

Elder Law: Clearing up VA benefit confusion

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By Julian Gray and Frank Petrich

Last May, in this column, we examined the availability of veterans benefits for Mrs. Williams, a widow of a wartime veteran whose daughter, Judy, was providing care to her in her home. While this scenario is quite common and, under the right circumstances, the U.S. Department of Veterans Affairs will pay a monthly Aid and Attendance benefit to Mrs. Williams, many are still confused over how to obtain these benefits.

The response from readers was overwhelming. The comments ranged from, "Excellent information, this is a very worthwhile benefit" to less encouraging statements from one reader, who, after unsuccessfully navigating the VA system wrote, "I'm so frustrated and disillusioned with this entire experience. To me, it's very sad and disappointing that the Veterans Administration treats WW II vets like this." Other readers commented that they heard that no VA benefits were available until a person is actually in an assisted living facility. Still others claimed that the VA has a "lookback" period for gifts made to family members that would disqualify the claimant for benefits.

Unfortunately, it is often difficult to obtain accurate information about these programs directly from the VA along with the planning options necessary to obtain these benefits, which are rarely mentioned by government officials.

In fact, the VA will pay benefits when the proper process and procedures for obtaining them are followed. Like any large government organization, there are a myriad of rules to follow. The application and approval process takes several months. If incomplete or incorrect applications are submitted, the benefits can be significantly delayed or even denied, which leads to the frustration so many report.

In this article, we will help "clear the air" and debunk some common myths about obtaining VA benefits as well as point out some common mistakes made by applicants who are attempting to navigate the system for the first time. First, let's look at some of the myths.

Myth 1: The VA claimant must be residing in an assisted living facility or nursing home before he or she can apply for benefits.

Fact: The Aid and Attendance benefit is available to certain wartime veterans and their spouses who require the regular assistance of another person to maintain their safety and general welfare. This assistance can occur in a variety of settings. In addition to those mentioned above, this care can be provided in one's own home (or the home of a family member) or even an independent living facility. The location is not as important as the medical condition of the claimant and the daily needs to maintain a safe living environment.

Myth 2: The VA has strict guidelines for "countable" assets and there are penalties for giving away assets in order to expedite qualification for benefits.

Fact: The VA does have a countable asset threshold for qualifying for benefits. However, there is currently no penalty for giving assets away, nor is there a "lookback" period similar to Medicaid eligibility -- although the VA could change this practice at any time. That said, veterans should not haphazardly give away all of their assets to apply for benefits. (This could pose significant problems in the future for a variety of reasons such as Medical Assistance, which are beyond the scope of this article.)

Myth 3: The value of the VA claimant's primary residence is exempt from consideration to qualify for benefits.

Fact: It is true that when an applicant files for VA benefits, the value of the primary residence is exempt from consideration. However, it must be noted that a person filing for VA benefits already requires some degree of recurring care. Therefore, even if he or she is living in their home at the time of application, it is likely that at some point in the future the person will need to move into a facility for a higher level of care. Consequently, the house may then need to be sold for a variety of reasons, most often to provide additional liquidity to pay for increasing care costs. So, while the home was exempt when the VA application was filed, the applicant now finds her/himself with a pile of money from the sale of the home. This new money can then interrupt the continued VA payments, which the person now relies upon to pay for her/his monthly care costs.

A common issue presented to us by clients who have obtained VA payment on their own is what to do once the house is sold in relation to maintaining ongoing benefits. Since it takes several months to obtain the benefits in the first place, it is devastating to learn that the process may have to be done over again once new funds have become available.

In Part 2 of this article next month, we'll continue to examine these myths and the options to successfully deal with them.

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