

# ELDERLAW

## NEWS

New Jersey

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Legal News for the Aging and Disabled

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## Veteran's Benefits that Increase Income to Pay for Long term Care: Housebound and Aid & Attendance Benefits

This Newsletter addresses two types of Veteran's Benefits which, though not very well known, are available to and can provide critical monetary benefits to senior citizens and the disabled who need assistance paying for health care costs: **Housebound benefits** and **Aid & Attendance benefits**. Because of strong governmental funding and under-utilization by the public, the eligibility rules for these benefits are more flexible than the rules for Medicaid or other public benefits available to pay for long-term care. These VA benefits are also available to qualified surviving spouses and qualified dependents of a veteran.

### Background.

The Veteran's Administration is divided into two branches:

Veteran's Health Administration. The primary purpose of the health administration is to provide health care for prior service members. Programs include:

- VA Hospitals;
- VA Nursing Homes;
- Prescription Benefits;
- Outpatient Dental Services;
- Services for the Blind/Vision-Impaired;
- Prosthetic Services; and,
- Alcohol and Drug-Dependence Treatment.

Veteran's Benefits Administration. The benefits administration administers monetary benefits programs for eligible veterans. Programs include:

- Compensation for Service-Connected Disabilities;
- Vocational Rehabilitation and Employ-

ment

- Education and Training;
- Home Loan Guaranties;
- Compensation for Surviving Spouses and Dependents;
- Special Monthly Pension: Housebound and Aid & Attendance Benefits;
- Specially-Adapted Housing;
- Life Insurance Benefits; and,
- Burial Benefits.

An applicant must meet both medical and financial criteria to be eligible for either the Housebound benefits or the Aid & Attendance benefits.

### Eligibility Criteria for Both Housebound and Aid & Attendance Benefits.

All of the following criteria must be met before a veteran or widow(er) of a veteran can receive either Housebound or Aid & Attendance benefits:

1. The veteran must have served at least ninety (90) days of consecutive active duty service, one (1) day of which must have been during a war-time period;
2. The veteran must have received a discharge other than dishonorable;
3. The claimant must have limited income and assets;
4. The claimant must have a permanent and total disability;
5. The disability must have been caused without willful misconduct of the claimant; and,
6. The veteran or widow(er) must sign an application and provide the application to the Veteran's Administration. 38 U.S.C. §1521; 8 U.S.C. §1521(a); 38 U.S.C.

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§1502(a).

## Housebound Benefits

Housebound benefits are available to a veteran or widow(er) of a veteran who is determined to be disabled and is confined to the home. 38 U.S.C. §1502©. The two ways to prove entitlement are:

- (1) a single permanent disability rated as 100% disabling under the VA schedule and confined to the dwelling. 38 U.S.C. §1521(e), or
- (2) a 100% disability with another 60% disability, regardless of whether or not the person is confined to the dwelling. 38 U.S.C. §1502(c).

Notwithstanding the above two methods of proof requiring some sort of disability, a disability rating is not required for people aged 65 or older. People aged 65 or older are presumed to be disabled, and simply must meet the financial and military service requirements to be eligible for the benefit.

## Aid & Attendance Benefits

Aid & Attendance benefits are available to a veteran or widow(er) of a veteran who meets one of the following conditions:

- (1) Claimant is blind; OR
- (2) Claimant is living in a nursing home; OR
- (3) Claimant is unable to:
  - (a) dress/undress or keep self clean and presentable;
  - (b) unable to attend the wants of nature; OR
  - (c) claimant has a physical or mental incapacity that requires assistance on a regular basis to protect him/her from daily environmental hazards. 38 U.S.C. § 1502(b).

The applicant is presumed to need Aid and At-

tendance if living in an assisted living facility.

## Determining Eligibility Based on Income and Assets.

### A. Income Limits.

The applicant will be denied benefits if the veteran's or widow(er)'s countable income exceeds the maximum permissible family income limits. Countable income is all income attributable to the applicant, the applicant's spouse, and the applicant's dependent children. 38 U.S.C.S. § 1521 (c), (h).

The 2008 permissible family income limits for Housebound benefits are:

- (1) Housebound veteran with no dependents – \$1,138/month
- (2) Housebound veteran with one dependent – \$1,427/month
- (3) Housebound widow(er) with no dependents – \$763/month

The 2008 permissible family income limits for Aid & Attendance benefits are:

- (1) Veteran with no dependents – \$1,554/month
- (2) Veteran with one dependent – \$1,842/month
- (3) Widow(er) with no dependents – \$998/month

Although most veterans have income that exceeds the permissible family income limits, unreimbursed medical expenses paid by the claimant may be used to reduce the claimant's countable income. 38 U.S.C.S. §1521. Unreimbursed medical expenses that may reduce income include: doctor's fees, dentist's fees, prescription glasses, Medicare premium deductions and co-payments, prescription medications, health insurance premiums, transportation to physician offices, therapy, and funeral expenses. ***The most beneficial unreimbursed expenses that may reduce countable income are the costs of home health care, assisted living facilities, or skilled nursing homes.***

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Assuming the applicant is eligible, the VA uses a formula to determine the amount of the monthly benefit. The formula is calculated by adding to

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gether all sources of monthly income. If a couple is applying for benefits, then the VA will combine their monthly incomes. Once the VA determines the combined monthly income, they will subtract from that number the amount of out-of-pocket medical expenses. Medical expenses may include, but are not limited to, medications, caregivers, physicians visits, and living expenses in an assisted living facility or nursing home if it is deemed to be a "medical expense." Once the monthly out-of-pocket medical expenses are determined, the VA will subtract that amount from the applicant's monthly income. Based on the remainder of that amount, the VA will supplement the applicant's monthly income to assist with medical costs.

