

# PENSIONS

By: Connie L. Bauswell, J.D. LL.M. ( Elder Law), CELA\*  
Law Office of Connie L. Bauswell, LLC

\*Certified as an Elder Law Attorney by the National Elder Law Foundation

# WHO IS APPLYING AND WHY

- CLAIMANT: PERSON APPLYING FOR THE BENEFIT
- IMPROVED PENSION FOR VETERAN
- SURVIVOR'S PENSION FOR SURVIVING SPOUSE AND DEPENDENT CHILDREN (HAS A SPECIFIC MEANING IN VA WORLD)
- MEANS-BASED BENEFIT
- NOT MEANT TO PROVIDE SUPPORT FOR CLAIMANTS WHO CAN OTHERWISE PROVIDE SUPPORT THROUGH OWN INCOME AND ASSETS

# ELIGIBILITY

- QUALIFYING SERVICE
- DISABILITY
- MEET INCOME REQUIREMENTS
- MEET NET WORTH LIMITS
- FOR SURVIVING SPOUSE THERE IS ALSO A MARRIAGE REQUIREMENT
- THERE ARE SPECIAL REQUIREMENTS TO BE CONSIDERED A DEPENDENT

# QUALIFYING SERVICE

- VETERAN IS “PERSON WHO SERVED IN THE ACTIVE MILITARY, NAVAL, OR AIR SERVICE” AND “WAS DISCHARGED OR RELEASED UNDER CONDITIONS OTHER THAN DISHONORABLE”
- OTHER THAN DISHONORABLE DISCHARGE
- 90 DAYS OF ACTIVE DUTY WITH 1 DAY DURING A TIME OF WAR (SEE CHART PAGE 4) IF BEFORE 1980
- 24 MONTHS OF ACTIVE DUTY OR PERIOD VETERAN WAS CALLED TO ACTIVE DUTY IF 1980 OR LATER

# DISABILITY RATING

- BASIC SERVICE AND SPECIAL MONTHLY PENSION
- SPECIAL MONTHLY PENSIONS:  
HOUSEBOUND AND AID AND ATTENDANCE
- EACH HAS ITS OWN DISABILITY REQUIREMENTS

# BASIC SERVICE PENSION

- PERMANENT AND TOTAL DISABILITY MEANS
  - 65 OR OLDER
  - IN A NURSING HOME
  - DETERMINED TO BE DISABLED BY SOCIAL SECURITY ADMINISTRATION
  - OR UNEMPLOYABLE AND REASONABLY CERTAIN TO CONTINUE THROUGHOUT LIFE OR HAS A DISABILITY THAT MAKES IT IMPOSSIBLE FOR THE AVERAGE PERSON TO FOLLOW A SUBSTANTIALLY GAINFUL EMPLOYMENT

# HOUSEBOUND

- SUBSTANTIALLY CONFINED TO THE HOME OR IMMEDIATE PREMISES DUE TO A DISABILITY WHICH IS REASONABLY CERTAIN TO REMAIN THROUGHOUT LIFETIME
- P&T DISABLED AND CONFINED TO THE HOME; OR
- PERMANENT DISABILITY RATING OF 100% OR MORE AND A SECOND RATING OF AT LEAST 60%

# AID AND ATTENDANCE

- IN A NURSING HOME, BLIND OR NEARLY SO;  
OR
- A SUBSTANTIAL DAILY NEED FOR ASSISTANCE  
FOR ANOTHER TO PERFORM FUNCTIONS OF  
EVERYDAY LIFE
- RESEMBLE ADLS IN MEDICAID
- REGULAR NOT A CONSTANT NEED FOR HELP



# VA ACTIVITIES OF DAILY LIVING

- DRESSING AND UNDESSING
- KEEP CLEAN AND PRESENTABLE
- FREQUENT ADJUSTMENT OF PROSTHETIC DEVICES
- FEED SELF BECAUSE OF LOSS OF COORDINATION IN UPPER BODY
- ATTEND WANTS OF NATURE
- PHYSICAL OR MENTAL INCAPACITY THAT REQUIRES THE CARE OR ASSISTANCE ON A REGULAR BASIS TO PROTECT THE CLAIMANT FROM HAZARDS OR DANGERS OF DAILY ENVIRONMENT
- BEDRIDDEN

# SPOUSES- MARRIAGE RULES

- VALID MARRIAGE AT TIME OF VETERAN'S DEATH
- COULD BE COMMON LAW AND BE VALID IF VALID WHERE LIVED
- MARRIED AT LEAST ONE YEAR BEFORE DEATH OR CHILD BORN BEFORE OR DURING MARRIAGE
- NOT LIVE WITH SOMEONE ELSE OR HELD SELF OUT MARRIED TO ANOTHER (SPECIAL RULES IF BEFORE 1990)
- LIVING WITH VETERAN AT TIME OF DEATH UNLESS MARITAL DISCORD NOT FAULT OF SURVIVING SPOUSE

