

## Confused About “Aid and Attendance” VA Benefits?

VA benefits are governed by 38 United States Code and 38 Code of Federal Regulations. In short, it's all about law...not someone's personal opinion, gossip or hearsay. What matters is working with an accredited individual who understands the law which provides clear guidance regarding what has to be proven (and how) in order to be awarded benefits. There is probably no VA program more misunderstood than “Aid and Attendance.” In fact, “Aid and Attendance” isn't even the right name...and that's just for starters.

**1. No “Aid and Attendance?” What am I applying for?** What most people refer to as “Aid and Attendance” is the Non-Service Connected Disability Pension, also sometimes called the Improved Pension. Pension is a guarantee by the VA that eligible wartime veterans and their un-remarried surviving spouses will be granted a minimum monthly income. [38 C.F.R. 3.3] Aid and Attendance is just a special, *additional* benefit that can increase the funds paid to Pensioners if they have a medical problem requiring the regular help and assistance of another person in safely performing daily living tasks (such as bathing, dressing, medications, etc.) [38 C.F.R. 3.352]

**2. What are the eligibility requirements for Pension and who can apply?** There are four points of federal law that must be met: (i) minimum wartime military service, (ii) marital status (if applicable), (iii) limited net income, and (iv) limited net assets. [38 C.F.R. 3.3 and 3.272]. A single veteran, married veteran or surviving spouse of a veteran can be considered for benefits.

**3. What are military service requirements?** The veteran must have served at least 90 days of active, *federal*, military service, one-day of which must have been during a wartime period, and cannot have been un-desirably discharged. [38 C.F.R. 3.3]

**4. How much income is “too much?”** Gross household income greater than the amount of benefit guaranteed in law makes a claimant ineligible. However, gross income may be reduced dollar-for-dollar by un-reimbursed, regularly occurring, predictable medical expenses. VA will pay the difference between the resulting net income and the amount guaranteed by law. Expenses such as pharmacy co-pays, doctor co-pays, vision costs, and dental expenses are examples of expenses not considered regular and predictable by VA and cannot be used on the initial claim. [38 C.F.R. 3.272(g)] Each case is unique and well worth a phone call to check potential eligibility.

**5. Are fees paid to Assisted or Independent Living Facilities medical deductions?** Maybe. Direct fees for care, certainly. Fees for room and board can be more problematic. VA has had a problem with consistency on this issue for years. In 2012, a directive was released more or less settling the question. In any residential facility or community, (i) if the claimant is in need of the special benefit of Aid and Attendance and (ii) assistance is being provided with at least two basic activities of daily living (“custodial care”) either by facility staff or under separate contract with a third-party provider, VA will more than likely treat the room and board fees as deductible medical expenses. [Fast Letter 12-23]

**6. Can just anyone help me with a VA claim?** No. Anyone who represents a claimant or even gives advice concerning a VA claim *must be accredited* by the General Counsel of the VA. The VA accredits

attorneys, agents or veterans service officers. Further, just because a person happens to be accredited does not necessarily mean they are capable or knowledgeable. Ask questions and satisfy yourself that the accredited individual has your best interest at heart, is knowledgeable about VA benefits and has a proven track record of timely success and service. VA law is complicated and there is much to know to adequately represent a potential client. Be careful and use good common sense!

**7. Is it legal to charge fees for representation before the VA?** No, not concerning a benefit claim at the administrative claim level. Title 38 disallows anyone representing veterans during the administrative claim process from charging a fee or even accepting a voluntary gift or donation for assisting a claimant with a claim. However, a VA General Counsel opinion from May, 2004 allows attorneys to charge for what VA terms a “pre-filing consultation” as this legal work takes place before a person becomes an actual claimant for benefits. [38 C.F.R. 14.617(h)]

**8. I applied for benefits and was denied. Is there anything I can do?** Yes. In the denial notification, VA says if you disagree with their decision, you can file an appeal. Filing an appeal may not be the best thing to do as it can take a very long time to adjudicate. It is best to have the claim reviewed by a knowledgeable accredited individual and if advisable, file a request to reopen the claim and have it reconsidered based on new and material evidence addressing the issue causing the denial. This is can be much faster process. [38 C.F.R. 3.151] The VA does make mistakes, so please have a knowledgeable individual review your specific situation and evidence.