ELDERCOUNSELOR
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Long Term Care Benefits Available to Surviving Spouses of Wartime Veterans

There are over 9 million surviving spouses of veterans currently living in the United States. Many of these surviving spouses are receiving long term care or will need some type of long term care in the near future, and there are funds available from the Veterans Administration ("VA") to help pay for that care. Unfortunately, many of those who are eligible have no idea that any benefits exist for them or that an attorney can help them become eligible.

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Personalized Planning for the Present and the Future

Benefits Available

There are three types of pension benefits available that provide monthly cash payments to surviving spouses who either have low income, long term health care needs, or both. The pension benefit is referred to as "Death Pension." Below is an overview of the three benefits, and more detail will be provided on each benefit in the following paragraphs.

Death Pension. The VA provides a monthly cash payment to surviving spouses of veterans who meet active duty and discharge requirements, who are either 65 or older or disabled, and who have limited income and assets. A surviving spouse can receive up to $661 per month (with additional payments available if dependent children are present in the home).

Death Pension with Housebound Allowance. A slightly higher monthly payment is available to surviving spouses of wartime veterans (who meet the same service requirements as Service Pension) but who are confined to their home for medical reasons. A surviving spouse can receive up to $808 per month (with additional payments available if dependent children are present in the home).

Death Pension with Aid and Attendance. The highest monthly benefit is available when a surviving spouse requires the assistance of another person to perform activities of daily living, or is blind or nearly so, or is a patient in a nursing home. This benefit, often referred to simply as "Aid and Attendance" is the most widely-known and talked-about benefit as it offers the highest possible monthly payment. A surviving spouse can receive up to $1056 per month (with additional payments available for dependent children).

Practice Tip: While Aid and Attendance is the most popular VA benefit, it is important to remember that Death Pension (with no additional allowances) is available to surviving spouses who do not require assistance with activities of daily living but are either disabled or 65 or older and have low income.

Eligibility Requirements

Valid Marriage. The surviving spouse and the veteran must have been married for at least one year prior to the veteran's death. This particular requirement is met, however, if the couple was married for any period of time and a child was born to them before or during the marriage, if the marriage occurred before or during the veteran's service, or if the marriage occurred prior to the following dates:

World War II veteran	January 1, 1957
Korean War veteran	February 1, 1965
Vietnam War veteran	May 8, 1985
Persian Gulf war veteran	January 1, 2001

Next, the surviving spouse must not have remarried or lived with someone and held themselves out as married, unless the remarriage ended prior to November 1, 1990, by death, or unless legal proceedings to end the remarriage were started by November 1, 1990. Additionally, the surviving spouse must have been living with the veteran at the time of the veteran's death. If the couple was living apart, it must have been for medical, business, or other reasons besides marital discord, unless the marital discord was not the fault of the surviving spouse.

Wartime service and discharge. As noted above, the deceased veteran must have met certain service and discharge requirements before the surviving spouse can be considered for any type of pension benefit. The deceased veteran must have served 90 days of active duty with at least one day beginning or ending during a period of war. After September 1, 1980, the active duty requirement increases to 180 days. In addition, the veteran must have been discharged under circumstances other than dishonorable.

Disability. To qualify for any type of pension benefit, a surviving spouse must also be 65 or older or be permanent and totally disabled.

Permanent and total disability includes a claimant who is:

- In a nursing home;
- Determined disabled by the Social Security Administration;
- Unemployable and reasonably certain to continue so throughout life; or
- Suffering from a disability that makes it impossible for the average person to stay gainfully employed.

Asset and Income Requirements

The financial eligibility requirements of any pension benefit address a claimant's net worth and income. A claimant is the individual filing for benefits. A surviving spouse should have no more than $50,000 in countable assets. Retirement assets are counted, but a claimant's home and vehicle are not. However, the $50,000 limit is a guideline only – it is not a rule set by the VA. The VA looks at a claimant's total net worth, life expectancy, income and medical expenses to determine whether the surviving spouse is

entitled to any monthly death pension benefits.

Practice Tip: Many times the most difficult task in this area is to reduce a claimant's assets down to the applicable level (or what one hopes will be acceptable to the VA). The assistance of legal counsel is important to insure the right strategies are used with minimal impact on Medicaid in the future.

