

# Chapter Four

## Need-Based Pension for Low-Income Veterans or Survivors

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*The VA has two disability benefit programs for veterans called compensation and pension. They are very different from each other.*

Compensation, which is discussed in Chapter 3, “Compensation,” is paid to veterans who suffer from disabilities that were incurred in or aggravated by service. Compensation is not based on need. Veterans applying for compensation benefits do not need to have total disability, low income, or wartime service. Veterans seeking compensation, however, must connect their disability to their time of active duty service.

Unlike compensation, pension is a needs-based program similar to Supplemental Social Security income (SSI). You do not have to link your disability to service. To be eligible for pension benefits, you must have wartime service, low income, and a permanent and total disability. For pension purposes, the VA will presume that you are permanently and totally disabled if you are age sixty-five or over. You may not receive both pension and compensation at the same time, but usually the VA will pay you the higher amount.

Surviving family members of a veteran may be eligible for non-service-connected death pension benefits if they are in financial need. Survivors can-

not receive death pension benefits at the same time they are receiving dependency and indemnity compensation (DIC) for a service-connected death.

This chapter begins with a discussion of VA pension eligibility requirements and the pension claims process. It describes special monthly pension, old-law pension, Section 306 pension, and the choice to elect improved pension in place of the older pension programs. The chapter then shifts focus to VA death pensions for surviving relatives of deceased veterans and concludes with information on the annual reports required to maintain pension and death pension benefits.

### **VA Pension Eligibility Requirements**

The purpose of non-service-connected pension, also called improved pension, is to supplement the income of needy “wartime” veterans who are disabled. This benefit was originally created as form of welfare to help totally disabled wartime veterans who would otherwise be living in poverty. Increasingly, it has become a middle class benefit for veterans and their surviving spouses, even those with significant assets and income, due to the high cost of long-term-care.

One key advantage of non-service-connected pension is that your disability can be completely unrelated to service. You must meet five requirements to be eligible for non-service-connected pension benefits:

1. You must be discharged under other than dishonorable conditions.
2. Your disability must not be due to your willful misconduct.
3. You must have served during a period of war.
4. You must be permanently and totally disabled.
5. You must satisfy a means test (verify your low income and net worth).

### **The Veteran Must Be Discharged Under Other Than Dishonorable Conditions**

You must have been discharged or released from military service under conditions other than dishonorable to receive VA pension. *Honorable discharges and discharges under honorable conditions clearly satisfy the first part of the eligibility test.* Bad conduct discharges from a special court-martial and discharges under other than honorable conditions, however, are not automatic bars to VA benefits.

These discharges may or may not make you and your family ineligible. If you have a negative discharge, the VA will make a special determination on the character of your service and decide if you are still eligible for VA benefits.

You will not qualify for VA pension if you were released from service as a conscientious objector, as a result of a general court martial, as a deserter, as an alien during a period of hostilities, as an officer who resigned for the good of the service, or as a result of an absence without official leave (AWOL) for at least 180 continuous days.

There is an exception to this rule if the VA later finds that you were insane when you committed the offense that led to your release from service (see definition in the next paragraph). Another exception may be granted in an AWOL case if you can show that compelling circumstances led to your absence.

VA regulations define an insane person as one who, while not mentally defective or constitutionally psychopathic, . . . exhibits, due to disease, a more or less prolonged deviation from his or her normal method of behavior, or who interferes with the peace of society; or who has so departed from the accepted standards of the community to which by birth and education he or she belongs (has become antisocial) as to lack the adaptability to make further adjustment to the social customs of the community in which he or she resides.

If you are prohibited from receiving VA benefits due to your discharge, you can request a discharge upgrade from a Discharge Review Board or from a Board for Correction of Military Records. Discharge upgrade cases can be complicated and difficult to win. You should contact a representative from a veterans service organization or an attorney experienced in military law for help with changing a negative discharge. Services reps are usually associated with veterans service organization, such as AMVETS, the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, and Vietnam Veterans of America.

### ***Willful Misconduct***

The VA will not award you VA pension if your disability was a result of your own willful misconduct. Willful misconduct is defined as deliberate or intentional wrongdoing with knowledge or wanton disregard of its probable consequences. Alcoholism or drug addiction that is not the result of another condition, such as Post-Traumatic Stress Disorder (PTSD), is considered will-

ful misconduct. Other examples could include criminal acts, venereal disease, and suicide. This is an area with many exceptions and special rules. If willful misconduct is a potential issue in your case, consult with a service representative or experienced attorney for help, as you may still be eligible for benefits.

