

Veterans Benefits Law: An Overview

*Special Needs Trust
Conference
October 22, 2026*

Chief Judge Michael P. Allen
United States Court of Appeals
for Veterans Claims



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Organization of the VA

- Executive Branch/Cabinet level agency
- VA is a “them,” not an “it.”
- Three main components
 - Veterans Benefits Administration Agency of original jurisdiction for claims = VA Regional Office (RO or VARO)
 - ▣ 58 VARO's
 - Veterans Health Administration, including VAMCs
 - National Cemetery Administration

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VA Benefits

- Medical care (VHA)
- Home loan guarantees
- Educational assistance
- Survivor benefits
- Pension for indigent wartime veterans
- Caregiver Benefits (VHA)
- Disability compensation
 - Monthly nontaxable check
 - For current disabilities connected to the veteran's military service

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Who is a Veteran?

- Requirement of Veteran Status for benefits
- Active Military, Naval, Air, or Space Service Requirement, including Coast Guard. Also, uniformed segments of the National Public Health Service and the National Oceanic and Atmospheric Administration
- Reserve or National Guard Service is complicated.
- To be a “veteran” one must meet a discharge requirement.
 - “Who was discharged or released therefrom under conditions other than dishonorable.”
 - DD Form 214

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The DD-214

- What’s on it?
 - Biographical information
 - Verifies complete span of time served on active duty
 - Lists MOS (Military Occupational Specialty)
 - Overseas service
 - Awards
 - Rank
 - Character of Discharge
 - Reason for Discharge

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VA BENEFITS: Pensions & Compensations

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Pension vs. Compensation:
The Basics

- Non-service-connected disability
- Needs-based
- Need to show:
 - Low income
 - Wartime Service
 - Total and permanent disability

- Service-connected disability
- Not needs-based
- Need to show:
 - Eligibility
 - Current Disability
 - Nexus

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Establishing Entitlement
to Disability
Compensation

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Establishing entitlement
to disability compensation

Current disability

Nexus

Event during Service

(Statute; regulation; case law)

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Disability Compensation:
1. Current Disability

- Must have current disability or current disabling residuals
- May be awarded disability compensation if resolves prior to adjudication

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Disability Compensation:
1. Current Disability

- Made by a medical professional or some other person with specialized training that qualifies them to give medical diagnosis
- Generally, lay evidence will not satisfy the requirement

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Disability Compensation:
2. In-service Event

- Does not have to be directly related to military duties if happened between entry and discharge
- STANDARD: Evidence in the record demonstrates that it is *as likely as not* that there was an in-service aggravation of disease/injury
- How do you prove this?

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Disability Compensation: 3. Nexus

- Direct causative link between current disability and in-service event
- Aggravation of pre-existing condition
- Presumptive service connection
- Secondary service connection
- Consequence of injury by VA health care

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Disability Compensation: 3. Nexus (cont'd)

- Medical evidence of nexus almost always required (Biggest denial basis)
- Competent medical evidence: Evidence provided by a person qualified through education, training, or experience to offer medical diagnoses, statements, or opinions.
- Does not have to be a medical doctor.

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Sometimes, the requirements for compensation are hard to prove, so VA created some “short-cuts” called presumptions.



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Examples of Presumptions (Just a quick comment)

- Agent Orange
- Gulf War Syndrome
- Burn Pits
- Camp Lejeune water/Litigation
- Other diseases and situations
- PACT ACT: "Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022" or the "Honoring our PACT Act of 2022" PL 117-168

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Presumptions: Agent Orange

- Presumption applies if you:
 - Served in Vietnam
 - Between Jan. 9, 1962 and May 7, 1975
 - Set foot on land or inland waterways or served within 12 nautical miles of the shore of Vietnam
 - Have one of a list of specified diseases
 - For some diseases, got the disease within 1 year of serving
 - Do NOT need to prove exposure to Agent Orange

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Navy Veterans and AO Exposure

- ***Procopio v. Wilkie*** (Fed. Cir. Jan 29, 2019)
 - 12 nautical miles
 - Stay on cases
- Blue Water Navy Vietnam Veterans Act of 2019 (June 25, 2019 became law amending 38 USC 1116A)
 - Vets who filed claims between 9/85 and 1/20 (or survivors)
 - 12 nautical miles seaward of a line commencing on the southwestern demarcation line of the waters of Vietnam and Cambodia intersecting at a number of geographic points latitude and longitude.

