



Helping Veterans Pay for Long-Term Care: The VA Pension

2nd Edition

by Marcie Johnson

Questions about benefits?

Call the Author, Marcie Johnson
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You want to protect those who are closest and dearest to you.

It's all about family! You want to protect those who are closest and dearest to you. You want assurance that those who care & sacrificed for you are protected during their time of need. This book will help explain a little known benefit available to veterans and their surviving spouses called the

VA Pension ("Death Pension" for surviving spouses). Its purpose is to help alleviate some of the financial struggle facing military families who are paying for long-term care. Provided here is a brief overview of the VA Pension: who can get it, how one can apply for it, and strategies to become eligible for it. This book intends to clear some of the confusion regarding the VA Pension and offer planning techniques to ensure your family can protect as much of your hard-earned assets as the law allows, and enable you to receive the care you need.

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Helping Veterans Pay for Long-Term Care: The VA Pension



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“Our family taking care of your family!”

We, at the law firm of The Johnson Firm, P.C. specialize in helping families. Through Medicaid and VA planning, we help families protect what they have spent a lifetime to build from the potentially devastating costs of nursing homes and long-term care. Through estate planning, we create and help administer wills and living trusts. We probate estates and help our clients achieve asset protection, having helped clients for over 35 years. What distinguishes our law firm from others is that we are a father-daughter family team.

Being family, we can relate to other families with compassion and understanding to help bring peace of mind, and clearly inform our clients of their estate planning options to devise the best plan for their needs.



Marcie Johnson, Attorney, graduated from Texas Tech School of Law. She received her Bachelor's Degree from the University of Texas. Marcie is a VA accredited attorney and concentrates specifically in the areas of Medicaid, VA Pension, probate and trust administration. Marcie speaks regularly to community groups across North Texas and was a guest presenter at the AICPA & CIMA national elder planning conference in 2019 addressing how to pay for long-term care utilizing Medicaid and VA Pension.



Marcie was named one of *D Magazine's* Best Attorneys in Dallas 2016 and 2018. She is licensed to practice law in Texas and Arizona.



Richard P. Johnson, Attorney, is Board Certified in the practice area of Estate Planning and Probate Law by the Texas Board of Legal Specialization. Richard is recognized by his peers and clients alike for his expertise in estate planning, probate, and asset protection. Richard speaks extensively on the subject of estate planning, asset protection, and elder law. He has been a frequent presenter before organizations throughout Texas, including banks, accounting firms, law firms and colleges. Richard is licensed to practice law in Texas and Washington.

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There are over 25 million veterans alive throughout the United States and close to 9 million surviving spouses of veterans living today.

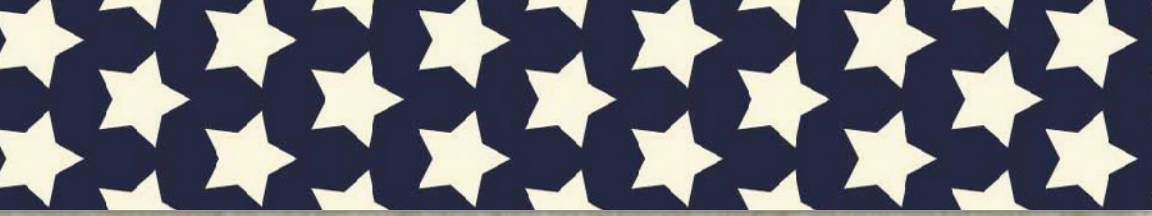
There are nearly 1.7 million veterans currently living in Texas. There are over 25 million veterans alive throughout the United States and close to 9 million surviving spouses of veterans living today. Many of these veterans and surviving spouses are now over age 65 and need or will need long-term care in the future. What may be surprising to some, the U.S. Department of Veterans Affairs offers tax-free money to help veterans and their families offset medical expenses not covered by insurance if they meet certain service, disability, out-of-pocket medical expenses and net worth requirements.

The purpose of the VA Pension is to say “thank you” to the men and women who served our country during wartime and to keep them from going broke to pay for their long-term care. Their military service earned them this benefit. The extra income direct-deposited to the veteran or surviving spouse’s bank account can be a life saver and provide a wider range of choices as to their level of care and where to receive that care (in the home, assisted living facility or nursing home). The challenge of this income benefit is that not enough people know that it is available. Unfortunately, many people who could benefit from the program know nothing about it. Our goal in the next few pages is to get you acquainted with the program and determine if it might be a good fit for your family.

