
 The Chubb Law Firm

## Planning for Wartime Veterans



The Importance of the Aid & Attendance Pension Benefit:  
What the Veterans Administration Might Not Tell You

Presented By Heather R Chubb, Esq. | 4/29/2021 | Sacramento Public Law Library

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## What You Will Learn Today

- What is Improved Pension aka "Aid & Attendance"
- How much does it pay
- What can it be used for
- How do you qualify
- How long does it take to get the benefit
- Hurdles to qualification
- Planning strategies for qualification
- The importance of Medi-Cal
- How having the right legal tools makes life easier for you and your family

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## The Population Who Can Be Helped

- Approximately 2.3 million WWII Vets
- Approximately 2.3 million Korean Vets
- Approximately 6.4 million Vietnam Vets
- Approximately 650,000 Gulf War Vets
- Widows of WWII and Korean Vets over 65 = approximately 9.2 million (2 to 1 ratio)

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## Another Type of Benefit

### VA Improved Pension

#### "Aid & Attendance"

- Not a retirement benefit.
- No service-connected injury or disability.
- Eligible wartime veterans and surviving spouses receive a monthly cash benefit from the Veterans Administration if they meet certain service, financial, and medical requirements.
- Money is paid directly to the veteran or surviving spouse.



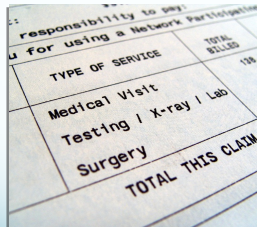
Up to \$1,937/mo for veterans



Up to \$1,245/mo for surviving spouses

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## 3 Levels of Improved Pension



- Base
- Housebound
- Aid & Attendance

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## "Base Pension"



- Over age 65 – presumed to be totally & permanently disabled
- If under age 65 – must be 100% disabled

(38 USC § 1513(a))

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## "Housebound"



- Cannot leave house without assistance
- Does not mean cannot take care of self within the house
- Cannot drive
- Substantially confined to dwelling and immediate premises (*Hartness v. Nicholson (2006)*)

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## "Aid & Attendance"



- Assistance with dressing/undressing
- Assistance with keeping oneself presentable
- Assistance with bathing
- Assistance with medications
- Assistance with feeding or meal preparation
- Would benefit from protected environment

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## 3 Levels of Improved Pension

VETERAN		SURVIVING SPOUSE	
<b>Basic (65+)</b>		<b>Basic (65+)</b>	\$799
Single	\$1,161		
Married	\$1,520	<b>Housebound</b>	\$952
<b>Housebound</b>			
Single	\$1,419	<b>Aid &amp; Attendance</b>	\$1,245
Married	\$1,778		
<b>Aid &amp; Attendance</b>			
Single	\$1,937		
Married	\$2,296		

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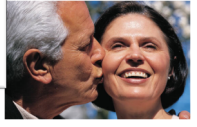
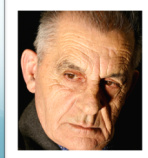
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## How Can This Benefit Be Used?

- In-Home Care
- Assisted Living
- Board and Care
- Skilled Nursing\*\*
- Pay a family member to help

\*\* Medi-Cal/Medicaid is also available



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## Criteria for Qualification

- Wartime service
- Medical expenses / Need for assistance
- Household income
- Assets and Net Worth

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## Service Requirements

- Served at least 90 days (if before 9/8/1980) of active duty
- If active duty started after 9/8/1980, at least 24 months or full period for which called to active duty
- Served at least one day during a war period
- Other than dishonorable discharge



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## Service Requirements

Service in combat is not required,  
only that the veteran was in the service during wartime.

Period of War	Beginning and Ending Dates
• World War II	December 7, 1941 through December 31, 1946
• Korean Conflict	June 27, 1950 through January 31, 1955
• Vietnam War	August 5, 1964 through May 7, 1975; for veterans who served "in country" before August 5, 1964, February 28, 1961 thru May 7, 1975
• Gulf War	August 2, 1990 through a date to be set by law or Presidential Proclamation



