



# NON-SERVICE-CONNECTED DISABILITY PENSION

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## LOUIS GEORGE





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- VSO liaison
- Began prior tenure at NVLSP in 1998, served as Staff Attorney and Senior Staff Attorney before being named Director of Training and Publications (2013-2015)
- Previously worked at BCMR of the Coast Guard, BVA, and SSA

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## AGENDA

- Improved Pension Basics
- MAPR and Countable Income
- Medical Expense Deductions from Countable Income
- Net Worth
- Assets
- Asset Transfer and Penalty Periods
- Other Issues



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## IMPROVED PENSION BASICS

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## IMPROVED PENSION

- VA Pension Program
  - Pension benefits are based on disability
  - Pension is a needs-based program, similar to SSI
  - Designed to provide supplemental income to wartime Vets
  - Special monthly pension (SMP) available for Vets who require aid and attendance (A&A) or meet housebound requirements
  - “Improved Pension” applies to all claims filed after 12/31/78

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## IMPROVED PENSION

- To be eligible for VA pension, Vet must:**
  - Have wartime service
  - Be permanently and totally disabled
  - Be in need (low income and net worth)
- Total and permanent disability does not need to be connected to Vet's service!**



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## IMPROVED PENSION ELIGIBILITY

### 1. Wartime Service:

- 90 consecutive days of service, 1 of which during period of war; **OR**
- Total of 90 days active service during one or more periods of war; **OR**
- At least 1 day of wartime service resulting in discharge for SC disability

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## SURVEY #1

- Does “active” military, naval, space, or air service for pension purposes include active duty for training (ADT) or inactive duty for training (IADT)?**
  - A. Yes
  - B. No
  - C. It depends



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## IMPROVED PENSION ELIGIBILITY



- **“Active” military, naval, space, or air service includes active duty and may include ADT or IADT, if the Veteran has SC conditions due to ADT or IADT**
  - See Manual M21-1, IX.i.1.2.a (change date March 6, 2024)

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## IMPROVED PENSION ELIGIBILITY



- **Relevant Periods of War (38 C.F.R. § 3.2):**
  - World War II: 12/7/1941 – 12/31/1946
  - Korean War: 6/27/1950 – 1/31/1955
  - Vietnam War: 8/5/1964 – 5/7/1975, but also 11/1/1955 – 8/4/1964 for Vets who served in RVN during that earlier time
  - Persian Gulf War: 8/2/1990 – present 

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## IMPROVED PENSION ELIGIBILITY



- **Additional Length-of-Service requirement**
  - **Many Vets must also have 24 months of continuous active duty or served the full period for which called/ordered to active duty:**
    - Vets who originally enlisted after 9/7/1980
    - Any other person (including officers) who entered on active duty after 10/16/1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. § 1171 (early discharge w/in 1 year of term of enlistment)
  - 38 U.S.C. § 5303A(b); 38 C.F.R. § 3.12a

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## IMPROVED PENSION ELIGIBILITY



### 2. Permanently and Totally Disabled

- VA must presume Vet P&T for pension if:
  - In nursing home long-term due to disability
  - Disabled for SSA benefits purposes
  - Unemployable from disability to continue for life
  - Suffering from permanent disability making it impossible to be gainfully employed or any disorder VA finds P&T

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## IMPROVED PENSION ELIGIBILITY



- P&T Disabled (cont'd):
  - No P&T requirement for Vets 65 or older
  - Vet 65 or over who meets military service & income/net worth requirements is eligible as if P&T
  - Permanent and total disability cannot be due to Vet's willful misconduct

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## IMPROVED PENSION ELIGIBILITY



### 3. Need (low income and net worth)

- Need is determined by "countable income" for VA purposes and the claimant's "net worth"
- Countable income must be lower than applicable Maximum Annual Pension Rate (MAPR) to qualify for pension
- Payments of any kind from any source are counted as income during the 12-month annualization period in which received, unless specifically excluded under 38 C.F.R. §§ 3.272 or 3.279

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## IMPROVED PENSION ELIGIBILITY



- Need (cont'd)
  - Claimant's net worth must not exceed **\$155,356** (eff. 12/1/2023) to qualify for pension
  - Limit increased by same % as Social Security increase whenever there is cost-of-living increase in benefit amounts payable under Social Security Act
    - 38 C.F.R. § 3.274(a)
  - Net worth limit available at: [www.va.gov/pension/veterans-pension-rates](http://www.va.gov/pension/veterans-pension-rates)

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## WHAT ABOUT VETS RECEIVING PENSION WHEN RULES CHANGED?



