



# VFW GUIDE FOR POST SERVICE OFFICERS

Part 2



# **PART 2: SERVICE-CONNECTED DISABILITY AND PENSION**



**PART 2**  
**SERVICE-CONNECTED DISABILITY AND PENSION**

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## SERVICE CONNECTION

**Sec. 1. Service Connection<sup>1</sup>:** Service connected disability compensation is granted for the residuals of a disease or injury incurred or aggravated as a result of active military service .<sup>2</sup>

Active military service can include periods of active duty for training if a disease started or became aggravated during the service period, and can include periods of inactive duty for training (Reserve and Guard drills), if an injury occurred during the service period. Hundreds of thousands of Reserve and Guard veterans have served on active duty since 9/11, and many serve on “AGR” or active guard reserve status, which is active service for the purpose of service connected benefits.

Note that service connection is granted for active diseases and the residuals<sup>3</sup> of a disease or injury. If a disease (e.g., common cold) or injury (e.g., broken bones) resolves or heals without residual, service connection will generally be denied. However, if a broken bone, for instance, healed poorly or affects a joint, then VA should grant service connection because there is some lingering impact from the disability.

There are several ways VA can grant service connected benefits.

- Direct service connection. Three things are needed to grant service connection for a condition. First, there must be a current diagnosis of the claimed condition. Second, there must be evidence of something in service which could have caused that condition. Third, there must be either evidence showing that the current problem existed since the event in service or a medical opinion stating that the current problem was likely caused by the event in service. This medical opinion is often called a “nexus”, or a connection or series of connections linking two things. If these three requirements are satisfied, then service connection can be granted on a direct basis.
- Presumptive service connection. In this context, a presumption is a legal device used to relax a burden that falls on veterans to prove that their disability is related to service. Congress and VA have decided that service connected compensation should be awarded for a number of diseases which appear after service for all veterans that meet certain conditions of service, even if there is no record of an event or disability in their particular military service records. When scientific research shows that veterans who served under certain conditions have a greater chance of developing disabilities, a presumption may be enacted to expedite the processing of claims for these veterans. For example, veterans exposed to radiation during nuclear testing have been granted a presumption of service connection for many cancers. The event in service is the participation in a nuclear test. The development of one of the cancers noted in the presumptive law serves as the nexus, without having to obtain a medical opinion. For a complete list of presumptive disabilities, at the time of publication of this guide, see Appendix B. For updated references, always check [www.ecfr.gov](http://www.ecfr.gov).
  - NOTE: If the veteran has a disability which is not on a presumptive list, and did not appear during service, but nevertheless feels it is related to his/her service, the claim should be filed. Additional presumptive disabilities continue to be added to VA regulations: there were originally only 2 disabilities linked to Agent Orange exposure and now 14 disabilities are linked to Agent Orange

<sup>1</sup> This information is provided for educational/informational purposes only. When helping someone complete an application the PSO should not fill out the form but should have the veteran submit the claim and any evidence the veteran has to the Department Service Officer. VA has the legal responsibility to determine what benefits can be granted according to the law.

<sup>2</sup> In law, words have very precise meanings that may be different from the common use of the word. Since VA’s disability compensation program is based on laws and regulations (Appendix A), we need to be precise when describing this program. Note the difference between active duty and active service in 38 CFR 3.6.

<sup>3</sup> Residual: something that remains to discomfort or disable a person following an illness, injury, or operation.

exposure (see Appendix B). Additionally, any condition may be granted service connection on a direct basis if a well-reasoned medical nexus opinion links the condition to an exposure or event in service.

- Secondary service connection. VA can grant service connection for a disability which is caused by a disability which is already service connected. For example, if a veteran is service connected for a right knee disability and begins favoring her left leg, she may develop problems in her left leg that are secondary to the primary service connected disability.
- Aggravation of a non-service-connected disability. A disability which is not related to service can be service connected if it worsens due to a service-connected disability more quickly than it would under the normal conditions of life.

**Sec. 2. Special Considerations:** The Department of Veterans Affairs (VA) has established special rules to handle claims from groups of veterans with unique challenges. This does not mean preferential treatment is given to them but that procedures have been developed to address the significant difficulty in gathering the necessary supporting evidence for these claims.

A. *Combat Veterans* – Injuries incurred while under the conditions of combat are not well documented. Congress has established a provision in the law allowing combat veterans to offer evidence by their testimony for certain lapses in official record keeping<sup>4</sup>. A veteran can only testify regarding injuries that are reasonably incurred based on the type of service being performed and location. If there were official records being kept at the same time, the testimony will not eliminate consideration of the official record but may clarify the nature of the service.

B. *Prisoners of War* - Because of the extraordinary hardships suffered by this select group, the VA has a long history of prioritizing their claims for compensation benefits. Historical records maintained by hostile governments during a time of war are very often insufficient to establish certain events in service. POW statements as to specific events are viewed the same as combat veteran statements. The Congress has established several presumptive disabilities due to POW status that reflect the effects of extreme physical treatment and confinement. (See Appendix B). There is a mandatory length of confinement for some disabilities while other conditions require minimal confinement. Examples include post-traumatic stress disorder, traumatic arthritis and residuals of cold injuries. No claim may be denied for a POW without VA offering the veteran a medical examination.

C. *Gulf War Veterans* -- The use of depleted uranium, anthrax vaccinations, and burn pits in the ongoing conflict in Southwest Asia has produced concern regarding toxic and chemical contamination on the battlefield. Scientists continue to devote much research to resolve the likely health effects of service in this theater, including exposure to burn pits. Many troops in Southwest Asia in different time periods, from Operation Desert Storm through Operation Inherent Resolve, exhibit similar symptoms without a known medical cause. Congress initially addressed this dilemma with the “Veterans’ Benefits Improvement Act of 1995” which permitted compensation benefits for certain unexplained health symptoms and undiagnosed illnesses. The decision to compensate this select group of veterans has been amended to include certain ill-defined or multi-symptom diseases such as chronic fatigue syndrome, irritable bowel syndrome and fibromyalgia. These conditions or groups of symptoms were previously considered undiagnosed illnesses but now have a specific diagnostic pattern. Chronic respiratory illnesses have shown associations to service near burn pits. Contact the Department Service Officer for help with documenting undiagnosed illnesses and diseases suspected to be related to Gulf War service. Gulf War Veterans are encouraged to participate in the Gulf War Registry and Burn Pit Registry Exams to allow VA to gather more data on the health effects of service in various areas of this theater of operations.

D. *Post-Traumatic Stress Disorder (PTSD)*. Service connection may be granted to any veteran who suffers from PTSD if manifested at any time after service if three elements are met. Service connection requires a diagnosis of PTSD, supportable evidence of in-service stressor and a direct link between current symptomatology and the claimed in-service stressor. The Purple Heart, the Combat Infantryman Badge or a similar individual combat citation or involvement in combat demonstrating valor is conclusive evidence of a qualifying stressor if the claimed stressor is combat related. The Secretary of the VA relaxed the evidentiary burden for in-service stressors, allowing the VA

<sup>4</sup> This provision is Title 38, United States Code, Section 1154(b). It is often referred to as the “combat veteran presumption”.

physician or PhD psychologist diagnosing PTSD to also corroborate stressors that are related to fear of hostile military activity. This change was effective July 13, 2010, for more information see 38 CFR 3.304(f)(3).

*E. Military Sexual Trauma* – Military sexual trauma or “MST” refers to experiences of sexual assault or repeated, threatening sexual harassment that a veteran experienced during his or her military service. Men and women who experienced military sexual trauma often did not file criminal charges against their assailant, and may not have reports in their official military files. Due to the difficulty processing claims for service connection and health care for medical conditions related to MST, sources of evidence outside the service treatment record may be used to support the claim, and VA must consider these sources of evidence.

Examples of evidence that can help prove a MST happened in service include requests for reassignment, increased use of leave, changes in job performance, increased use of medications, substance abuse, tests for pregnancy or sexually transmitted disease, visits to a medical provider without a specific ailment, journals, buddy statements, etc. The PSO should refer the veteran to VA health care for treatment. If the veteran intends to file for disability compensation related to MST, provide the veteran with VA Form 21-0781a to fill out when they see their health care provider, or at a convenient time for them. Try to avoid taking a statement from the veteran on the spot as the veteran will need to report their story on the form as well as in the VA C&P exam, and it may be traumatic each time the veteran re-lives the experience. Note that all trauma incurred during active military service which leads to PTSD or other physical and mental conditions may be service-connected, including trauma due to intimate partner violence.

**Sec. 3. Chronicity and Continuity:** As previously stated, a veteran will be successful in establishing service connection if he or she can provide evidence linking the current disability to the period of military service. The disability or residuals of the disability must still be present at the time of filing a claim (chronic). Some disabilities are shown to be chronic by federal regulation or law (See Appendix B) and others must be proven to be chronic by evidence of continuing treatment from military service to the present or a medical opinion. Some chronic disorders are in fact diseases that progress over time and continue to be more disabling. Other conditions are greatly improved with aggressive medical treatment. Some claimed disabilities do not appear to be significant when first discovered. However, repeated medical treatment or symptoms can demonstrate the severity of a disability. When determining whether a disability is chronic, the VA decision maker is very concerned with certain facts. The veteran should be prepared to answer questions such as: When did you first become aware of the disability? Did you seek treatment for the disability? When and where was that treatment? Who knows about the disability? The most helpful assistance you can provide is to make the veteran aware that he or she should provide this documentation to VA and consult with the DSO as to any needed forms or follow-up.

**Sec. 4. Determination of Cause of Death:** Surviving spouses and children are entitled to service-connected death benefits known as Dependency and Indemnity Compensation (DIC) if the veteran’s death is attributed to his or her active military service. A decision must be made based on the veteran’s claim file and any necessary evidence such as a death certificate and medical evidence obtained in developing a claim for death benefits. Once the record is complete and reviewed, the VA must decide the factors that caused the veteran’s death. Their task is much easier if the death certificate shows a previously established service-connected disability as the primary or contributory cause of death. However, if the veteran never submitted a claim, the surviving spouse or child may still establish that the cause of death should be service-connected. Always check to see if the primary or contributory cause of death is something that is commonly caused by a service connected disability, or is a presumptive disability. VA owes the duty to assist to survivors as well as veterans: VA will gather records that the survivor tells VA about and VA will obtain a retrospective medical opinion if needed.

*A. Primary Cause of Death* -- There will be a grant of service connection for the cause of death if the primary cause of death is a service-connected disability or there is evidence supporting a later finding of service connection for the primary cause of death. A doctor may offer a medical opinion after the veteran’s death as to whether the cause of death was at least as likely as not related to the veteran’s military service or a service-connected disability.

