

VA Pension Rules: Then and Now

As of October 18, 2018, the Department of Veterans Affairs (VA) Pension Rules have changed in a significant way. There are several areas of the rules that were affected, including financial net worth, asset



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transfers and medical expense deductions. Understanding the scope of these changes will help to navigate the VA Pension eligibility requirements.

Veterans have earned these benefits through their service to our country. The non-service connected pension is often referred to as "Aid and Attendance," although Aid and Attendance is actually the most enhanced pension benefit, which also includes basic pension and Homebound Allowance. Aid and Attendance is a program within the pension system that is meant to assist an eligible veteran (or the eligible surviving spouse of a veteran) with health care costs, and is subject to income and asset restrictions. The veteran or surviving spouse must require assistance with the activities of daily living (ADL).

The eligibility requirements may be viewed as three main components, some of which have changed, consisting of: 1) Wartime Service of a Veteran (or widow(er) of a Wartime Veteran); 2) Household Income and Assets; and 3) Medical Expenses.

Wartime Service (Then and Now)

To qualify, the veteran must have served at least 90 consecutive days of active duty and served at least one of those days during a period of war. These periods include: World War II (Dec. 7, 1941 – Dec. 31, 1946), Korean War (June 27, 1950 – Jan. 31, 1955); Vietnam War (February 28, 1961 – May 7, 1975 for Veterans who served in the Republic of Vietnam during that period, or for other service August 5, 1964 – May 7, 1975); and Persian Gulf War (Aug. 2, 1990 – date to be set by Presidential Proclamation or law).

In addition, the veteran must have been other than dishonorably discharged.¹

Household Income and Assets Then

Prior to October 18, 2018, the VA Pension requirements provided that a veteran's financial net worth should not exceed a subjective amount of approximately \$80,000. This was not a specific number. In addition, a veteran was able to transfer assets above this allowance to reduce the value of the assets owned without a penalty. Prior to October 18, 2018, there also was no look-back period for any transfers made for purposes of VA eligibility.²

Household Income and Assets Now

Pursuant to 38 CFR §3.276, the new transfer rule and penalty period that will be imposed for transfers made prior to applying for VA pension are outlined. On or after October 18, 2018, the VA applicant may not have a net worth more than the fixed amount of \$123,600 (for 2018), not counting a home and land if it is two acres or less.³ This amount is equal to the maximum community spouse resource allowance for Medicaid purposes as of October 18, 2018, and will increase annually by the same percentage as the cost-of-living increase for Social Security benefits.⁴

In addition, there is now a 36-month look-back period for transfers of assets to a person or a trust after October 18, 2018. The transfers calculated within the 36-month look-back period create a penalty period not to exceed 60 months.⁵

Transfer of assets includes a transfer of certain assets for less than fair market value or the transfer or purchase of an annuity or any other financial instrument that reduces net worth and "would not be in the claimant's financial interest but for the claimant's attempt to qualify for VA pension."⁶ The look-back period consists of the 36 months immediately preceding the date the VA receives an original pension claim or a new pension claim after a period of non-entitlement. The divisor used to calculate the



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penalty is the maximum annual pension rate for a veteran with one dependent (\$2,170 for 2018).⁷

For example, Stanley is a veteran who served during World War II. Stanley has no dependents. On October 31, 2018, Stanley transferred assets with a fair market value of \$100,000 and kept income and assets worth \$123,600 in his name.

Stanley immediately applied for Aid and Attendance, with an application date of November 10, 2018. Stanley's transfer was subject to the 36-month look-back period. The VA calculated Stanley's penalty in the following manner. Calculation: $\$100,000/\$2,170=46.08$ (rounded down to 46 months). Stanley will not be eligible for benefits for 46.08 months.

Medical Expenses

The new regulations have expanded on the definitions of medical expenses that may be deducted from income. Prior to the new regulations, certain medical expenses could be deducted from income to lower the applicant's income and increase the applicant's pension benefit. In other words, if the applicant has enough medical expenses to reduce the applicant's income below the pension amount to be awarded, then the applicant will be entitled to that pension amount.

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Pursuant to 38 CFR §3.278(b), the definitions of deductible medical expenses are now defined for the purpose of a VA pension. Importantly, the definition of Activities of Daily Living now includes "ambulating within the home or living area" and Instrumental Activities of Daily Living (IADL) now includes "independent living activities, such as shopping, food preparation, housekeeping, laundering, managing finances, handling medications, using the telephone and transportation for non-medical purposes."⁸

In addition, 38 CFR §3.278(c) continues to specifically identify medical expenses that qualify as those that are "medically necessary; that improve a disabled individual's functioning; or that prevent, slow or ease an individual's functional decline." Some examples include: health care provider payments medications, medical supplies, medical equipment medical food, vitamins and supplements, transportation expenses, health insurance premiums, smoking cessation products and institutional forms of care and in-home care.⁹

In addition, 38 CFR §3.278(c) expands on the criteria to qualify in home care as a medical expense deduction. The final rules provide more clarification regarding care in a facility other than a nursing home or assisted living facility. 38 CFR §3.278(d)(3) now covers care facilities other than nursing homes and allows their cost to be deducted as a medical expense.¹⁰

The regulations implemented as of October 18, 2018 offer further clarification and, to some degree greater specificity on the requirements to qualify for Aid and Attendance. However, as a result, these regulations also require the applicant to plan in advance.

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1. 38 CFR §3.31.

2. 38 CFR §3.274 and 38 CFR §3.275.

3. Federal Register RIN2900-A073, 38 CFR §3.274(a), 38 CFR §3.275(a)(3).

4. 38 CFR §3.274(a) and (b); 38 U.S.C. 1522(a).

5. 38 CFR §3.276(a)(7).

6. 38 CFR §3.276(a)(6).

7. 38 CFR §3.276(e)(1).

8. 38 CFR §3.278(a)(3).

9. 38 CFR §3.278(c).

10. 38 CFR §3.278(d)(3).