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February 15, 2015

VA proposes regulations to change standards for some benefits

The Department of Veteran Affairs (VA) has announced proposed regulations that will affect needs-based programs such as Pension and Aid and Attendance for older veterans and their surviving spouses. The VA claims that the proposed changes are the result of a 2012 Government Accountability Offices (GAO) report. This report recommended changes in the VA needs based programs to “to maintain the integrity of VA’s needs-based benefit programs.” The VA itself says another reason for the new rules is to “reduce opportunities for attorneys and financial advisors to take advantage of pension claimants.”

The programs targeted by these new rules are low income pension, homebound pension, and Aid and Attendance. These benefits may be available to a veteran, or a surviving spouse of a veteran who served at least one day during wartime (as set by Congress) for at least 90 days, and received something other than a dishonorable discharge. The benefit, particularly the Aid and Attendance benefit, replaces some income that the veteran or surviving spouse is spending on *unreimbursed* medical expenses. Furthermore, there is a limit on assets or net worth since the VA assumes that if the veteran or his surviving spouse has sufficient assets to take care for himself or herself, then the VA should not be providing money to the veteran or spouse. These proposed changes to the rules would presumably not apply to compensation, which are the benefits for those with a current injury/illness that is service connected.

The proposed rules would impose a 36 month “look back” period on transferred assets, even between spouses to the extent that assets exceed the new net worth limit which would be the maximum community spouse resource allowance permitted by Medicaid prevailing at the time the final rule is published, indexed for inflation. In 2015, the maximum allowance is \$119,220. For those who dispose of excess assets in order to qualify for VA benefits, there will be a penalty period of up to **10** years based upon the total assets transferred during the “look back” period that exceed the net worth calculation. The penalty period would begin on the first day of the month that follows the last asset transfer, and the divisor would be the applicable maximum annual pension rate in effect as of the date of the pension claim. If the VA mirrors Medicaid rules, this would mean that no pension monies would be paid during the penalty period.

The net worth is determined by adding the claimant’s annual income to his or her assets. The primary residence would not be included as an asset unless it is sold and another residence is not purchased within one calendar year. Deductible medical expenses would be further clarified as well.

These new regulations seem to attempting to mirror Medicaid rules for a benefit that is not nearly as valuable as Medicaid. Moreover, it would seem that veterans earned the right to some assistance when they are older and ill by virtue of simply being veterans and having served our country. These rules are so restrictive, it would seem that few veterans or surviving spouses would qualify for what is a fairly low benefit (in 2015, the maximum surviving spouse benefit is \$1,149 per month and a veteran with one dependent/spouse is \$2,120 per month). Most claimants are trying to obtain assistance to pay for personal care/assisted living facilities, or for care in a State Veterans facility.

Consider contacting your U.S. Congressman or U.S. Senator to express your feeling on the proposed regulations. If accepted the new regulations could go into effect as early as early as July, 2015.