*B. Contributory Cause of Death* -- There are many claims for service-connected death benefits mainly because a veteran was service-connected for some disability during his or her lifetime. The disability did not cause death but may have been a contributing factor in hastening death. That is a judgment to be made by the Department of Veterans Affairs. VA must decide what effect the service-connected disability had in the subsequent death. If the service-connected disability involved a vital organ such as the heart, lungs, kidneys or liver, there is a strong likelihood that contributory cause of death will be conceded.

C. *Suicide* -- It is the consistent position of the Department of Veterans Affairs that the act of suicide is strong evidence of mental unsoundness (and therefore not due to willful misconduct). A veteran who commits suicide is viewed as a mentally ill individual and the VA is required to make a formal finding regarding mental unsoundness. This is called a memorandum rating specifically for the death benefit claim. If the veteran was service-connected for a mental illness during his or her lifetime, DIC may be granted on a secondary basis.

D. *Death in Service* -- Death in service establishes entitlement to service-connected death benefits provided there is no evidence of willful misconduct in the circumstances surrounding the death. This is identical to the concept of service-connection for disabilities that arise during active duty. A final report of casualty (DD Form 1300) should be submitted with the claim. Casualty assistance officers will assist with burial planning and claims for DoD and VA benefits due to death in service.

**Sec. 5. Disability or Death Due to VA Care:** Occasionally a veteran will sustain additional injury or die while undergoing treatment by the VA. The injured veteran or his or her survivors may claim additional benefits from VA if the injury or death resulted from the negligence of the VA. Benefits, if payable, are in the same amount “as if” the disability or death were service connected. However, some ancillary benefits such as the service-connected burial allowance are only available to veterans with service connected disabilities.

Note: If the veteran was receiving treatment for a service-connected condition, any injury, death, or increase in disability will be service-connected on a secondary basis. Negligence does not need to be established in such a case, and all ancillary benefits can be paid.

#### **Sec. 6. Application Forms:**

It is recommended that the veteran work directly with the VFW DSO to complete any necessary forms. The exception is that the veteran should file the “intent to file” form, VA 21-0966 as soon as you know they may want to file for benefits, so that benefits, if granted, will begin as soon as possible. Please refer to General Information, Section 3, procedures for submitting claims and intent to file forms to the DSO.

The complete, current listing of VA forms may be found on VA’s website at <http://www.va.gov/forms>. Below are descriptions of some of the basic compensation forms.

- **IMPORTANT:** Effective March 24, 2015, VA no longer accepts “informal claims”. All claims **MUST** be filed on standard claims forms as noted below. We recommend that the veteran fill out and sign VA Form 21-0966, *Intent to File for Compensation and/or Pension, or Survivors Pension and/or DIC*, and mail or fax it to VA, complete an Intent to File through eBenefits, or call the VA at 1-800-827-1000 to complete an “intent to file”. The day an intent to file is received by VA can be considered the effective date of the claim if a completely filled out claim is received within one year.
- VA Form 21-22, *Appointment of Veterans Service Organization as Representative*, must be submitted with every claim in which there is not already a recent VA Form 21-22 on file with VA. Without this form, the VFW cannot represent the veteran or claimant. There is now a requirement that the DSO or other accredited representative sign the 21-22 along with the veteran or claimant or sign online to accept representation, if the veteran completes the form through eBenefits. Please see Part One of the Post Service Officer Guide: all forms should be forwarded by the claimant to the DSO or other accredited service officer. Post Service Officers cannot offer advice on how to fill out forms, but can provide information so the veteran can gather information and work on the claim with the DSO or other accredited VFW representative. All original compensation claims and pre-discharge claims must be filed on a VA Form 21-526EZ, *Application for Disability Compensation and Related Compensation Benefits*, and must be signed by the veteran.
- A Fully Developed Claim (FDC) must be filed on a VA Form 21-526EZ. The claim must comply with the requirements as stated on the 21-526EZ. Any questions should be referred to your VFW DSO.
- Claims for compensation filed after an original claim is filed must be on a standard VA Form. Claims for new disabilities or increased disability must be filed using VA Form 21-526EZ. Claims for compensation that were previously denied should be filed using VA Form 20-0995, *Decision Review Request: Supplemental Claim*.
- Please note that a VA Form 21-4138 is no longer acceptable as a claim form on its own, but may be filed with another claim form to provide additional detail. VA requires additional claim forms to be used to



support certain benefits such as claims for PTSD, unemployability, aid and attendance, etc. For more information, refer to the instructions on the primary claim form (21-526EZ or 21p-534EZ for survivors).

- Claims for Dependency and Indemnity Compensation (DIC) (Service connected death)
  - VA Form 21p-534EZ– Application for DIC, Death Pension and Accrued Benefits
  - VA Form 21p-0847 – Request for Substitution of Claimant Upon Death of Claimant
- Reporting dependency information
  - VA Form 21-686c – Declaration of Status of Dependents
  - VA Form 21-674 – Request for Approval of School Attendance

Note: Veterans may now file VA Form 21-526EZ and 21-686c online through the website “eBenefits”. It is recommended that the veteran speak with an accredited VFW representative in all cases before submitting the claim. Accredited VFW representatives have access to view and help the veteran complete their claim through electronic means including VA systems and VFW’s case management system.

## APPENDIX A

### LEGAL AUTHORITY

In discussing any government program, one must be aware of the authority for the rules governing claims, the development of claims and the rationale behind decisions of eligibility and entitlement. Title 38 of the United States Code is the section of federal law that allows the Department of Veterans Affairs to administer veterans benefit programs. Title 38 of the Code of Federal Regulations interprets the United States Code and provides more detail on what benefits are offered, the evidence needed to grant benefits and the process of deciding claims. Questions about these regulations should be addressed to the DSO who is trained in awareness of the current rules and can use this knowledge to assist veterans and claimants in filing for disability compensation benefits.

The necessary authority for the information in this chapter is

**Title 38 Code of Federal Regulations (CFR), Part 3 (Adjudication) and Part 4 (Schedule for Rating Disabilities).**

**The above referenced parts of Title 38, CFR can be found at <http://www.ecfr.gov>. Any questions regarding benefits eligibility should be referred to the Department Service Officer.**

## APPENDIX B

### PRESUMPTIONS

Service connection may be granted for a number of medical conditions causing disability for veterans who meet certain conditions of service, even though the disabilities were not manifested or diagnosed during active service. Please note that if a veteran meets one of the conditions of service and developed a disability after service, but the disability is not listed below, he or she can still file for compensation on a direct basis. In this case, the veteran will need to submit an opinion from a medical professional linking an event in service (such as exposure to contaminated water or herbicides) to the development of the veteran’s current disability.

*A. Chronic Diseases:* Service connection may be granted for the following chronic diseases after completion of 90 days of continuous active service (if the active service was before January 1, 1947, at least one day of service must have been during wartime) if manifested to a compensable degree within the timeframe otherwise specified:

Anemia, primary	Myocarditis
Arteriosclerosis	Nephritis
Arthritis	Organic disease of the
Atrophy, progressive,	nervous system
muscular	Osteitis deformans
Brain hemorrhage	(Paget’s disease)
Brain thrombosis	Osteomalacia
Bronchiectasis	Palsy, bulbar
Calculi of the kidney,	Paralysis agitans (Parkinson’s Disease)
bladder or gallbladder	Psychoses

Cardiovascular-renal disease, including hypertension (1)	Purpura idiopathic, hemorrhagic
Cirrhosis of the liver	Raynaud's disease
Coccidioidomycosis	Sarcoidosis
Diabetes Mellitus	Scleroderma
Encephalitis lethargica residuals	Sclerosis, amyotrophic lateral (ALS or Lou Gehrig's Disease) (5)
Endocarditis (2)	Sclerosis, multiple (5)
Endocrinopathies	Syringomyelia
Epilepsies	Thromboangiitis obliterans (Buerger's Disease)
Hansen's disease (5)	Tuberculosis, active (5)
Hodgkin's disease	Tumors (3)
Leukemia	Ulcers, peptic (gastric or duodenal) (4)
Lupus Erythematosus, systemic (SLE)	
Myasthenia gravis	
Myelitis	

(1) Cardiovascular-renal disease shown under (A) of this section, includes hypertension. This term applies to combination involvement of the type of arteriosclerosis, nephritis and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the one-year period will be given the same benefit of service connection as any of the chronic diseases listed.

(2) Endocarditis shown under (A) of this section, covers all forms of valvular heart disease.

(3) Tumors shown under (A) of this section, means malignant tumors anywhere in the body, or malignant or benign tumors of the brain, spinal cord, or the peripheral nerves.

(4) Concerning ulcers shown under (A) of this section, a proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology. In short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

(5) The statutory time limits for presumptive service connection for certain diseases are extended past the one-year period (see 38 CFR 3.307). Hansen's disease and tuberculosis must manifest within three years after service, and multiple sclerosis must manifest within seven years after service. There is no time limit for amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease). ALS will be presumptive service-connected for any veteran who develops the disease any time after active continuous military service of 90 days or more. Note: there are no time limits on filing for service connected compensation, but to apply these special rules, symptoms of the disability need to arise in the presumptive period.

*B. Tropical Diseases:* Presumptive service connection may be granted for diseases as a result of tropical service, if manifested to a compensable degree (10% or more) within one year following release from active service of 90 continuous days. If service was before January 1, 1947, six months of continuous active service is required, or 90 continuous days with at least one day during wartime.

Amebiasis	Loiasis
Blackwater fever	Malaria
Cholera	Onchocerciasis
Dracontiasis	Oroya fever
Dysentery	Pinta
Filariasis	Plague
Leishmaniasis,	Schistosomiasis
including Kala-azar	Yaws
	Yellow fever

Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof may be service-connected.

*C. Prisoner of War Presumptions:* If a veteran is a former prisoner of war, the following diseases shall be service connected if manifest to a degree of disability of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of 38 CFR § 3.307 are also satisfied.

- Psychosis
- Any of the anxiety states
- Dysthymic disorder (or depressive neurosis)
- Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite
- Post-traumatic osteoarthritis
- Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, arrhythmia)
- Stroke and its complications
- Osteoporosis, if the Secretary determines that the veteran has Post-Traumatic Stress Disorder.

If the veteran is a former prisoner of war and was interned or detained for not less than 30 days, the following diseases shall be service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of Sec. 3.307 are also satisfied.

