

# PENSION



## WHAT VETERANS AND THEIR FAMILIES SHOULD KNOW WHEN APPLYING FOR DEPARTMENT OF VETERANS AFFAIRS (VA) PENSION BENEFITS

VA's pension program provides monthly benefit payments to certain wartime Veterans with financial need, and their survivors. As Veterans and survivors consider applying for these benefits, VA would like to share important information about the pension program and organizations offering assistance with pension applications.

### WHAT ARE PENSION BENEFITS?

- **Pension** is a needs-based benefit paid to a wartime Veteran and his/her survivor(s). A Veteran may generally be eligible if he/she:
  - was discharged from service under other than dishonorable conditions, **AND**
  - served 90 days or more of active military, naval or air service with at least 1 day during a period of war\*, **AND**
  - his/her countable income is below the [maximum annual pension rate](#), **AND**
  - meets the net worth limitations, **AND**
  - is age 65 or older, **OR** is shown by evidence to have a permanent and total non-service-connected disability, **OR** is a patient in a nursing home, **OR** is receiving Social Security disability benefits.

\*Veterans who entered active duty after September 7, 1980, must also have served at least 24 months of active duty service. If the total length of service is less than 24 months, the Veteran must have completed his/her entire tour of active duty.

- **Aid and Attendance (A&A)** is an increased monthly pension amount paid to a Veteran or surviving spouse. You may be eligible for the increased A&A amount if:
  - You are eligible for basic pension benefits **AND**
  - You require the aid of another person in order to perform activities of daily living, such as bathing, feeding, dressing, toileting, adjusting prosthetic devices, or protecting yourself from the hazards of your daily environment, **OR**
  - You are bedridden, in that your disability or disabilities require that you remain in bed apart from any prescribed course of convalescence or treatment, **OR**

Disabilities determined by VA to be related to your military service can lead to monthly non-taxable compensation, enrollment in the VA health care system, a 10-point hiring preference for federal employment and other important benefits. Ask your VA representative or Veterans Service Organization representative about Disability Compensation, Pension, Health Care, Caregiver Program, Career Services, Educational Assistance, Home Loan Guaranty, Insurance and/or Dependents and Survivors' Benefits.



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- You are a patient in a nursing home due to mental or physical incapacity, **OR**
- You have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less.
- **Housebound** is an increased monthly pension amount paid to a Veteran or surviving spouse who is substantially confined to his or her home because of permanent disability. You may be eligible if:
  - You are eligible for basic pension benefits **AND**
  - You have a single permanent disability evaluated as 100-percent disabling **AND**, due to a disability or disabilities, you are permanently and substantially confined to your immediate premises, **OR**
  - You have a single permanent disability evaluated as 100-percent disabling **AND** another disability or disabilities, independently evaluated as 60-percent or more disabling.

### What do I need to know about the organizations that are offering assistance with claims for pension benefits?

- **The U.S. Senate Special Committee on Aging** (Committee) found that some organizations are misrepresenting themselves while helping Veterans and survivors apply for VA pension.
  - In a June 2012 hearing, the Committee addressed concerns that some organizations are marketing financial products and services to enable claimants whose assets exceed the VA pension program's financial eligibility thresholds to qualify for VA pension benefits.
  - The Committee also learned these organizations may charge substantial fees for products and services that may not always be in claimants' best long-term interests.
  - You can access a video of the hearing on the Committee's [website](#).
- **The U.S. Government Accountability Office** (GAO) published a report, Veterans' Pension Benefits: Improvements Needed to Ensure Only Qualified Veterans and Survivors Receive Benefits, [GAO-12-540](#). GAO found that:
  - There are over 200 organizations that market financial and estate-planning services to help pension claimants with excess assets meet financial eligibility requirements for pension benefits.
  - These organizations consist primarily of financial planners and attorneys who offer products such as annuities and trusts.
  - Some products and services provided, such as annuities, may not be suitable for elderly Veterans because they may not have access to all their funds for their care within their expected lifetime without facing high withdrawal fees.
  - These products and services may result in ineligibility for Medicaid for a period of time.
  - Some organizations charged fees, ranging from a few hundred dollars for benefits counseling to \$10,000 for establishment of a trust.