# INCOME

- PAYMENTS FROM ANY KIND AND ANY SOURCE
- COUNTED DURING 12 MONTH PERIOD RECEIVED
- GROSS AND HOUSEHOLD INCOME
- PROSPECTIVE ANNUALIZED BASIS- PROJECTED FOR 12 MONTHS FOLLOWING DATE OF VA CLAIM
- NARROW EXCEPTIONS
  - WELFARE AND MAINTENANCE ARE IMPORTANT
    - PRIVATE OR PUBLIC HELP
    - EXAMPLES ARE SSI OR FINANCIAL HELP FROM A FRIEND

# DEDUCTIONS AND EXCLUSIONS

- SEE 38 CFR 3.272 FOR LIST
- UNREIMBURSED MEDICAL EXPENSES
- DO THEY NEED TO BE RECURRING?
- EXAMPLES
  - HEALTH INSURANCE PREMIUMS
  - CANCER AND LTCI PREMIUMS
  - MEDICATIONS, SUPPLIES AND EQUIPMENT
  - SUPPLEMENTS AND VITAMINS PRESCRIBED
  - ADAPTIVE EQUIPMENT, INCLUDING SERVICE ANIMALS
  - TRANSPORTATION AND MILEAGE FOR MEDICAL PURPOSES
  - HEALTHCARE PAYMENTS
  - SMOKING CESSATION PRODUCTS
  - INSTITUTIONAL FORMS OF CARE AND IN-HOME CARE (SEE NEXT SLIDE)

# INSTITUTIONAL AND IN-HOME CARE

- HOSPITAL CHARGES, NURSING HOME CHARGES, AND IN-PATIENT TREATMENT CENTERS
- IN-HOME CARE FOR ADLS AND IADLS AS LONG AS HEALTH CARE OR CUSTODIAL CARE PROVIDED
- NON-NH AND ALF CARE IS DEDUCTIBLE IF CARE IS PROVIDED BY FACILITY, CONTRACTED BY THE FACILITY OR OBTAINED BY A THIRD PARTY
- IF HB OR A&A OR MEDICAL PROFESSIONAL WRITES A STATEMENT THAT NEEDS PROTECTIVE ENVIRONMENT THEN DOES NOT EVEN HAVE TO BE A HEALTHCARE PROVIDER TO BE DEDUCTED- CAN BE FAMILY AND FRIENDS
- MEALS AND LODGING DEDUCTIBLE IF FACILITY PROVIDES OR CONTRACTS FOR HEALTHCARE OR CUSTODIAL CARE AND FACILITY PROVIDES A WRITTEN STATEMENT THAT HAS TO LIVE THERE TO RECEIVE THOSE SERVICES, EVEN IF FROM FAMILY AND FRIENDS

# 5% RULE

- TO BE DEDUCTIBLE, MEDICAL EXPENSES MUST EXCEED 5% OF THE MAPR FOR THE BENEFIT SOUGHT
- SEE PAGES 18 AND 19
- FOR A VETERAN SEEKING BASIC SERVICE, THIS DEDUCTION IS \$676
- LARRY HAS DEDUCTIBLE MEDICAL EXPENSES OF \$2,676 FOR THE YEAR. TO BE DEDUCTIBLE, HIS MEDICAL EXPENSES MUST EXCEED \$676. THEY DO. HIS DEDUCTION FROM HIS INCOME WILL BE?

# INCOME CALCULATION

- COUNTABLE INCOME MINUS DEDUCTIONS AND EXCLUSIONS
- FRED HAS INCOME OF \$1,200 PER MONTH
- BETTY, HIS WIFE, HAS INCOME OF \$1,000 PER MONTH
- THEY LIVE AT SHADY PINES INDEPENDENT LIVING AND IT COSTS \$5,000 PER MONTH
- IS IT DEDUCTIBLE?
- THE ANSWER IS IT DEPENDS ON WHETHER THEY PROVIDE DOCUMENTATION THAT THEY NEED CUSTODIAL CARE

# EXAMPLE – PAGE 20

- BASIC SERVICE FOR VETERAN PLUS SPOUSE IS \$17,724
- ANNUAL INCOME IS \$14,724
- DEDUCTIBLE MEDICAL EXPENSES ARE \$2,000
- HAVE TO DEDUCT 5%, OR \$886.00
- \$1,114 IS THE MEDICAL EXPENSE DEDUCTION FOR IVAP
- $\$14,724(\text{GROSS INCOME}) - \$1,114 = \$13,610$
- $\$17,724 \text{ (BASIC SERVICE AMOUNT)} - \$13,610 = \$4,110 \text{ PER YEAR}/\$342 \text{ MTH.}$



# NET WORTH

- APPLIES TO OCTOBER 18, 2018 AND AFTER
- WHAT COUNTS? ASSET AND NET WORTH
- NET WORTH IS CLAIMANT'S ASSETS PLUS NET WORTH
- INCOME COUNTS TWICE FOR PENSION ELIGIBILITY
- INCOME AND ASSETS OF DEPENDENT CHILDREN- SPECIAL RULES
- ASSETS - FMV OR ALL PROPERTY INDIVIDUAL OWNS, INCLUDING REAL PROPERTY AND PERSONAL PROPERTY, UNLESS EXCLUDED AND MINUS LIENS AND ENCUMBRANCES
- SINGLE FAMILY RESIDENCE PLUS 2 ACRES UNLESS UNMARKETABLE
- PERSONAL EFFECTS FOR MODE OF LIFE INCLUDING APPLIANCES AND FAMILY TRANSPORTATION VEHICLES