- Avitaminosis
- Beriberi (including beriberi heart disease)
- Chronic dysentery
- Helminthiasis
- Malnutrition (including optic atrophy associated with malnutrition)
- Pellagra
- Any other nutritional deficiency
- Irritable bowel syndrome
- Peptic ulcer disease
- Peripheral neuropathy except where directly related to infectious causes
- Cirrhosis of the liver
- Osteoporosis

*D. Radiation-Exposed Veterans:* A veteran who, while serving on active duty (or active duty for training or inactive duty training) participated in a radiation-risk activity, shall be service-connected for the following diseases if they become manifest at any time after service.

- Leukemia (other than chronic Lymphocytic Leukemia)
- Cancer of the thyroid
- Cancer of the breast
- Cancer of the pharynx
- Cancer of the esophagus
- Cancer of the stomach
- Cancer of the small intestine
- Cancer of the pancreas
- Multiple Myeloma
- Lymphomas (except Hodgkin's Disease)
- Cancer of the bile ducts
- Cancer of the gall bladder
- Primary liver cancer (except if cirrhosis or hepatitis B is indicated)

Cancer of the salivary gland  
Cancer of the urinary tract  
Bronchiolo-alveolar carcinoma  
Cancer of the bone  
Cancer of the brain  
Cancer of the colon  
Cancer of the lung  
Cancer of the ovary

**NOTE (1):** The term urinary tract means kidneys, renal pelves, ureters, urinary bladder and urethra.

**NOTE (2):** If a radiation-exposed veteran's illness is not listed above, there is an alternative procedure for VA to grant presumptive service connection for the disability. Notes on this process can be found at 38 CFR 3.311.

*E. Diseases Associated with Exposure to Certain Herbicide Agents:* If a veteran was exposed to an herbicide agent during active military, naval, or air service, the following diseases shall be service connected if manifested to a degree of 10 percent or more at any time after service if the requirements of 38 CFR 3.307(a)(6) for place and time of service are met even though there is no record of such disease during service, provided further that the rebuttable presumption provisions of 38 CFR 3.307(d) are also satisfied.

AL amyloidosis  
Chloracne or other acneform disease consistent with chloracne  
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)  
Hodgkin's disease  
Ischemic heart disease (including, but not limited to, acute, subacute, and old myocardial infarction;  
atherosclerotic cardiovascular disease including coronary artery disease (including coronary spasm) and  
coronary bypass surgery; and stable, unstable and Prinzmetal's angina)  
All chronic B-cell leukemias (including, but not limited to, hairy-cell leukemia and chronic lymphocytic  
leukemia)  
Multiple myeloma  
Non-Hodgkin's lymphoma  
Parkinson's disease  
Early-onset peripheral neuropathy  
Porphyria cutanea tarda  
Prostate cancer  
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)  
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma)

The term "soft-tissue sarcoma" includes the following:

Adult fibrosarcoma  
Dermatofibrosarcoma protuberans  
Malignant fibrous histiocytoma  
Liposarcoma  
Leiomyosarcoma  
Epithelioid leiomyosarcoma (malignant  
leiomyoblastoma)  
Rhabdomyosarcoma  
Ectomesenchymoma  
Angiosarcoma (hemangiosarcoma and  
lymphangiosarcoma)  
Proliferating (systemic) angioendotheliomatosis  
Malignant glomus tumor  
Malignant hemangiopericytoma  
Synovial sarcoma (malignant synovioma)  
Malignant giant cell tumor of tendon sheath  
Malignant schwannoma, including malignant  
schwannoma with rhabdomyoblastic differentiation

(malignant Triton tumor), glandular and epithelioid  
malignant schwannomas  
Malignant mesenchymoma  
Malignant granular cell tumor  
Alveolar soft part sarcoma  
Epithelioid sarcoma  
Clear cell sarcoma of tendons and aponeuroses  
Extraskelatal Ewing's sarcoma  
Congenital and infantile fibrosarcoma  
Malignant ganglioneuroma

**NOTE (1):** The 2020 National Defense Authorization Act, once signed into law, is slated to add the following three conditions as presumptive for herbicide exposure:

Hyperthyroidism  
Parkinsonism (or Parkinson's-like symptoms)  
Bladder cancer

**NOTE (2):** This section refers to exposure to “Agent Orange” and other herbicides that were mainly used to defoliate areas of Vietnam and the Korean DMZ during the Vietnam War. Veterans who served on land in Vietnam, including inland waterways, and in certain units stationed on the Korean DMZ, qualify for the presumption as noted in 38 CFR 3.307. Service members who served aboard or maintained C-123 aircraft used in the herbicide spraying missions after the Vietnam War were recognized to have been exposed to Agent Orange and other herbicides. These service members also qualify for the presumption noted in 38 CFR 3.307. Beginning on January 1, 2020, the “Blue Water Navy Vietnam Veterans Act of 2019”, Public Law 116-23, expanded the presumption to include veterans who served in the waters offshore Vietnam during the Vietnam War. This area is defined in the law and includes locations up to 12 nautical miles offshore from the landmass of Vietnam. As of the writing of this guide, VA has not yet updated 38 CFR 3.307 to include this group, but VA is granting presumptive service connection for these veterans and service connected cause of death for their survivors.

The herbicides were also used in other locations: on specific Air Force Bases in Thailand, in certain locations in the United States, Puerto Rico and other territories for testing, and in locations where they were disposed of, including Johnston Island. In locations other than those mentioned in 38 CFR 3.307, or where their service is not verified in the veteran's DD-214 or personnel file, veterans must prove their exposure on a case-by-case basis. For more information, please see the VA Public Health Website: <http://www.publichealth.va.gov/exposures/agentorange/>

NOTE (2): For purposes of this section, Ischemic Heart Disease does not include hypertension or peripheral manifestation of arteriosclerosis such as peripheral vascular disease or stroke, or any other condition that does not qualify within the generally accepted medical definition of ischemic heart disease.

In addition to the above, 38 U.S.C. 1805 and 38 CFR 3.814 provide that a monthly monetary allowance shall be paid to any child who suffers from Spina Bifida if the child's mother or father was exposed to herbicides in Vietnam or the Korean DMZ before the child's conception. The law required VA to establish three levels of disability for this allowance according to the severity of residual conditions. Up to date rating amounts may be found here: <https://www.benefits.va.gov/compensation/rates-index.asp>.

Similarly, 38 U.S.C. §1812 and 38 CFR 3.815 provide that a monthly monetary allowance shall be paid for covered birth defects for the children of women Vietnam veterans exposed to herbicides. The term covered birth defect means any birth defect identified by VA as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975, and that has resulted, or may result, in permanent physical or mental disability. However, the term covered birth defect does not include a condition due to a:

Familial disorder;  
Birth-related injury; or  
Fetal or neonatal infirmity with well-established causes.

Covered birth defects include, but are not limited to, the following (however, if a birth defect is determined to be familial in a particular family, it will not be a covered birth defect):

Achondroplasia;  
Cleft lip and cleft palate;  
Congenital heart disease;  
Congenital talipes equinovarus (clubfoot);  
Esophageal and intestinal atresia;  
Hallerman-Streiff syndrome;  
Hip dysplasia;  
Hirschsprung's disease (congenital megacolon);  
Hydrocephalus due to aqueductal stenosis;  
Hypospadias;  
Imperforate anus;  
Neural tube defects (including spina bifida, encephalocele, and anencephaly);  
Poland syndrome;  
Pyloric stenosis;  
Syndactyly (fused digits);  
Tracheoesophageal fistula;  
Undescended testicle; and  
Williams syndrome.

The law required VA to establish four levels of disability for this allowance according to the severity of residual conditions. If a covered child has more than one birth defect due to the veteran parent's herbicide exposure, the child will be paid at the level of disability for the most severe condition. Current payment amounts may be found at: <http://www.benefits.va.gov/compensation/rates-index.asp>.

Character of discharge of the veteran is not a factor for benefits to be paid to the child for spina bifida or other birth defects. The child is also eligible for VA health care and health-related rehabilitation benefits.

*F. Disease Associated with Camp Lejeune Contaminated Water:*

On January 13, 2017, VA published a final rule establishing presumptive service connection for eight medical conditions for any of the veterans, reservists and Guard members who served at Camp Lejeune, N.C. (including Marine Corps Air Station New River) for 30 or more days between August 1, 1953 and December 31, 1987. The 30 days do not have to be consecutive. This presumptive service connection is based on exposure to toxic chemicals present in the water on base during that time period.

The medical conditions are:

- Adult leukemia,
- Aplastic anemia and other myelodysplastic syndromes,
- Bladder cancer,
- Kidney cancer,
- Liver cancer,
- Multiple myeloma,
- Non-Hodgkin's lymphoma and
- Parkinson's disease.

These conditions were selected as a result of review of scientific studies on the chemicals that were known to have contaminated the water at Camp Lejeune. The regulation can be found at 38 CFR 3.307 and 3.309(f).

Other medical conditions arising in veterans exposed to the contaminated water may be filed on a direct basis, but veterans will need a medical opinion linking their current condition to their exposures at Camp Lejeune.

Survivor benefits are available for eligible surviving spouses and children of veterans who served at Camp Lejeune during the water contamination and died as a result of any of the presumptive conditions.

Note that there is an expanded list of fifteen conditions approved for healthcare treatment purposes (38 CFR 17.400). Veterans may receive free VA healthcare for these conditions, and dependents of service members who lived in on-base housing during the presumptive period (1953-1987) are eligible for reimbursement for out-of-pocket medical expenses paid for treatment for these fourteen conditions. Dependents are NOT entitled to any compensation for disabilities arising from toxic exposure to contaminated water at this time. To learn more and to apply online for reimbursement of expenses, please visit [publichealth.va.gov/exposures/camp-lejeune](http://publichealth.va.gov/exposures/camp-lejeune).

*G. Disease Associated with Exposure to Mustard Gas and Lewisite:* Service connection may be granted to any veteran with full body exposure to nitrogen or sulfur mustard during military service, including those exposed to mustard gas during warfare in World War I; those present at the German bombing raid on Bari, Italy, in World War II; and those engaged in manufacturing and handling mustard gas during their military service who suffer from the chronic forms of:

Laryngitis	Squamous cell carcinomas of
Bronchitis	the skin
Emphysema	Nasopharyngeal cancer
Asthma	Lung cancer (except mesothelioma)
Conjunctivitis	Corneal opacities
Keratitis	Laryngeal cancer
Chronic obstructive Pulmonary disease	Scar formation

Those veterans exposed to nitrogen mustard are eligible for presumptive disability compensation for Acute nonlymphocytic leukemia, also called acute myeloid leukemia (AML), in addition to the above diseases.

Those veterans exposed to Lewisite who are suffering from a chronic form of laryngitis, bronchitis, emphysema, asthma, or chronic obstructive pulmonary disease, are eligible for presumptive disability compensation.

