

## Elder Law: Clearing up VA benefit confusion

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### *Part Two*

Last month we examined some common myths surrounding eligibility for veterans' benefits. ([See column here.](#)) In particular, we were focusing on nonservice-connected disability benefits, commonly referred to as Pension with Aid and Attendance. Specifically, we examined three myths dealing with:

1. Whether a person seeking VA benefits must reside in an assisted living facility or nursing home,
2. Asset eligibility guidelines and the prospect of gifting assets, and
3. Dealing with the primary residence of a VA applicant, both before and after eligibility.

This now leads us to Mrs. Williams (who was the widow of a wartime veteran in our last column) and her brother, Ralph, an 80-year-old widower who lives in his home, which he has owned for more than 50 years. Ralph was drafted into the Army during the Korean War and served two years of active duty, but he never left the United States prior to being honorably discharged.

Ralph retired many years ago and gets by on his Social Security income of \$1,500 a month and dips into his cash savings of about \$100,000 as he needs additional money. Over the past few years, he has had knee problems and developed macular degeneration, the combination of which prevents him from driving and makes climbing stairs and other daily physical activities difficult.

Fortunately, with the regular assistance of his daughter, Karen -- who stops by his house daily to check on him, takes him to his doctor visits, administers his medications and shops for his groceries -- he has been able to get by at home.

Karen realized that her father could be eligible for VA benefits if she and her father entered into a caregiver contract for her to be paid for her services.

If done correctly, this would result in a monthly VA award to Ralph of \$1,644.

So, Karen contacted her local Veteran Service Organization (VSO) and was told that since her father was paying her each month for care that was protective in nature and that her father required regular assistance, he could be eligible.

However, when Karen disclosed Ralph's assets on the VA application, she was told that her father had too much money to qualify for benefits.

Because Karen and Ralph understood that there is no penalty currently imposed by the VA for gifts prior to submitting a VA application, Ralph made a gift of \$50,000 to Karen, who deposited these funds into her personal checking account. (While this maneuver is legal and would not result in a federal gift tax under current laws, there are numerous issues outside the scope of this article that need to be considered prior to gifting in this manner, including that of Ralph's future Medical Assistance eligibility.)

Karen returned to the VSO after the gift was made and disclosed to the VA that the only assets her father owned were his home (valued at \$100,000) and his remaining savings of \$50,000.

She was informed that since Ralph's countable assets were only \$50,000 and his primary residence was an exempt asset, he would probably be eligible for the VA benefit.

Once the VA application was filed, Karen continued to care for her father and was paid by him for several months. Periodically, she would check in with the VA to see how the application was proceeding. The VA requested additional information over several months and, finally, Ralph was approved and received a large retroactive award followed by monthly payments from the VA.

Karen was happy for him, but was frustrated in the VA application process, which took more than six months for approval and required numerous phone calls and additional documentation she had forgotten to submit with the original application.

However, it all seemed worth it.

A few months later, Ralph's cognitive abilities began to decline, and on a recent visit to his doctor, Karen was informed that Ralph's condition of dementia required that he needed to be placed into an assisted living facility. While Karen was reluctant to do so, she knew that placing her father in a facility was the safest environment for him. Because he would now receive care in the facility, it was no longer necessary for Karen to be paid for her care giving services.

From a VA benefit eligibility standpoint, Ralph's VA checks kept on coming because he was now paying the facility each month instead of his daughter.

Months passed as Ralph's house stood vacant. Karen tried to maintain the home in hopes that her father would someday return, but the costs of ongoing utilities, insurance, real estate taxes and general maintenance were eating up her father's remaining funds. So, Karen decided to sell the home.

Within a few weeks, she received an offer on the home fairly and walked away from the closing with a check payable to her father for \$90,000.

Annually, the VA requires a benefit recipient to report changes to assets and income to determine ongoing eligibility.

Since Ralph had received the proceeds of his home sale, he now had more than \$100,000 in his checking account.

Once the VA learned of this, his benefits were discontinued and he had to pay the facility completely out of his own assets for another year until he could regain his benefits, a loss of approximately \$20,000 (12 months at \$1,644 per month).

Even worse, Karen was now faced with the prospect of reapplying for VA benefits and enduring the long and grueling process of interfacing with the government, something she dreaded and frankly, for which she did not have time.

This scenario demonstrates that there are options for veterans to obtain benefits in situations that defy the myths we've discussed previously. However, as Ralph and Karen learned, there are additional and complex issues that must be considered in dealing with one's primary residence before the VA application is submitted.

This interruption of benefits could have been avoided with proper planning. However, this type of legal advice is not readily given by government officials during the application process.

The bottom line is to explore the options prior to submitting a claim to avoid complexities and headaches later on.

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