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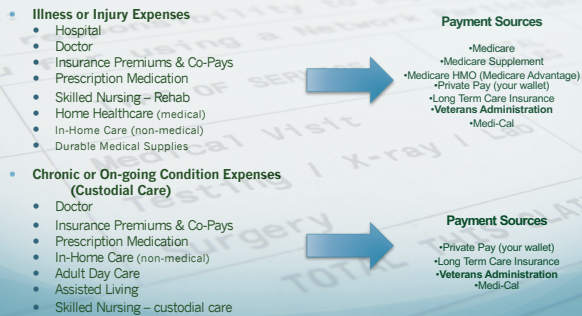
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## Medical Expenses

### How Are They Created and Paid For?



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## Income Is Not What You Think

Gross Household Income – Out of Pocket Medical  
equals  
Income for Veteran Administration Purposes (IVAP)

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## October 2018 Changes to VA Eligibility Standards



- 36-month lookback period
- Transfer penalty period
- Net Worth Limit
- Defines and clarifies deductible UMEs
- Defines “covered assets” and “exempt assets”

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## Limits On Net Worth



Net Worth is the sum of the claimant's (and spouse's)

Income for VA purposes (IVAP)

and

Assets

2021 Net Worth Limit = \$130,773  
increases each year with SS COLA

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## Assets VA Does Not Count



- Residence
- Burial Policies/plans
- Small life insurance policies
- Personal property
- Personal Vehicle

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## QUALIFICATIONS FOR SURVIVING SPOUSE



1. SERVICE OF VETERAN
2. MARRIAGE
  - Married at veteran's death
  - Not remarried
  - Married at least 1 year, continuous cohabitation
3. MEANS TEST
  - Income
  - Net Worth

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## How Long Does It Take?



- 3-12 months
- Each "Development Letter" results in a 3-month delay
- What Can Cause Delays?
  - Incomplete application
  - Using the wrong language (i.e., needs assistance)
- Can file online or through mail or fax

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## Forms Used

Form Number	Name
21-0845	Authorization to Disclose
21-22a	Appointment of Claim Representative
21-2680	Doctor Exam for HB or A&A
21-4138	Statement in Support of Claim
21P-8049	Request for Details of Expenses
21P-527EZ	Veterans NSC Pension Claim
21P-534EZ	Surviving Spouse DIC Claim
21P-8416	Medical Expense Report
21P-0969	Income and Asset Statement in Support of Claim

<https://www.va.gov/find-forms/>

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## Where to Find the Law



- M21-1 Adjudication Procedures Manual  
<https://www.knowva.ebenefits.va.gov/>
- 38 CFR Chapter I Part 3 Subpart A

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## The Biggest Hurdles to Qualification



- Too much income
- Not enough medical expenses
- Excess Net Worth

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## Planning Strategies



- Spend Down
- Convert to Exempt Asset
- Give Away (caution!!)
  - outright to kids
  - to a trust

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## Other Important Considerations

- 36 Month "Look Back"
- 5 year maximum penalty period
- Penalty is determined by dividing amount of excess assets transferred by the vet+1 dependent A&A rate
- Penalty starts on 1<sup>st</sup> day of month following transfer

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## The Colonel

The Colonel, who served in WWII, is a 93 year old widower who suffered a stroke and is currently in assisted living and does not have full mobility. The ALF cost is **\$6,500.00 per month**.

His assets include:

Home - \$500,000.00 bought 20 years ago for \$100,000.00  
Checking account - \$30,000.00  
CDs - \$180,000.00

His income is: \$2,800.00  
Social Security: \$1,900.00  
Pension: \$900

His household expenses are \$750/month



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## The Colonel

IVAP:  $\$2800 - \$6500 = \$0$

The home is an exempt asset  
Countable resources = \$210,000.00

Net Worth: IVAP + Assets = \$210,000

Max Net Worth = \$130,773

XS net worth = \$79,227



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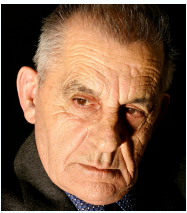
# The Colonel

How much can be protected and how quickly can the Colonel apply for A&A?

Excess Net Worth = \$79,227  
Burn Rate before sale = \$4,450  
Burn Rate after sale = \$3,700  
Penalty divisor = \$2,296

Assume home is transferred and sold within 2 months.

Once he qualifies, the Colonel will receive \$1,937/month.