## Who can help me file a claim for VA pension, including pension at the aid and attendance or housebound rates?

- An individual generally must first be accredited by VA to assist a claimant in the preparation, presentation, and prosecution of a claim for VA benefits—even without charge. VA accredits three types of individuals for this purpose:
  - Representatives of VA-recognized Veterans service organizations
  - Independent claims agents
  - Private Attorneys
- A searchable list of accredited representatives, agents, and attorneys is available at the VA Office of the General Counsel website: <http://www.va.gov/ogc/apps/accreditation/index.asp>
- VA accreditation, which is for the sole and limited purpose of preparing, presenting, and prosecuting claims before VA, is necessary to ensure that claimants for VA benefits have responsible, qualified representation.
- VA regulations allow a one-time exception to this general rule, which allows VA to authorize a person to prepare, present, and prosecute one claim without accreditation. The assistance must be without cost to the claimant, is subject to the laws governing representation, and may not be used to evade the accreditation requirements.
- Preparation and presentation of a VA claim includes, among other things, gathering the information necessary to file a claim for benefits, completing claim applications, submitting claim information to VA, and communicating with VA on behalf of a claimant.
- A VA-accredited attorney or claims agent, who is also a financial planner, may assist a claimant with a claim for A&A. However, financial planners may not use their VA accreditation for the purpose of promoting or selling financial products.
- If VA determines that an accredited attorney or agent is using VA accreditation for an improper purpose, VA may suspend or cancel the individual's accreditation.

## Can an accredited attorney or claims agent, who is also a financial planner, charge a fee for preparing a claim for A&A?

- No. An accredited attorney or claims agent may generally charge claimants a fee only **after** an agency of original jurisdiction (e.g., a VA regional office) has issued a decision on a claim, a notice of disagreement has been filed, and the attorney or agent has filed a power of attorney and a fee agreement with VA.
- An exception applies when an accredited attorney or claims agent receives a fee or salary from a disinterested third party. A third party is considered disinterested only if the entity or individual would not benefit financially from the successful outcome of the claim.

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- We note that some individuals charge a pre-filing “consultation” fee to inform a Veteran or survivor about VA benefits that may be available to them. In certain states, a license to practice law may be required to provide and charge a fee for such “consultations,” which may be considered giving legal advice.
  - Such “consultation” fees are unlawful if they are charged after a Veteran or survivor becomes a VA **claimant** by expressing to the attorney or agent an intent to file a claim for VA benefits.
  - A “consultation” fee may not be tied to the outcome of a claim filed with VA if the attorney or agent provides any claims assistance—that is, an attorney or agent cannot agree to refund the fee if, after the attorney or agent assists with a VA claim, VA ultimately denies the claim. Such a fee would amount to an unlawful contingency fee or advance payment for assistance with an application for VA benefits.
  - VA-recognized Veterans service organizations, including their accredited representatives, are not permitted to receive fees for their services in connection with a VA claim in any instance.
  - If VA determines that an accredited attorney or agent is improperly charging a fee for preparing, presenting, or prosecuting a claim prior to the filing of a notice of disagreement, VA may suspend or cancel the individual’s accreditation.

**Is it permissible to offer a guarantee that a claimant will be awarded A&A or that the processing of a claim will be expedited?**

- No. Such promises are patently misleading because VA is ultimately the adjudicator of claims for VA benefits.
- If VA determines that an accredited attorney or agent has misled or deceived a claimant regarding benefits or other rights under programs administered by VA, VA may suspend or cancel the individual’s accreditation.

For More Information, Call Toll-Free 1-800-827-1000 or Visit Our Web Site at <http://www.va.gov>