- If Vet was receiving pension as of **10/18/2018** (when current net worth rules went into effect):
  - If net worth exceeds new limit, Vet will continue to receive pension (unless he or she loses pension for another reason)

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## MAXIMUM ANNUAL PENSION RATE (MAPR) AND COUNTABLE INCOME



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MAPR

- **Maximum Annual Pension Rate (MAPR)** is the maximum amount of pension that is payable to a Vet, which is set by Congress
- If Vet's countable income for VA purposes exceeds MAPR, Vet is **NOT** eligible for pension, regardless of net worth

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CALCULATING  
IMPROVED PENSION

- **Calculating Improved Pension:**
  - VA first determines the proper MAPR
    - # of dependents?
    - Is beneficiary entitled to housebound or A&A?
  - VA then subtracts the countable income for VA purposes (IVAP) from the MAPR (projected for next 12 mos.)
  - That amount is divided by 12 to calculate the monthly pension payment rate

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MAPR – VET WITH NO DEPENDENTS

If you have NO dependents and...	MAPR is:
You don't qualify for Housebound or Aid and Attendance benefits	\$16,551
You qualify for Housebound benefits	\$20,226
You qualify for Aid and Attendance benefits	\$27,609

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## MAPR – VET WITH 1 DEPENDENT SPOUSE OR CHILD



If you have one dependent spouse/child and... MAPR is:

You don't qualify for Housebound or Aid and Attendance benefits	\$21,674
You qualify for Housebound benefits	\$25,348
You qualify for Aid and Attendance benefits	\$32,729

Add \$2,831 to the MAPR amount for each additional dependent

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## MAPR – 2 VETS MARRIED TO EACH OTHER



If... MAPR is:

Neither qualifies for Housebound or A&A benefits	\$21,674
One qualifies for Housebound benefits	\$25,348
Both qualify for Housebound benefits	\$29,021
One qualifies for A&A benefits	\$32,729
One qualifies for Housebound benefits and one qualifies for A&A benefits	\$36,395
Both qualify for A&A benefits	\$43,791

Add \$2,831 to the MAPR for each child

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## COUNTABLE INCOME



- **ALL INCOME of Vet and Vet's spouse is countable for pension purposes unless specifically excluded by 38 C.F.R. §§ 3.272 and 3.279**

- 38 C.F.R. § 3.271

- **Countable income includes, among other things:**

- Gross salary
- Dividends
- Business, farm, professional income
- Most annuity payments
- Income from property
- Unemployment compensation
- Retirement or survivors' programs
- Inheritance and gifts
- Interest
- Life insurance proceeds

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## 3 TYPES OF INCOME



- Computing Income**
  - Recurring income:** rcvd in equal amounts at regular intervals that continue throughout the 12-month period (SSA bens., salary, etc.)
    - Counted on open-ended basis from first of the month after the month in which it was first rcvd
  - Irregular income:** rcvd in unequal amounts or at irregular intervals
    - Counted for 12-months from beginning of the reporting period in which it was rcvd
  - Nonrecurring income:** rcvd on one-time basis (inheritance, etc.)
    - Counted for 12-months from first of the month after the month in which it was rcvd