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Presumptions: Agent Orange

- List of diseases includes:
 - Many types of cancer
 - Lung, prostate, myeloma, leukemia
 - Hodgkins Disease
 - Non-Hodgkins Lymphoma
 - Type 2 Diabetes
 - Many others
 - See <http://www.va.gov/agentorange>

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Presumptions: Camp Lejeune

- Served at Camp Lejeune or MCAS New River for at least 30 cumulative days from August 1953 through December 1987; AND
- Have at least one of these conditions:
 - Adult leukemia
 - Aplastic anemia and other myelodysplastic syndromes
 - Bladder cancer
 - Kidney cancer
 - Liver cancer
 - Multiple myeloma
 - Non-Hodgkin's lymphoma
 - Parkinson's disease

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Presumptions: For All Veterans

- Tropical Diseases
 - Within 1 year of service
- Tuberculosis
 - Within 3 years after service
- Multiple Sclerosis
 - Within 7 years after service

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Presumptions: For Certain Veterans

- Prisoners of War
- Veterans injured in combat
 - Note: If records show you were in combat, do NOT have to prove you were injured
- Veterans exposed to radiation

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Disability Compensation: Ratings

- Disability refers to the “average impairment in earning capacity” resulting from the rated condition.
- VA created a schedule of ratings providing for degrees of impairment evaluated from 0 to 100 percent in increments of 10 percent.
- Combined ratings. See “Combined Ratings Table,” 38 U.S.C.S. § 1155
- A brief word about “effective dates.”

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Accrued Benefits Dependency and Indemnity Compensation (DIC)

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Accrued Benefits

- At one point, a veteran’s claim died with him or her.
- That is no longer true. A veterans surviving spouse, surviving children, and dependent parents may seek to complete claims pending at the time of the veteran’s death.
- Can either substitute into the veteran’s shoes or pursue as a new claim. Difference in evidence considered.

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DIC Eligibility

- The Service-member died while on active duty, active duty for training, or inactive duty training, **OR**
- The Veteran died from an injury or disease deemed to be related to military service, **OR**
- The Veteran died from a non service-related injury or disease, but was receiving, **OR** was entitled to receive, VA Compensation for service-connected disability that was rated as totally disabling
 - For at least 10 years immediately before death, **OR**
 - Since the Veteran’s release from active duty and for at least five years immediately preceding death, **OR**
 - For at least one year before death if the Veteran was a former prisoner of war who died after September 30, 1999

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Program for Comprehensive Assistance for Family Caregivers

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Caregiver Program

❑ In 2010, Congress adopted the Caregiver Program that at the time was limited to post-9/11 veterans. However, as of October 1, 2022, the program is open to veterans of all eras.

❑ The basic notion is that seriously disabled veteran (generally rated as 70% disabled) who is in need of caregiver services because they need assistance in ADL (or similar need) may have a family member receive a monthly financial stipend to provide such care.

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Caregiver Program

❑ Additional, non-monetary benefits are also available to caregivers (respite service, counseling, etc.)

❑ Has been an extraordinarily popular program. But it has also been controversial.

❑ Program has recently been expanded. As it stands now, it provides an important source of benefits for veterans of all eras.

❑ For more information, see the VA's website at:

❑ https://www.caregiver.va.gov/support/support_benefits.asp

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Entitlement to Pension Benefits

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Pension: Low Income

- Countable income does not exceed Maximum Annual Pension Rate
 - What is veteran's net worth?
 - What are the incomes of the veteran, veteran's spouse, and the veteran's dependent children?
- Amount of pension increases with each dependent
- Need is reassessed annually
- Can be for a veteran or the spouse of a deceased veteran.



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Non-Service Connected Pension Requirements

- (1) wartime service that ultimately results in a discharge under other than dishonorable conditions,
- (2) permanent and total disability, and
- (3) demonstrated need. The VA determines need by calculating the income and net worth of the claimant.

Periods of War:

1. World War II: December 7, 1941 – December 31, 1946
2. Korean Conflict: June 27 1950 – January 31, 1955
3. Vietnam Era: August 5, 1964 – May 7, 1975.
4. Persian Gulf War: August 2, 1990 – date to be prescribed by Presidential proclamation.

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Requirement: Wartime Service

- Discharged under conditions other than dishonorable
- Minimum period of service (if enlisted after Sept. 8, 1980 24 mos or the full period for which you called up.)
- PLUS one of the following:
 - Total of 90 days during one or more periods of war
 - 90 or more consecutive days with one day during a period of war
 - At least one day of wartime service resulting in discharge for service-connected disability

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Requirement: Permanent and Total Disability

- Permanent = Unlikely veteran's disability will get better over time
- Total = 100% rating
 - Ineligible if veteran has *substantial gainful employment*
- Veterans 65+ are *presumed* to be permanently and totally disabled
- Vets in nursing homes (SNFs) qualify/Not ALF
- Disability does NOT have to be service-connected!