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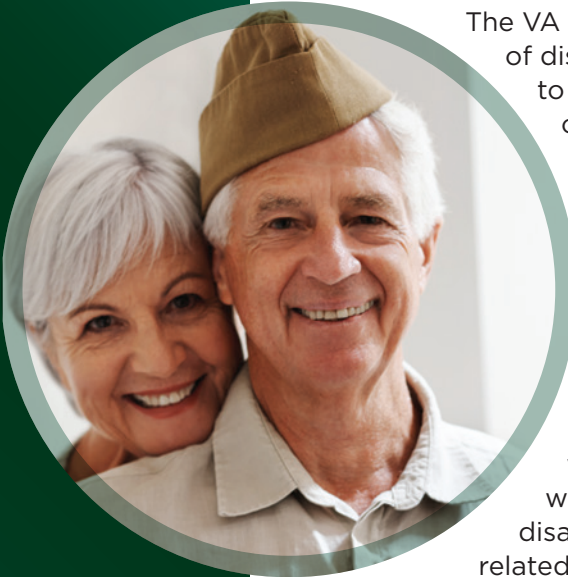
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What is the VA Pension?



The VA offers two types of disability payments to veterans: service-connected disability compensation and non-service connected disability pension. Service connected disability compensation provides money to wartime veterans whose death or disability is directly related to their military service and can be proven

through medical records. Examples of disabilities that might be eligible for disability compensation would be paralysis due to an accident that occurred during military training or those exposed to Agent Orange during military service which resulted in developing Parkinson's disease. The amount the VA will compensate such veterans is based on a rating system determined by the degree in which the disability would impair an average person to make a living. Disability compensation is not limited by the veteran's income or assets. This VA compensation program is NOT covered in this book. If you need more information on disability compensation, we recommend you contact your regional VA office.

The Aid and Attendance categorization pays the highest level of pension.

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Instead, the focus of this book is on non-service connected disability, also known as the VA Pension. In this book, for convenience, we refer only to the “veteran.” Please remember, however, that this benefit is also available to the surviving spouse of a veteran. Where the rules differ for a surviving spouse applicant, we will address those distinctions specifically.

The VA Pension is a tax-free monthly sum paid to help veterans offset the expenses for their long-term care needs. Depending on the level of care needed, veterans can receive a Special Monthly Pension which pays above the regular base pension. These include a “housebound” allowance which is an intermediary level of pension, and the “aid and attendance” allowance. The Aid and Attendance categorization pays the highest level of pension and is the level most veterans applying for the benefit strive to obtain. This is why you may have heard the VA Pension referred to as simply the “Aid and Attendance Pension”. Qualifying veterans and their spouse could receive up to \$2,643 a month and a surviving spouse could receive up to \$1,433 monthly for their lifetime!

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How Can I Qualify for the VA Pension?



To receive any level of pension, basic requirements must be met. In essence, the veteran applicant must pass four tests: a service test, disability test, out-of-pocket medical expenses test, and a net worth test. Let's look at these requirements in more detail.

Service: The veteran must have served 90 consecutive days of active duty and at least 1 of those days occurred during a period of war (regardless of where the veteran was stationed). In other words, the veteran did not have to be in a combat zone during wartime to qualify under this test. The veteran must not have been discharged dishonorably. Many mistakenly believe only career veterans can receive the pension. This is not true. Only 90 days of active service is required. The veteran must have served active duty in one of the following branches of the U.S. Military:

- Army
- Navy
- Marines
- Air Force
- Coast Guard
- Merchant Marines

To receive any level of Pension, basic requirements must be met.

Official War Time Periods:

- ★ WWII: December 7, 1941 – December 31, 1946
- ★ Korean War: June 27, 1950 – January 31, 1955
- ★ Vietnam War: November 1, 1955 – August 4, 1964 (only if serving IN Vietnam during this time)
- ★ Vietnam War: August 5, 1964 – May 7, 1975
- ★ Persian Gulf: August 2, 1990 – present (Note: Veterans who enlisted after Sept. 7, 1980 have different service requirements and must have served continuously for a 24-month period)



STOP! If the veteran does not meet the service requirements, there is no need to read further. The veteran or surviving spouse is not eligible for the VA Pension. However, we would recommend you speaking with an elder law attorney as there may be other strategies available to help pay for long-term care.

If the veteran passes the service test, Congratulations! Read on to learn about the other 3 tests that must be met.

