The Top Five Things the Department of Veterans Affairs Won't Tell You

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We live in truly confusing times. Americans are forced to endure countless shifting opinions, assertions of fact, and are faced at determining where the truth lies in a world of 24-Hour Cable Journalism, Twitter, and purported "Fake News". What is particularly troubling among these issues is misinformation directly from government entities. As an Elder Law practitioner and VA accredited attorney, this is something I fight against for my clients on a day-to-day basis. The following is a list of the "Top Five" misstatements I generally see from the VA.

1. You Can Be in the VA's Quoted Range of Eligibility and Still be Over Resourced:

One of the most common misstatements presented to my clients is that in which an applicant or married couple can own between $50,000.00 and $80,000.00 and being eligible for VA Benefits. Numerous applicants are rejected based on this untruth due to having too much money. Despite its statements to the contrary, the VA does not have a specific threshold asset range. The VA actually determines asset eligibility by comparing an applicant's potential lifetime medical expense shortfall to their current assets. This is a complicated calculation that should be run by a professional before submitting an application.

2. Some Investments Can Be Treated as Assets AND Income:

IRAs and other qualified funds are a growing trend among VA benefits applicants. More and more people are utilizing these vehicles as primary investment assets and they present some significant and nuanced issues for VA planning. Many applicants must liquidate these resources to afford expensive monthly medical costs or to qualify for VA Benefits. Liquidating the qualified fund and sheltering it or spending it removes the asset from the applicant's estate for eligibility purposes. However, what the VA will not tell you is liquidating qualified assets without a plan will trigger issues down the road. Liquidating a qualified asset generates an income tax event that will show up on the individual's tax return for that taxable year. The VA will look into an applicant or recipient's tax returns to cross reference income each year. In its cross-reference, the VA will recognize the liquidated asset as additional income which could trigger additional filings and informational requests or outright denial of benefits. This is almost always unexpected by an applicant and can be avoided with proper planning.

3. Your House Can Become a Countable Resource:

The VA makes it commonly known that an applicant's primary residence will not be treated as a countable resource for application purposes. While this is mostly true, the VA does not tell applicant's how the residence is treated after it is sold. Generally, if a VA benefits applicant or recipient is no longer living in their primary residence (i.e. a Personal Care Home or and Assisted Living Facility), the residence is sold. Doing so bolsters the individual's liquidity to allow them to continue to afford their current care setting. Unfortunately, the VA will not tell you that doing so converts a non-countable piece of real estate into cash which is absolutely countable. Without proper advice, protective planning not addressing an "exempt" resource can bring about disastrous consequences.

4. You Do Not Have to Spend Down Excess Resources to Become Eligible:

The VA and many care facilities will tell a veteran or veterans spouse that he/she must simply spend resources down to qualify for benefits. This leaves a potential applicant with very few good options with regards to estate and financial planning. This statement is simply not true. Under current VA rules, an applicant can use any number of planning tools including protective trusts to shelter assets from being spent down. This allows an applicant to stretch his/her life savings out to afford more care and even leave something behind for their loved ones. Engaging in this sort of planning involves utilizing complex legal and financial approaches, therefore it is imperative to discuss such planning with a professional.

5. Payments to Family Care-Givers May Be Considered Permissible Medical Expenses:

To qualify for VA benefits, an applicant must have regularly occurring medical expenses. Most people are made aware that these expenses include: insurance premiums, facility costs, and professional in-home care. What most applicants are not told is care-giver children can be paid as a medical expense for VA Benefits purposes. This means that, if an applicant can prove that he/she agreed to pay a child or family member, in writing, for care-giver services, those payments are permissible as regularly occurring medical expenses. To achieve this, the applicant must draft legal documents and understand the nuances of income tax and related factors. Therefore, it is vitally important for an applicant to seek representation in matters related to care-giver children.

In summation, the five above-listed items represent the most frequent misinformation I see on behalf of my clients. Understanding that you will not hear everything from the VA and that there are more solutions out there is extremely vital to an individual faced with paying for monstrously expensive medical expenses. Elder Law and VA Accredited attorneys stand at the ready to properly inform applicants and assist wherever needed.