### ***Service Requirements***

You must have served at least ninety days of active duty during a period of war or ninety consecutive days with at least one day during a period of war. The ninety days of service requirement is also satisfied if you served in more than one service period for a total of ninety days. Congress has designated the periods of war as:

**World War I:** April 6, 1917–November 11, 1918. If a veteran served in the former Soviet Union, this period of war is extended through April 1, 1920.

**World War II:** December 7, 1941 through December 31, 1946. This may be extended to July 25, 1947, if continuous service with active duty on or before December 31, 1946 is established.

**Korean Conflict:** June 27, 1950 through January 31, 1955.

**Vietnam Era:** August 5, 1964 through May 7, 1975. For veterans who served in the Republic of Vietnam, the Vietnam Era begins on February 28, 1961.

**Persian Gulf War:** August 2, 1990 through a date yet to be determined.

The conflicts in Iraq and Afghanistan are currently included in the open-ended Gulf War period.

You do not have to have experienced combat or even served in a combat zone to be eligible for pension. You only have to have served at least one day between the start and end dates of the period of war. For example, a veteran will not be excluded from VA pension because he or she served in Germany during the Vietnam Era nor will a veteran be excluded if he or she was not deployed at all during the war.

### ***Permanent and Total Disability Requirement***

For VA pension benefits, you must be totally disabled and the disability must be permanent. Permanent means the disability is expected to continue throughout your lifetime. You are considered totally disabled for VA pension purposes in any of the following circumstances: when you are evaluated (or rated) 100% disabled based on the VA Rating Schedule (38 C.F.R. Part 4); when the VA determines that you are unable to obtain and retain substantially gainful employment; or when you are age 65 or older.

In processing a claim for VA benefits, the VA evaluates the severity of your disability and assigns it a percentage rating based on your symptoms. The rating may range from zero percent for no disability to one hundred percent for a total disability. The VA will consider a claim for pension when you have at least one disability that is rated at sixty percent or higher. It will also consider a claim if you have more than one disability and at least one of your disabilities is rated at forty percent or higher and the combined total of all of your disabilities is seventy percent or higher.

In some instances, the VA will presume that you are permanently and totally disabled. When a permanent and total disability is presumed, the VA does not require you to prove the extent of your disability. This type of presumption is common when veterans receive long-term care in a nursing home or the pension applicant is age 65 or older.

In some cases, VA Regional Office (VARO) officials may grant a veteran pension benefits even if his or her disabilities do not meet the general evaluation requirements. The VA calls this a grant of pension on an extra-schedular basis. It occurs when the veteran is unemployable by reason of factors that are not included in the VA rating schedule and may include the nature of his or her disability(ies); age; occupational background; education; and other, related factors.

### ***Income and Net Worth Limits***

Claimants for VA pension benefits must demonstrate financial need by showing that they have low income and low net worth. The VA uses a complicated formula for determining pension eligibility and it is summarized below.

First, the VA calculates a claimant's maximum annual pension rate (MAPR). This is the maximum dollar amount that the claimant is potentially eligible to receive. To calculate the MAPR, the VA must first identify the type

of beneficiary involved, because a different rate may be paid depending on whether the beneficiary is a veteran, surviving spouse, or child. Next, the VA must count the number of dependents to be considered because the MAPR is increased by the number of dependents. Next, the VA must decide whether the pension beneficiary is entitled to any of the increased benefits that are available to veterans with certain severe disabilities.

After calculating the claimant's MAPR, the VA then calculates the veteran's income. The VA determines the claimant's countable income for the coming year, which is the 12 months beginning the month after the VA receives a written request for benefits. The general rule for countable income is that all income is included, or counted as income, unless specifically excluded under VA regulations. Actually, a veteran's yearly income is better described as the family's yearly income because it includes all of the veteran's income, the spouse's income, and dependents' income (if the veteran is living with his or her spouse and dependents). Usually, the only income that is not counted is Supplemental Social Security income and the value of maintenance services provided by a friend or relative to the veteran (usually money or the value of housing). Most unreimbursed medical expenses can be deducted from the VA countable income. The VA will require that the veteran submit his or her Social Security number to the VA when applying for pension benefits so that the VA can verify a claimant's Social Security benefits by checking information from the Social Security Administration and other income by checking information from the Internal Revenue Service.

