

VETERAN'S BENEFIT UPDATES

**Racine Kenosha Estate Planning Council
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I. General Overview

a. Threshold Questions:

i. Q: Who is a veteran?

A: Per 38 USC §101, the term “veteran” means a person who (i) served in the military, naval, or air service, and (ii) was discharged or released therefrom under conditions **other than dishonorable**.

ii. Q: Is the veteran wartime or non-wartime?

A: A wartime veteran is generally defined as a veteran who served at least 90 days of active duty, one of which was during a period of war, or for veterans entering service after September 7, 1980, the veteran active duty must be for at least 24 months of continuous service or the full period to which the Veteran was called to active duty, as provided in 38 USC §5303A and 38 CFR 3.12a. *(See M21-1 Compensation and Pension Manual, Part III, Subpart ii, Chapter 6, Section B)*

iii. Q: Was is a period of war? (38 USC §101)

A: **World War II.** December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.

Korean Conflict. June 27, 1950, through January 31, 1955, inclusive.

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 the Republic of Vietnam during that period. The period beginning on August 5, 1964, and ending on May 7, 1975, inclusive, in all other cases.

Persian Gulf War. August 2, 1990- Date to be announced later.

b. Basic VA Benefits *

- i. VA Life Insurance (38 USC §§1901-1988)
- ii. VA Education Benefits (Montgomery GI Bill)
- iii. VA Burial Benefits (38 USC §§2301-2308 and 38 USC §§2400-2414)
- iv. VA Health System (38 USC §§1701-1788)

- v. Service-Connected Pension and Survivor's Benefits (DIC- Dependent and Indemnity Compensation) (38 USC §§1101-1163 and 38 USC §§1301-1323)

*See also www.benefits.va.gov for further information regarding these benefit programs.

II. Improved Pension (Non-service connected)

a. What is Improved Pension? This program is designed to provide a veteran and his/her spouse a cash benefit to assist with paying for medical expenses. This is a need-based program.

b. Classifications (38 CFR 3.351)

i. Disabled

1. 100% Disability (similar determination to SSDI); or
2. Presumption of Disability if over age 65 (Pub. Law No. 107-103 §207)

ii. Housebound

1. Disabled + veteran is substantially confined to his or her dwelling; or
2. If veteran has one condition that renders the veteran 100% disabled + has additional condition that causes at least 60% disability, then veteran is presumed to be housebound.

iii. Aid & Attendance

If a veteran is:

1. Blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or

2. A patient in a nursing home because of mental or physical incapacity; or

3. Has the inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on

regular basis to protect the claimant from hazards or dangers incident to his or her daily environment.

- c. Maximum Annual Pension Rate- 2021 Amounts. (38 CFR 3.272(g) and www.va.gov/pension/veterans-pension-rates and www.va.gov/pension/survivors-pension-rates

	Base Pension Rate	5% MAPR	Housebound	5% of MARP	Aid & Attendance	5% MAPR
Single Veteran with No Dependents	\$13,931/yr. or \$1,160/mo.	\$697/yr.	\$17,024/yr. or \$1,418/mo.	\$851/yr.	\$23,238/yr. or \$1,936/mo.	\$1,161/yr.
Married Veteran	\$18,243/yr. or \$1,520/mo.	\$912/yr.	\$21,337/yr. or \$1,778/mo.	\$1,066/yr.	\$27,549/yr. or \$2,295/mo.	\$1,377/yr.
Widowed Spouse of Veteran	\$9,344/yr. or \$778/mo.	\$467/yr.	\$11,420/yr. or \$951/mo.	\$571/yr.	\$14,934/yr. or \$1,244/mo.	\$746/yr.

- d. Eligibility Rules – Significant Changes Effective October 18, 2018

i. Income.

1. To be income eligible, a claimant’s gross income cannot exceed the Maximum Annual Pension Rate (MAPR).
2. To determine Income for VA Purposes (IVAP), use the following formula:
Gross Income-Deductible Medical Expenses +5% of MARP = IVAP.
3. The formula to determine the monthly pension rate is: MAPR-IVAP.
4. The income rules were not affected by the October 2018 rule changes, however, the rule changes did provide much clarification of what qualifies as a medical expense.
5. 38 CFR 3.278(c) defines medical expenses as “payments items or services that are medically necessary; that improve a disabled individual’s functioning; or that prevent, slow, or ease an individual’s functional decline.”
6. Examples of medical expenses can include: medications, medical equipment, adaptive equipment, insurance premiums, and institutional and in-home care costs.

ii. Assets/Net Worth. (38 CFR 3.274; 38 CFR 3.275) (www.va.gov/pension)

1. Prior to the October 18, 2018 regulation changes, asset limits were somewhat ambiguous.

2. The new rules provide for a clear asset limit. For 2021, this amount is \$130,773.

3. Assets that are not included in this amount are generally the primary residence (2-acre lot limit), personal property, a vehicle and burial plots/plans.

4. IVAP is now treated as an asset when determining total net worth.

Example: Claimant has \$90,000 in total non-excluded assets and has \$10,000 of annual IVAP. Claimant is deemed to have a total of \$100,000 in assets.

