



**ROTHKOFF  
LAW GROUP**  
*Elder Care Law*

# **The Nuts & Bolts Guide to Veterans Benefits**



*An introductory guide to the Special Monthly Pension available for Wartime Veterans and their surviving spouses who are 65 or older OR permanently and totally disabled.*

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## Dear friends of the firm

Most people think Veterans' benefits are available only for those who were wounded or disabled while serving in the armed forces. However, the Veterans Administration offers substantial benefits to wartime Veterans who are now elderly and facing the burden of long-term care costs associated with age-related disability and disease. In fact, the Veterans Administration estimates that millions of wartime Veterans are completely unaware that they, their spouses, their widowed spouses, or other eligible dependents may be eligible for Special Monthly Pension Benefits.

## Introduction

Wartime Veterans, their spouses, their surviving spouses, and other dependents may be eligible to receive a monthly payment for use offsetting care and related expenses. The program's eligibility criteria that include both financial and clinical components are widely misunderstood.

We provide this guide as a primer on this program and to clarify some of the misconceptions. This guide focuses on non-service-related compensation. Veterans who are disabled as a direct result of their service, as well as their surviving spouses and other dependents, may qualify for service-connected compensation. The eligibility requirements for service-connected compensation are much different than non-service connected.

We invite you to contact our office for assistance determining for which benefit you may be eligible.

## Who can help you

Because this benefit is complicated and misunderstood, Veterans often seek assistance. However, there are only three options for assistance: (1) A Veterans Administration accredited attorney, licensed to practice in your state, (2) a Veterans' Service Organization (VSO) such as the American Legion, AmVets, etc., or (3) A state or county official of the Department of Veterans affairs.

It is also important to note that VSOs and Government officials will assist with the application process but are often unable to advise Veterans who are not already eligible for benefits on planning to obtain eligibility.





## A Word of Caution

The only other readily available source of information regarding this benefit typically comes from annuity salespeople. These individuals routinely offer to consult with Veterans and their families for free.

This “free” offer is often based on the strategy of counseling Veterans to meet the financial eligibility requirements by purchasing annuities and/or gifting money to their children or even friends and neighbors. These same advisors offer to prepare the benefits application and any necessary estate planning documents at no charge. The reality is that the annuity companies are compensating the salesperson for selling a financial product. As a result of these practices, the VA revised its rules dramatically in October of 2018.

The revision resulted from a lengthy investigation by the Government Accountability Office (GAO) of abusive practices by “Veterans’ benefits planners.” According to the GAO Website:

“...in 2012, GAO identified over 200 organizations, such as financial planners, that marketed their services to help Veterans qualify for needs-based VA pensions. GAO found that some organizations offer Veterans’ products and services that could adversely affect them by transferring assets to lower their net worth. For example, some organizations sold Veterans deferred annuities that might limit their access to funds during their expected lifetimes.”

Annuities may be an excellent financial decision or a poor one. When considering any such planning, you should seek advice from a qualified individual, one without a financial interest in the product being sold.





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*Legal Disclaimer: 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.*





# Eligibility Requirements

## 1. Wartime Service.

- a. Minimum 90-days of active duty (*See page 9 for eligible armed forces and related groups*)
- b. At least one day of Active Duty during one of the following wartime periods:

WARTIME PERIOD	OPENING DATE	CLOSING DATE
World War II	December 7, 1941	December 31, 1946
Korea	June 27, 1950	January 31, 1955
Vietnam (service in Vietnam)	February 28, 1961	May 7, 1975
Vietnam (no service in Vietnam)	August 5, 1964	May 7, 1975
Persian Gulf	August 2, 1990	Not Yet Determined

## 2. Permanently & Totally Disabled.

Commonly referred to as “clinical eligibility,” the Veteran or Veteran’s spouse must meet one of the following to be considered permanently and totally disabled:

- a. Over age 65, or
- b. Receiving long-term care in a nursing home, or
- c. Receiving Social Security Disability, or
- d. Unemployable as a result of disability reasonably certain to continue throughout the life of the applicant.