A surviving spouse must have Income for VA Purposes ("IVAP") that is less than the benefit for which he or she is applying. IVAP is calculated by taking a claimant's gross income from all sources less countable medical expenses. Countable medical expenses are recurring out-of-pocket medical expenses that can be expected to continue throughout a claimant's lifetime. If a claimant's IVAP is equal to or greater than the annual benefit amount, the veteran or surviving spouse is not eligible for benefits. Table 2 below shows the applicable income and pension amounts for surviving spouses.

Is the Surviving Spouse Housebound?
If a surviving spouse qualifies for regular death pension and is housebound, her maximum allowable income increases (as does the annual benefit amount). The VA defines housebound as being substantially confined to the home or immediate premises due to a disability that will likely remain throughout the claimant's lifetime. A surviving spouse with no dependent children who is housebound is eligible for benefits of up to $808 per month.

Unreimbursed medical expenses will reduce a surviving spouse's income dollar for dollar after a small co-pay (5% of the annual pension amount) is met. But remember, to be eligible for an additional allowance for being housebound, the surviving spouse's IVAP must be less than the annual income threshold.

To illustrate, a surviving spouse with $20,00 in annual income would not be eligible for a special monthly pension for being housebound. However, if the surviving spouse is able to show annual income of $20,000 and unreimbursed medical expenses of $25,000, the veteran would be eligible for $9,696 in annual death pension with housebound allowance (paid on a monthly basis) because the surviving spouse has negative IVAP.

Does the Surviving Spouse Require the Aid and Attendance of Another?
If a surviving spouse can show, through medical evidence provided by a primary care physician or facility, that he or she requires the aid and attendance of another person to perform activities of daily living, that surviving spouse may qualify for an additional monthly death pension allowance commonly referred to as "aid and attendance."

The VA defines the need for aid and attendance as:

- Requiring the aid of another person to perform at least two activities of daily living, such as eating, bathing, dressing or undressing;
- Being blind or nearly blind; or
- Being a patient in a nursing home.

Table 2 below shows the applicable pension amounts for each type of VA pension available to a surviving spouse.

Practice Tip: The maximum death pension for a surviving spouse is $1,056 per month ($12,681 per year). The VA pays this amount directly to the surviving spouse regardless of where he or she is living.

Qualification
As stated above, the VA looks at a surviving spouse's total net worth, life expectancy, and income and expenses to determine whether the spouse should qualify for special monthly pension. Unlike Medicaid, there is no look-back period and no penalty for giving assets away. However, one must use caution when considering a gifting strategy to qualify a surviving spouse for death pension benefits as this will cause a period of ineligibility for Medicaid which could be as long as five years. Other Medicaid planning strategies may apply when trying to qualify a surviving spouse for death pension with aid and attendance.

Practice Tip: The client's trusted advisors must work together to determine the best combination of strategies and financial products that will gain eligibility for monthly death pension but not disqualify the client from Medicaid.

An illustration. James, age 82, is the surviving spouse of a World War II veteran. James' total monthly income consists of Social Security income of $1500 per month. James was diagnosed last year with dementia and now lives in an assisted living facility as he needs help bathing, dressing and taking his medication. The assisted living facility costs $3000 per month. James has liquid assets totaling $100,000.

James' IVAP:
Income $1500
Unreimbursed recurring medical expenses $3000
Total IVAP ($1500)

The maximum monthly benefit that James could qualify for is $1,056 – death pension with an allowance for aid and attendance. Because James has a negative IVAP of $1500, he is eligible for the full death pension with aid and attendance benefit. However, his assets are too high. But because James has negative income of $1500, one option may be to take a portion of his liquid assets and convert them into an income stream through the use of an immediate annuity or promissory note. As long as James's IVAP remains a negative number or $0, he can qualify for the full death pension with aid and attendance amount.

The Application Process
While the application process for special monthly pension can be agonizingly slow – some applications take over a year before the VA makes a decision – the benefit is retroactive to the month after application submission. Having the proper documentation in place at the time of application (for example, discharge papers, medical evidence, proof of medical expenses, death certificate, marriage certificate and a properly completed application) can cut the processing time in half.

Practice Tip: Benefits are retroactive to the month after application submission. Therefore, it is imperative for potential claimants to seek legal help immediately to become eligible and to apply as

quickly as possible.

