

CHAPTER 8

STUDY PLAN

NON-SERVICE-CONNECTED DISABILITY PENSION

OBJECTIVE

To understand VA non-service-connected disability pension benefits, who is eligible to receive such benefits, and the requirements for entitlement.

REFERENCES

- Title 38, U.S. Code, Chapter 15
- 38 Code of Federal Regulations, Part 3 and 4
- Adjudication Manual, M21-1MR (Manual Rewrite), Part 5
- Veterans Benefits Manual, Chapter 6
- *Federal Benefits for Veterans, Dependents and Survivors*, 2014 edition
- VA Website, *How to Read Pension Rates*, available at <http://www.benefits.va.gov/PENSION/rates.asp>
- VA Website, *How to Calculate Veterans Pension*, available at <http://www.benefits.va.gov/PENSION/pencalc.asp>
- VA Forms
 - 21P-527EZ, *Application for Pension*
 - 21-2680, *Examination for Housebound Status or Permanent Need for Regular Aid and Attendance*

INTRODUCTION

The VA administers two major disability benefits programs for veterans: service-connected disability compensation and non-service-connected disability pension.

The basic concept behind each program is different. Service-connected disability compensation is **not** based on need or income. It is a tax-free monetary benefit paid to veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military

service. **Non-service-connected pension**, however, **is** a *needs-based program* with limits on how much countable income a veteran can have, and his or her net worth. Basic eligibility for non-service-connected pension requires that the veteran have "wartime" service, low income/net worth, and be rated permanently and totally disabled and/or over age 65. Non-service-connected pension can be a very important safety net for low-income wartime veterans. Over the years, the VA has had different pension programs: "Old-law Pension," "Section 306 Pension," and "Improved Law Pension," which is the current program. The Improved Law Pension program began January 1, 1979. All persons who were in receipt of pension under either of the prior pension laws, or who had a pension claim pending on December 31, 1978, are protected under those laws for as long as they continue to meet the income and net worth limits for those programs.

There are three Pension Management Centers (PMCs): one each in Philadelphia, PA; Milwaukee, WI; and St. Paul, MN. The PMC in St. Paul has jurisdiction over non-service-connected pension claims from all regions in the west.

NOTE: Peacetime veterans who served between May 8, 1975 and August 1, 1990, who do not have service-connected medical conditions, are **ineligible** for any monetary benefit from the VA. Indigent veterans in these circumstances should be directed to apply for other public benefits, such as Social Security Disability Insurance (SSDI).

Pension Management Centers

The map shows the area of jurisdiction for St. Paul PMC, Milwaukee PMC and Philadelphia PMC.



If a non-service-connected pension claim also includes a claim for service-connected disability compensation (making it a "dual claim"), it will not be adjudicated at one of the PMCs. Instead, it will be adjudicated at the regional office of jurisdiction.

To apply for non-service-connected pension, veterans must complete and submit VA Form 21P-527EZ, *Application for Pension*.

NON-SERVICE-CONNECTED PENSION ELIGIBILITY REQUIREMENTS

To be eligible for non-service-connected pension, the veteran must:

- Have a discharge under other than dishonorable conditions
- Have wartime service
- Be permanently and totally disabled (or age 65 or older), and
- Demonstrate financial need

QUALIFYING DISCHARGE

The veteran must have been discharged under “conditions other than dishonorable”. For further discussion on this topic, see the “Basic Eligibility” section of [Chapter 5](#). For information on how to assist veterans who do not possess a qualifying discharge, see [Chapter 19](#).

WARTIME SERVICE

The veteran must have served on active duty for at least 90 consecutive days, at least one day of which was during a wartime period; or if less than 90 days, was discharged because of a disability; or had two or more separate periods of active duty for an aggregate of 90 days or more during more than one period of war.

If the veteran entered active service on or after *September 8, 1980*, or if she or he was an officer who entered active duty on or after October 16, 1981, the veteran must have completed a **minimum period of service**—either 24 consecutive months of continuous active duty, or the full period for which he or she was called or ordered to active duty—with at least one day during a wartime period.

PERIODS OF WARTIME:

These periods (beginning after 1900) are recognized by the VA as constituting "Wartime Service" according to 38 C.F.R. § 3.2(c)–(i)

Mexican Border Period: May 9, 1916 to April 5, 1917, if the veteran served in Mexico, on the borders thereof; or the waters adjacent thereto.

