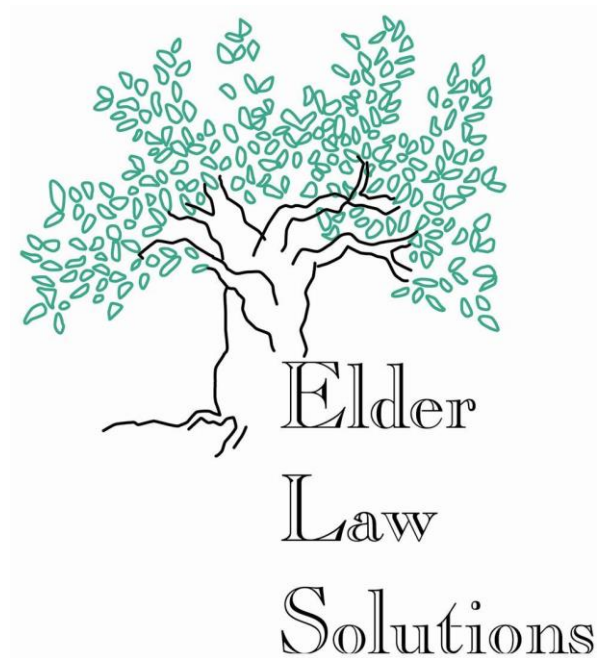


# Veteran's Benefits Guide

## Aid and Attendance Pension



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# **Table of Contents**

1. Introduction
2. What is Aid and Attendance Benefit?
3. What are the service requirements?
4. Medical Needs Test
5. What is the Income Test?
6. What is the Asset Test?
7. Case Example
8. Coordinate Your Decisions and Plans
9. Carefully Choose Your Advisors and Seeking Help

## INTRODUCTION

Did you know that age 85+ is the fastest growing age category in the United States? Americans are living longer. Care planning is now a requirement for people who want to live safely during their retirement years. Medicare pays for very limited costs of long-term care at home or in nursing homes. While some Medicaid programs will pay for at-home care and nursing home care, most elders must financially impoverish themselves to qualify for Medicaid.

A diagnosis that means a loved one will no longer be able to care for himself or has a progressive disease like Alzheimer's...or has had a stroke or heart attack, and now needs extra help, makes many families panic. Most families want to keep the loved one at home. But the burden of work and expense to do that safely can be overwhelming. Our health care system doesn't provide easily understood options for home care for many of our elders. But the options are there, and the benefits can be coordinated to work together.

Many veterans and their families assume there are no benefits for veteran's who were not wounded in combat. This is not correct. If you are an honorably discharged veteran, who served at least one day during a period of wartime, and if you spend several hundred dollars a month or more on your health care at home or in an assisted living facility, you may qualify for benefits under the Aid and Attendance Program.

Margot G. Birke  
Attorney at Law

## What is Aid and Attendance Benefit?

The formal name for the benefit program is the “Non-Service Connected Disability Improved Pension” and the “Non- Service Connected Death Pension”. The programs are available to veterans, or to the single surviving spouses of deceased veterans. The benefit comes in the form of a monthly payment, directly deposited into the bank account of the veteran or surviving spouse.

The pension amount varies, based on the category of an applicant. Each category has three levels of payment.

<u>Single Veteran</u>	<u>Monthly Benefit Amount</u>
1. Low Income	\$1,229.42
2. House Bound	\$1,502.42
3. Veteran in need of Aid & Attendance	\$2,050.83

<u>Married Veteran</u>	<u>Monthly Benefit Amount</u>
1. Low Income	\$1,610.00
2. House Bound	\$1,883.00
3. Veteran in need of Aid & Attendance	\$2,431.25

<u>Surviving Spouse of Veteran</u>	<u>Monthly Benefit Amount</u>
1. Low Income	\$ 824.67
2. House Bound	\$ 1,007.83
3. Surviving Spouse needing Aid & Attendance	\$1,318.00

In other cases where veterans are disabled because of injuries or illnesses incurred while they were on active duty, there is a benefit called “Compensation”. It is not available to as many veterans. It can be increased if a veteran’s spouse has un-reimbursed medical expenses. However, a veteran cannot receive both Pension and Compensation at the same time. The veteran must decide which benefit is better.

## What are the service requirements?

- The veteran served on active duty at least 90 days
- At least one of those days during a period of war
- The veteran received “other than dishonorable discharge”

Service in combat is not required, only that the veteran was in the service at least one day during wartime:

<u>Period of War</u>	<u>Beginning and Ending Dates</u>
World War II	December 7, 1941 to December 31, 1946
Korean Conflict	June 27, 1950 to January 31, 1955
Vietnam Era	August 5, 1964 to May 7, 1975
Vietnam Vets who served "in Country" before August 5, 1964	February 28, 1961 to May 7, 1975
Gulf War	August 2, 1990 through a date to be set by law or Presidential Proclamation

### **Medical Needs Test**

Surprisingly, all veterans over the age of 65 are considered disabled. This qualifies the veteran for the low income benefit automatically. If the veteran is younger than age 65, he or she must be totally disabled to receive the benefit. Medical evidence must be submitted for these types of applications.

Next, if the veteran or surviving spouse is housebound, in addition to being disabled, the applicant gets a little more money each month. To prove that the person is housebound, the person must give up his or her driver's license, and there must be a letter written from the applicant's doctor stating the applicant is housebound without the assistance of another person.

The third and highest level of benefit is given if the applicant has a regular medical need for assistance or supervision due to disability. The applicant is in need of the "aid and attendance of another". Again, this must be proven through medical evidence. This is accomplished primarily with a doctor's evaluation of the veteran, or the surviving spouse. There is a specific form that must be filled out.

