attendance pension benefit is reduced to \$90, payable directly to the veteran. Married veterans can keep their Aid & Attendance for maintenance of the spouse in the marital home. The courts have disagreed as to whether payments made under other Medicaid programs would be reduced by actual payments made for Aid & Attendance. Presumably, since Aid & Attendance is excluded in the definition of income and does not fall under the \$90 exception above, it should continue to be excluded for other purposes as well.



The surviving spouse of a veteran who would have been entitled to these benefits will be eligible for widow's or widower's benefits with the same criteria for income, assets and health condition. They may qualify to receive a maximum of \$1,056.00 per month.

The primary problem that arises when coordinating VA benefits with Medicaid relates to asset transfers. The VA allows for asset transfers with no look-back period whatsoever. When applying for Medicaid, all Medicaid look-back periods apply, thus a transfer that was legitimate for VA purposes may cause a period of disqualification for Medicaid purposes. There are a number of steps that can be taken to remedy the situation including, but not limited to, a return of the entire principal that was transferred in order to obtain VA benefits, to the Medicaid recipient. Of course, appropriate Medicaid planning tools and devices must then be used with the assistance of

a qualified elder law attorney to again protect those assets under the Medicaid rules.

Resources

County Veterans Services Offices	
Albany	518-447-7710
Delaware	607-746-2334
Dutchess	845-486-2060
Orange	845-291-2470
Rockland	845-638-5244
Saratoga	518-884-4115
Schenectady	518-377-2738
Ulster	845-340-3190
Washington	518-746-2470
Westchester	845-638-5244
NYS Division of Veterans Affairs	888-838-7697
National Veterans Legal Services Program	www.nvlsp.org
Veterans Affairs Website	www.va.gov

Requirements for Non-service Connected Pension Aid & Attendance, Housebound and Independent Low Income:

- Must have served at least ninety days active duty with one day of the ninety during a qualifying wartime period
- Must have other than dishonorable discharge
- Must have limited assets and household income and generally high household medical expenses



- Must be low income, housebound, and/or in need of personal assistance from another individual

Widowed Spouse, Who has Not Remarried Since the Veteran's Death:

- Veteran must have served at least ninety days active duty with one day of the ninety during a qualifying wartime period
- Veteran must have other than dishonorable discharge
- Spouse must have been officially married to the veteran for at least one year OR had a child by the veteran
- Spouse must have been living with the veteran at the time of the veteran's death, unless the separation was medical or military (there may be other acceptable reasons for the separation, such as abuse)
- Must be low income, housebound, and/or in need of personal assistance from another individual
- Must have limited assets and household income and generally high household medical expenses



Dependent Child:

- Veteran must have served ninety days active duty with at least one day of the ninety during a qualifying wartime period
- Veteran must have had other than dishonorable discharge
- Child is under the age of 18 or permanently disabled prior to the age of 18 and unable to support self

- Must have limited assets and household income and generally high household medical expenses

Listing of Acceptable Services for VA Non-service Connected Pensions

1. Full-time service in the Army, Navy, Marine Corps, Air Force, Coast Guard, Merchant Marines, Women's Corp, Nursing Corp, other than active duty for training
2. Full-time service as a commissioned officer in the Public Health Service
3. Full-time service as a commissioned officer at the Coast and Geodetic Survey, Environmental Services Administration, or National Oceanic and Atmospheric Administration (with certain additional qualifications)
4. Service as a cadet at a military academy
5. Attendance by certain active-duty members at certain preparatory schools associated with military academics
6. Includes authorized travel to or from such above duty or service
7. Certain civilians, serving on Wake Island during WWII, and others



There are other unusual branches of service. (For full list of eligible active duty positions, see 38 U.S.C. 101;38 C.F.R. 3.6). May also search the internet for Title 38 for such U.S. Code.

