

Leave It To The Professionals:

Veterans Benefits Pitfalls

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As we move farther into the warmer months of the year with the Memorial Day and Independence Day holidays, one can't help but consider our veterans and everything they've done and sacrificed for this country. Much of our practice at Julian Gray Associates is focused on helping our veterans obtain the care that they need. Primary among these planning tools is the Aid and Attendance Benefits Program ("A and A"). This program is designed to pay a tax-free benefit to war time veterans and their spouses who need costly medical care. While this can be a wonderful program, it is very difficult to enroll in and can present significant issues to laypersons applying. This article will focus on a few of those pitfalls and present how the services of an Elder Law Attorney can help.

Asset Limits:

A and A is a means based benefits program. This means that, to qualify, an applicant must be experiencing a monthly income shortfall due to medical expenses and own assets under certain limitations. The majority of the people I speak to are under the impression that a married couple can obtain VA Benefits and maintain \$80,000 in their estate, while a single applicant can maintain \$50,000. This information generally comes directly from the VA and is just not accurate. Asset limits to qualify for A and A are determined case-by-case and based on a complicated equation that considers an individual's life expectancy, income, healthcare costs, and assets. This means that an individual can apply under the belief that he or she is eligible based on asset numbers provided by the VA and be denied outright. A qualified Elder Law Attorney with experience in Veterans Benefits planning can perform these calculations and determine the proper total assets an applicant may maintain to achieve A and A eligibility.

The Family Home:

As contemplated in the above paragraph, the VA examines an applicant's and spouse's assets to determine their eligibility for A and A. It is commonly known that a primary residence is generally not counted as a resource for eligibility purposes. This leads people who are VA planning to disregard the home and not consider the effects of leaving a home in an applicant's name. While this may not cause immediate issues, failing to plan for the family home can have disastrous consequences down the road. If the individual decides to sell his or her home, that previously exempt home will be converted into cash which may immediately render the individual ineligible for A and A. The individual is then forced to choose between spending

down the sale proceeds, or gifting the proceeds and triggering a year-long ineligibility period. An Elder Law Attorney can effectively protect an individual from this costly mistake by utilizing a protective trust to hold the family home. By placing the family home in a VA qualified trust, an Elder Law Attorney can protect the proceeds from any subsequent home sale, thus avoiding the situation outlined above.

IRAs and Qualified Money:

Even if an applicant understands the complex calculations to determine asset eligibility, many applicants need to liquidate their IRAs or qualified (i.e. tax deferred) resources to qualify for A and A. Due to the tax-sensitive nature of qualified assets, liquidation can trigger an ordinary income tax event. This is generally solved simply by withholding some money to pay the tax and moving on with the application. While this action may seem simple enough and harmless on its face, doing so can potentially trigger unforeseen issues in an A and A application. To more thoroughly review each application, the VA cross-references every applicant's reported income with the IRS. This means that the income tax event that occurs upon liquidation will appear to the VA as additional income in its analysis. Without the proper analysis and explanation by an experienced professional, the VA could consider an applicant to be ineligible based on income because of the liquidation of an IRA. Elder Law Attorneys are prepared to handle this situation proactively and help assure a client that this situation will not hinder an application.

In summation, A and A applications are extremely difficult and risky endeavors. The combination of complexity, stringent rules, and misinformation can cause many otherwise-eligible applicants to lose out. Elder Law Attorneys navigate these matters constantly and can provide the insight necessary to avoid the above-referenced pitfalls.