Disability: The VA Pension requires the veteran to be either over the age of 65 or be completely and permanently disabled. The VA defines complete disability as when the veteran is blind or nearly so, receiving Social Security Disability “SSD” or Supplemental Security Income “SSI”. Meeting VA’s definition of disability as well as the other three tests discussed herein would make the applicant eligible for the regular “base” pension. However, additional payments can be made for veterans who meet “housebound” or “aid and attendance” status.



Housebound: The VA defines “housebound” as being substantially confined to the home or immediate premises due to a disability that will likely remain throughout the veteran’s lifetime. If a veteran can prove housebound status through a doctor’s evaluation, the veteran may receive a special monthly payment which is higher than the base pension. See Page 11 for a list of available pension amounts.

Aid and Attendance: This is the highest level of special monthly pension paid to veterans who are unable to perform at least two activities of daily living without assistance (bathing, dressing, transferring from bed or chair, walking, eating and toilet use). The VA presumes eligibility for aid and attendance if the veteran is living in a nursing home.

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NOTE: If the veteran is married, it is the veteran's disability that determines the level of pension paid, not the spouse's. If the spouse is in an assisted living facility, but the veteran lives at home with no need of assistance, the veteran might be eligible for the base pension if all other tests are met, but the veteran will not receive the Special Monthly Aid and Attendance pension. The spouse may indirectly benefit from the tax-free direct deposit into the veteran's bank account to offset unreimbursed medical expenses, but the pension amount is based on the disability of the veteran and no one else.

Please do not get this confused with *surviving spouse* benefits. When a surviving spouse is applying for the Death Pension, then his or her disability is considered in determining pension amount.

Out-of-Pocket Medical Expenses: The veteran's regularly occurring unreimbursed medical expenses (not covered by insurance) must exceed gross monthly income from all sources. These medical expenses must be expected to continue throughout the veteran's lifetime. If the veteran is married, both spouses' income is considered. Examples of unreimbursed medical expenses include:



- Medicare Part B and D
- Supplemental health insurance premiums
- Long-Term Care Insurance premiums
- Care-Giver expenses
- Assisted Living
- Skilled Nursing Home Care
- Prescription Drugs (if reasonably certain to occur for remainder of lifetime)

Net Worth: A veteran is allowed \$150,538 in net worth.¹ This includes income as well as assets. If the veteran is married, the income and assets of the veteran's spouse is also included. Like Medicaid, some assets are exempt from the VA's calculation. VA does not consider the value of personal effects, vehicles or homestead as long as the residential lot does not exceed two acres. The VA will determine the veteran's net worth as of the date the VA application for pension is filed.



¹ Beginning January 1, 2023. The limit on net worth is adjusted annually to reflect inflation.



Surviving Spouse

A widow(er) of a wartime veteran is eligible for the Death Pension if the deceased spouse meets the service requirements and the widow(er) meets the other three tests (disability, out-of-pocket medical expenses and net worth). Net worth is capped at \$150,538 (same amount as a veteran), but the available monthly pension amount is less than that for a veteran.

The surviving spouse need not have been married to the veteran during time of active duty. He or she could have married afterward. Marriages ending in divorce disqualify an ex-spouse from receiving the Death Pension on their ex-spouse's military service. The surviving spouse cannot remarry after the veteran's death and be eligible for the pension unless the second spouse was also a veteran and met the criteria outlined previously.

Pension Rates

2023 Pension Rates for Wartime Veteran

	Max. Monthly Pension Rate	Max. Annual Pension Rate
Basic Service Pension	\$1,336	\$16,037
With spouse/child	\$1,750	\$21,001
Housebound	\$1,633	\$19,598
With spouse/child	\$2,047	\$24,562
Aid and Attendance	\$2,229	\$26,752
With spouse/child	\$2,643	\$31,714
Each additional dependent child	+\$229	+\$2,743

2023 Pension Rates for Surviving Spouse (Death Pension)

	Max. Monthly Pension Rate	Max. Annual Pension Rate
Basic Service Pension	\$896	\$10,757
Housebound	\$1,096	\$13,147
Aid and Attendance	\$1,433	\$17,192
Each additional dependent child	+\$229	+\$2,743

Recently, the VA instituted a 36 month (3 year) look-back period to penalize transfers made in an attempt to reduce an applicant's net worth to qualify for the VA Pension.

The penalty is calculated by a complex mathematical formula which is beyond the scope of this book. The good news, unlike the Medicaid program, is that veterans do not have to wait until a pension application is filed before the penalty period starts. The penalty period begins to run the month following the transfer and no penalty applies to transfers made prior to October 18, 2018.