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## EXCLUSIONS FROM INCOME



- Exclusions/deductions include:**
  - Medical expenses (more on this later)
  - Welfare
  - VA Pension
  - State & local veterans benefits
  - Reimbursement for casualty loss
  - Profit from sale of property
  - Funds from joint accounts due to death of joint owner
  - Income received under the Victims of Crime Act of 1984
  - Interest accrued on retirement annuity accounts
  - Income from tax returns
  - Expenses of last illness & burial of spouse or child
  - Educational expenses
  - Child's income (in some cases)
  - Cash surrender value of life insurance
  - Numerous types of payments to Native Americans
  - Income from state/municipality due to injury or disease
  - Radiation Exposure Compensation Act
  - Numerous types of Federal compensation or restitution payments

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## STATE UNEMPLOYMENT BENEFITS



- State unemployment compensation IS countable income and cannot be excluded**
  - It is NOT a donation from a public or private relief or welfare organization
    - Cooper v. McDonough, 33 Vet. App. 341 (2021)

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## GARNISHMENT



- Income Subject to Garnishment
  - If a claimant's income or benefits, such as Social Security, are subject to involuntary withholding due to legal action initiated by a third party, the entire amount counts as income, even though the claimant does not receive it all
  - EXCEPTION:** If benefits are withheld to recoup an overpayment of the benefit, then only the actual amount received is considered income
  - Manual M21-1, IX.iii.1.l.1.b (change date Apr. 18, 2023)

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## IRAs



- When an IRA or similar instrument starts paying benefits, the entire amount counts as income, even though it represents a partial return of principal
  - Manual M21-1, IX.iii.1.l.1.c (change date Apr. 18, 2023)

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## NON-RETIREMENT ANNUITIES



- If Vet purchased the annuity using funds VA already considered as:
  - Part of net worth, or
  - Conversion of assets from a property sale
- Then only the amount of interest received from a non-retirement annuity or similar instrument counts as income
- Otherwise, the entire amount received from the annuity is counted as income
  - Manual M21-1, IX.iii.1.l.1.d (change date Apr. 18, 2023)

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## RETIREMENT BENEFITS



- A distribution of retirement benefits is counted as income, even though all or part of the distribution might represent a return of withheld wages which were previously counted as income as part of the claimant's gross wages
- Manual M21-1, IX.iii.1.i.1.e (change date Apr. 18, 2023)

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## GIFTS AND INHERITANCES



- **Gifts and inheritances of property or cash count as income**
- **The value attributed to**

  - **Property** is the fair market value of the property at the time it is received
  - **Financial instrument**, such as a stock certificate or bond, is the amount it would bring if it were cashed on receipt, even though this might be less than its face value

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## GIFTS AND INHERITANCES



- **EXCEPTION:**
  - Regular cash contributions for the purpose of paying for the claimant's maintenance are not considered countable gifts
  - But if a third party pays for medical expenses, those same medical expenses cannot be allowed as deductions from the Vet's income
- Manual M21-1, IX.iii.1.i.1.g (change date Apr. 18, 2023)

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## GAMBLING WINNINGS

- The gross amount of gambling winnings counts as income
- Gambling losses cannot be deducted from gambling winnings
  - Note: Prior to 1/1/2020, only *net* winnings counted as income (i.e., gambling losses were able to be deducted from gross winnings during the corresponding income reporting period)
  - Manual M21-1, IX.iii.1.i.1.i (change date Apr. 18, 2023)



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## CHILD SUPPORT

- Child support payments count as income of the custodial parent, if they are payable to the custodial parent
- They do not count as income of the child
  - Manual M21-1, IX.iii.1.i.1.n (change date Apr. 18, 2023)



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## SURVEY #2

- Vet A and Vet B are married to each other. Vet A receives VA pension and Vet B receives VA disability compensation. Does Vet B's disability compensation count as income?

