

ARTICLE – July 2017

TO: Ally McAndrews, M.Ed.

FROM: Anthony L. Marone, Esquire

RE: The Veterans' Pension, Aid and Attendance, and the Department of Human Services

The VA Pension provides monthly payments to veterans who are disabled or over the age of 65. This payment may provide crucial funds to be used for the care of a veteran in the community. However, when the same veteran applies for Medical Assistance Long-Term Care benefits to assist with his or her medical care, he or she will find that the money received from the Department of Veterans' Affairs causes serious complexities for receipt of those benefits. This article identifies some of the common problems and provides some suggestions on how to resolve them.

What are the "VA Pension" and Aid and Attendance?

The VA Pension is a "needs-based" government benefit that provides a monthly cash payment to eligible veterans or their surviving dependents ("claimants"). To be eligible for the VA Pension, also known as the "Improved Pension," a veteran of the United States Armed Forces must (1) have been discharged under other than dishonorable conditions, and (2) served 90 days or more of active duty with at least 1 day during a period of war, and (3) have countable income and net worth below established thresholds, and (4) either be permanently and totally disabled or age 65 or older. The surviving spouse or unmarried child of a deceased veteran may also be eligible to receive the VA Pension, which is often called the "Death Pension." To be eligible for the VA Pension, the surviving spouse or unmarried child must have countable income and net worth below established thresholds and the deceased veteran must have met the criteria under conditions (1) and (2), above. The amount of the monthly payments under the VA Pension varies based on the financial and medical need of the claimant.

The VA Pension benefits are designed to provide eligible claimants with a minimum level of financial security and are not intended to protect substantial assets or build up his or her estate for his or her heirs. Therefore, a claimant with a "net worth" in excess of \$80,000.00 will likely not qualify for the VA Pension. Assuming the claimant's net worth is less than the established limits for the VA Pension, the Department of Veterans' Affairs ("VA") will determine the amount of the benefit based on the claimant's income, need, and expenses. If the claimant does qualify for the VA Pension, the claimant will receive a payment equal to the difference of his or her maximum annual pension rate ("MAPR"), which is a figure established by the VA, and his or her income for VA purposes ("IVAP"), minus expenses.

The calculation of the VA Pension amount will vary if the claimant is severely disabled. The VA provides for two "add-ons" to the amount of the VA Pension. The first add-on, "Aid and Attendance" ("A&A"), is for a claimant who establishes he or she is so helpless as to require the aid and attendance of another person. If a claimant has visual acuity of 5/200 or less, or is a patient in a nursing facility, or establishes a need based on the totality of the circumstances, he or she may be eligible for the payment of A&A. If the claimant cannot establish the need for A&A, he or she may qualify for "Housebound" benefits ("HB"), which pays a lesser rate than

A&A. Eligibility for HB can be established if the claimant can show he or she is substantially confined to his or her home because of disabilities that are reasonably certain to continue throughout the claimant’s lifetime. The difference in the rates from the yearly basic pension amount to the amount for A&A is significant:

| Veteran Family Status | Basic Pension Income Limit | Housebound Income Limit | Aid & Attendance Income Limit |
|----------------------------------|-----------------------------------|--------------------------------|--|
| Veteran with no dependents | \$12,907 | \$15,773 | \$21,531 |
| Veteran with a spouse or child* | \$16,902 | \$19,770 | \$25,525 |
| Surviving spouse / death pension | \$8,656* | \$10,580 | \$13,836 |

**Add \$2,205 for each additional child*

See, http://www.benefits.va.gov/PENSION/current_rates_veteran_pen.asp and http://www.benefits.va.gov/PENSION/current_rates_survivor_pen.asp for a full list of the VA Pension rates by each MAPR group for veterans and surviving dependents.

However, a claimant may require assistance from more than one needs-based benefit. Medical Assistance Long-Term Care benefits (“MA-LTC”), for example, are needs-based benefits that provide expansive medical care as well as nursing facility and in-home care. Eligibility is based on both medical need and strict income and resource limits. Many persons with disabilities and persons over the age of 65 rely on MA-LTC to provide for their medical care. Payments from the VA Pension may exceed the strict income and resource limits of the Medical Assistance program, possibly disqualifying the claimant.

Medical Assistance Long-Term Care and the VA Pension.

The VA Pension can provide much needed income to a veteran or his or her surviving dependents (referred to as “veterans” for the remainder of the article). It could also provide enough income or resources to disqualify a veteran for other needs-based benefits, such as MA-LTC. To qualify for MA-LTC, the veteran must have resources less than \$8,000.00, in most cases. This resource limit does not include the value of exempt resources such as the residence or one vehicle. The income limit for MA-LTC is based on gross monthly income. That amount cannot exceed \$2,205.00 per month.

1. The VA Pension and the MA-LTC Income limit.

Initially, it is important to note that only the VA Pension portion of the monthly payment to the veteran is considered income for the purpose of eligibility for MA-LTC. The A&A and HB portion of a veteran’s benefit is not considered income. 55 Pa. Code § 181.81(9). However, when the VA awards benefits, it does not usually distinguish which portion of the payment is income and which portion is for HB benefits or A&A. The Department of Human Services will attempt to verify which portion of a benefit to include as income by contacting the VA. See, Medical Assistance Long-Term Care Handbook, Chapter 450, Appendix B. If a single veteran with no dependents receives the maximum VA benefit of \$1,794.00 per month,

the Department will consider \$719.00 as the excluded A&A portion. Id.