*H. Payment of Compensation for Persian Gulf War Veterans with Certain Chronic Disabilities:* Service connection may be granted to Persian Gulf veterans with a qualifying chronic disability (10% or more) that became manifest during or following military service in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War. For this benefit, chronic disability means a chronic disability in existence for at least 6 months and resulting from the following (or any combination of the following):

An undiagnosed illness or, a medically unexplained chronic multi-symptom illness (such as chronic fatigue syndrome, fibromyalgia, or functional gastrointestinal disorders, including irritable bowel syndrome) that is defined by a cluster of signs or symptoms. Signs or symptoms that may be a manifestation of an undiagnosed illness or a chronic multi-symptom illness include the following:

- Fatigue.
- Unexplained rashes or other dermatological signs or symptoms.
- Headache.
- Muscle pain.
- Joint pain.
- Neurological signs and symptoms.
- Neuropsychological signs or symptoms.
- Signs or symptoms involving the upper or lower respiratory system.
- Sleep disturbances.
- Gastrointestinal signs or symptoms.
- Cardiovascular signs or symptoms.
- Abnormal weight loss.
- Menstrual disorders.

**NOTE:** The term "Gulf War" veteran means a veteran who served on active military, naval, or air service in the Southwest Asia Theater of operations during the Gulf War. The Gulf War extends from August 2, 1990, through a date yet to be determined by law or Presidential proclamation (38 U.S.C. § 101(33)). The Southwest Asia Theater of operations includes: Iraq, Kuwait, Saudi Arabia, The neutral zone between Iraq and Saudi Arabia, The United Arab Emirates, Bahrain, Qatar, Oman, The Gulf of Aden, The Gulf of Oman, The Persian Gulf, The Arabian Sea, The Red Sea, and the airspace above these locations.

On September 29, 2010, VA published a final regulation on additional presumptive diseases for Southwest Asia service if diagnosed within 1 year of discharge:

- Brucellosis
- Campylobacter jejuni
- Coxiella Burnetii (Q fever)
- Malaria
- Nontyphoid Salmonella
- Shigella
- West Nile Virus

The following disabilities will be service-connected at any time following discharge:

- Mycobacterium tuberculosis
- Visceral Leishmaniasis

For these additional presumptive diseases (infectious diseases), service in Afghanistan on or after September 19, 2001 qualifies for the presumption. Service in Afghanistan does not qualify for the other Gulf War presumptions.

## **DISABILITY RATING**

**Sec. 1. Rating:** The Department of Veterans Affairs has the legal responsibility to determine if a veteran or eligible claimant is entitled to a benefit once all evidence, including service records, medical and lay affidavits and statements, examinations and other evidence, is obtained. An appropriate rating decision will be made by VA to decide questions including service connection, initial percentage of disability, effective date of entitlement, increase or reduction, and special statutory evaluation (special monthly compensation).

*A. Increase:* When service connection has been previously granted and the disability worsens, a claim for increase may be filed. Increased evaluations include evaluations above the current percentage assigned and may include special benefits such as housebound or aid and attendance benefits. To support a claim for increase, it will be necessary for the veteran to submit acceptable evidence indicating that his/her disability has in fact worsened or become more severe. The veteran's statement alone that a service-connected disability has become worse will trigger VA's duty to assist, and VA will likely provide a new exam to evaluate the disability. Be aware that VA can always reduce a rating if the disability has improved, or continue the current rating. The veteran may want to have their VA or private physician fill out a Disability Benefits Questionnaire or "DBQ" which summarizes the veteran's symptoms in a way that matches up to the VA rating schedule. If the DBQ is properly completed, VA may be able to rate the claim without scheduling an exam, saving processing time. For a complete list of DBQs, please see VA's website. Note that the DBQ requests that the physician call VA for the appropriate fax number to submit the DBQ. This is not necessary – instead, the veteran should submit the DBQ to the VFW Department Service Office with his or her claim forms for review. The physician **MUST** include his or her signature, medical license number and contact information.

*B. Prestabilization:* When a claim for disability is filed within a year from date of discharge from service, a prestabilization rating may be assigned if the disability is still healing or is not stabilized. The veteran may be rated as follows:

- Unstabilized condition with severe disability, substantially gainful employment is not feasible or advisable: 100%
- Unhealed or incompletely healed wounds or injury, material impairment of employability likely: 50%.

This rating will continue for a twelve-month period following discharge from service and may be changed to a regular schedular total rating or rating authorizing a greater benefit at any time. An examination will be scheduled to determine the true level of disability not earlier than six months nor more than twelve months following discharge. In cases where the examination warrants a reduced evaluation, the reduction will not take place prior to the full year



period or under the provisions of 38 C.F.R. 3.105(e), whichever is later. The veteran is given his or her due process and the opportunity to submit evidence to avoid or cancel the reduction.

*C. Stabilization of Rating:* In service-connected cases, the disability will be stabilized with no future examinations once the disability is established as static; when the disability has persisted without substantial improvement for five years or more; where the disability is permanent in character and of such nature that there is no likelihood of improvement; when the veteran is over 55 years of age, except in unusual circumstances; where the rating is the minimum under the particular diagnostic code; or, where a combined evaluation would not be affected by reduction in one or more conditions. If the disability has not reached this stabilized level, the veteran can expect reexamination to determine whether the disability has increased, decreased, or stayed the same. Re-examinations generally are scheduled five years from the initial rating, but may be scheduled sooner, usually in 18 month increments, on a case-by-case basis.

In nonservice-connected cases where a permanent and total rating for pension purposes has been made, re-examinations will not be requested unless there is evidence that the veteran is no longer entitled to pension benefits.

**NOTE:** When it is determined by VA that an examination or a period of hospitalization for observation is necessary, persons in receipt of compensation or pension are required to report and submit to examination when requested. Failure to do so may subject them to possible reduction or discontinuance of monetary benefits.

**Sec. 2 Rating Schedule:** The VA Rating Schedule is a federal regulation. It is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries resulting from or manifesting during military service. It contains evaluations of specific injuries or disabilities to compensate for reduction in earning capacity in civilian occupations. The reduction of earning capacity is based on the concept of the average person rather than the individual's specific ability to overcome disability. Every disabled person is considered to have lost some degree in earning capacity compared to a healthy individual. The current schedule varies from disability to disability but provides degrees of impairment evaluated from 0% to 100% in 10% increments.

*A. Combined Ratings:* Evaluations are assigned for each service connected disability. These evaluations are not added together. They are combined according to a table contained in 38 CFR 4.25 (the complete Rating Schedule can be found at [www.ecfr.gov](http://www.ecfr.gov) (38 CFR 4.40-4.150)

Note: Most veterans do not understand how their combined evaluation is determined. Since combined evaluations are complicated, you may wish to simply refer veterans to the Department Service Officer.

However, for your understanding, the best way to explain combined evaluations is that VA does not simply add percentages together, but instead applies each percentage to the "total person" individually, starting with the most severe disability first. This means that if a veteran is rated for three conditions, one at 40%, one at 30%, one at 20%, and one at 10%, VA will not simply add the percentages to 100%. Instead, they will apply them incrementally as follows:

- Starting with a 100% able person, VA will apply the 40% disability, meaning the veteran will be considered 40% disabled and 60% able.
- VA then applies the 30% disability to the remaining 60%, meaning the veteran is now only 42% able and 58% disabled. Since VA rounds to increments of 10, the veteran is now 60% disabled and 40% able.
- VA then applies the 20% disability to the remaining 40%, meaning the veteran is now 32% able and 68% disabled. Since VA rounds to the nearest 10, the veteran is now 70% disabled and 30% able.
- VA finally applies the 10% disability to the remaining 30%, meaning the veteran is now 27% able and 73% disabled. Since VA rounds to the nearest 10, the veteran remains 70% disabled for a combined disability rating of 70%.
- This is similar to shopping with multiple discount coupons for 20% off. Though you can apply all of them, they are not simply added up, they are applied incrementally to the remaining total price.

For a chart explaining how VA calculates combined ratings, refer veterans to 38 CFR 4.25.

*B. Bilateral Factor:* VA recognizes that disabilities affecting paired extremities (both arms, both legs or all four limbs) as well as certain paired muscles create greater impairment than do disabilities affecting unrelated areas of the body. As a consequence, VA will combine the evaluations from the paired extremities, take 10 percent of that number and add it to the combined evaluation. This extra 10 percent usually, but not always, increases the overall

compensation the veteran receives. Questions concerning whether evaluations of disabilities are subject to the bilateral factor, or whether a bilateral factor is properly applied, should be referred to the Department Service Officer.

*C. Pyramiding:* In arriving at overall disability ratings, VA takes care to avoid pyramiding. The term “pyramiding” means rating the same disability or same symptoms under more than one disability code. For example, a veteran will receive only one evaluation for mental health effects even if multiple diagnoses such as PTSD and depression exist. However, if a disability causes different symptoms, such as a traumatic brain injury causing headaches and memory loss, separate ratings may be obtained for each symptom.

*D. Amputation Rule:* The combined ratings for disabilities of an extremity shall not exceed the rating for amputation of that extremity at the highest disability level in that extremity if amputation were performed. Essentially, VA will not pay a veteran a higher amount of compensation for a poorly working extremity than for an amputated extremity.

*E. Higher Rating:* Where the evidence is split between two disability evaluations, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned. As advocates, if the evidence is at least equal, we will always argue for the higher evaluation.

**Sec. 3 Protection:** Laws administered by VA provide protection for service connection and disability evaluation in certain circumstances as follows:

*A. 10 Year Protection — Service Connection:* Service connection for any disability or death which has been in effect for at least ten continuous years will not be terminated except upon a showing that the original grant was based on fraud or it is clearly shown from the military records that the person concerned did not have the requisite service or character of discharge. The ten-year period will be computed from the effective date of the VA finding of service connection to the effective date of the rating decision terminating service connection. This protection also extends to claims for Dependency and Indemnity Compensation or Death Compensation.

*B. 20 Year Protection – Disability Evaluation:* A disability which has been continuously rated at or above any evaluation of disability for twenty continuous years or more for compensation purposes will not be reduced to a lower evaluation except upon a showing that the original rating was based on fraud or lack of proper status (i.e., not a veteran). The twenty-year period will be computed from the effective date of the evaluation, not the date of the rating decision. Likewise, a rating of permanent total disability for pension purposes, which has been in effect for twenty or more continuous years, will not be reduced except upon showing of fraud in the rating.

**Sec. 4 Total Disability:** Total disability will be considered to exist when there is any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Permanent total disability shall exist when the impairment is reasonably certain to continue throughout the life of the disabled person.

