

Representing Veterans in the VA System

October 7, 2019

Presented by:

Polli A. Pollem

Military Assistance Project Director, Indiana Legal Services

Connie Bauswell

Law Office of Connie L. Bauswell

&

Andrew R. Rutz

Law Office of Andrew R. Rutz

Introduction

- Introduction to the Military Cultural Competency Manual for Attorneys
- US Department of Veterans Affairs – Introduction
- Primary Income-Based Benefits
 - Compensation for Service-Connected Disabilities
 - Non-service Connected Income-Based Pension
 - Dependency & Indemnity Compensation for Surviving Spouses
 - Income-Based Pension for Surviving Spouse / Death Pension



Introduction to the Military Cultural Competency Manual for Attorneys

US Department of Veterans Affairs

- Veterans Benefits Administration
- Veterans Health Administration
- National Cemetery Administration



VA Compensation for Service-Connected Disabilities

*To care for him who shall
have borne the battle
and for his widow and his orphan.*

- Abraham Lincoln



Compensation

- A service-connected disability is a disease or injury incurred or aggravated while on active duty
- Does *not* need to be combat or wartime related
- Rated from 0% to 100%
- VA rating is independent of any military rating
- \$ begin with 10% disability ratings
- Extra \$ for dependents with 30% or higher disability rating
- 38 USC §§ 1101, *et. seq.*

Compensation

Disability Examples

- Torn knee ligament
- Amputation
- Heart disease
- Post traumatic stress (including the result of sexual trauma)
- Skin condition such as psoriasis



Compensation

- Elements
 - Current Diagnosis of a chronic physical or mental disability
 - Documented event in service or verifiable stressor
 - A connection between the current disability and the in-service event
 - Continuity of treatment
 - Credible medical opinion
 - A disease subject to presumptive service connection (38 CFR § 3.309)

Compensation

- **Service-connection – Five ways to prove:**
 - **Direct service connection (38 C.F.R. §3.303)**
 - **In-service aggravation of a pre-existing condition (38 C.F.R. §3.306)**
 - **Proximity – or a secondary condition caused by a service-connected illness or injury (38 C.F.R. §3.310)**
 - **Disability was caused by medical care or vocational rehabilitation provided by the Department of Veterans Affairs (38 U.S.C. §1151)**
 - **Presumptive service connection (38 C.F.R. §3.307)**

Compensation

- Presumptive service connection under 38 CFR §3.307, 3.308, & §3.309
 - ALS – any time period, any veteran
 - Chronic diseases – symptoms to 10% or more within a certain time period after discharge (ex: MS must manifest within 7 years of separation)
 - Tropical diseases – symptoms to 10% or more within one year after discharge (ex: Malaria)
 - Diseases specific to former POWs
 - Diseases associated with certain herbicide exposure (ex: Agent Orange) – Must have served in Vietnam “boots on the ground” between January 9, 1962 and May 7, 1975
 - Diseases specific to radiation-exposed veterans – must have been exposed to radiation-risk activity

Compensation

Sample Rates

Rating	Vet Only	Vet & Spouse	Vet, Spouse & 1 Child
10%	\$140	N/A	N/A
20%	276	N/A	N/A
30%	428	479	516
40%	617	685	735
50%	879	964	1,026
60%	1,113	1,215	1,290
70%	1,403	1,522	1,609
80%	1,631	1,767	1,867
90%	1,833	1,986	2,098
100%	3,057	3,227	3,352

Rates effective on 12/1/2018

Compensation

- Compensation is *tax free* (state & federal)
- Additional *Special Monthly Compensation* added for loss of limb, organ, etc.
- Retirees with 50% or more VA disability rating may receive both compensation & retired pay
- Compensation is affected by Voluntary Separation Incentive (VSI), Special Separation Benefit (SSB), Separation pay, and Severance pay

Compensation – Related Benefits



- In addition to VA Compensation, depending on the circumstances, a vet may also be eligible for:
 - VA health care for all rated service-connected conditions
 - Vocational Rehabilitation & Employment services
 - \$10,000 life insurance
 - Federal employment preference
 - VA home loan funding fee waived

Compensation – Related Benefits

- **Indiana Benefits available:**
 - **May be eligible for the Hoosier Disabled Veteran License Plate**
 - **Disabled veteran's children may be eligible for free education at an Indiana University**
 - **Property Tax Deduction**



**VA Non-Service
Connected
Income-Based
Pension**

Pension

Eligibility Requirements

- At least 90 days of active military service (generally, 24 months for enlistments after 9/7/1980)
- At least one day of wartime service (combat service not required)
- Totally & permanently disabled, OR 65-years old or older
- Within income limits to qualify for this benefit
- 38 USC § 1501, *et. seq.*



Pension

Eligibility Requirements – Housebound Benefit

- Single permanent disability evaluated as 100-percent disabling AND because of this disability, he or she is permanently and substantially confined to his or her home, OR
- Single permanent disability evaluated as 100% disabling AND, another disability, or disabilities, evaluated as 60% or more disabling

Pension



Eligibility Requirements – Aid & Attendance Benefit

- Needs the aid of another person in order to perform daily living activities, OR
- Bedridden because of the disability and not because of treatment or bed rest prescribed by a doctor, OR
- In a nursing home because of mental or physical incapacity, OR
- Blind, or so nearly blind as to have corrected visual acuity of 5/200 or less in both eyes.