A. Yes

B. No



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## SPOUSE'S VA DISABILITY COMPENSATION



- **Vet B's VA disability compensation counts as income for pension purposes for Vet A**
  - Even if Vet B's compensation is being withheld to recoup an overpayment, the gross amount of compensation before withholding is counted as income

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## CASUALTY INSURANCE PROCEEDS



- **Reimbursement proceeds of casualty insurance (fire, flood, theft, etc.) do not count as income**
  - Exclusion applies only to proceeds for loss of or damage to property; it does not apply to proceeds for personal injury
- **Exception:** if evidence shows that Vet has no intention of using the money received to repair or replace the property, the proceeds count as income
  - VA should request documentation showing Vet's commitment to replace or repair the property, if needed
  - Manual M21-1, IX.iii.1.I.5.b (change date June 30, 2015)

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## WAIVED INCOME



- **If a Vet is entitled to receive income, but waives that income, the amount that would be received but for the waiver counts as income**
  - The intent of this rule is to prevent a person from creating a need for pension
- **EXCEPTION:** If a claimant withdraws a Social Security application after a finding of entitlement to Social Security benefits, in order to maintain eligibility for unreduced Social Security benefits upon reaching a certain age, the withdrawal is not considered a waiver
  - 38 CFR § 3.271(i)

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## MEDICAL EXPENSE DEDUCTIONS FROM COUNTABLE INCOME

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## MEDICAL EXPENSES

- **Medical expenses that are above 5% of MAPR can be deducted from countable income**
  - For this calculation, use the normal (non-A&A / non-housebound) MAPR for the Vet and Vet's dependents
  - Example: For Vet with dependent spouse, medical expenses over \$1,083 (5% of applicable \$21,674 MAPR, rounded down to the nearest dollar) can be deducted

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## MEDICAL EXPENSE DEDUCTION CHECKLIST

- **If ALL of these conditions are met, then a medical expense can be deducted:**
  1. Expenses were paid on or after date of entitlement to pension
  2. Expenses were actually paid by the claimant or dependent
  3. Expenses are unreimbursed (from insurance or any other source)

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## MEDICAL EXPENSE DEDUCTION CHECKLIST



4. Expenses are for the claimant or relative (not necessarily a dependent) who is a member of household

- Includes “constructive member” of household, such as a spouse in a nursing home or a child away at school

5. The unreimbursed expenses exceed 5% of the applicable MAPR

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## MEDICAL EXPENSES



- Medical expenses that can be deducted are listed in 38 C.F.R. § 3.278, and include:
  - Care by a health care provider:** payments for services performed within scope of provider’s professional capacity
  - Health insurance premiums:** premiums for health, medical, hospitalization, long-term care, and Medicare Parts A, B, and D

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## MEDICAL EXPENSES



- Medication:** prescription and non-prescription
- Medical Equipment & Medical Supplies:** items such as incontinence supplies, bandages, thermometers, heating pads, back braces, compression stockings, and first aid kits
- Medical food, vitamins, and supplements:** health care provider authorized to write prescriptions must direct the purchase of vitamins, food supplements, and/or herbal remedies. If the amount exceeds \$1,500 for any household member, Vet must provide proof that qualified health care provider instructed person to make purchase

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## MEDICAL EXPENSES



- **Smoking cessation products**
- **Transportation expenses:** cost of transportation to and from health care provider's office (taxi, bus, public transportation, privately owned car expenses including mileage, parking, & tolls)
- **Adaptive equipment:** adaptive devices, service animals (including veterinary care)



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## MEDICAL EXPENSES



- **Institutional forms of care and in-home Care:**
  - Applies to claims for a medical expense deduction for institutional forms of care or in-home care received on or after 10/18/2018 that VA has not previously granted
  - Medical expense grants pertaining to institutional or in-home care made prior to 10/18/2018 will continue unless claimant moves to a different facility or employs a different in-home attendant or in-home care agency

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## MEDICAL EXPENSES



- **Institutional forms of care and in-home care (cont'd):**
  - Payments to hospitals, nursing homes, medical foster homes, and inpatient treatment centers (including treatment centers for drug or alcohol addiction)
  - Payments for assistance with ADLs and IADLs by in-home attendant (attendant must provide health care or custodial care)

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## ACTIVITIES OF DAILY LIVING

• ADLs = basic self-care activities such as:

- Bathing/showering
- Dressing
- Eating
- Going to bathroom
- Getting in/out of bed/chair (transferring)
- Ambulating within the home or living area