*A. Schedular:* Disability or disabilities ratable at 100% under the published criteria in the VA’s Schedule for Rating Disabilities is considered total disability. A veteran receiving compensation on a schedular basis may still continue to work without jeopardizing VA benefits, except if the rating is based on unemployability.

*B. Unemployability:* Unemployability with less than 100% disability under the schedule will nonetheless be considered as total disability when service-connected disability (or disabilities) is the sole cause of unemployability without regard to age. If a veteran has one service-connected disability ratable at 60% or more, or two or more service-connected disabilities with a combined evaluation of 70%, one of which is at least 40%, and claims to be unemployable, VA must consider the claim and provide an examination. The veteran must be unable to pursue gainful employment because of these disabilities and not the result of other disabilities or personal motivation.

There are exceptional cases supporting a grant of a total evaluation based on unemployability with less than the percentage evaluations noted above. The grant is considered as an extra-schedular rating. The evidence must show that there is present an unusual disability factor, such as marked interference with employment or frequent periods of hospitalization, which renders the veteran unable to secure or follow a substantially gainful occupation. Example: If a veteran with service-connected migraines (which have a maximum rating percentage of 50%), has symptoms so severe that they cause long absences from work and frequent bedrest, the veteran could be paid at the 100% rate by reason of individual unemployability on an extra-schedular basis.

*C. Hospitalization:* A total disability rating is not always permanent in nature. Some total ratings are temporary with anticipated improvement or recovery expected. A temporary total rating will be assigned for disabilities not already rated at 100% when it is established that a service-connected disability has required hospitalization for a period in excess of 21 days or hospital observation at VA expense for a service-connected disability for a period in excess of 21 days. The provision in excess of 21 days requires the veteran’s physical presence in the hospital. This means that

any absence, except passes of 4 days or less, will be considered as interrupting the continuity of the first 21 days of hospitalization. When the requirement is met, the total rating will be assigned from the first day of hospitalization. Meritorious claims of veterans who are discharged prior to the 21<sup>st</sup> day of hospitalization but need post-hospital care and a prolonged period of convalescence will be referred to VA Central Office (Director of the Compensation Service).

D. *Convalescent Rating*: A total disability rating will be assigned without regard to the provisions of the rating schedule when it is established that hospital treatment of a service-connected disability, irrespective of the length of hospitalization, resulted in:

1. Surgery necessitating at least one month of convalescence, or
2. Surgery with severe postoperative residuals shown at hospital discharge, such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast or the necessity for house confinement or continued use of a wheelchair, or
3. Immobilization by cast, without surgery, of one major joint or more shown at hospital discharge or performed on an outpatient basis.

When the requirement is met, the total rating will be assigned from the first day of hospitalization and will continue for a period of 1, 2 or 3 months from the first day of the month following hospital discharge or outpatient release. Extension of 1, 2 or 3 months beyond the initial three months may be authorized. Extension of one or more months up to six months beyond the initial six months may also be authorized under certain circumstances.

E. *Prestabilization Rating*: See Sec. 1-B.

**Sec. 5. Special Monthly Compensation:** The law allows for greater compensation based on anatomical loss or functional loss of use of major body organs and extremities, and combinations of specific losses. This is referred to as special monthly compensation and may be paid in place of or in addition to a veteran's basic disability rating. Benefits may be authorized if a veteran has anatomical loss or loss of use of one leg, one foot, one hand or one eye. Greater benefits are permitted for loss of both legs, both feet, both hands or both eyes. Benefits are authorized also for loss of speech, blindness of one or both eyes, total deafness, loss of both buttocks, and loss of reproductive organs. There are many combinations of loss that generate specific payments. A complete explanation for those combinations is found in 38 CFR 3.350. These ratings represent the unique and severe impact on quality of life associated with that particular combination of disabilities.

**Sec. 6. Aid and Attendance:** Need for aid and attendance will be considered to exist when the veteran is so nearly helpless that he or she cannot protect himself or herself from hazards and dangers incident to daily environment, or cannot perform most self-care activities. It is not required that the need be constant (every minute of the day) but only that the services of another person to perform skilled care for the veteran be needed regularly. Total blindness or being bedridden also meets requirements for regular aid and attendance. This benefit is available under the compensation and pension programs: there must be basic entitlement to compensation, pension, DIC or Parents' DIC to be eligible for aid and attendance. To be entitled to Aid and Attendance as a supplement to compensation, the veteran must require assistance solely due to service-connected disability or disabilities. Aid and attendance may be added to pension regardless of the disability or disabilities that causes the need, but it is usually a lower payment. For compensation purposes, a veteran may be so disabled to require a higher level of care which must be provided by or supervised by a professional health care specialist. This level of disability is considered special monthly compensation and is noted in 38 CFR 3.350, above.

**Sec. 7. Housebound:** The term "housebound" means that a veteran is basically confined to the home or immediate premises because of his or her disabilities. This benefit is added to compensation or pension and is not a stand-alone benefit. A veteran may also qualify by having a service-connected disability rated at 100% and additional independent service-connected disabilities of 60% or more (this is called statutory housebound). The ability to leave one's home for medical treatment or emergency does not preclude entitlement.

## COMPENSATION PAYMENTS FOR DISABILITY

**Sec. 1. Compensation:** Compensation is a government authorized monthly payment based on disability resulting from military service. It is meant to offset the anticipated loss of earnings because of disability. The payments are made for disabilities in multiples of 10% up to 100%. Some veterans have greater disability due to the unique location of the disability or in combination with other service-connected disabilities. An example would be loss of vision or loss of use of both feet. This greater disability results in special monthly compensation payments resulting in

disabilities greater than 100% under federal law. A compensable evaluation of 30% or more entitles a veteran to additional monthly compensation for qualifying dependents.

Current compensation rates may be found at: <http://www.benefits.va.gov/compensation/rates-index.asp>. Rates are updated yearly to reflect cost of living adjustments. Please direct any questions on compensation rates to the DSO as the DSO will have access to VA computer systems to determine whether the correct rate is being paid based on the veteran's disabilities and number of dependents.

**Sec. 2. Compensation for Dependents:** Veterans rated 30% or higher are entitled to additional compensation for their dependents. The additional monthly compensation payable to a veteran because of dependents is a percentage of the amount that would be payable if he or she were rated as being totally disabled. The monthly amounts of this compensation may be found at: <http://www.benefits.va.gov/compensation/rates-index.asp>.

Greater compensation will be paid for a dependent spouse if that dependent spouse also requires the regular aid and attendance of another individual due to disability.

**Sec. 3. Imprisonment:** Effective 61 days after imprisonment of individuals convicted of felonies, compensation payments to these individuals will be reduced as follows:

A. In the case of an incarcerated veteran with a service-connected disability rated 20% or more, the reduced payment will be the rate payable for a 10% disability.

B. In the case of an incarcerated veteran with a service-connected disability rated less than 20% or an incarcerated surviving spouse, parent or child, the reduced payment will be one half of the rate payable for a 10% disability.

C. The reduction will not apply to any period during which the person is participating in a work release program, is residing in a halfway house or is under community control.

D. Compensation withheld may be apportioned among eligible dependents or survivors based on financial hardship. No apportionment may be made to any person who is incarcerated for conviction of a felony.

E. Payment of reduced compensation applies to persons incarcerated for conviction of a felony committed after October 7, 1980 and to persons who, while incarcerated for a felony conviction, are awarded compensation, DIC or death compensation on or after October 1, 1980.

F. A total rating based on individual unemployability may not be assigned during any period in which the veteran is incarcerated for conviction of a felony.

G. Payments at the normal rate resume when the individual is no longer imprisoned. Incarcerated veterans may work with a Veterans Justice Outreach Specialist at VA to assist with benefits related issues and ensure that benefits are applied for or restarted. Please view VA's Homeless Veterans webpage for current contact information.

## DEATH BENEFITS, SERVICE-CONNECTED

**Sec. 1. Death Benefits:** There are two types of monthly benefits payable to dependents by VA for service-connected death. They are "death compensation" and "dependency and indemnity compensation."

**Sec. 2. Death Compensation:** Death compensation is payable to surviving spouse, children and dependent parents of veterans who died prior to January 1, 1957, provided such death in service was in line of duty, or if after discharge or release from active duty, is service-connected by VA. New claims for death compensation are no longer accepted by VA, however anyone already receiving death compensation may continue to receive the benefit. A person entitled to receive death compensation may elect to receive Dependency and Indemnity Compensation. Once such an election has been made (first payment is deposited), it is irrevocable.

**Sec. 3. Dependency and Indemnity Compensation (DIC):** DIC is payable in case of death after January 1, 1957, provided such death is service-connected or can be proven to be service-connected or the result of VA negligence.

Also, effective October 1, 1978, the surviving spouse and children of a veteran who has been rated 100% service-connected disabled for ten continuous years at time of death or, if rated for a lesser period, was so rated continuously from release from active duty for not less than five years at time of death, or, if a former POW, was so rated for one year prior to death, shall be entitled to DIC if such surviving spouse was married to veteran for not less than one year

immediately preceding such veteran's death. The cause of death does not need to be service-connected in this case, but it must not be the result of willful misconduct.

Beginning October 1, 1982, an original DIC award to surviving spouse for the month of the veteran's death shall be in the amount the veteran would have received for the month of death only if that amount exceeds the amount of DIC otherwise payable.

**NOTE:** Public Law 108-183 the *Veterans Benefits Act of 2003*, provided, effective December 16, 2003, remarriage of a surviving spouse after age 57 shall not bar the payment of DIC. However, remarriage after age 55 will void any entitlement to TRICARE.

**Sec. 4. Dependency and Indemnity Compensation, (DIC) Monthly Rates:**

*A. Surviving spouse:* Prior to December 31, 1992, the amount of DIC paid was based on the highest rank held by the deceased veteran during his or her military service. This meant that the surviving spouses of Privates were paid less than those of Captains. Recognizing that this was inherently unfair, Congress established a single amount for surviving spouses.

Current rates may be found at: <http://www.benefits.va.gov/compensation/rates-index.asp>.

**Sec. 5. Eligibility Verification Report, Parents:** For parents to qualify to receive DIC due to the service-connected death of a child, the parents must have low income. A questionnaire to verify income is sent annually to each parent who is in receipt of DIC and every three years to parents in receipt of death compensation. If the parent's only income is from Social Security, the questionnaire is not sent: VA automatically verifies the income with Social Security.

**Sec. 6. Prompt Reporting, Parents:** A parent in receipt of DIC or death compensation must promptly report to the VA any increase in income received or to be received during the year that could cause the total income to bar payment of these benefits. A claimant in receipt of this benefit should also promptly advise of any change in marital status and loss or gain of income.