Example: Claimant has \$125,000 in total non-excluded assets and has \$10,000 of annual IVAP. Claimant is now over the net worth threshold and would lead to a denial of benefits.

iii. Lookback and Penalty Period (38 CFR 3.276)

1. Prior to the October 2018 regulations, there was no lookback period or penalty for transferring assets.

2. The new regulations now impose a lookback period of 36 months for transfers of covered assets for less than fair market value.

3. Covered asset means an asset that: (i) was part of claimant's net worth; (ii) Was transferred for less than fair market value; and (iii) if not transferred, would have caused or partially caused the claimant's net worth to exceed the net worth limit.

4. If a claimant transferred a covered asset, a penalty is imposed. The penalty is calculated by a divisor (amount equal to the amount payable to a married veteran who requires Aid and Attendance). For 2021, the divisor amount is \$2,295.

5. The penalty period is rounds down the number of months (no partial penalty months).

6. The maximum penalty period is capped at 5 years/60 months.

Example: Claimant has \$100,000 in total assets and transfers \$50,000 to child. No penalty would be imposed because claimant was already under asset threshold.

Example: Claimant had 135,000 in assets and transferred \$6,000 to child. Claimant would be subject to a penalty, but only for the amount the transferred over the asset threshold- in this example, a total of \$4,267. $\$4,267/\$2,295 = 1.85$ months, rounded down to a 1-month penalty period.

III. **Improved Pension and Long-Term Care Medicaid Comparison**

a. Long-Term Care Medicaid (42 USC 1396; Chapter 49 of the Wisconsin Statutes; Wis. Stat. §46.286; Wis. Admin. Code Ch. DHS 100-110; Medicaid Eligibility Handbook)

i. Institutional Medicaid. Government benefit that assists with paying for hospital stays and/or skilled nursing facility expenses/services if institutionalized for a minimum of 30 days.

1. Applicant will contribute all income toward care costs except for \$45 and credit for out-of-pocket medical expenses.

2. If spousal case, applicant may be able to allocate some or all income to non-applicant spouse.

3. If applicant is receiving Improved Pension, Aid & Attendance portion will be reduced all but for \$90. Base pension still in effect.

ii. Community Waivers Programs. Programs are available to pay for services/care costs for individuals who meet a nursing home level of care but reside in residence or assisted living/memory care/group home.

1. If in facility, applicant will have to pay room and board from income. Excess income will be applied toward medical expenses and cost share.

2. If spousal case, applicant may be able to allocate some or all income to non-applicant spouse.

3. If applicant is receiving Improved Pension, Aid & Attendance portion will be disregarded income. Only the base pension will count toward total income.

iii. Asset and Income Limits

1. A single individual is limited to a total of \$2,000 in assets, not including a vehicle, burial assets, a residence (if residing in the home or if home listed for sale) and personal belongings.

2. A married couple is allowed to have a total asset amount between \$52,000-\$132,380. (Determined by the snapshot date).

3. Income cannot exceed the private pay rate of facility.

4. Unlike IVAP, applicant's income is not counted as an asset in month received.

Comparison Chart

	Medicaid	Improved Pension (A&A)
Asset Maximum (single)	\$2,000 (2021)	\$130,773 (2021)
Asset Maximum (married)	\$52,000-\$130,380 (2021)	\$130,773 (2021)
Income Maximum (single)	Less than private pay rate	\$1,936/mo. (2021)
Income Maximum (married)	Less than private pay rate	\$2,295/mo. (2021)
Penalty Period	Yes- uses partial months in penalty calculation; no maximum penalty period	Yes, but only for transferred assets over asset limit; rounds down to nearest month and avoids partial months in penalty calculations; maximum of 5 years penalty period.
Lookback Period	5 years or 60 months	3 years or 36 months
Cash Benefit	No; pays directly to provider of services	Yes
Pay for Skilled Nursing Facility?	No; Improved Pension is fixed amount; Aid & Attendance Benefit is reduced to \$90.	Yes

- IV. **VA Accreditation** (38 USC §§5901-5905; 38 CFR 14.629; 38 CFR 14.636)
- a. VA Authorized Representative and VA Accreditation.
 - i. Generally, no individual may act as an agent or attorney regarding the 3 P's of an application for a veteran: preparation, presentation, prosecution. In order to represent a claimant, the individual must be accredited with the VA and be recognized as claimant's authorized representative.

 - ii. To obtain accreditation, an attorney must submit Form 21a to the Office of General Counsel. After the application is submitted, the attorney must then attend a qualifying 3 hour CLE course within 1 year of application. Within the first 3 years after initial accreditation, another 3 hour CLE course is required. Thereafter, every 2 years, a 3 hour CLE course is required.

 - b. Fees
 - i. Fees are not allowed to be charged to a claimant for assisting with the application for benefits.

 - ii. Where fees are permissible (i.e. an appeal for application denial), there are limits on fees and you must have a VA approved fee agreement in place.