### 3. Net-Worth.

The veteran's net worth may not exceed the annual threshold. This figure is adjusted annually, similar to the annual Social Security cost of living adjustment.

- a. **Calculating Net Worth.** Adding all resources (checking, savings, bonds, stocks, retirement accounts, etc.) with gross annual household income totals the Veteran's net worth. However, net worth excludes the primary residence of up to two acres, and one car.

#### Sample Net Worth Calculation – No Care Expenses:

Checking	\$25,000.00
Savings	\$30,000.00
Retirement Account	\$55,000.00
Annual Household Income	\$35,000.00
<b>Net Worth</b>	<b>\$145,000.00</b>

*The above example shows Net Worth in excess of the \$130,772.22 limit (2021 limit- see insert for current annual net worth threshold).*

- b. **Unreimbursed Medical Expenses.** Gross annual household income can be reduced dollar-for-dollar by unreimbursed medical expenses (UME). This includes health insurance premiums, home health care costs, and assisted living facility and nursing home expenses.

#### c. Sample Net Worth Calculation – Care Expenses:

Checking	\$25,000.00
Savings	\$30,000.00
Retirement Account	\$55,000.00
Annual Household Income	\$35,000.00
<b>TOTAL</b>	<b>\$145,000.00</b>
<b>- Less Care Expenses</b>	<b>- \$35,000.00</b>
<b>Net Worth</b>	<b>\$110,000.00</b>





*Because the care expenses equal annual household income, Net Worth is reduced dollar-for-dollar. Accordingly, the above example shows Net Worth below the \$130,772.22 limit (2021 limit- see insert for current annual net worth threshold).*

**Note: Care costs only reduce Annual Household Income, not resources in the bank (e.g., checking, savings, etc.).**

#### **4. Three-year look-back.**

During the application process, the adjudicator reviewing the application may examine up to 36 months of financial records (bank statements, tax returns, etc.). This is referred to as a “look-back.”

The purpose of this review is to determine whether the Veteran made any transfers of assets for less than fair value (i.e., gifts). Any such gifts result in a penalty period during which the VA will not pay benefits. **Further, a penalty may even be imposed if a Veteran purchases an annuity or transfers assets to a trust.**

The penalty period is calculated by dividing the maximum monthly pension benefit into the total amount of gifts. However, only gifts occurring after October 18, 2018 are subject to the look back. Gifts made before October 18, 2018 do not result in penalties.

**Total gifts/maximum monthly payment = penalty months**

You should consult a qualified Elder Care Law Attorney if your net worth is higher than the maximum or if you are concerned about the effect prior gifts may have on eligibility





## Pension Figures

As discussed above, the monthly payments depend on a variety of factors, including marital status. Please see insert for this years maximum benefit amount. Award of the maximum monthly payment presupposes that the Veteran is over 65 years of age, meets the clinical eligibility criteria, meets the net-worth requirements, and has unreimbursed medical expenses equal to or greater than monthly income.

MARITAL STATUS	MAXIMUM MONTHLY PAYMENT
Married Veteran	\$2,295.00
Single Veteran	\$1,936.00
Widowed Spouse	\$1,244.00

## Other Eligible Groups

In addition to active-duty Veterans from the Armed Forces, 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 under conditions other than dishonorable, your service meets the active-duty service requirement for benefits:

- Recipients of the Medal of Honor
- Women Airforce Service Pilots (WASPs)
- Women's Army Auxiliary Corps (WAAC)
- Civilian employees of Pacific naval air bases who actively participated in defense of Wake Island during WWII
- 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 blockships in support of Operation Mulberry in the WWII invasion of Normandy
- American merchant marines in oceangoing service during WWII
- 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 6th 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