If the veteran informs the VA that he or she will receive some income in the next year but the amount is uncertain, the VA will use an estimate when calculating countable income. The VA will pay the pension benefit at the lowest possible rate to avoid an overpayment. The VA, however, will not count future benefits if it is not certain they will be paid. For example, only after the veteran actually receives Social Security Disability Income (SSDI) will it be considered income by the VA.

If your countable income exceeds the MAPR calculated for you, you will not be entitled to any VA pension benefits and your claim for improved pension will be denied. If your countable income does not exceed the MAPR, then the VA will reduce the MAPR dollar-for-dollar by the amount of your countable income. If your annual income is zero, you may qualify for the full amount of the MAPR per year, which as of December 1, 2007, was \$11,181 for a single veteran without dependents. Updated MAPR information may be found at [www.vba.va.gov/bln/21/Rates/pen01.htm](http://www.vba.va.gov/bln/21/Rates/pen01.htm). After calculating the an-

nual amount if any that you are owed in pension, the VA divides this annual amount by twelve to determine the monthly amount owed to you.

Normally, financial need will be shown when the veteran's net worth is less than \$80,000. Net worth is the market value, less mortgages, of all real and personal property owned by the claimant. The claimant's home is not included in determining net worth. If a veteran's net worth exceeds \$80,000, he or she should include an explanation as to why the claim should not be denied for excess net worth. For example, veterans in high cost-of-living areas should point that out to the VA that they live in such areas.

### ***Initiating a Claim for Improved Pension***

To initiate a claim for pension, you should notify the VA in writing that you are seeking all benefits to which you may be entitled, specifically pension, and request that the VA provide you with the appropriate application form. This can be done by simply sending a letter to the VA.

After you initiate your claim, get help. Ask a service organization to represent you. The service organization will represent you before the VA for no charge. Do not fill out any VA form until you have an opportunity to consult with your service representative. These representatives are usually called service officers.

The date on which the VA received your letter should serve as the effective date for the pension award, but the first payment date will be the first day of the following month. In response to your letter, the VA will probably send you a VA Form 21-526, "Veteran's Application for Compensation and Pension." When filling out the form, you should be prepared to provide your service information, marital and dependency information with certified copies of marriage or birth certificates, employment history, and net worth and income information.

If you were permanently and totally disabled before applying for pension benefits, you may be eligible to receive a retroactive award, which is an award of up to one year's worth of pension benefits. In your claim, you need to explain that your disability prevented you from filing the claim for pension when you became disabled. For example, you may have been hospitalized and unable to submit your application. You need to file a specific claim asking for retroactive pension benefits.

### ***Special Monthly Pension***

Veterans with severe disabilities may be eligible for increased VA benefits, known as special monthly pension (SMP). There are two types of special monthly benefit payments—housebound benefits and aid and attendance benefits.

Housebound benefits are available to veterans with a single disability rating of 100% who are essentially confined to their homes. A veteran may also be entitled to housebound benefits if he or she has a 100% disability rating with an additional disability rating of 60% or more even if he or she is not housebound.

Aid and attendance benefits are available to veterans requiring assistance to perform tasks associated with daily living. A claimant requiring skilled nursing care in a nursing home because of a physical or mental incapacity may be entitled to the aid and attendance benefit. However, you do not have to be in a nursing home to receive the benefit. Entitlement may be established by showing that the veteran is unable to dress or undress or keep him or herself clean, that regular adjustments to any special prosthetic or orthopedic appliances are often required, or that a mental incapacity requires assistance on a regular basis to protect the claimant from the hazards of daily life. Entitlement can also be established if the veteran is blind or nearly blind (5/200 vision in both eyes, with corrective lenses, or contraction of the visual field to five degrees or less). Special monthly pension benefits are important because they can increase the veteran's monthly payments by a significant amount. The VA must consider a veteran's entitlement to SMP benefits whenever a veteran's single disability is rated as one 100%.

### ***Special Issues for Elderly Veterans***

Family members and advocates of elderly or totally disabled veterans may want to consult with an elder law attorney because the eligibility or potential eligibility for non-service-connected pension benefits can have a huge impact on estate planning, asset protection efforts, and long-term care planning. Medicaid has a five-year look-back period.