# NET WORTH

- 3 YEAR LOOKBACK
- STARTS FROM THE DATE A FORMAL CLAIM SUBMITTED AFTER A PERIOD OF NON-ENTITLEMENT OR A NEW FORMAL CLAIM
- DOES NOT INCLUDE ANY DATE PRIOR TO 10/18/18
- \$127,061 NET WORTH LIMIT (2019)
- TAXABLE QUALIFIED RETIRMENT ACCOUNTS AND IRA BALANCE ARE ASSETS AND DISTRIBUTIONS ARE INCOME
- TRUSTS WITH INCOME OR CONTROL RIGHT COUNT
- LIFE ESTATES AND ADDING NAMES TO ACCOUNTS DOES NOT WORK

# NET WORTH

- TRANSFER PENALTY IS A&A AMOUNT FOR VETERAN AND ONE DEPENDENT = \$2,230 (2019)
- STARTS THE MONTH AFTER THE DATE OF TRANSFER (OR LAST TRANSFER)
- ENDS ON LAST MONTH OF LAST MONTH OF PENALTY PERIOD AND BENEFIT ELIGIBILITY IS AS OF THE FIRST OF THE FOLLOWING MONTH
- TRANSFER FOR LESS THAN FMV
- VALUE OF ANNUITY, TRUST OR OTHER FINANCIAL INSTRUMENT
- COUNTS AS AN ASSET IF THE CLAIMANT HAS THE RIGHT TO LIQUIDATE THE ENTIRE BALANCE
- IF DO NOT HAVE THAT RIGHT, YOU HAVE A TRANSFER OF THE ASSET AND IT COUNTS AS A TRANSFER PENALTY IF A COVERED ASSET
- COVERED ASSET- SOMETHING THAT COUNTS AS AN ASSET THAT WHEN YOU TRANSFERRED IT, NET WORTH DROPPED BELOW THE \$127,061 (2019)
- HOUSE PRESENTS AN INTERESTING QUESTION

# COUNTING INCOME AS PART OF NET WORTH

- ADD IVAP TO NET WORTH
- POSTIVE IVAP INCREASES NET WORTH
- NEGATIVE/ZERO IVAP DOES NOT REDUCE NET WORTH
- EXAMPLE: CLAIMANT HAS ASSETS OF \$125,000, PENSION OF \$15,000 YR. AND NURSING HOME EXPENSES OF \$30,000
- NEGATIVE IVAP, COUNTABLE NET WORTH IS \$125,000
- WHAT IF THE CLAIMANT GIFTS \$20,000 TO HIS SON WITHIN THE 3 YEAR LOOKBACK?
- NO EFFECT BECAUSE NOT A COVERED ASSET

# EXAMPLE

- CLAIMANT BUYS AN IRREVOCABLE ANNUITY ON 5/11/2009 FOR \$250,000
- ANNUITY PAYS \$1,500 PER MONTH OVER LIFE OF CONTRACT
- FORMAL CLAIM DATE IS 10/31/2020
- PRESUMED TO BE FOR DECREASING NET WORTH FOR VA PENSION PURPOSES BECAUSE CANNOT GET RETURN OF FULL PURCHASE PRICE
- COUNTS AS A TRANSFER
- WHAT IF FORMAL CLAIM IS FILED 6/1/2023?

# EXAMPLE

- CLAIMANT FILES FORMAL CLAIM
- REPORTS ASSETS AS \$100,000 AND IVAP AS \$5,000
- HIS COUNTABLE NET WORTH IS \$105,000
- ONE YEAR PRIOR TO FILING FORMAL CLAIM, HE GAVE \$30,000 TO HIS DAUGHTER
- DOES HE MEET FINANCIAL ELIGIBILITY FOR PENSION?
- NO, BECAUSE NET WORTH IS REALLY \$135,000
- HE HAS A TRANSFER PENALTY ON THE DIFFERENCE BETWEEN THE \$135,000 AND \$127,061

# RECALCULATING THE PENALTY PERIOD

- VA WILL RECALCULATE IF ERRONEOUS
- OR VA RECEIVES EVIDENCE NO LATER THAN 90 DAYS VA NOTIFIES CLAIMANT THAT CLAIMANT CURED IN WHOLE OR IN PART WITHIN 60 DAYS THE VA NOTIFIED THE CLAIMANT

# HOW TO APPLY FOR THE VA BENEFIT

- USE THE RIGHT FORM
- GO TO VA WEBSITE AND PRINT FORM EACH TIME
- INFORMAL, FORMAL AND FULLY DEVELOPED CLAIMS
- SF 180
- SEE PAGES 2 AND 3 AND APPENDICES FOR LIST OF COMMONLY USED FORMS