

Changes to the Veterans Aid and Attendance Benefit Program

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If your client (or client's spouse) is a Veteran of the Armed Forces and worried about paying for the cost of long-term care, he or she should consider applying for the Veterans' Aid and Attendance Benefit. A determination of whether a veteran is eligible for Aid and Attendance is complicated, and a full discussion of the benefit is beyond the scope of this article. Instead, this article will provide a brief overview of Aid and Attendance and focus on recent changes in how the Department of Veterans Affairs (VA) determines if a veteran is financially eligible.

What is the Veteran's Aid and Attendance Benefit?

Aid and Attendance is part of the Veteran's Pension Benefit program. The Veteran's Pension Benefit is offered to wartime Veterans in need of supplemental income and/or assistance with the costs of long-term care. It has three levels: Basic, Housebound, and Aid and Attendance. Aid and Attendance is the highest level of benefit and reserved for veterans who are the most medically needy. A veteran who qualifies for Aid and Attendance will almost always qualify for the Basic and Homebound benefits as well.

For a veteran to qualify for Aid and Attendance he or she must meet the VA's service criteria, medical criteria, and financial criteria. To meet the service criteria a veteran must not have been dishonorably discharged, must have served at least 90 days active duty with at least one day served during a declared state of war, and must be either disabled or over the age of 65. To meet the medical criteria, a veteran must have a medical condition that requires "the regular attendance of another person" to assist in activities of daily living ("ADLs").

The VA has complicated asset and income rules to determine whether a veteran meets financial criteria for Aid and Attendance. This aspect is usually the most difficult part of the process. The VA also significantly amended the asset and income rules as of October 18, 2018, adding complication to the process. If a veteran meets the service criteria, medical criteria, and financial criteria, however, he or she is eligible for Aid and Attendance and will receive supplemental income and/or assistance with the costs of long-term care from the VA.

How do recent changes affect a Veteran's eligibility for Aid and Attendance?

As mentioned above, the VA recently amended the asset and income rules for determining eligibility. These rules modify a number of criteria including the calculations of an applicant's net worth, asset transfers, medical expenses and income deductions. A complete discussion of the changes is beyond the scope of this article. Instead, this article will focus on three major ways the VA has modified how it determines financial eligibility for Aid and Attendance.

The most significant change is that the VA now imposes a strict limit on a veteran's "net worth" in order to be eligible for Aid and Attendance. Previously, the VA considered a Veteran's net worth on a case-by-case basis, weighing the veteran's (or the surviving spouse's) life expectancy against the rate his or her assets were being exhausted by long-term care and other deductible expenses. Now, a veteran's "net worth" must be less than an amount equal to the maximum community spouse resource allowance for Medicaid purposes on the effective date of the final rule. In 2018, this number is \$123,600, but it will rise with the cost-of-living increases for Social Security benefits.

It is important to note that the VA's amended rules now define net worth" as "the sum of a claimant's or beneficiary's asset **and annual income.**" (Emphasis added.) Thus, the VA considers a veteran's (or a surviving spouse's) income when calculating net worth. As a result, a veteran who has \$120,000 in assets and annual income of \$7,000 exceeds the limit and is ineligible for Aid and Attendance. If there are allowable exclusions to income, however, the VA will apply those first to decrease annual income, and to reduce a veteran's assets. A veteran who has deductible medical expenses, for example, may use those expenses to reduce income and assets so their "net worth" falls below the limit.

The second major change is that the VA now imposes a three-year look-back period for uncompensated transfers similar to that of the Medicaid program (which has a five-year look-back period). If a veteran's net worth exceeds the limits imposed under the new rules, there is an incentive to give away assets before making application for Aid and Attendance. If a veteran transfers or gives part of an estate away for less than fair market value less than three years prior to applying for the Aid and Attendance, however, the veteran will incur a penalty under the new rules. Importantly, this look-back period does not apply to transfers prior to the October 18, 2018, and the VA permits a veteran to cure the penalty by having assets returned to the veteran.

Finally, the new rules slightly modify how the VA treats a veteran's personal residence when determining "net worth." A veteran's primary residence continues to be excluded from the definition of assets when calculating net worth but only to the extent the residential lot area does not exceed two acres. Previously, the VA excluded the value of a veteran's personal residence regardless of its size. Now, if the residential lot area exceeds two acres, then the value of the additional land above

the two acres will be included in the asset calculation. This may have a significant impact on veterans who reside in rural communities and own large tracts of land.

What should I do next?

If you have clients who are concerned about long-term care costs and served in the Armed Forces, we recommend they have a conversation with one of our an Elder Law attorneys to see if they are eligible for Aid and Attendance. Our Elder Law attorneys constantly look for ways to give our clients peace of mind knowing they have a means to pay for the cost of long-term care without having to spend down all their assets. If your client (or client's spouse) may benefit from this program, our attorneys can determine (1) whether they qualify for Aid and Attendance; (2) whether Aid and Attendance is the best benefit for them and if it will affect their qualification for Medicaid; and (3) how best to plan so they may qualify for Aid and Attendance in the future while not spending down all of their assets.