



# **The Nuts and Bolts Guide to Veterans Benefits:**

*An introductory tour of the Special  
Monthly Pension available  
for wartime veterans and/or survivor  
spouses who are age 65 or older OR  
permanently and totally disabled*

-Revised-  
Updated to reflect recent changes in the law  
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Most people think of veteran benefits as being only for servicemen and women that were wounded or disabled while serving in the armed forces. By and large, that is true. But—we have learned that there are substantial benefits that may be available to wartime veterans who are now senior citizens and are facing the burden of long-term care due to a host of diseases such as Alzheimer’s, Parkinson’s, MS, Lou Gehrig’s Disease, and many others. In fact, the Veterans Administration estimates that millions of wartime veterans and their spouses may be eligible for Special Monthly Pension benefits, and not even be aware of it!

Wartime veterans, or their surviving spouses, become eligible for the Special Monthly Pension benefit when they are over 65 years of age, or are permanently disabled and unable to work, and are homebound, or need the regular aid and attendance of another—whether at home, in assisted/supportive living, or in a nursing home. The program is based on actual financial need for assistance, so there are income and asset limitations.

Unfortunately, there is widespread misunderstanding regarding how to determine qualification for this important benefit. It is the goal of this *Nuts and Bolts Guide* to give you a start in understanding the ins and outs and the ups and downs of the VA benefit maze commonly referred to as “Aid and Attendance.” Even though finding your way through the maze can be extremely difficult, it is worth the effort to assist wartime veterans and their surviving spouses during times of great need.

**The maximum benefit available can provide significant help in paying for long-term care costs, either for the homebound and/or nursing home veteran/surviving spouse.**

There are only three types of persons who are authorized to provide a veteran with assistance filing a claim for veteran’s benefits:

1. An attorney licensed to practice law in your state
2. A veteran’s service organization such as VFW, American Legion, Amvets, etc.
3. A state or county official of the Dept. of Veterans Affairs in your state

Unfortunately, there are few attorneys who have knowledge in this particular area of legal practice due to the fact that it is illegal to charge a veteran a legal fee for providing assistance in filing a claim for benefits. Veterans Service Organizations (VSOs) are often hard-pressed to provide sufficient resources to assist multiple generations of veterans, so it is often difficult for a veteran or his/her surviving

spouse to get help in filing a claim. According to the VA's own data, people who call the agency's regional offices for help and advice are more likely to receive completely wrong answers than completely right ones.

The only other common source of information regarding this benefit generally comes from annuity salespeople who often offer to consult with veterans and their families for free. This "free" offer is based on the strategy of counseling the veteran to meet the asset and income limitations of the benefit by buying an annuity and giving away their assets to their children. The offer is that the annuity sales organization will assist the veteran in filing for the VA benefit claim. They also promise to provide any necessary estate planning work at no charge. In reality, the annuity salesperson is being compensated by the annuity company for selling a financial product to the veteran. An annuity may be an excellent financial decision or a poor one, depending on the facts and circumstances (although with the 2018 changes annuities can no longer be used to qualify for VA benefits). All we are saying is this: You should seek independent advice before making a decision to purchase an annuity.

### **A Medicaid trap...**

Another important factor that one must consider when thinking about trying to meet the VA asset limitation test is that giving away cash or other things of value can create terrible problems for senior citizens if or when they later need to apply for the VA A & A or Medicaid to assist them with skilled nursing home care. Giving away assets can create a long penalty period of ineligibility for both benefits. Any senior facing long-term care needs to seek capable legal advice from an attorney who is skilled in the areas of estate planning, financial planning options, Medicaid, Medicare, income tax, and gift tax, as well as having experience regarding VA rules.

The big question for many families will be, "What will it cost me to seek advice in this area?" Although an attorney who chooses to actually file a claim for veterans benefits must do that portion of his/her work for free, the attorney may charge the usual fees related to any estate planning, financial planning options, Medicaid, Medicare, income tax, or gift tax work, as well as the determination of the financial suitability of filing for a veterans benefit claim. No one should pay an attorney fee unless receiving a fair return on his/her investment.

***The VA General Counsel's advice regarding legal fees and VA claims:***

“To the extent that after consultation the veteran expressed to the attorney an intention to file a specific claim for VA benefits, if the attorney charged the veteran for preparing the claim, the attorney did so in violation of Section 5904... The better practice would have been to charge the veteran for the pre-filing consultation and simply prepare the claim on a pro bono basis.