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Income Requirement

Needs based program.

In order to establish entitlement to improved pension, the VA considers the claimant's **net worth** as well as his or her **income**.

-Need does not refer to physical disability.

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Income Requirement

If countable income exceeds the maximum annual pension rate (MAPR), a claim for improved pension will be denied.

-MAPR for Veteran 2025: \$16,965 [no dependents]

-MAPR for Spouse 2025: \$11,380 [no dependents]

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Exclusions and Deductions from Income for Improved Pension Purposes

Sources of income excluded and deductions from income for VA improved pension purposes include*:

- 1.) Welfare
- 2.) Fire insurance proceeds
- 3.) Profit from sale of property
- 4.) Funds in joint accounts acquired by death
- 5.) Medical Expenses
- 6.) Interest accrued on retirement annuity accounts
- 7.) Expenses of last illness and burials
- 8.) Educational Expenses

* 38 U.S.C.S. § 501(a); 38 C.F.R. § 3.272

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The Formula Used to Calculate Improved Pension

Simple Income Example:

- MAPR is \$16,965 a year
- Veteran income is \$10,000
- VA pension will be \$6,965 ($\$16,965 - \$10,000 = \$6,965$) paid in monthly installments

\$580.42/month

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The Formula Used to Calculate Improved Pension - Deducting Medical Expenses

- **A portion of your unreimbursed medical expenses** (what you paid out of pocket after medical insurance pays) may **reduce** your countable income. If your medical expenses for a year are \$8,000 and your medical insurance pays \$6,000 of that, your **unreimbursed medical expense is \$2,000.**
- That **portion** of your unreimbursed medical expenses (\$2,000 in the example above) which is **more than 5%** of the maximum rate of pension, or **\$848.25** in this example ($\$16,965 \times .05 = \$848.25$), may be deducted from your total combined income which then increases the amount VA will pay to you.

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The Formula Used to Calculate Improved Pension Deducting Medical Expenses

Since the \$2,000 out of pocket expenses is greater than \$848.25, you may reduce your income by \$1,151.75 (\$2,000 - \$848.25). So, your income for VA pension purposes is now **\$8,848.25** (\$10,000 - \$1,151.75).

Your VA pension would then be \$16,965 (maximum rate for a veteran) minus \$8,848.25 (total income after deducting unreimbursed medical expenses), or **\$8,116.75** for that year.

\$676.40/month

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Net Worth

- Was an arbitrary standard designed to take into account life expectancy, depletion rate of assets, etc...
- Now (EFF DATE: 10/18/18) is pegged to the Medicaid CSRA (community spouse resource allowance)
- 2025: \$159,240
- The length of the penalty period is determined by dividing the fair value of the income or assets given away by a "penalty divisor." For 2025 the penalty divisor is \$2,795.

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Spending Down Assets

- May be expended on any item that claimant pays fair market value for that isn't an ASSET.
- Transfers change!!!
 - 36-month look-back period. 5-year max penalty period.
 - Any transfer for less than market value that cannot be liquidated for claimant benefit (irrev. Trust) for an amount that would have made claimant ineligible for pension benefits.
 - Exception: trust for child incapable of self-sufficiency.

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Special Monthly Pension (SMP)

Special Monthly Pension (SMP) is awarded for disability levels exceeding permanent and total disability. There are two types of SMP:

- 1.) Housebound benefits (HB).
also permanently housebound (essentially confined to his or her home).
\$20,732 (2025 Veteran alone)/\$13,908 (2025 Spouse alone)
- 2.) Aid & Attendance (A&A).
needs the regular aid and attendance of another person for ADL.
\$28,300 (2025 Veteran alone)/\$18,187 (2025 Spouse alone)

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Aid & Attendance

- Require the aid of another person in order to perform personal functions required in everyday living such as:
 - Bathing, showering, toileting
 - Feeding (not merely meal preparation)
 - Transferring from bed/chair, overall mobility
 - Incontinence
 - Adjustment of prosthetic
 - Bedridden due to disability
- Patient in a nursing home due to mental or physical incapacity;
- Limited eyesight (blind or very nearly blind)

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“We are dealing with veterans, not procedures -- with their problems, not ours.”

General of the Army
Omar Bradley, speaking
as Administrator of the
U.S. Veterans Administration
in 1947



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QUESTIONS

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