Nevertheless, for assessing assets for Medicaid eligibility, the VA does not have a look-back period in assessing assets for non-service-connected pension. (If a needs-based benefit has a look-back period, then any asset that you gifted

away—and some other transfers—during that period counts as if it were still your property in determining whether you are eligible for the benefit.)

Also, for pension purposes most medical expenses can be deducted from income and the cost of nursing home care, assisted living care, and home care may be considered a medical expense. In some cases, even a veteran with significant income becomes eligible for pension or pension plus aid and attendance once the cost of medical care is deducted from income due to the high cost of long-term care. The VA rules for pension should be considered in conjunction with the rules for Medicaid eligibility to determine the best course of action for a veteran and a veteran's family. There is no substitute for consultation with an experienced elder law attorney.

### ***Old-Law Pension***

The old-law pension program ended July 1, 1960 and is therefore available only to veterans who began receiving pension benefits prior to this date. Section 306 pension program was available between July 1, 1960, and December 31, 1978. The main difference between these older pension programs and the improved pension program is the way in which a spouse's income is considered when calculating the income and net worth of a veteran. The old-law pension did not consider the spouse's income at all in its calculations and Section 306 pension counted only the spouse's unearned income, such as Social Security benefits.

Veterans in receipt of old-law pension or Section 306 pension may elect to receive improved pension instead of the older pension program. However, veterans should proceed with caution and seek the advice of a service officer before making this change to the improved pension because an election of improved pension is permanent and cannot be withdrawn or changed. One advantage of electing improved pension is that veterans may be eligible for special monthly pension or housebound benefits under the improved pension program. A veteran who is unsure of whether he or she is eligible for special monthly pension should ask a service officer to write to the VA Regional Office (VARO) to inquire whether the veteran would be entitled to special monthly pension if he elected to receive improved pension. Of course this letter should not be written in such a way that suggests the veteran is definitely electing to receive improved pension. Another advantage is that the maximum annual pension rate is much higher for improved pension than for the older

pension programs. Again, a veteran should be cautious to make sure that he or she meets all of the qualification requirements for the improved pension before electing to change.

Spouses who receive old-law death pension benefits or Section 306 death pension benefits are considered to have a “protected pension.” This means that their benefit rates are protected and will not change. However, spouses may wish to elect to receive improved pension benefit so that they may establish entitlement to aid and attendance or housebound benefits. However, spouses too should proceed with caution and ensure that they are eligible for improved pension before electing to receive it. The rates for the protected pension programs can be found at [www.vba.va.gov/bin/21/Rates/pen03.htm](http://www.vba.va.gov/bin/21/Rates/pen03.htm).

## ***Non-Service-Connected Death Pension***

### ***Introduction***

Non-service-connected death benefits are pension payments for low-income surviving spouses and surviving dependent children. A veteran’s dependent parents are not eligible for non-service-connected death pension.

The basic eligibility requirements for non-service connected death pension are that the veteran would have met the basic eligibility requirements for VA benefits described in the section Eligibility for VA Benefits and the survivor demonstrates financial need. The survivor need not be disabled, nor is it necessary that the veteran have established entitlement to VA benefits before his or her death. The disability of the survivor is not at issue in claims for death pension.

### ***Eligibility for Death Pension***

A surviving spouse seeking death pension benefits must satisfy additional criteria to be eligible. The surviving spouse must have been married to the veteran for at least one year prior to the veteran’s death. If the spouse was not married to the veteran for one year, the spouse may still be eligible if a child was born to them before or after the marriage. The surviving spouse may receive an increased pension amount if the spouse has custody of the veteran’s biological or adopted children.

If the surviving spouse married the veteran after discharge, death pension can be paid if the surviving spouse married the veteran before the following dates:

- For veterans of the **Mexican Border Period and World War I**, the marriage must have occurred before December 14, 1944.
- For veterans of **World War II**, the marriage had to occur before January 1, 1957.
- For veterans of the **Korean Conflict**, the marriage had to occur before February 1, 1965.
- For veterans of the **Vietnam Era** the marriage had to occur before May 8, 1985.
- For veterans of the **Persian Gulf War**, the marriage had to occur before January 1, 2001.

A veteran's child may be eligible for death pension benefits in his or her own right if the child is not in a surviving spouse's custody, or if there is no surviving spouse who is entitled to pension. Children are not entitled to improved death pension if they are in the custody of a surviving spouse with excessive income or net worth. If a child is in the custody of a surviving spouse who has remarried, the income of the surviving spouse and new husband or wife will be considered when determining the child's eligibility. However, when the child's legal guardian or custodian is not the child's parent, the income of the legal guardian's spouse will not be counted.