World War I: April 6, 1917 to November 11, 1918, inclusive. If the veteran served with US forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran also served in the active military, naval or air service after April 5, 1917 and before November 12, 1918.

World War II: December 7, 1941 to December 31, 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: February 28, 1961 through May 7, 1975, inclusive, in the case of a veteran who served in the Republic of Vietnam during that period. August 5, 1964 through May 7, 1975 is inclusive in all other cases.

Persian Gulf War: August 2, 1990 through a (future) date to be prescribed by Presidential proclamation or law.

PERMANENTLY AND TOTALLY DISABLED

If a veteran is over age 65, has been found permanently and totally disabled by the Social Security Administration and in receipt of Social Security disability, or is a patient in a nursing home for long-term care due to a disability, that veteran is presumed to be permanently and totally disabled by VA standards. If the veteran does not fall into one of these categories, the VA must make a rating determination as to whether or not the veteran has disabilities that make him or her permanently and totally disabled. All of the veteran's disabilities may be considered: both service-

connected and non-service-connected. The only requirements are that the disability is permanent, that it is not the result of the veteran's own willful misconduct, and that it is sufficient to preclude substantially gainful employment for which the veteran would otherwise qualify, based on his or her age, education and work history. The disabilities are evaluated according to the criteria set out in the VA's *Schedule for Rating Disabilities* (38 C.F.R. Chapter 1, Part 4.).

QUALIFYING FINANCIAL NEED



In order to financially qualify for non-service-connected pension, a veteran's family income must be less than the amount set by Congress to qualify. If eligible, the veteran's benefit will be the difference between his or her "countable" income, and the annual pension limit set by Congress. The VA will pay the veteran the difference in 12 equal monthly payments. The income and net worth limits are spelled out in 38 U.S.C. §§ 1521-1522, and are thoroughly explained on the VA website at <http://www.benefits.va.gov/PENSION/pencalc.asp>.

All family income from all sources is counted, unless specifically excluded. Specific categories of countable income are discussed in 38 C.F.R. § 3.271. The veteran's countable income may be reduced by a certain amount of unreimbursed medical expenses (UMEs). Categories of excluded and/or excludable income are listed in 38 C.F.R. § 3.272. The income limits are periodically adjusted based on the Consumer Price Index on the same schedule governing Social Security benefits which permits concurrent cost-of-living increases in both pension and Social Security. Since entitlement is based on a recipient's income and net worth, any material change to their estimated annual income, net worth or dependents must be promptly reported to the VA.

The VA no longer requires pension recipients to complete annual Eligibility Verification Reports verifying their income and net worth. Technological improvements allow the VA to conduct income data matching with federal agencies;

however, the pension recipient **is still responsible** for notifying the VA of any change in income or change in the number of dependents.

Higher income limits apply if the veteran has dependents; however, the dependents' incomes are then also counted, as well. In addition, higher income limits also apply if the veteran is in need of *Special Monthly Pension* by being housebound or in need of regular aid and attendance (discussed below).

Determinations as to whether or not a veteran's net worth is excessive for pension entitlement is considered on a case-by-case basis, taking into account such factors as the amount(s) of income and assets; the nature and amount(s) of debts and expenses; the number and age(s) of any dependents; the amount of anticipated educational expenses for dependents; the veteran's and dependents' state of health; and the anticipated life expectancy of the veteran and/or dependents, as determined by actuarial tables. In general, net worth is not a factor for consideration unless it is greater than \$80,000.

SPECIAL MONTHLY PENSION (SMP)

Special Monthly Pension (SMP) is a benefit awarded when a veteran's disability is especially severe. There are two types of SMP: 1) **housebound benefits**, and 2) **aid and attendance**. Complete VA Form 21-2680 to apply for SMP benefits.

SMP HOUSEBOUND BENEFITS (HB)

These benefits are awarded when the VA determines that a veteran—already shown to be disabled—is now also permanently housebound.