*(The above is a quote from a letter written by Tim S. McClain, General Counsel of the Dept. of Veterans Affairs, to The Honorable Lane Evans of the U.S. House of Representatives Committee on Veterans Affairs, dated May 24, 2004.)*

After reading this *Nuts and Bolts Guide*, we strongly recommend that you contact an elder law attorney such as those at Hauptman & Hauptman, PC to determine if you qualify. An elder law attorney can assist you and your family by explaining many difficult-to-understand things about long-term care. Qualification for a VA benefit is only one of several concerns that must be considered. As you struggle to provide dignified long-term care for a wartime veteran and/or surviving spouse, we can help you understand the options. We are your advocates, and we want to help you stretch your hard-earned dollars further. VA benefits are only one part of the puzzle. We will hold your hand and guide you every step of the way as we consider all of your family's resources and needs.

## WHAT'S INCLUDED IN THIS GUIDE:

- ✓ Fact sheet: Veterans Administration compensation and pension benefits
- ✓ Veterans benefits at a glance
- ✓ The benefits available
- ✓ Who can help you file a claim?
- ✓ Official dates for periods of war
- ✓ Other eligible groups
- ✓ VA benefits checklist
- ✓ The wrap-up

*This information has been provided for informational purposes only. It does not constitute legal advice. The receipt of this information does not establish attorney-client privilege. Proper legal advice can only be given upon consideration of all the relevant facts and laws. Therefore, you should not act upon any of the information contained herein without seeking appropriate counsel.*

# Veterans Administration

## Compensation and Pension Benefits

There are many types of VA benefits available to veterans through the Veterans Administration for things such as education, life insurance, health care, home loans, and burial benefits. Two major categories of benefits, however, are compensation and pension.

### **Service Connected Disability COMPENSATION**

Compensation is a benefit that veterans receive when the veteran has a disability caused by an injury or illness that was incurred during, or exacerbated by, active military service. Disability compensation is available to a qualified veteran regardless of their level of income. Once a veteran can show that they are disabled because of their military service, their level of disability is rated by the Veterans Administration (for example, 20% disabled) and the amount of compensation paid depends on the rating assigned. A veteran can apply for increases in the percent rating if the condition worsens. A rating above 100% disabled will qualify the veteran for special monthly compensation that could more than double the normal benefit. In 2020, monthly compensation payments ranged from \$142.29 for a veteran with no dependents and a 10% disability rating, to \$3,106.04 for a veteran with a spouse and a 100% disability rating. Special monthly compensation benefits can raise the maximum monthly payment.

### **Non-Service Connected Disability PENSION**

A pension is a benefit for veterans with low incomes who are permanently and totally disabled, when that disability is not related to military service. This is sometimes referred to as a “Special Monthly Pension” (or sometimes an “Improved Pension”). A veteran will be considered permanently and totally disabled if they are, (1) a patient in a nursing home for long-term care because of disability; (2) receiving Social Security disability benefits; (3) unemployable as a result of a disability that is reasonably certain to continue throughout their life; or (4) suffering from any disease or disorder that renders them permanently and totally disabled as determined by the Secretary of the Department of Veterans Affairs.

In 2020, the Special Monthly Pension for a veteran with no dependents is \$13,752, or \$1,146 per month. The rate for a veteran with one dependent, or for two veterans married to each other is \$18,008 or \$1,500 per month. Each additional dependent child adds \$2,351, or \$195 per month, to the pension.

The VA pays a death pension to low-income surviving spouses and unmarried dependent children of deceased wartime veterans. In order to be eligible, a spouse must not have remarried, and a dependent must be under age 18, or must be under age 23 if attending a VA-approved school. Dependents who are permanently incapable of self-support because of disability before age 18 are also eligible for the death pension. For 2020, the Special Monthly Pension for a surviving spouse is \$9,224, or \$768 per month. If the spouse has a dependent child, the maximum pension is \$12,072, or \$1,006 per month. If the spouse has more than one dependent child, the benefit for each dependent child is \$2,351, or \$195 per month. The pension for a surviving child is \$2,351, or \$195 per month.

The amount of the Special Monthly Pension will be increased if the permanently disabled veteran is also housebound. A person is housebound if they are permanently and totally disabled and, either (1) have an additional disability or disabilities ratable at 60% or more; or (2) are substantially confined to their residence or the immediate premises due to a disability that is reasonably certain to remain throughout their lifetime. In 2020, the Special Monthly Pension for a housebound veteran with no dependents is \$16,805, or \$1,400 per month. If the housebound veteran has one dependent, the maximum pension is \$21,063 or \$1,755 per month. If a surviving spouse is housebound, the maximum pension is \$11,273, or \$939 per month. With a dependent child, the maximum pension is \$14,116, or \$1,176 per month. Again, each additional dependent will increase the pension \$2,351, or \$195 per month.