The countable income and net worth for a veteran's survivor seeking improved death pension is determined in the same way as for a veteran seeking improved pension. When calculating income, the VA will consider the income of the entire household. The only difference is in the timing of when the VA begins paying death pension. If the veteran was not receiving VA pension benefits or compensation prior to his death, the payment will be withheld for the first month after the veteran's death, meaning payment will start two months after the veteran's death. If the veteran was receiving some benefits from the VA prior to his death which exceeded the amount that the spouse will receive, the survivor will receive the amount due to the veteran for that month and the death pension amount will begin the following month.

The MAPR for death pension is lower than the MAPR for a veteran seeking VA pension. As of December 1, 2007, the MAPR for a surviving spouse was \$7498. More information about death pension rates may be found at [www.vba.va.gov/bln/21/Rates/](http://www.vba.va.gov/bln/21/Rates/). The monthly death pension benefit rate may

be increased with aid and attendance benefits or housebound benefits. The eligibility criteria that apply to veterans seeking special monthly pension also apply to surviving dependents seeking a special monthly allowance.

### ***Applying for Non-Service-Connected Death Pension***

To apply for death pension benefits, the surviving beneficiary should send a letter to the VA stating that the survivor seeks death pension benefits and requests that the VA send the proper form. The VA should reply by sending the beneficiary a VA Form 21-534, “Application for Dependency and Indemnity Compensation, Death Pension, and Accrued Benefits by a Surviving Spouse or Child.” An application for survivor’s benefits filed with the Social Security Administration will also be considered a claim for VA benefits. Please note that while there is no time limit for applying for death pension; in order to qualify for death pension benefits dating back to the veteran’s death, the survivor must submit a VA Form 21-534 within a year of the veteran’s death.

When filing for non-service-connected death pension, the survivor must submit proof of his or her relationship to the veteran. This may be accomplished by submitting a certified copy of a marriage license or, in the case of a dependent child, a birth certificate may be submitted. As always, it is important to get help from a qualified veterans service officer before applying for non-service-connected death pension. For more information about veterans service representation, consult your local telephone directory under the names of veterans service organizations or the office of your county or state-funded veterans assistance office. The VA Web site [www.va.gov](http://www.va.gov) has a directory of veterans service organizations and state veterans affairs offices.

### ***Annual Reports for Improved Pension Beneficiaries***

The VA requires veterans receiving VA pension and survivor beneficiaries receiving VA death pension to file annual reports that detail their previous year’s income. These reports are called Eligibility Verification Reports (EVRs). If an EVR is not completed and returned within sixty days of the VA’s request for it, the VA will suspend the award or disallow a claim. The VA uses these reports to verify that a beneficiary is still eligible to receive pension and to adjust the amount of a recipient’s award.

The VA has identified some common problems in EVRs filed by veterans and survivor beneficiaries. These errors include improper signing and dating of forms, leaving blocks unmarked when the word “none or zero” is required, incorrect Social Security information, and incorrect addresses. Such errors could result in delay and suspension of benefits. Extra care in completing the EVR is recommended and a veteran may wish to seek the assistance of a veterans service representative.

Supplemental Security Income benefits should not be counted as income for VA pension purposes but the VA counts other Social Security benefits. Often the Social Security Administration subtracts a claimant’s monthly Medicare premium from his or her SSDI benefits check. However, this is countable income for VA pension purposes and the claimant must report it. If the claimant fails to report it as income, the VA could treat it as an overpayment, and overpayments generally must be repaid.

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The National Veterans Legal Services Program (NVLSP) is an independent, nonprofit, veterans service organization dedicated to ensuring that the U.S. government honors its commitment to our veterans by providing them the federal benefits they have earned through their service to our country. NVLSP accomplishes its mission by:

- Providing veterans organizations, service officers and attorneys with training and educational publications to enable them to help veterans and their dependents obtain all of the benefits that they deserve.
- Representing veterans and their dependents who are seeking benefits before the U.S. Department of Veterans Affairs and in court.
- Placing meritorious cases (especially cases involving claims of servicemembers and veterans of Iraq and Afghanistan) with volunteer pro bono attorneys.