Amount transferred	\$ 70,000.00	\$ 50,000.00	\$ 35,000.00	\$ 30,000.00	\$ 25,000.00	\$ 20,000.00
Penalty (months)	30.49	21.78	15.24	13.07	10.89	12.63
Penalty (months - round down)	30.00	21.00	15.00	13.00	10.00	12.00
Funds Used During Penalty Period	\$ 112,500.00	\$ 79,200.00	\$ 57,000.00	\$ 49,600.00	\$ 38,500.00	\$ 45,900.00
Remaining NW at time of application	\$ 18,273.00	\$ 71,573.00	\$ 108,773.00	\$ 121,175.00	\$ 137,273.00	\$ 125,873.00
Total Protected (transfer+remaining NW)	\$ 88,273.00	\$ 121,573.00	\$ 143,773.00	\$ 151,175.00	\$ 162,273.00	\$ 154,873.00

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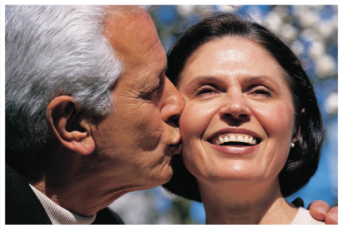
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# Dot and Steve

Steve served in the Army during the Korea conflict.

His wife Dot has dementia and Steve is at his limit for caregiving ability. He has hired Amanda to provide care.

Steve can no longer drive, but otherwise can care for himself.



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# Dot and Steve

Assets:

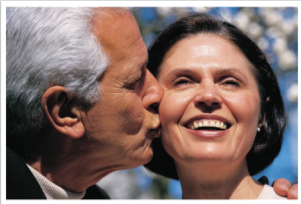
Home - \$300,000  
Checking account - \$30,000  
Investments - \$150,000\*  
Life Insurance - \$25,000

Steve's income:

Social Security: \$2,400/month  
Pension: \$200/month  
Dot's income:

Social Security: \$650/month  
Household expenses: \$950/month  
Caregiver expenses: \$3,600/month

\*4 years ago Dot and Steve added their son to the investment account.



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## Dot and Steve

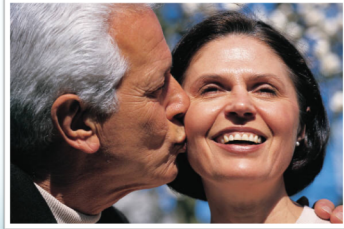
IVAP:  $\$3,250 - \$3,600 = \$0$

The home is an exempt asset  
Countable resources =  
\$155,000.00

Net Worth: IVAP + Assets =  
\$155,000

Max Net Worth = \$130,773

XS net worth = \$24,227



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## Dot and Steve

Although Dot is the spouse requiring care, the benefit belongs to the veteran-Steve. Steve qualifies as housebound.

When a third party is on the account their percentage is not counted.

Excess Net Worth = \$24,227  
Burn Rate = \$4,550  
Penalty divisor = \$2,296

Once qualified, Steve will receive  
\$1,778/month



Amount transferred	\$ 20,000.00	\$ 15,000.00	\$ 10,000.00	\$ 12,000.00
Penalty (months)	8.71	6.53	4.36	5.23
Penalty (months - round down)	8.00	6.00	4.00	5.00
Funds Used During Penalty Period	\$ 36,400.00	\$ 27,300.00	\$ 18,200.00	\$ 22,750.00
Remaining Net Worth at time of application	\$ 94,373.00	\$ 108,473.00	\$ 122,573.00	\$ 116,025.00
Total Protected (transfer+remaining NW)	\$ 114,373.00	\$ 123,473.00	\$ 132,573.00	\$ 128,025.00

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## VA vs Medi-Cal

VA	Medi-Cal
If using a trust, Vet may not receive income or principal	If using a trust, applicant may receive income but not principal
Retirement accounts (and their income) are countable	Retirement accounts are unavailable (income still counts)
36 month Look Back	30 or 60 month Look Back
Up to 5 year penalty	No max penalty
Penalty starts month after <u>last</u> transfer	Penalty starts in month immediately after transfer
No payback or Recovery	Payback/Recovery

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## Final Important Considerations

- DON'T apply until:
  - you meet all qualifications
  - any penalty period has elapsed
- DON'T forget about potentially qualifying for Medi-Cal benefits. Additional planning may be necessary.
- REMEMBER, transfers when net worth is less than the maximum are NOT penalized.

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Thank You!



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