

New Final Rule from VA Impacts Needs-Based Programs

The Department of Veterans Affairs published a [final rule](#) that went into effect on October 18, 2018. These new regulations significantly affect the VA Pension, the Aid & Attendance benefit, and other needs-based benefit programs. The VA Pension benefit is paid to wartime veterans, and their surviving single spouses, who meet low income and resource thresholds and have either a non-service connected disability, or meet age requirements (65 years old or more). The Aid & Attendance benefit provides significant additional cash benefits to veterans who already qualify for a VA Pension benefit, and who also are bedridden, blind, a patient in a skilled nursing facility, or require the aid of another person in order to perform activities of daily living. Some of the significant changes made by the new rules that advocates should be aware of are:

- **New requirements for evaluating net worth**

The new regulations establish a net worth limit to qualify for VA pensions at \$123,600, the maximum community spouse resource allowance (CSRA) for Medicaid purposes at the time the regulations go into effect. That limit will be increased by the same percentage as the Social Security cost of living increase each year. The calculation will include both countable assets and yearly income. Certain income and assets are excluded. For example, the claimant's primary residence and residential lot area provided it does not exceed 2 acres. See 38 C.F.R. §§ 3.274 and 3.275 for more information on how net worth will be calculated.

- **A new 36 month look back period with asset transfer penalties of up to 5 years of benefits**

The new rules institute a 36 month look back period and asset transfer rules and penalties that did not exist before. Transferring covered assets for less than fair market value can now result in penalty periods of up to five years during which needs-based VA benefits might not be paid. One notable rule is that transfers to annuities are presumed to be transferred to qualify for benefits and will be penalized. Also, transfers to trusts for disabled children will be penalized unless the child is rated incapable of self-support with the Veterans Administration, and there

is no circumstance under which distributions could benefit the veteran or the veteran's spouse. More information on these new requirements are found in the new regulations at 38 C.F.R. § 3.276.

- **New rules regarding which medical expenses can be deducted from countable income**

Previously, there had been no regulation which adequately defined "medical expenses" for purposes of the medical expense deduction from countable income for VA needs-based benefit calculations. The new rules include a long list of medical expenses which can be deducted from countable income for purposes of VA Pension, Section 306 Pension, and Parents' Dependency and Indemnity Compensation (DIC) benefits. The expenses must be unreimbursed, and the list can be found in the new rules at 38 C.F.R. § 3.278.

- **List of statutory exclusions for income or assets**

The new regulations provide a detailed chart listing all of specific types of payments which are excluded from countable income and/or assets for the purpose of determining entitlement to any VA-administered benefit that is based on financial need in 38 C.F.R. § 3.279.

- **Implementing statutory changes for VA pension beneficiaries who receive Medicaid-covered nursing home care**

This final rule amends 38 CFR § 3.551(i) and § 3.503 to implement statutory changes to 38 U.S.C. § 5503(d). The statute, which provides for a reduced pension rate of \$90 per month when a pension recipient is receiving care in a nursing home paid for by Medicaid, previously applied only to veterans and surviving spouses with no dependents, but was amended in 2010 to apply also to surviving children.

Advocates serving veterans who might apply for needs based benefits should be aware of these new changes so they can properly advise their clients.