**Sec. 7. Accrued Benefits and Substitution:** Except as provided in sections 3329 and 3330 of Title 31, United States Code (USC), accrued benefits represent monetary benefits (other than insurance and servicemen's indemnity) to which an individual was entitled at death under existing ratings or decisions, or those claims based on evidence in the file at date of death and due the individual and unpaid. Such benefits will be paid under the following priority:

- (1) Upon the death of a person receiving an apportioned share of benefits payable to a veteran, all or any part of such benefits to the veteran or to any other dependent or dependents of the veteran, as may be determined by the Secretary;
- (2) Upon the death of a veteran, to the living person first listed below:
  - (A) The veteran's spouse;
  - (B) The veteran's children (in equal shares);
  - (C) The veteran's dependent parents (in equal shares);
- (3) Upon the death of a surviving spouse or remarried surviving spouse, to the children of the deceased veteran;
- (4) Upon the death of a child, to the surviving children of the veteran who are entitled to death compensation, dependency and indemnity compensation, or death pension; and
- (5) In all other cases, only so much of the accrued benefits may be paid as may be necessary to reimburse the person who bore the expense of last sickness and burial. [1]

**Note:** In special circumstances, retroactive benefits may be payable to the veteran's estate (including to persons named in trusts and wills). This applies when a veteran filed a claim for compensation due to Agent Orange exposure and was denied, but later qualifies. The benefits only go to the estate if there is no other potential applicant (spouse, child, dependent parent). See 38 CFR 3.816.

**Substitution:** In those cases where the claimant dies with a pending claim, an individual such as the surviving spouse, child or person paying last expenses may be substituted for the claimant and continue the claim (for compensation, pension, DIC, etc.). In the case of substitution, new evidence can continue to be added to the claim, and the duty to assist applies to the survivor. If granted, only the amount payable prior to the veteran's death will be paid. However, the new rating may lead to ongoing DIC or Parents' DIC benefits.

No part of any accrued benefits shall be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary.

Applications for accrued benefits and substitution must be filed within one year after the date of death. If a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the claimant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no accrued benefits may be paid. Applications for Dependency and Indemnity Compensation or Death Pension (VA Form 21p-534EZ) are considered to include a claim for accrued benefits.

*Time limitation:* Claims for accrued benefits and substitution must be submitted within one year of death and all requested evidence must be submitted within one year of the request. Pension withheld by reason of a hospitalized competent veteran will be paid in the following order: Spouse, Children by relationship only (age and marital status not a factor), and Parents, if dependent at veteran's death, in equal shares.

Benefits of a veteran patient will be paid in the following order: Spouse, Children by relationship only (age and marital status not a factor), and Parents, if dependent at veteran's death, in equal shares. VA checks not negotiated will be paid in the following order: Spouse, Children, and Parents, if dependent at the veteran's death, in equal shares.

There is no time limit on reimbursement for the expenses of last sickness and burial.

**Sec. 8. Forms:** Applications for death benefits will be made on the appropriate VA form as follows:

Number	Title
21p-530	Application for burial allowance.
21p-534a	Application for dependency and indemnity compensation by a surviving spouse or child – in-service death only
21p-534EZ	Application for DIC, death pension, and/or accrued benefits
21p-535	Application for dependency and indemnity compensation by parents.
21-601	Application for accrued amounts due a deceased beneficiary.
21p-0847	Request for Substitution of Claimant upon Death of Claimant.
21-6898	Application for amounts on deposit for deceased veteran.

## SPECIAL BENEFITS

### SPECIAL BENEFITS FOR DISABLED VETERANS

**Sec. 1. Automobiles and Conveyances:** Any veteran entitled to compensation for any of the disabilities described below or active duty personnel with any of the disabilities described below, provided the disability is the result of an injury or disease incurred in or aggravated by service, shall be entitled to a specially adapted automobile or other conveyance.

A. *Disability Requirements:* Disability of the following nature will be required for entitlement to a monetary grant:

1. Loss or permanent loss of use of one or both hands or feet OR

2. Permanent impairment of vision of both eyes with central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to no greater than 20 degrees in the better eye, OR
3. Severe burn injury OR
4. Amyotrophic Lateral Sclerosis (ALS or Lou Gehrig's Disease).
5. For Adaptive Equipment only, but not Automobile Grant, ankylosis of one or both knees or hips.

B. *Service Requirements:* The disability on which entitlement is based must be service-connected and must have been incurred in or aggravated by military service or have been incurred while the veteran was receiving compensation as a result of being disabled by treatment or vocational rehabilitation.

C. *Automobile Grant:* VA may pay an automobile grant towards the purchase price of a new or used automobile, jeep, truck, station wagon, or other conveyance. This entitlement is called the Automobile Grant and is processed by the VA Regional Office. To apply for this benefit, the veteran should use VA Form 21-4502, *Application for Automobile or Other Conveyance and Adaptive Equipment*. The veteran is only entitled to this automobile grant one time, and the benefit is paid directly to the seller of the vehicle.

D. *Adaptive Equipment:* Automobile adaptive equipment is used to permit physically challenged persons to enter, exit and /or operate a motor vehicle or other conveyance. The program provides equipment designed to assist the eligible person, such as: wheelchair lifts or ramps, power door openers, lowered floors and raised roofs, raised doors, hand controls, left foot gas pedals, reduced effort and zero effort steering and braking, and digital driving systems.

Other items of adaptive equipment may also be furnished if they meet the criteria for safe operation of the vehicle or they are required in consideration of the safety of others. As VA approval is dependent upon the eligible person's disability and driving conditions, prior authorization is desirable. Reimbursement is available, however, if the items are subsequently approved. The adaptive equipment may be repaired, replaced or reinstalled in another automobile or other conveyance, but may not be purchased or serviced on more than two vehicles during any four-year period. There are limited exceptions to the time limitation in cases where the vehicle is no longer available such as theft, fire, or accident.

**IMPORTANT:** Adaptive equipment for the operation of a vehicle will not be provided to a blind applicant or in any other case where the veteran has a driver because of physical disability or if they do not have a valid driver's license or learner's permit. Add-on adaptive equipment must be approved by the VA to qualify for reimbursement, and an item of access or egress may be provided, when appropriate.

D. *Limitations on Providing Assistance:*

1. Subject to limitations, reimbursement amounts will be the sticker price. If the window sticker is not available, an itemized invoice may be used to substantiate the cost of purchased items of adaptive equipment purchased.

(a) If equipment is listed as standard on the window sticker but no price is given, the amount payable is the "Standard Equipment Reimbursable Amount".

(b) If the sticker price is available, the amount payable will not exceed the "Maximum Sticker Reimbursable Amount".

(c) If no sticker is available and an itemized invoice is used, reimbursable amount will be the "Standard Equipment Reimbursable Amount" if the item is normally standard on the type of vehicle purchased. If the item is not standard, the invoice amount will be paid but will not exceed the "Maximum Sticker Reimbursable Amount."

(e) All van and motor home modifications must be pre-authorized.

2. Application for automobile adaptive equipment must be made to the nearest VA medical center or outpatient clinic using VA Form 10-1394 (All form numbers that start with 10 should be submitted by the veteran to the VA hospital, all form numbers that start with 21 should be sent through the DSO to the appropriate VA Regional Office). The VA prosthetic and sensory aids department approves requests for adaptive equipment. Information concerning add-on adaptive equipment that has been tested and approved by the VA may be obtained from the nearest VA medical center or outpatient clinic. Request may be made to the VA outpatient clinic for approval of equipment not specified for the qualifying disabilities, and for a determination of whether adaptive equipment is needed for driver training and testing.

**NOTE:** Apart from the automobile adaptive equipment program, medical equipment may be authorized for installation on a veteran's automobile or other conveyance (including a van) when medically prescribed for the veteran's treatment. They may not be furnished solely for comfort or to make life outside a hospital more available. Such items may include, but are not limited to a wheelchair lift, raised roof, raised doors and other devices of access or egress, or an air conditioner. Other items of adaptive equipment related to the safe operation of the vehicle or in consideration of the safety of others may only be furnished to persons eligible for the automobile adaptive equipment program who are drivers or in exceptional instances, to people in driver training.

*E. Driver Training:* Driver training will be provided, directly or by contract, through special driver training courses at designated VA health care facilities, to instruct each eligible person to operate the type of automobile or other conveyance. Such courses may also be made available to any veteran or member of the Armed Forces eligible for care in a VA facility that is determined to need the special training even though the person is not eligible for the grant. Requests for driver training should be made to the nearest VA medical center or outpatient clinic.

**Sec. 2. Guide Dogs and Equipment for the Blind:** Blind veterans who are entitled to disability compensation for a service-connected disability and blind veterans who are entitled to pension based on the need for regular aid and attendance or being permanently housebound, if medically feasible, may be furnished a trained guide dog at no cost to the veteran. The VHA does not provide the dog, but does refer the veteran to an Assistance Dogs International-accredited agency. The blind veteran may be furnished necessary travel expenses to and from his or her place of residence to the point where adjustment to the dog guide is available plus meals and lodging during the period of adjustment. VA also authorizes necessary medical attention for the veteran's guide dog. Mechanical and/or electronic equipment considered necessary as aids to overcome the handicap of blindness may also be supplied to veterans meeting the requirements of the above paragraph.

The Department of Veterans Affairs also provides special visual impairment clinics in outpatient and inpatient settings to help veterans and active duty service members adjust to living independently with vision loss. VA operates 45 low vision clinics, 13 inpatient blind rehabilitation centers, and 9 intensive two-week inpatient VISOR program centers. For referral to the appropriate rehabilitation program, the veteran should contact the Visual Impairment Services Team (VIST) Coordinator at the closest VA medical center. Current contact information can be found on VA's Blind Rehabilitation Service website.

**Sec. 3. Prosthetics, Sensory and Rehabilitative Aids:** VA is authorized to purchase, repair or make artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, or similar appliances such as invalid lifts and therapeutic and rehabilitative equipment and special clothing made necessary by wearing such appliance, for any veteran enrolled in VA health care, provided it is medically necessary.

*A. Fitting and Training:* Any veteran supplied prosthetic and similar appliances will be entitled to fitting and training in the use of the appliance. Generally training is given in VA facilities. However, under certain conditions, training may be obtained elsewhere.

*B. Repair or Replacements:* Any artificial limb, truss, brace, hearing aid, eyeglasses, or similar appliance (not including dental appliances) which was damaged or destroyed by a fall or other accident caused by a service-connected disability may be repaired or replaced by VA.

*C. Repair Cards:* Upon determination by VA, the veteran will be given a prosthetic services card when he or she has been furnished an appliance. If the veteran's appliance needs repair, the card is sufficient authorization for repair without requiring prior VA approval.