A veteran who is disabled or over age 65 may also receive income from both the VA Pension and from Social Security, in the form of Social Security Disability Income (“SSDI”) or Social Security Retirement. The combination of SSDI and the VA Pension income, for example, may exceed the strict income limit for the veterans’ MA-LTC eligibility. This is usually only an issue when the veteran remains in the community and attempts to qualify for the MA-LTC’s in-home care benefits, known as “Waiver” Services. If the veteran has gross monthly income in excess of the \$2,205.00 income limit for MA-LTC, it will be extremely difficult for the veteran to access the Waiver Services. The complexity of this issue is beyond the scope of this article. Suffice it to say, the veteran in this situation cannot access Waiver benefits without doing a complex and draconian income spend-down, which would require spending all income, in excess of \$450.00 per month, on medical expenses. This issue does not apply to veterans who are receiving long-term care in a nursing facility.

When the veteran enters a nursing facility for long-term care, the maximum VA benefit he or she can receive is \$90.00 per month if he or she receives Medical Assistance and has no spouse or dependent child in the community. The \$90.00 is considered A&A by the Department and is not treated as income payable to the nursing facility to defray the veteran’s cost of care. See, Medical Assistance Long-Term Care Handbook, Chapter 450.3(1). However, while the \$90.00 is not considered income in the month it is received, it will be considered a resource in the following months if it is not spent.

2. The VA Pension and the MA-LTC Resource limit.

Regardless of whether the veteran resides in a nursing facility or is receiving MA-LTC Waiver Benefits, any amount of the conserved monthly payment from the VA will be considered the veteran’s resource in the calendar month after receipt. Eventually, if these funds are not properly spent, the veteran will become ineligible for MA-LTC due to resources in excess of the \$8,000.00 limit. Careful monitoring and management of the veteran’s resource will be required to maintain his or her eligibility. Further, excess resources cannot simply be given away. The veteran will generally be prohibited from gifting away his resources.

However, there is another circumstance where a veteran could receive excess resources in the form of a payment from the VA: a lump sum disbursement of retroactive benefits. Unlike the lump sum distributions for retroactive SSDI, lump-sum VA benefits are considered income in the month received and a resource in the subsequent calendar months. See, Policy Clarification PMN-18420-440. There is no period of time when the VA benefits are excluded. Id. This rule applies to the entire amount of the lump-sum payment, regardless of whether it is attributable to the VA Pension, HB benefits, or A&A. To maintain eligibility, the veteran must properly spend these resources. This is a common problem as delays in the VA’s processing of claims are all too common.

3. Transition to a Nursing Facility and conserved VA payments.

An issue of consistent confusion is what to do when a veteran transitions from the community, where he or she receives a monthly payment from the VA Pension with HB benefits or A&A, to a nursing facility. If the veteran is single with no dependents and receives MA-LTC

in a nursing facility, the veterans' monthly benefit will change to the \$90.00 monthly A&A payment, possibly from the maximum amount of \$1,794.00. Assuming proper notice is given to the VA; the VA should immediately reevaluate the case and adjust the amount paid to the veteran. However, delay is an ever present issue with the VA and the adjustment will not be immediate.

The adjustment to the veteran's monthly payment could take six or more months. During this period of delay, the veteran will have received incorrectly paid, or "overpaid," veterans benefits that are collectable by the VA. The veteran will receive income in the form of the VA Pension portion of the monthly payment that, according to the MA-LTC regulations, should be paid to the nursing facility to defray the veteran's cost of care. Also, the veteran will accumulate funds that could exceed the MA-LTC resource limit. If the veteran attempts to pay the nursing facility or spend the funds, he or she could run afoul of the VA if it asserts an overpayment. If the veteran conserves the funds, he or she may be disqualified for MA-LTC. If the veteran attempts to return the funds the VA has not historically cashed the check.

When faced with this situation, the veteran, or his or her representative, should immediately segregate all the VA monies in excess of the \$90.00 A&A. By segregating the funds, the veteran can satisfy a future VA overpayment claim and account to the Department for all the funds received during this transition period. The veteran can also address the Department's income and resource issues by stating that he or she agrees to keep the funds segregated and will not access the funds until the overpayment issue is resolved. The Legal Office has unofficially taken the position that, under these unique circumstances, the Department will not consider the segregated funds available as income or as a resource until the VA overpayment is resolved.

Recently the VA has begun to resolve these overpayment issues. The VA has issued letters in a number of cases to veterans stating that it will not create an overpayment for monies paid during the transition period from the community to a nursing facility. When the veteran receives this letter, the conserved monies are clearly available.

The Office of General Counsel for the Department has given some guidance on how to deal with the overpaid funds when they become available. First, the veteran should request a Statement of Claim from Third Party Liability. This will give the veteran the amount of monies paid on behalf of the Department during the transition period. Second, all of the income portion of the VA benefits must be repaid to the Department as a pre-payment prior to death. This payment effectively solves the problem of contributing income to the facility for the veteran's cost of care. Finally, any conserved A&A that is not used to replenish the veteran's \$8,000.00 protected resources must also be repaid as a pre-payment. Therefore, the veteran no longer has any excess resources.

This method of satisfying the Department's issues has benefits for the veteran as well as the Department. The veteran avoids any interruption in his or her nursing facility care. He or she does not need to incur the expense of an appeal or reapplication. The Department receives the bulk of the overpaid funds and does not need to process a new application for the veteran.

Conclusion.

The VA Pension and the add-on HB and A&A benefits are crucially important to pay for the care of a veteran or a deceased veteran's dependents. However, the VA Pension and MA-LTC are both needs-based government benefits with differing eligibility criteria. An eligible veteran should always attempt to access the VA Pension and the add-on benefits but should also be aware of the potential complexity when he or she applies for MA-LTC. McAndrews Law Offices specializes in Disability law and Veteran's issues and is readily available to assist any veteran with these complex issues. For any questions, call 610-648-9300.