However, it is important that the form be reviewed by someone familiar with the VA prior to submission, because if the applicant's medical needs are not outlined properly, the applicant can be refused benefits.

## **What is the Income Test?**

The household income of the veteran or the surviving spouse cannot exceed the Maximum Allowable Pension Rate (MAPR). In plain English this means monthly income cannot exceed the monthly benefit amount. But the insider secret that most veterans don't know, and that the VA often doesn't tell the veteran or surviving spouse, is that you can reduce gross income by any unreimbursed medical expenses when determining whether you meet the income test.

This includes in-home care if the applicant cannot be left home alone. Assisted living rent can also be covered, if the person is staying at the assisted living because the person cannot live at home alone. Family members (not including the spouse), can be hired to provide care in the home. Other common medical expenses are:

- Medicare Part A that is deducted from the veteran's social security check each month
- Medicare Part B supplemental insurance
- Prescription drug insurance and co pays.

After deducting all of these un-reimbursed medical expenses, the VA calls this remaining net income amount: "Income for VA Purposes (IVAP)."

## **What is the Asset Test?**

Some people believe that there is a general rule that household assets cannot exceed \$80,000.00 if married, and \$50,000.00 if single. But that is often not true, because there is no specific asset test in the VA regulations. The decision as to allowable assets is a decision made by a VA representative processing the claim.

There is also a belief that an older person is allowed to keep fewer assets than a younger person. But in our office we have seen how a veteran or surviving spouse who has very expensive care needs may be allowed to keep substantial assets to meet those needs, no matter how old they are.

A personal residence, a reasonable amount of land on which it sits, personal property and automobiles for personal use are exempt from the asset test. If the applicant has too many assets, assets can be gifted. Unlike Medicaid, there is no penalty imposed by the VA if the applicant gifts assets.

However, the applicant must keep in mind that the VA is not going to pay the full cost of nursing home care for veterans who do not have service connected disabilities. Therefore, if the applicant needs to apply for Medicaid within five years, there must be a plan for covering the costs of nursing home care. Gift transfers of assets can cause Medicaid disqualification. An experienced elder law attorney can help plan to protect assets and coordinate cost coverage from all sources of payment.

Another strategy that is sometimes effective takes cash assets and converts them into monthly income payments, using an annuity. But caution must be taken so the annuity income does not reduce the VA pension amount, and to make sure the annuity qualifies under the Medicaid rules, in case the veteran needs to apply for Medicaid in the future.

### **Case Example**

Arlene's first husband was a veteran who had served during World War II and in Korea. His impressive record of combat service was recorded on his discharge papers. He died during the 1960s. Arlene remarried, and her second husband predeceased her. Arlene had substantial assets when she was diagnosed with a memory impairment disorder. She now requires the "aid and attendance" of other people, to safely manage her basic activities of daily life.

VA regulations allow for monthly "aid and attendance" benefits of \$1,056.00 to be paid for Arlene's care every month. The VA aid and attendance pension amount is added to her Social Security Retirement, and her work pension. These sources of payment can be used to pay for at-home care, assisted living rent, or nursing home care, depending on the level of care that Arlene needs.

### **Coordinate Your Decisions and Plans**

The veteran's benefit application is very complicated. Applicants sometimes forget important information that would help the VA award the pension. It's easy to misunderstand what the application is asking for. If the VA needs you to send more information, they can delay an application for up to 6 weeks. Some applicants have had delays lasting over a year!

When benefits are awarded, you get paid retroactively, from the month after you had filed the application. But why wait? Especially when unnecessary delays can be prevented. No one can charge to fill out an application. Some elder law attorneys complete applications as a free service for clients for whom they are doing other work. There are also veteran's agents and service organizations that assist veterans with the application. No matter who helps you understand the application, you must have a complete view of all the benefits programs and options that are available, so that everything works together. It cannot be stressed enough that even though gifting is currently allowed by the VA, it is not allowed by Medicaid. Many veterans will need Medicaid to pay for nursing home care in the future. Veterans must be careful to preserve their Medicaid eligibility. A qualified elder law attorney can provide this guidance.

## **Carefully Choose Your Advisors**

When you have a family member with a chronic disease or illness you are on a journey. There are going to be many challenges along the way. Your family needs trusted advisors that you can call, to make sure you are making wise decisions.

You need someone who knows your family, your values, and your goals. In a crisis situation, it is hard to explain all the relevant details to a new advisor who doesn't know you. Developing a relationship with a skilled elder law attorney now will give your family peace of mind. You will get ongoing guidance, which will make a difficult time easier.

We specialize in helping families during the difficult times. It is a complicated area of law, with a lot of pitfalls for the unwary. We make sure our client's journey goes as smoothly as possible.

We will develop a relationship with you to make sure your wishes are understood and implemented as much as possible.

The information in this booklet is a public resource of general information which is intended, but not guaranteed, to be correct, complete and up-to-date. It is not intended to give legal advice to anyone on any subject. This information is not intended to be an endorsement of any professional or services listed within.





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Attorney Margot G. Birke founded Elder Law Solutions to focus on the intricate legal and financial needs of older and disabled adults. She has extensive experience in Elder Law as an advocate, mediator, and volunteer. She speaks frequently at assisted living centers, geriatric centers, and councils on aging to empower the elder community by providing the information they need to make informed choices

Margot Birke is a member of the Massachusetts Chapter of the National Academy of Elder Law Attorneys, a member of the Massachusetts, New York, and American Bar Associations, the Newburyport Chamber of Commerce, and the Academy of Special Needs Planners. Margot also is the Past-Chairperson on the advisory Council on Elder Services of the Merrimack Valley and is currently state certified Nursing Home ombudsman.

Margot received her B.A. from Fordham College in New York and her J.D., with academic honors, from Fordham University Law School. She is admitted to practice in both Massachusetts and New York.

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