**Planning Tip** : The goal is to obtain the greatest amount of VA Aid & Attendance benefit possible. Carefully consider the applicable health care expenses that may reduce the applicant's income. For example, one unreimbursed expense that is permissible to reduce income is payment made to a family member pursuant to a "family services contract" for the payment of services to care for the person.

### **B. Asset Limits.**

The VA considers the net worth of the individual seeking benefits, excluding the value of the person's home. The standard as to whether a person will be eligible for benefits is **whether the person has "sufficient means" to pay for their own care**. The VA now uses "age analysis" to determine financial need. Thus, there is no specified limit on the amount of resources a person may or may not have; however, *a commonly used resource limit is \$80,000 or less in assets, whether married or single*. However, due to the age analysis, a person who is 98 years of age who has \$75,000 may not be eligible, whereas a person who is 78 years of age who has \$75,000 may be considered eligible.

Assets that are counted toward the "sufficient means" \$80,000 limit include bank accounts, cer-

tificates of deposit, money market accounts, investment accounts, annuities, retirement accounts, life insurance cash surrender values, etc.

**Planning tip**: There is no "look-back" penalty for VA benefits. Thus, if the applicant has assets above the \$80,000 asset limitation, his or her assets may be gifted, spent or transferred to anyone without penalty. As long as the current bank statement shows that the assets are below the asset limitation, the VA will not inquire how the assets were spent-down to the asset limitation. Applicants may consider gifting, funding educational plans, securing pre-paid funeral arrangements or entering into an irrevocable trust agreement. However, with the Medicaid laws now imposing a five (5) year look-back period, spending down to reach the asset limitation to qualify for

## **Preventing A Will Contest**

VA benefits must be done carefully. If there is any anticipated need for Medicaid, gifting may only be done in accordance with Medicaid divestment guidelines. ☼ ☼

Emotions can run high at the death of a family member. If a family member is unhappy with the amount received (or not received) under a will, he or she may contest the will. Will contests can drag out for years, keeping all the heirs from getting what they are entitled to. It may be impossible to prevent relatives from fighting over your will entirely, but there are steps you can take to try to minimize squabbles and ensure your intentions are carried out.

Your will can be contested if a family member believes you did not have the requisite mental capacity to execute the will, someone exerted undue influence over you, someone committed fraud, or the will was not executed properly.

The following are some steps that may make a will contest less likely to succeed:

\* Make sure your will is properly exe-

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assist you in drafting and executing the will. Wills need to be signed and witnessed by two independent witnesses.

\* Explain your decision. If family members understand the reasoning behind the decisions in your will, they may be less likely to contest the will. It is a good idea to talk to family members at the time you draft the will and explain why someone is getting left out of the will or getting a reduced share. If you don't discuss it in person, state the reason in the will.

\* Use no-contest clause. Include a no-contest clause (or in terrorem clause) in the will. A no-contest clause provides that if an heir challenges the will and loses, then he or she will get nothing.

\* Prove competency. One common way of challenging a will is to argue the deceased family member was not mentally competent at the time he or she signed the will.

\* Remove the appearance of undue influence. To avoid the appearance of undue influence, do not involve any family members who are inheriting under your will in drafting your will. Family members should not be present when you discuss the will with your attorney or when you sign it. To be safe, family members shouldn't even drive you to the attorney. ☒

***A PUBLICATION OF THE  
LAW OFFICES OF DONALD D. VANARELLI***

**Publisher of the ElderLaw  
News Again Recognized as  
"NJ Super Lawyer" in 2008**

Donald D. Vanarelli, Esq., with offices at 242 St. Paul Street, Westfield, NJ, has been selected as a "NJ Super Lawyer" in the areas of Elder Law and Estate Planning in 2008. Mr. Vanarelli was previously selected as a "NJ Super Lawyer" in 2007.

The selection of outstanding lawyers identifies the top 5% of all lawyers in New Jersey who have attained a high degree of peer recognition and professional achievement. The rigorous multi-step selection process includes peer evaluation, a review of credentials and current bar status, and review and approval from a blue ribbon panel of leading attorneys.

Mr. Vanarelli, a Certified Elder Law Attorney, represents older and disabled persons and their representatives in financing long-term medical care, nursing home issues, qualifying for Medicare, Medicaid and other public benefits, estate planning, probate, guardianship proceedings and special needs planning.

In addition to being board-certified as an Elder Law Attorney by the National Elder Law Foundation, accredited by the American Bar Association, Mr. Vanarelli was designated as an Accredited Professional Mediator by the NJ Association of Professional Mediators. Mr. Vanarelli is a co-founder of the Elder Mediation Center of New Jersey, and he mediates cases involving elder law, guardianship, probate, and family law.

For more information, call (908) 232-7400.

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**LAW OFFICES OF  
DONALD D. VANARELLI**

242 St. Paul Street  
Westfield, NJ 07090

Tel: (908) 232-7400

Fax: (908) 232-7214

Email: [dvanarelli@dvanarelli.com](mailto:dvanarelli@dvanarelli.com)

Websites: [dvanarelli.lawoffice.com](http://dvanarelli.lawoffice.com)

-and- [elderlawanswers.com/attorney/vanarelli.html](http://elderlawanswers.com/attorney/vanarelli.html)

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**Preventing Will Contests**

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