THE PHYSICIAN'S STATEMENT SHOULD PROVIDE:

1. A diagnosis, and
 2. The doctor's opinion about:
 - a. whether the veteran can:
 - i. leave home without assistance
 - ii. walk unaided,
 - iii. feed himself or herself,
 - iv. keep clean by himself or herself, *OR*
 - b. whether the claimant is:
 - i. blind,
 - ii. bedridden, or
 - iii. incontinent
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There are two ways for a veteran to demonstrate eligibility for HB benefits:

1. If the veteran has a single permanent disability rated as 100% disabling under the VA Rating Schedule and the veteran is "substantially confined to his or her dwelling and the immediate premises," then entitlement to HB benefits is established. (38 U.S.C. § 1521(e), 38 C.F.R. § 3.351(d)(4).)
2. If the veteran has a single permanent disability rated as 100% disabling with additional disability or disabilities independently rated at 60% or more, entitlement to HB benefits is established whether or not the veteran is actually housebound (meaning, whether or not the veteran is actually "substantially confined to his or her dwelling and the immediate premises"). (38 U.S.C.S. §§ 1502(c), 1521(e); 38 C.F.R. § 3.351(d)(1).)

SMP AID AND ATTENDANCE (A&A)

These benefits are awarded when the VA determines that a veteran—who has already established entitlement to non-service-connected pension—needs the aid and attendance of another person. One does not need to show that the veteran's

need for the aid and attendance of another person is permanent in order to be eligible. Eligibility for this benefit requires a showing of greater disability than is required for HB benefits.

NOTE: It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need.

According to 38 C.F.R. § 3.351(c), entitlement to A&A can be established by showing:

- The veteran is blind or so nearly blind as to have corrected visual acuity of 5/200 or less in both eyes or concentric contraction of the visual field to 5 degrees or less,
- Proving that the veteran is a patient in a nursing home because of mental or physical incapacity, **or**
- According to 38 C.F.R. § 3.352(a), showing:
 - inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable;
 - frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.);
 - inability of claimant to feed himself or herself through loss of coordination of upper extremities or through extreme weakness;
 - inability to attend to the wants of nature;
 - or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment.

NOTE: Determinations that the veteran is so helpless as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.



STUDY QUESTIONS

Using the assigned references and reading materials, answer the following questions:

1. Veteran and spouse have income from the following sources. The spouse is also a veteran, and is receiving compensation for a SC hysterectomy. Indicate which income is not countable for improved pension purposes.
 - a. Social Security
 - b. County payments for acting as foster parents
 - c. Rental income
 - d. VA compensation

38 C.F.R. §§ 3.271(a), 3.272

2. Veteran had traumatic amputation of both feet in an industrial accident. He returned to work and continued until reaching normal retirement for longevity.
 - a. Can he be rated permanently and totally disabled for pension purposes? (Y/N)
 - b. Why or why not?

38 C.F.R. § 4.15

3. Veteran was inducted into service in early 1945. Six weeks after starting basic training, he was found to have a small duodenal ulcer. This disqualified him for overseas duty, so he was discharged after being on active duty for two months and ten days. SC was established for the ulcer, but it was never symptomatic and was always rated 0% disabling.
 - a. Does he meet service requirements for VA pension? (Y/N)
 - b. Why or why not?

Even though he served less than 90 consecutive days, at least one of which was during wartime, and he was discharged for a service-connected disability.

38 C.F.R. § 3.3(a)(3)(ii)

4. While driving under the influence of alcohol, Gulf War veteran hit a freeway overpass abutment. He suffered massive head and neck injuries, and is now quadriplegic and demented.

a. Can he be rated permanently and totally disabled for pension purposes? (Y/N)

b. Why or why not?

38 C.F.R. § 3.3(a)(3)(B)

5. A blind veteran, with no light perception in either eye, is considered to be in need of regular aid and attendance. (T/F)

38 C.F.R. § 3.351(c)(1); 38 USC § 1114(l)

6. Additional pension for aid and attendance based on blindness will be reduced when the veteran is admitted to a VA medical facility. (T/F)

38 C.F.R. §§ 3.552(b); 3.550(h)

7. A veteran is receiving non-service-connected pension. He is rated 100% for prostate cancer and 60% for major depressive disorder. He is not housebound in the sense that he is not confined to his dwelling or the immediate premises. Is he eligible for Special Monthly Pension Housebound benefits? (Y/N)

38 U.S.C. §§ 1502(c), 1521(e); 38 C.F.R. § 3.351(d)(1)

8. Is the home in which the veteran and his or her spouse reside considered as part of the corpus of their estate for improved pension purposes? (Y/N)

38 C.F.R. § 3.274(a)

9. The veteran served from February 15, 1998 to June 30, 1998. He was administratively discharged under honorable conditions because of inadaptability. Does he meet service requirements for disability pension? (Y/N)

38 C.F.R. §§ 3.12a(b) and (d)