**Sec. 4. Clothing Allowance:** An annual clothing allowance is authorized to each veteran who is entitled to disability compensation for which he or she wears or uses one or more prosthetic or orthopedic appliances which have been determined to wear out or tear clothing, and to any veteran whose service-connected skin condition requires prescribed medication which damages, beyond repair, the veteran's outer garments. The appliances eligible for clothing allowance include but are not limited to: artificial limb, rigid extremity brace, rigid spinal or cervical brace, wheelchair, crutches, or other appliance prescribed for the veteran's compensable disability.

Military retirees not on the compensation rolls, and persons wearing or using prosthetic appliances on a temporary basis must apply annually. Applications (VA Form 10-8678) must be turned in to the local VA hospital or clinic by August 1<sup>st</sup> of each year. A veteran may apply for and receive more than one clothing allowance if, for example,



disabilities of both the arms and legs cause wear of clothing, but if he or she does receive more than one allowance, the veteran must apply annually. A maximum of up to four clothing allowances (two for each garment) may be paid annually. Persons in receipt of compensation for loss of use of an extremity, who are permanent wearers or users of prosthetic appliances, do not have to reapply. The clothing allowance will be paid in one sum each year on the anniversary date.

In the case of a veteran who is incarcerated in a federal, state or local penal institution for a period in excess of 60 days, and who is furnished clothing without charge by the institution, the amount of an annual clothing allowance payable to that veteran will be reduced on a pro-rata basis for each day on which the veteran was incarcerated during the 12-month period preceding the date on which payment of the allowance would be due. The clothing increase, while effective the date of the law, is not payable until the following August 1<sup>st</sup>. Current rates may be found at the VA website: <http://www.benefits.va.gov/compensation/rates-index.asp>.

**Sec. 5. Medicine and Rehabilitative Devices:** Regardless of entitlement to VA health care or priority group, any veteran entitled to a higher rate of compensation or pension based on requiring regular aid and attendance or being permanently housebound may be furnished medicines and selected sick room supplies on prescription of a duly licensed VA physician as specific therapy in the treatment of an illness or injury. If pension for aid and attendance is discontinued because of excessive income, medicine may be furnished so long as the annual income limitation (MAPR) is not exceeded by \$1,000 (38 U.S.C. § 1712).

## PENSION PROGRAMS

### CURRENT NON-SERVICE CONNECTED PENSION

**Sec. 1. Eligibility:** Pension is available for wartime veterans who are permanently and totally disabled from disabilities which do not need to be related to service. Pension is also available for their surviving spouse and/or children (called survivor's pension or death pension). **Pension and survivor's pension are need based benefits, so a veteran or survivor must fall below certain income levels to receive pension.**

**Sec. 2. Wartime Service Requirements:**

**Must have one day of wartime service during one of the following periods:**

A. *World War I:* April 6, 1917 to November 11, 1918, extended to April 1, 1920 for service in Russia and to July 1, 1921 for those veterans who had at least one day of service before November 12, 1918 and who served after November 11, 1918 and before July 2, 1921.

B. *World War II:* December 7, 1941 to December 31, 1946.

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

D. *Vietnam Era:* The period beginning on February 28, 1961 and ending on May 7, 1975, inclusive, in the case of a veteran who served in Vietnam during that period. The period beginning on August 5, 1964 to May 7, 1975, inclusive, in all other cases.

E. *Persian Gulf:* August 2, 1990 to a date to be determined.

In all cases, the veteran's discharge must have been under conditions other than dishonorable.

**Sec. 3. Active Duty Requirements:**

A. 90 days or more of continuous active service, with at least one day of service during wartime. If service was less than 90 days, discharged for a service-connected disability, OR

B. If entered service after September 7, 1980, or after October 16, 1981 for officers, completed a continuous period of active service of at least 24 months or the full period for which a person was called or ordered to active duty, with at least one day of service during wartime. If service was less than 24 months, at least one day of service during wartime and discharged or released under early out, hardship discharge, or discharged for a service-connected disability.

**NOTE:** Travel time from place of discharge to home by the most direct route may be included in the active duty period.

**Sec. 4. Disability Requirements:**

A. *Generally:* Wartime veterans with low income who are permanently and totally disabled (P&T) may be eligible for monetary support from the Department of Veterans Affairs if they meet the active service requirements

mentioned above. There is a presumption of being permanently and totally disabled (P&T) if the veteran is age 65 or older, or is (1) a patient in a nursing home for long term care because of a disability, or (2) a veteran determined to be disabled by a Social Security Administration disability decision, or (3) a veteran suffering from a disease or disorder that VA determines causes persons to be permanently and totally disabled. In all cases, the veteran's disabilities must have resulted from a cause other than the veteran's own willful misconduct.

If the veteran is not presumed to be permanently and totally disabled, he/she must be able to demonstrate that they are unable to secure and follow a substantially gainful occupation by reason of their disabilities. The disability or disabilities must be likely to be permanent: temporary convalescence will not qualify a veteran for pension. It will be helpful for the veteran to gather doctor's statements showing permanent and total disability, including clinical findings and/or diagnosis of a chronic condition(s) by x-rays and laboratory tests. If there is still a question as to whether the veteran is permanently and totally disabled, the veteran may be examined by VA to determine entitlement to pension.

A veteran may still be considered permanently and totally disabled and be marginally employed. For example, if the veteran is not making above the poverty threshold wage. However, the restrictions on work hours, type of job, and low wages must be due to disability and not personal preference.

**B. *Housebound*:** A higher rate of pension may be paid if the veteran is housebound or meets certain rating percentages. The need for housebound benefits will be considered to exist when the veteran is rated 100% for a single permanent disability and has additional disability or disabilities rated at 60% (called statutory housebound) or is totally disabled from a single disability and permanently housebound. Statutory housebound benefits may be granted on a temporary basis, for example if the veteran is convalescing from surgery, but the veteran must still be entitled to basic pension. If the veteran does not meet the percentage requirements, the requirement of being permanently housebound will be considered to have been met when the veteran is substantially confined, as a direct result of disability, to his or her house (ward or clinical area if institutionalized) or immediate premises, and it is reasonably certain that such circumstances will continue throughout the veteran's lifetime. Congenital, developmental, hereditary, or familial conditions may be considered for pension purposes.

**C. *Aid and Attendance*:** The need for aid and attendance will be considered to exist when the veteran is a patient in a nursing home; is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, both eyes, or concentric contraction of the visual field to 5 degrees or less; or is permanently bedridden or so nearly helpless as to need the regular aid and attendance of another person. It is not required that the need be constant but only that the services of another person to care and protect from the hazards and dangers incident to daily environment be needed regularly. If the veteran is a patient in a nursing home, VA form 21-0779 should be completed by the nursing home staff. If the veteran requires aid and attendance, VA form 21-2680 should be completed by the veteran's physician. As always, these forms should be turned in to the accredited Department Service Officer for submittal to VA.

**Sec. 5. Improved Disability Pension rates:** Current pension is also referred to as "live pension" and "improved pension". Improved pension rates for veterans are based on the veteran's income and the income from dependent family members. The amount of pension that each veteran receives will be unique. The Maximum Annual Pension Rate or "MAPR" is paid to veterans who qualify for pension and have no countable income. There are higher MAPR rates for veterans with dependents, and veterans who are housebound or require aid and attendance. The MAPR is reduced dollar for dollar by countable annual income. VA will determine the veteran's countable income. For the current MAPR rates, visit:

<http://www.benefits.va.gov/pension/rates.asp>

**Sec. 6. Improved Death Pension rates:** Improved death pension rates (called Survivors Pension) for surviving spouses and children are based on their income and the income from dependent family members. The MAPR is much lower for survivor's pension than for live pension. The MAPR is reduced dollar for dollar by annual income. For the current rates, visit: <http://www.benefits.va.gov/pension/rates.asp>

**Sec. 7. Net Worth:** Claimants seeking VA Pension or Survivors Pension must establish financial need. Included in the financial need, is the claimant's (with dependents) income and net worth. Excessive net worth is a bar to receiving VA pension. Some parts of the veteran's estate are not counted as net worth, such as the veteran's primary house and vehicle. For explanation of net worth and corpus of estate, see Income Limitations and Net Worth in this Part, Sec. 11. Corpus of Estate or Net Worth.

**Sec. 8. Changes or Reductions in Pension:**

- A. Prompt reporting to the Department of Veterans Affairs is required where a change in dependency status, or net worth or income occurs.
- B. Reduction in pension will occur when a veteran is hospitalized at government expense.
- C. Pension will be discontinued effective the 61st day of imprisonment following conviction of a felony or misdemeanor. Pension withheld may be paid to the prisoner's spouse and children based on need (called apportionment), but only in an amount that does not exceed the death pension rate (income of spouse or child is such that death pension would be payable).
- D. Pension recipients are required to complete an annual Eligibility Verification Report (EVR) if received from the VA. This report must be completed and returned as soon as possible to avoid any disruption of receipt of pension payments. If the pension recipient has no income or the only income is from Social Security, VA will automatically verify income and will not send an EVR. The veteran should return the EVR to VA as soon as possible and send a copy of the completed EVR to the Department Service Officer.
- E. Veterans whose annual income exceeds the MAPR may continue to receive medications from VA by reason of aid and attendance rating as long as the annual income limit is not exceeded by \$1,000.

**Sec. 9. Veterans Married to One Another:** When two veterans are married to each other, and both are eligible for pension based on their own service, they must be receiving pension under the same program. Their combined pension will be the same rate as pension for a veteran with one dependent (see current rates at <http://www.benefits.va.gov/pension/rates.asp>) plus any additional pension due based on being housebound, or in need of aid and attendance.

**Sec. 10. Medal of Honor Pension:** Recipients of the Medal of Honor may receive a special pension that is not related to disability or income. The Department of the Army, the Navy including the United States Marine Corps, the Air Force, and the Department of Homeland Security, respectively, maintain a roll designated as the Army, Navy, Air Force and Coast Guard Medal of Honor Roll.

Any person whose name has been entered on the Honor Roll and who has indicated desire to receive a special pension will be certified to the VA. For the current rate, go to [www.benefits.va.gov/pension/rates.asp](http://www.benefits.va.gov/pension/rates.asp). This benefit is payable independent of and in addition to any other benefit, including active duty pay and allowances, and compensation awarded by the VA or other federal agencies.

**Sec. 11. Application Form:** Apply on VA Form 21p-527EZ, *Application for Pension*. For survivor's pension, apply on VA Form 21p-534EZ, *Application for DIC, Death Pension and/or Accrued Benefits*.