What if I Do Not Meet the Eligibility Requirements?



You don't meet the military service requirement.

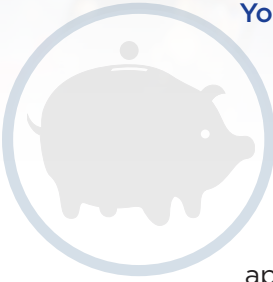
As stated previously, if the applicant does not meet the military service requirements, then the VA Pension will not be a viable option to help pay for long-term care. However, there are other options that should be considered, such as long-term care insurance or Medicaid benefits. This is why hiring a VA accredited attorney can be beneficial.

Many of these options are

addressed in our other books, “Help! Mom Needs To Go Into a Nursing Home...What Do I Do? A Family’s Guide to Texas Long-Term Care Planning” and in our book “Preserving the Family’s Wealth...A Senior’s Guide to Texas Long-Term Care Planning.” Both are available through our office and by download on our website.

Do not try to apply for benefits on your own.





Your net worth is too high.

If the applicant's income is higher than what he or she is paying out in unreimbursed medical expenses, there may be a solution. Naturally, if the applicant needs no assistance with activities of daily living and all medical expenses are covered by insurance, then he or she may need to wait and apply for benefits at a later time.

However, often the applicant is receiving regular help with activities of daily living from relatives or close friends. We can formalize these care giver services through a written agreement in which payment is made to a relative or close friend for such services and thus, make those medical services count as qualified expenses. Of course, the applicant must truly be in need of the care giver services. But the VA is aware of such contracts and if proper protocol is followed, they can be a viable tool to help meet the out-of-pocket medical expense test for the VA Pension.

If the applicant's assets are too high, we can help. We can calculate a definitive plan to spenddown assets to fall within the VA limits and possibility purchase exempt assets not counted by the VA. We can also strategically gift assets to become eligible for the benefit at a later time.

But before you start handing over your hard-earned assets, consider the consequences. Once money is given away, even to a trusted family member, more likely than not, the giver will not be able to receive it back. Unforeseen circumstances can happen and the gifted assets could be lost. There are strategies, however that we, as accredited VA attorneys, can implement to help preserve those funds, ensuring assets stay within the family while positioning the applicant to receive the VA Pension at a later date. This is usually accomplished by creating special types of trusts.



CAUTION:

A gifting strategy for VA Pension qualification can cause a period of ineligibility should the applicant need Medicaid assistance at a later date. Choosing an elder law attorney with experience in both VA planning and Medicaid planning is extremely important. Do not try to apply for benefits on your own. Hire an experienced guide to lead you through the process and steer you away from potential traps that could jeopardize later planning.



How Do I Apply for the Pension?



To make a claim with the VA, the claimant must fill out the correct forms, provide proof of financial and disability eligibility, submit copies of birth certificates, marriage certificates and death certificates (if applicable) and produce a copy of the veteran's military discharge papers. If you cannot find the veteran's discharge papers, a certified copy might be available online at www.archives.gov/veterans/military-service-records. The completed application is sent to the Pension Management Center which governs your state. For Texas and Arizona, applications are submitted to the St. Paul VA Regional office.

A benefit of working with a VA accredited attorney is that we are familiar with the process.

A claimant can attempt to file this paperwork on their own, although this is not recommended. The financial proof required by the VA can be a daunting process. A claimant can choose to work with an accredited VSO (veterans service organization) or a VA accredited attorney. A benefit of working with a VA accredited attorney is that we are familiar with the process, can often expedite the eligibility determination process and can address other long-term care issues, such as ensuring strategies used to qualify for the VA Pension do not jeopardize qualification for Medicaid down the road. Also, we can review a claimant's current estate plan and make sure their documents will be effective when they are needed.

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Where Do I Go From Here?

There is no “one size fits all” strategy to position your assets to financially qualify for the VA Pension. Each case is different because all families’ goals and needs are different. The strategies offered in this book are just a sampling of the tools available to you.

If you or your loved one needs help paying for long-term care, we encourage you to call our office for a consultation to discuss ways to preserve your assets while getting the long-term care you need. The more you know about how to get the help and protection you deserve, the better you will be able to look out for your family’s best interests. Get the right help. Contact us today to determine how our family can help yours.



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This information is provided as a guide with general information only. It is not intended to be legal advice. The reader is not considered a client of the law firm of The Johnson Firm, PC, unless a contract for services has been signed and a fee has been paid.

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