Other Benefits

Dependency and Indemnity Compensation ("DIC"). DIC is a monthly benefit paid to a surviving spouse whose veteran spouse died (1) while on active duty, (2) from a service-related injury or disease, or (3) from a non service-related injury or disease, and who was receiving or was entitled to receive VA compensation for a totally disabling service-connected disability for the 10 years immediately preceding the veterans death, or since the veteran's release from active duty and for at least 5 years immediately preceding death, or for at least one year before death if the veteran was a former prisoner of war who died after September 30, 1999.

Like death pension, DIC is a monthly payment provided to the surviving spouse. However, the surviving spouse does not have to prove a medical need, nor are there income or asset limits for DIC. The basic monthly rate of DIC is $1,154 for an eligible surviving spouse. See Table 3 below for the definition of "surviving spouse" for DIC purposes.

Burial Reimbursement. A surviving spouse who paid for a veteran's burial and/or funeral may be eligible for partial reimbursement if the veteran's death was due to the following:

- The veteran died because of a service-related disability,
- The veteran was receiving VA pension or compensation at the time of death,
- The veteran was entitled to receive VA pension or compensation, but decided not to reduce his/her military retirement or disability pay,
- The veteran died while hospitalized by VA, or while receiving care under VA contract at a non-VA facility,
- The veteran died while traveling under proper authorization and at VA expense to or from a specified place for the purpose of examination, treatment, or care,
- The veteran had an original or reopened claim pending at the time of death and has been found entitled to compensation or pension from a date prior to the date of death, **OR**
- The veteran died on or after October 9, 1996, while a patient at a VA-approved state nursing home.

Reimbursement for Service-Related Death. VA will pay up to $2,000 toward burial expenses for deaths on or after September 11, 2001. VA will pay up to $1,500 for deaths prior to September 10, 2001. If the veteran is buried in a VA national cemetery, some or all of the cost of transporting the deceased may be reimbursed.

Reimbursement for Nonservice-Related Death. VA will pay up to $300 toward burial and funeral expenses and a $300 plot-interment allowance for deaths on or after December 1, 2001. The plot-interment allowance is $150 for deaths prior to December 1, 2001. If the death happened while the veteran was in a VA hospital or under VA contracted nursing home care, some or all of the costs for transporting the veteran's remains may be reimbursed.

Conclusion

Time is of the essence for surviving spouses who may be eligible for benefits available through the

Veterans Administration. Failing to apply as soon as possible after a veteran's death could result in the loss of monthly payments the surviving spouse would otherwise be eligible to receive. It is imperative for those who work with surviving spouses of veterans to be aware of these benefits and to help potential claimants obtain legal help to qualify for these benefits. If you know of someone who may be eligible, please give us a call – we would be happy to help!

Table 1: Wartime Periods	
World War I	April 6, 1917 through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 12, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.
World War II	December 7, 1941, through December 13, 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.
Future Dates	The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by the Presidential proclamation or concurrent resolution of the Congress.
Mexican Border Period	May 9, 1916, through April 5, 1917, in case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
Persian Gulf War	August 2, 1990, through date to be prescribed by Presidential proclamation or law.

Table 2: 2011 Pension Benefit Figures - Surviving Spouse		
Type of Benefit	**Maximum Annual Pension Rate (Income Limit)**	**Monthly Maximum Annual Pension Rate (Income Limit)**
Death Pension	$7,933	$661
- One dependent child	$10,385	$865
Housebound	$9,696	$808
- One dependent child	$12,144	$1,012
Aid and Attendance	$12,681	$1,056
- One dependent child	$15,128	$1,260
- Each add'l dependent child	$2,020	$168

Table 3: Marriage Requirements for DIC	
The veteran and surviving spouse were validly married before January 1, 1957	
The surviving spouse was married to a service member who died on active duty, active duty for training, or inactive duty training	
The surviving spouse married the veteran within 15 years of discharge from the period of military service in which the disease or injury that caused the veteran's death began or was aggravated	
The surviving spouse was married to the veteran for at least one year	
The surviving spouse had a child with the veteran, and	
	cohabitated with the veteran continuously until the veteran's death, or if separated, was not at fault for the separation
	is not currently remarried.*
* A surviving spouse who remarries on or after December 16, 2003, and at or after age 57, is entitled to continue to receive DIC.	

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.