If the veteran is in need of regular aid and attendance, the Special Monthly Pension is increased further to \$22,939, or \$1,911 per month if the veteran has no dependents. With one dependent, the maximum pension is \$27,195 or \$2,266 per month. If the surviving spouse is in need of regular aid and attendance, the maximum pension is \$14,742, or \$1,228 per month. If the surviving spouse has a dependent child the maximum pension is \$17,586, or \$1,465 per month. Again, each additional dependent will increase the pension \$2,351, or \$195 per month. To be in need of regular aid and attendance, the veteran or spouse must be permanently and totally disabled and (1) a patient in a nursing home; (2) blind, or nearly blind; or (3) needing the regular aid and attendance of another person to perform basic activities of daily living, such as dressing, bathing, and attending to the wants of nature.

### **Attaining age 65 – SERVICE PENSION**

A low-income, wartime veteran who attains the age of 65 is also entitled to a pension, known as a Service Pension, whether or not they are disabled. The amount of the maximum pension is the same as the Special Monthly Pension.

## **Income Tested Net Worth Requirements**

In order to be eligible to receive any of the above non-service connected **PENSIONS**, the veteran must meet income and net worth requirements. First, the Special Monthly Pension is decreased, dollar for dollar, by the veteran's countable income. Income that is countable is, in general: all the veteran's income, including that of any dependents, MINUS recurrent unreimbursed medical expenses. Unreimbursed medical expenses include, Medicare and supplemental Medicare premium payments, long-term care insurance premium payments, recurrent prescription costs, transportation to physicians' offices, and the costs of assisted living facilities or in-home aides.

So, for example, if a single veteran has \$30,000 per year in income and \$20,000 per year in unreimbursed aide expenses, his/her countable income is \$10,000. This excess income reduces the Special Monthly Pension of \$22,939(\$1,911/mo) to \$12,939(\$1,078/mo). The veteran does not get the full monthly pension, but still collects a partial one. Another example of countable income reducing the Special Monthly Pension is as follows: suppose the veteran is in an assisted living and has income of \$50,000. If the unreimbursed medical expense for the assisted living is \$8,000 per month, or \$96,000 annually, the veteran's countable income is negative \$46,000. Any negative income is counted as an income of \$0 for VA purposes and the single veteran will be eligible for the yearly maximum Special Monthly Pension for aid and attendance of \$22,939.

The VA has defined the net worth limit that an individual or married person can have in order to qualify for benefits. This net worth limit is \$129,094 for 2020. Increases are tied to the Social Security annual cost of living adjustments.

Net worth is defined as assets added to annual income. Unreimbursed medical expenses can be used to reduce income, but it does not reduce assets. A claimant's net worth is calculated by adding the value of all personal and real property owned by the veteran (and their spouse), not including a primary home (must be 2 acres or less), family transportation vehicles and personal effects plus the annual income minus unreimbursed medical expenses. Items included in the calculation of a claimant's net worth would include assets such as CDs, savings accounts, retirement accounts and secondary homes.



## **Look back and Penalty Period**

The VA has instituted a 36 month look back period with regard to asset transfers. This new rule will not apply to any transfers of assets made prior to October 18, 2018. Only “covered assets” that are transferred will be penalized. The VA defines a “covered asset” as an asset that was part of the claimant’s net worth and if not transferred would have caused the claimant’s net worth to be over the limit (\$129,094 in 2020).

The VA utilizes the Maximum Annual Pension Rate (MAPR) for aid and attendance for a married veteran (currently \$2,266 in 2020) to calculate the penalty. The amount transferred is divided by \$2,266 to determine the penalty. Only “covered assets” that are transferred will be subject to the penalty calculation. There is no penalty for transfers made prior to October 18, 2018 or for transfers where the net worth was below the VA net worth limit of (\$129,094 in 2020). The penalty period is rounded down and starts the month after the transfer is made.

### Example: 1

Claimant has \$110,000 in total assets, \$12,000 in annual income for a total net worth of \$122,000. Claimant transferred \$50,000 on January 1, 2020, applied for VA pension on January 15, 2020 and claim was approved. Since the amount that was transferred was not from assets over the net worth of \$129,094, no penalty will be imposed.