**PRIOR NON-SERVICE CONNECTED PENSION**

**Sec. 1. Prior Pension Programs:** The Department of Veterans Affairs delivers benefits under two "prior" and now closed Disability and Death Pension Programs. Veterans and survivors who began receiving benefits under these programs can continue to receive them, or opt in to the Improved Pension program.

**Sec. 2. Section 306 Pension:** Section 306 Disability and Death Pension (formerly referred to as "New Law" or P.L. 86-211) was available for persons entitled between July 1, 1960 and December 31, 1978.

**Sec. 3. Protected Pension:** Protected Disability and Death Pension (formerly referred to as "Old Law") was available for those receiving or entitled to receive pension prior to and on June 30, 1960.

**INCOME AND NET WORTH LIMITATIONS**

**Sec. 1. Pension Income:**

- A. *Improved Disability Pension:* For the current rates, go to: [va.gov/pension/veterans-pension-rates](http://va.gov/pension/veterans-pension-rates)
- B. *Survivors Pension:* For the current rates, go to: [va.gov/pension/survivors-pension-rates](http://va.gov/pension/survivors-pension-rates)
- C. *Protected Pensions (Old Law and Section 306 Pension):* For the current rates, go to: [http://www.benefits.va.gov/PENSION/current\\_protected\\_pension\\_rate\\_tables.asp](http://www.benefits.va.gov/PENSION/current_protected_pension_rate_tables.asp)

Entitlement to pension is subject to annual income limitations, with higher adjustments for individuals who are permanently housebound, or in need of aid and attendance.

**NOTE:** The following income and net worth regulations are for informational purposes only. If there is any question as to whether income or expenses may be counted, have the veteran or survivor report the information and receipts, if applicable, to VA. Income and expenses may vary widely from year to year. VA decides all issues of eligibility.

**Sec. 2. Computation of Income:** For all types of pension, the amount that will be paid to the veteran or survivor is the Maximum Annual Pension Rate (MAPR) for that type of pension, minus countable income. Countable income is any income except what VA excludes. Countable income may also be reduced by qualified medical and education expenses. If the veteran or claimant has income higher than the MAPR, the amount of pension would be zero, so they will not receive pension, but may reapply if income or expenses change.

A. For entitlement to Pension, Survivors Pension, and/or Parents Dependency and Indemnity Compensation (Parent's DIC, discussed in Part 4, Service Connection), income will be counted for the calendar year in which it is received.

B. For improved pension, all family income not specifically excluded in 38 CFR 3.272 will be counted.

C. For protected and section 306 pensions, income exclusions are found in 38 CFR 3.261. Most protected and section 306 pensions are paid to survivors (about 6% of survivors pension recipients as of 2019). Less than .3% of veterans receive protected or section 306 pension, all others are receiving improved pension.

D. *Proportionate Computation:* If a veteran or survivor becomes entitled to or resumes pension midway through a year, the MAPR will be computed on a proportionate basis for the months of entitlement during that year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.

E. *Rate Changes:* In years after that for which entitlement to Pension or Parent's DIC has been established or reestablished, total income for the calendar year will govern the payment of benefits. Where there is a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married, or had a dependent, the rate payable will be determined under the MAPR applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the MAPR applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status. Rate changes will be effective the first day of the month following a change in income or net worth.

**Sec. 3. Spouse's Income - Availability:** For pension under the improved pension program, the income of the spouse will be included in determining the annual income of the veteran. In computing income, the VA will exclude 10% of the spouse's retirement income, if any.

**Sec. 4. Unusual Medical Expenses:** VA will exclude from the amount of the claimant's annual income any unreimbursed amounts which have been paid by the claimant within the calendar year for unusual medical expenses. The term "unusual" means "excessive". It does not describe the nature of a medical condition but rather the amount expended for medical treatment in relation to the claimant's income. Health, accident, sickness and hospitalization insurance premiums will be included as medical expenses. Nursing home expenses including health care, meals and lodging, may be considered medical expenses as long as the disabled individual is receiving health care or custodial care in the facility, and a health care professional states in writing that custodial care is needed, or the individual is entitled to aid and attendance or housebound benefits. Estimated recurring medical expenses may be submitted to determine income for the year; any changes must be noted by the claimant at the end of the income reporting year. For more information on medical expenses, see 38 CFR 3.278.

*Improved Pension:* Unreimbursed medical expenses shall be excludable to the extent that they exceed 5% of the MAPR, including medical expenses paid for dependents. The additional maximum annual rate amount being received for aid and attendance or being housebound, will not be added in determining the 5%. The medical expense exclusion amounts can be found in the rate tables published above on VA's website.

1. *Veterans:* VA will exclude from income unreimbursed amounts paid by the veteran for unusual medical expenses of self, spouse, children, parents, and other relatives for whom a moral or legal obligation to support exists and who are members or constructively members of the veteran's household.

2. *Surviving Spouses*: VA will exclude from income unreimbursed amounts paid by the surviving spouse for the unusual medical expenses of self, the veteran's children, and other relatives for whom a moral or legal obligation to support exists and who are members or constructively members of the household.

3. *Children*: VA will exclude from income unreimbursed amounts paid by a child for the unusual medical expenses of self, parent, and brothers and sisters.

4. *Parents*: For Parents Dependency and Indemnity Compensation purposes, VA will exclude from income unreimbursed amounts paid by the parents for the unusual medical expenses of the claimant, spouse, and other relatives for whom a moral or legal obligation to support exists and who are members or constructively members of the household. If the combined annual income of the parent and spouse is the basis for Dependency and Indemnity Compensation, the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives for whom a moral or legal obligation to support exists and who are members or constructively members of the household.

#### **Sec. 5. Final Expenses:**

A. *Veteran's Final Expenses*: Amounts equal to that paid by a surviving spouse or child for the veteran's just debts and the unreimbursed expenses of the veteran's last illness and burial will be excluded from income for pension purposes.

B. *Veteran's Spouse's or Child's Final Expenses*: Amounts equal to that paid by a veteran for the last illness and burial expenses of a veteran's spouse or by a veteran or surviving spouse for the last illness and burial expenses of a veteran's child will be excluded from income for pension purposes.

C. *Final Expenses of Veteran, or Parent's Spouse*: In claims for Parents DIC there will be excluded from the income of a parent amounts paid for: (1) expenses of a veteran's last illness and burial to the extent that such expenses are not reimbursed; (2) the parent's deceased spouse's debts; (3) the expenses of the spouse's last illness to the extent such expenses are not reimbursed.

D. *Just Debts*: Generally, any debt which would be recognized by a probate court will be considered a "just debt". An indebtedness secured by a home or other property is primarily against the property and only secondarily against the person. Therefore, such a debt is not considered a "just debt" of the deceased veteran, except to the extent it is established that the amount of the indebtedness exceeds the market value of the property.

E. *Last Illness*: Last illness is defined as the immediate attack which ends in death. If the attack is acute, the beginning of the attack will be taken as the commencement of the last illness. If the attack is not acute, it will be regarded as commencing at the time the beneficiary became so ill as to require the regular and daily attendance of another person until death.

F. *Period of Exclusion*: In the absence of contradictory information, the claimant's statement will be accepted as to the nature, amount and date of payment, and identity of the creditor. Payments will be deducted from the annual income for the year in which such payments are made. Payments made by a veteran, the spouse of a veteran, surviving spouse, child, or in DIC claims, by the parent during the calendar year following the year in which the veteran, spouse or child died may be deducted from the claimant's income for the year of last illness or burial, if this deduction is advantageous to the claimant.

#### **Sec. 6. Commercial Insurance:**

*Life Insurance*: Lump-sum proceeds of any life insurance policy on a veteran will be excluded from income for improved pension purposes.

*Disability, Accident or Health Insurance*: The medical, legal or other expenses incident to the disability may be deducted from payments received, for purposes of calculating income for improved pension.

**Sec. 7. Compensation for Injury or Death**: Compensation paid by the United States Department of Labor Office of Workers' Compensation Programs, Social Security Administration, the Railroad Retirement Board or pursuant to any worker's compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income. However, medical, legal or other expenses incident to the injury or death or incident to the collection or recovery of the amount of the award or settlement, may be deducted.

#### **Sec. 8. Property:**

A. *Income Producing Property*: Income received from real or personal property owned by the claimant will be included. The claimant's share will be determined in proportion to his right according to the rules of ownership.

B. *Ownership*: The terms of the recorded deed or other evidence of title will constitute evidence of ownership of real or personal property. This includes property acquired through purchase, bequest or inheritance. If property is

owned jointly, each person will be considered as owning a proportionate share. The claimant's share of property held in partnership will be determined on the facts found. In the absence of evidence to the contrary, the claimant's statement as to the terms of ownership will be accepted.

**Sec. 9. Sale of Property:** Net profit from the sale of real or personal property will not be considered income. Any amounts received in excess of the sale price will be counted as income. Profit from the sale of property may be counted as an increase in net worth, if the proceeds are not used to purchase a primary residence within the same calendar year.

**Sec. 10. Education Expenses:** Under the improved pension program, amounts may be deducted from income equal to expenses paid by a veteran or surviving spouse for themselves or their child pursuing a course of education or vocational rehabilitation or training, including tuition, fees, books, and related unusual transportation expenses. The amount expended for a child's education will only reduce the child's income, not the veteran or spouse's income.

**Sec. 11. Corpus of Estate or Net Worth:** "Corpus of estate" and "net worth" mean the market value, less mortgage or other encumbrances, of all real and personal property owned by the claimant except the claimant's dwelling (single-family unit), including a reasonable lot area (2 acres) and personal effects suitable to and consistent with the claimant's reasonable mode of life. Effective October 18, 2018, the Department of Veterans Affairs uses a "bright-line" rule to determine the maximum net worth a veteran or survivor may have and still qualify for VA pension programs. The maximum net worth amount as of **December 1, 2019 is \$130,773**. The amount will be adjusted in the future based on Social Security cost of living increases. For current maximum net worth amounts, please visit: [www.va.gov/pension/veterans-pension-rates](http://www.va.gov/pension/veterans-pension-rates).

If a veteran or survivor's net worth is too high to qualify for pension, they may "spend down" or use the net worth for living expenses, and re-apply for pension once the net worth is below the limit. If a veteran or survivor attempts to transfer funds at less than fair market value (for example to a family member or trust), within the three-year period before applying for VA pension, they may be barred from re-applying for pension for up to five years. Transfers to special needs trusts for helpless children are exempted from this penalty. For more information on net worth and pension, see 38 CFR 3.274 – 3.276.

**NOTE:** Claimants should beware groups that advise veterans they will "handle their money" or sell them an insurance policy so that the veteran's income appears lower. Refer veterans to their family lawyer and the Department Service Officer for advice.



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