Pension

Sample Annual Rates

Veteran Status	Regular	If Housebound	If in need of Aid & Attendance
Veteran Only	\$13,535	\$16,540	\$22,577
w/Spouse	17,724	20,731	26,766
w/Spouse & 1 Child	20,037	23,044	29,079
w/Spouse & 2 Children	22,350	25,357	31,392

Rates effective 12/1/2018



Pension

Income-Based Benefit

- “Countable Income” cannot be more than the pension amount
 - Income minus unreimbursed medical expenses
 - Some income is not counted, but all income needs to be reported
 - If there *is* countable family income, the monthly rate is reduced, dollar-for-dollar, by the amount of countable family income

Pension

Income-Based Benefit

- The Veteran's Net worth cannot be excessive
 - “Net worth limit” tracks with Medicaid's Maximum Community Spouse Resource Limit – currently \$127,061
 - NOT Included in net worth calculation:
 - Primary residence and up to two acres of land
 - Personal vehicles
 - Household goods & personal items
 - Included in net worth calculation:
 - Annual income minus unreimbursed medical expenses

Pension

Income-Based Benefit

- **New Rule as of 10/18/18: Look-back period for asset transfers (gifting or selling for less than fair market value)**
 - **ONLY applicable to asset transfers that are in excess of the Net Worth Limit and that occurred AFTER 10/18/18**
 - **A 3-year look back period for asset transfers and a maximum 5-year penalty – as of the date that the veteran applied for the pension**
 - **Penalty Period Rate is currently \$2,230 per month. So if the asset transfer over the Net Worth Limit was \$10,000, then the penalty period would be 4.48 months ($\$10,000 / \$2,230$)**
 - **Purchase of Annuities that cannot be cashed out to spend down net worth over the net worth limit is a violation**

Pension

- *Income-Based Benefit*
 - Exceptions to the Look-Back Period
 - If the net worth is below the net worth limit prior to the asset transfer, then the asset transfer is NOT a violation
 - Penalty can be purged or reduced if the veteran can get their assets back prior to applying for the pension or within 60 days from the VA determination that the penalty period was violated
 - Asset Transfer to a trust for a disabled child, provided that the child was deemed disabled and unable to support themselves PRIOR to the age of 18
 - “Spend down” on excess assets for services and other items valued at fair market value. The spend down must purchase non-countable assets (medical bills, pre-paying for a burial policy, buying a new vehicle).

Compensation & Pension

Time Limit

- No time limit to apply for Compensation or Pension
- For Compensation:
 - Benefits are paid retroactively to the date of separation *if VA receives the application within one year of the separation*
 - Otherwise, benefits are effective no earlier than the date VA received the application

Compensation & Pension for Surviving Spouses

Compensation & Pension for Surviving Spouses

Overview

- Two possible VA entitlements:
 - Dependency & Indemnity Compensation (DIC)
 - Death Pension



Dependency & Indemnity Compensation (DIC)

- Monthly *tax-free* benefit paid to the surviving spouse of a serviceperson who died while on active duty, or a veteran who died from a service-related condition
- Currently, \$1,319 monthly
- Increased by \$326 for each dependent child
- Survivor Benefit Plan (SBP) for a retiree's surviving spouse is offset by DIC
- 38 USC § 1301, *et. seq.*

Dependency & Indemnity Compensation (DIC)

A veteran's surviving minor child is directly eligible for DIC *if*:

- There is no surviving spouse, *or*
- The child is not in the custody of surviving spouse



Dependency & Indemnity Compensation (DIC)

Transitional DIC Benefit

- Added to the surviving spouse's DIC if there are children under age 18
- \$282 per family per month for a maximum of two years
- Transitional benefit ends when there is no minor child included on the DIC, even if the two-year period has not expired

Dependency & Indemnity Compensation (DIC)

Remarriage

- A surviving spouse who remarries before reaching age 57 loses DIC entitlement
- Entitlement restored if the remarriage ends in death, divorce, or annulment
- However, a surviving spouse's remarriage after 12/16/03 and on or after reaching age 57 does not affect the entitlement

Death Pension for Surviving Spouses

- If a surviving spouse is not entitled to DIC, a Death Pension may be available
- Income-based benefit – similar to VA Pension for veterans
- Is available for dependent children in certain situations
- Veteran must have served at least one day during wartime



Death Pension for Surviving Spouses

Sample Annual Rates

Surviving Spouse Status	Regular	If Housebound	If in Need of Aid & Attendance
Surviving Spouse Alone	\$9,078	\$11,095	\$14,509
w/1 Child	11,881	13,893	17,309
w/2 Children	14,194	16,206	19,622

Rates effective 12/1/2018

Questions?