### Example: 2

Claimant has \$200,000 in total assets and \$24,000 in annual income for a total net worth of \$224,000. Claimant has total unreimbursed medial expenses of \$34,000 which eliminates the annual income and reduces the claimant’s net worth to \$200,000. Veteran transferred \$80,000 on January 1, 2020 and applied for the VA pension on February 1, 2020 reducing his total net worth to \$120,000. The VA looks back 3 years on what was transferred. Taking the total net worth prior to the transfer of \$200,000, subtracting \$129,094 results in a “covered asset” subject to a penalty of \$70,906. The covered asset of \$70,906 is then divided by \$2,266 (2020 married veteran benefit) resulting in a 31month penalty or period of ineligibility. The VA rounds down the penalty period (from 31.29) and starts it one month after the transfer (February 1).

## Veterans Benefits at a Glance:

The focus of this *Nuts and Bolts Guide* is the “non-service connected pension” which may provide money to assist a wartime veteran or surviving spouse who now faces substantial medical costs due to Alzheimer’s, Parkinson’s, MS, or other “non-service connected” diseases.

**Table 1: Disability Compensation**

**VETERAN**

- Must have a disability caused by, or worsened by, military duty
- The amount of money paid to the veteran is not based on need/income/net worth of the veteran

**SPOUSE/DEPENDENTS**

- Eligible for Dependency and Indemnity Compensation (DIC)

**Table 2: Non-Service Connected Pension**

**VETERAN**

- Must be permanently and totally disabled, or 65 or older
- Disability does not have to be related to military duty
- Pension is needs-based—must meet income and net worth requirements;  
or
- If the veteran has too much income or too many assets, he/she will not qualify for the pension
- A higher pension is awarded if the veteran is housebound
- An even higher pension if the veteran is in need of regular aid and attendance

**SPOUSE/DEPENDENTS**

- Eligible for Death Pension
- A higher pension is awarded if the veteran is housebound

## The Benefits Available

(2020 figures)

Table 1:  
Special Monthly Pension Rates  
Paid to veterans age 65 or older OR  
Permanently and Totally Disabled

Situation	Maximum Annual Pension Rate	Maximum Monthly Check
Permanently and totally disabled veteran	\$13,752	\$1,146
With one dependent	\$18,008	\$1,500
Permanently and totally disabled and also housebound	\$16,805	\$1,400
With one dependent	\$21,063	\$1,755
Permanently and totally disabled and in need of regular aid and attendance	\$22,939	\$1,911
With one dependent	\$27,195	\$2,266
Increase for each additional dependent child	\$2,351	\$195 additional

Table 2:  
Death Pension Rates  
Paid to Veteran's Surviving Spouse

Situation	Maximum Annual Pension Rate	Maximum Monthly Check
Surviving spouse	\$9,224	\$768
With one dependent child	\$12,072	\$1,006
Surviving spouse is permanently housebound	\$11,273	\$939
With one dependent child	\$14,116	\$1,176
Surviving spouse is in need of regular aid and attendance	\$14,742	\$1,228
With one dependent child	\$17,586	\$1,465
For each additional dependent child	\$2,351	\$195 additional
Pension for each surviving child	\$2,351	\$195 additional

## Who can help you file a claim?

- Recognized Veterans Service Organizations, like the VFW or American Legion
- An accredited agent, such as an employee of the State of New Jersey
- A licensed attorney

Only accredited agents and attorneys can receive fees for their services. *HOWEVER*, no one can receive a fee for filling out forms or actually filing a claim for you once you have decided to make a claim!

Hauptman & Hauptman, PC offers pre-filing and asset protection consultation to veterans who may qualify for a pension. Our consultation is part of our overall long-term care planning practice. Contact us today! Phone 973-994-2287

## **Official Dates for Periods of War**

<b>World War II:</b>	<b>December 7, 1941 to December 31, 1946</b>
<b>Korean War:</b>	<b>June 27, 1950 to January 31, 1955</b>
<b>Vietnam War:</b>	<b>August 5, 1964 to May 7, 1975 February 28, 1961 if served in Vietnam</b>
<b>Persian Gulf War:</b>	<b>August 2, 1990 to Date not yet determined</b>

In addition to active duty vets from the armed services, these little-known groups also meet the active duty qualification for VA benefits

If you belong to any of these groups and received a discharge by the Secretary of Defense, your service meets the active duty service requirement for benefits:

- **Recipients of the Medal of Honor**
- **Women Air Force Service Pilots (WASPs)**
- **WWI Signal Corps Female Telephone Operators Unit**
- **WWI Engineer Field Clerks**
- **Women's Army Auxiliary Corps (WAAC)**
- **Female clerical employees of the Quartermaster Corps serving with the American Expeditionary Forces in WWI**
- **Civilian employees of Pacific naval air bases who actively participated in defense of Wake Island during WWII**
- **Reconstruction aides and dietitians of WWI**
- **Male civilian ferry pilots**
- **Wake Island defenders from Guam**
- **Civilian personnel assigned to OSS secret intelligence**
- **Guam Combat Patrol**
- **Quartermaster Corps members of the Keswick crew on Corregidor during WWII**
- **U.S. civilians who participated in the defense of Bataan**
- **U.S. merchant seamen who served on block ships in support of Operation Mulberry in the WWII invasion of Normandy**
- **American merchant marines in oceangoing service during WWII**
- **Civilian Navy IFF radar technicians who served in combat areas of the Pacific during WWI**
- **U.S. civilians of the American Field Service who served overseas under U.S. armies and U.S. army groups in WWII**
- **U.S. civilian employees of American Airlines who served overseas in contract with the Air Transport Command between 12/14/41 and 8/14/45**
- **Civilian crewmen of certain U.S. Coast and Geodetic Survey vessels between 12/7/41 and 8/15/45**
- **Members of the American Volunteer Group (Flying Tigers) who served between 12/7/41 and 8/14/45**
- **U.S. civilian flight crew and aviation ground support of TWA who served overseas between 12/14/41 and 8/14/45**
- **U.S. civilian flight crew and aviation ground support of Consolidated Vultee Aircraft Corp. who served overseas between 12/14/41 and 8/14/45**
- **Honorably discharged members of the American Volunteer Guard, Eritrea Service Command, between 6/21/42 and 3/31/43**
- **U.S. civilian flight crew and aviation ground support of Northwest Airlines who served overseas between 12/14/41 and 8/14/45**
- **U.S. civilian female employees of the U.S. Army Nurse Corps who served in the defense of Bataan and Corregidor from 1/2/42 to 2/3/45**
- **U.S. civilian flight crew and aviation ground support of Braniff Airways who served overseas in the North Atlantic between 2/26/42 to 8/14/45**
- **Chamorro and Carolina former native police who received military training in the Donnal area of central Saipan and were placed under command of Lt. Casino of the 6<sup>th</sup> Provisional Military Police Battalion to accompany U.S. Marines on active, combat patrol from 8/19/45 to 9/2/45**
- **The operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps from 12/7/41 through 8/15/45**
- **Honorably discharged members of the Alaska Territorial Guard during WWII**

# VA Benefits Checklist

Besides the appropriate VA application forms, these are the items you will need to file a claim if you are a:

## Veteran Only:

	DD214 or Discharge Papers
	Annual Social Security Award Letter received in December and documentation of any other income (i.e. RMD, pension stubs)
	A year to date print out of pharmacy expenses
	Copies of all your latest financial statements and documentation of closed accounts over the last 3 years
	Invoices from assisted living/home health care agency or proof of other recurring medical expenses
	Most recently filed tax return

## Veteran and Spouse:

	All of the above for you and your spouse, PLUS
	Birth certificate for spouse
	Marriage certificate
	Death certificate or divorce decree if either spouse was previously married

## Widow/er of Veteran:

	The veteran's DD214 or Discharge Papers
	Annual Social Security Award Letter received in December and documentation of any other income (i.e. RMD, pension stubs)
	A year to date print out of pharmacy expenses
	Marriage certificate
	Veteran's death certificate
	Death certificate or divorce decree related to any previous marriages of either you or the veteran
	Copies of all your latest financial statements and documentation of closed accounts over the last 3 years
	Invoices from assisted living/home health care agency or proof of other recurring medical expenses
	Most recently filed tax return

## The Wrap-up: You made it to the end!

After reading this *Nuts and Bolts Guide*, you may have enough information to file a claim on your own. If you do decide that you need the help of attorneys who are concentrated in the area of assisting senior citizens, then please contact us at Hauptman & Hauptman, PC. Our goal is to make sure that our clients make the most of their financial and family resources so that they are ***never out of money and never out of options for as long as they live***. If you are like most people, then we believe that you will need guidance to apply the information in this guide to your life or the life of your loved one.

We are here to provide guidance to you in the following areas:

- Basic estate plan documents such as powers of attorney, wills & possibly trusts
- Basic analysis of any income tax, estate tax, and gift tax issues
- Care options available in the local community for both the Veteran and spouse
- A review of Medicare and Medicaid as it applies to your circumstances
- A comprehensive understanding of availability and extent of personal and financial, as well as family resources to pay for care
- Analysis of financial suitability of any asset protection tools
- Analysis of both positive and negatives of all tools and planning options
- A calculation of the actual dollar benefit and/or cost of any helpful idea that is discussed
- Possibly completing and submitting the VA claim form

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