## Application Checklist:

### Items you will need if you are a Veteran only:

- DD-214 or Discharge Papers
- Annual Social Security Award Letter received in January OR other documentation to verify your income
- Verification of all medical and care expenses
- Copies of all your latest financial statements

### Veteran and Spouse:

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





### **Widow/er of Veteran:**

- The Veteran's DD-214 or Discharge Papers
- Annual Social Security Award Letter received in January OR other documentation to verify your income
- Verification of all medical and care expenses
- Marriage certificate
- Veteran's death certificate
- Death certificate or divorce decree if either spouse was previously married
- Copies of all your latest financial statements

### **Additional forms that will need to be filled out and filed with the claim for benefits:**

- VA Form 21-22a – Appointment of Individual as Claimant's Representative
- VA Form 21-0845 – Authorization to Disclose Personal Information to a Third Party
- VA Form 21-527EZ (Veteran) – Application for Veterans Pension OR 21P-534EZ (Survivor) – Application for DIC, Survivors Pension, and/or Accrued Benefits
- Care Expense Certification
- VA Form 21P-0969 – Income and Asset Statement in Support of Claim
- VA Form 21-2680 – Examination for Housebound Status or Permanent Need for
- Regular Aid and Attendance





## Listing of Possible Unreimbursed Medical Expenses (UME)

**These can be deducted from your gross income to determine VA benefit eligibility.**

- Medicare Premiums deducted from Social Security
- Supplementary medical insurance (Part B) under Medicare
- Abdominal supports
- Acupuncture service
- Ambulance hire
- Anesthetist
- Arch supports
- Artificial limbs
- Back supports
- Braces
- Cardiographs
- Chiropodist
- Chiropractor
- Convalescent home (for medical treatment only)
- Crutches
- Dental services
- Dentures
- Dermatologist
- Eyeglasses
- Food or beverages prescribed by doctor for treatment of illness
- Gynecologist
- Hearing aids & batteries
- Home health services
- Hospital expenses
- Insulin Treatment
- Insurance premiums (medical)
- Invalid chair
- Lab tests
- Lip reading lessons (in connection with disability)
- Neurologist
- Nursing services
- Occupational therapist
- Ophthalmologist





- Optician
- Optometrist
- Oral surgery
- Osteopath
- Pediatrician
- Physical examinations
- Physician
- Physical Therapy
- Podiatrist
- Prescriptions and drugs
- Psychiatrist
- Psychoanalyst
- Psychologist
- Psychotherapy
- Radium therapy
- Sacroiliac belt
- Seeing-eye dog
- Speech therapist
- Splints
- Surgeon
- Telephone/teletype for deaf
- Transportation expenses (20 cents per mile)
- Vaccines
- Vitamins prescribed by doctor
- Wheelchairs
- Whirlpool baths for medical purposes
- X rays

***Note: Most medical expenses must be prescribed by a physician to be deductible from gross income for VA benefit qualification purposes.***





## The Wrap Up

Our goal is to ensure that our clients make the most of their financial and family resources, so they are never out of money and never out of options for as long as they live. Like our past and current clients, we believe that you, too, will benefit from professional guidance to apply the information in this guide for yourself or a loved one.

### We provide guidance and counseling in the following areas:

1. Care Coordination to identify and access care in the local community for both a Veteran and spouse.
2. Comprehensive planning to maximize existing income and resources, as well as public benefits, to pay for care.
3. Preparation of critical legal documents such as Powers-of-Attorney, Living Wills, Last Wills and Testaments, and Trusts.
4. Determining whether Medicaid, Medicare, and Veterans' benefits are appropriate for your individual situation.
5. Planning to accelerate eligibility for benefits while protecting resources to enhance your quality of life or that of your spouse.
6. Analysis of the income, gift, and estate tax implications of long-term care planning.
7. Assistance determining the suitability of any asset protection tools, including the benefits and detriments of each.
8. Calculating the actual dollar benefits received as it relates to the cost of obtaining those benefits.
9. Completing and submitting a claim for VA benefits, if appropriate.

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