Prospective Claimant Qualification Questionnaire for Aid and Attendance

	Yes	No
Did the veteran serve a minimum of ninety days active duty with at least one day of the ninety during a qualifying wartime period?		
Did the veteran receive other than dishonorable discharge?		
Is prospective claimant housebound and in need of personal assistance?		
Are prospective claimant's total household assets less than \$80,000?		
Does prospective claimant's total household GROSS income exceed or come close to his/her total household medical expenses?		
Was widowed spouse living with the veteran at the time of the veteran's death?		
Was widowed spouse married to the veteran for at least one year OR have a child by the veteran?		
Did widowed spouse remain unmarried since veteran's death?		
<p>If all of the above answers were "yes", the prospective claimant may very well qualify for a Non-service Disability Connected Aid & Attendance pension. However, there is never a guarantee that any claimant will be approved for benefits. It is always best to file and allow the VA to determine final eligibility.</p>		
<p>Veterans please note: A claimant may qualify for a lesser amount if housebound, but not in need of personal assistance. A claimant, who is neither housebound nor in need of personal assistance, may also qualify for a lesser pension amount.</p>		

Veterans Aid & Attendance Benefits Worksheet

Gross Income:	
Social Security	\$
US Civil Service	\$
US Railroad	\$
Military retirement	\$
Black lung benefits	\$
Other pensions	\$
Interest & dividends	\$
Worker's Compensation	\$
Unemployment Compensation	\$
Other military	\$
Other	\$
Total income:	\$
Deductions:	
Medicare Part B	\$
Medicare Part C and/or D	\$
Private medical insurance	\$
Assisted living, nursing home	\$
Home care	\$
Incontinence supplies	\$
Other	\$
Total medical deductions:	\$
Calculations:	
Total medical deductions	\$
Minus flat veterans deductions	\$-46.00
Total net medical deductions:	\$
Income	
Minus net medical deductions	\$
Total net income:	\$

Summary: Veteran's Pension Benefits

2009 Veterans Monthly Pension Rates		
Veteran's Family Situation	Maximum Pension	Maximum Pension with Aid & Attendance
Single veteran	\$985.00	\$1,644.00
with one dependent	\$1,291.00	\$1,949.00
Widow of veteran	\$661.00	\$1,056.00
with one dependent	\$865.00	\$1,260.00
Veteran permanently housebound	\$1,204.00	n/a
with one dependent	\$1,510.00	n/a
Widow permanently housebound	\$808.00	n/a
with one dependent	\$1,012.00	n/a

Eligibility Requirements for Veterans Pension Benefits:

- Veteran was discharged from service under conditions other than dishonorable
- Veterans served at least 90 days of active military service, one day of which was during a wartime period. If veteran entered active duty after September 7, 1980, generally he/she must have served at least 24 months or the full period for which called or ordered to active duty (there are exceptions to this rule)



- Veteran's countable family income is below a yearly limit set by law
- Veteran is age 65 or older, or permanently and totally disabled, not due to wilful misconduct

Eligibility Requirements for Survivors and Dependents for Pension Benefits:

- Surviving spouse must not have remarried
- Children must be under age 18, or under age 23 if attending VA approved school or have become permanently incapable of self-support because of disability before age 18 (unless child marries or income exceeds applicable limit)

Benefits are retroactive to the first of the month the claim for benefits has been filed. There is a new federal policy where they may be able to go back twelve months for nursing home applications.



About the Author and Ettinger Law Firm

Principal attorney Michael Ettinger has been a member of the New York State Bar since 1980. He is an honors law graduate of McGill University in Montreal, Canada and obtained his Master of Laws from the London School of Economics in 1978. Ettinger Law Firm, dedicated exclusively to estate planning and elder law, was formed in 1991. Mr. Ettinger is a founding member of both the American Academy of Estate Planning Attorneys and the American Association of Trust, Estate and Elder Law Attorneys.



Ettinger Law Firm has prepared thousands of estate plans using trusts and has filed thousands of Medicaid applications. Our staff of attorneys and experienced Medicaid professionals provide you with over fifty years of combined experience in elder law and estate planning.

The law firm offers a free, one hour consultation to help you determine whether our services may be of benefit to you and your family. Please call us at 800-500-2525, ext. 10 to schedule your free consultation.

Please also visit our website, trustlaw.com, for office locations and directions and for more information about elder law and estate planning. Thank you for considering Ettinger Law Firm for your elder law and estate planning needs.

Testimonials

“Michael Ettinger was extremely helpful. All staff are very courteous and professional. Excellent in legal and advisory services. All documentation and recommendations are very clear. I certainly would refer and recommend family and friends. Thanks for all your assistance and efforts to provide me with basic estate planning. I find that it is necessary to have your estate planning in place in case of emergencies.”
-- D.J.F.

“My opinion -- Excellent.” -- H.W.B.

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