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## INSTRUMENTAL ACTIVITIES OF DAILY LIVING

• IADLs = independent living activities such as:

- Shopping
- Food Prep
- Housekeeping
- Laundry
- Handling Medications
- Managing Finances
- Using the telephone
- Transportation for non-medical purposes



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## MEDICAL EXPENSES

• **Institutional forms of care and in-home care (cont'd):**

- Those receiving SMP (HB or A&A) can deduct care of in-home aid without aid being a licensed health care provider (could be friend or family member)
- If not receiving HB or A&A, to deduct expense, in-home aid must be licensed health care provider

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## MEDICAL EXPENSES

- Institutional forms of care and in-home care (cont'd):**
  - Care in a facility (other than nursing home) can be deducted if care is:
    - Provided by the facility
    - Contracted by the facility
    - Obtained from third-party provider
    - Provided by family or friends

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## MEDICAL EXPENSES

- Institutional forms of care and in-home care (cont'd):**
  - Provider does not need to be a health care provider, and payments for assistance with ADLs and IADLs are medical expenses, if disabled individual is receiving health care or custodial care in a facility; and
    - Individual needs A&A or is housebound; or
    - Medical professional states in writing that individual needs to be in protected environment

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## MEDICAL EXPENSES

- Institutional forms of care and in-home care (cont'd):**
  - Meals and Lodging deductible if:
    - Facility provides health care or custodial care for individual; or
    - Medical professional states in writing individual needs to be in facility to get third party health care or must receive custodial care or help from family or friends

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## NOT MEDICAL EXPENSES

- The following are **NOT** medical expenses **(cannot be deducted)**:
  - Payments for maintenance of general health (ex: vacations, dance classes, etc.)
  - Meals and lodging (except as previously noted)
  - Assistance with IADLs (except as previously noted)
  - Cosmetic procedures, with the following exception...

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## MEDICAL EXPENSES

- Cosmetic procedures that a health care provider performs to improve a congenital or accidental deformity, or that are related to treatment for a diagnosed medical condition, are allowable medical expenses that can be deducted
  - Manual M21-1, IX.iii.1.G.2.c (change date May 24, 2023)

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## NET WORTH

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## NET WORTH

- **Net worth = annual income + assets**
  - 38 C.F.R. § 3.274(b)
- **Includes Vet's and spouse's assets (and income)**
- **If child's net worth exceeds limit, child will NOT be considered a dependent child for pension purposes**

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## WHEN VA CALCULATES NET WORTH

- **VA will calculate net worth when it receives:**
  - An original pension claim
  - A new pension claim (after a period of non-entitlement)
  - A request to establish a new dependent
  - Info that claimant's net worth has increased or decreased
  - 38 C.F.R. § 3.274(e)


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## NET WORTH HYPO

- **Vet Jane has no dependents and qualifies for Aid and Attendance benefits**
  - **MAPR = \$27,609**
  - **Net worth limit = \$155,356**
  - **Jane has \$148,000 in assets and \$10,000 in annual income = \$158,000 net worth**
  - **Jane's net worth exceeds the limit**

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## NET WORTH HYPO

- Jane is a patient in nursing home and pays annual unreimbursed nursing home fees of \$48,000
- Reasonably predictable unreimbursed medical expenses are deductible from annual income to the extent they exceed 5% of applicable MAPR
  - MAPR for Vet with no dependents = \$16,551 (don't use A&A rate)
  - 5% of \$16,551 = \$827 (rounded down)
  - Medical expenses over \$827 can be deducted from income \$48,000 - \$827 = **\$47,173**

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## NET WORTH HYPO

- Jane can subtract \$47,173 of unreimbursed medical expenses from the original \$10,000 of income. Therefore, Jane's countable income is \$0 (\$10,000-\$47,173).
- Jane's net worth is now based solely on her assets, which total \$148,000
  - This is below the net worth limit of \$155,356, so Jane qualifies for pension

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## NET WORTH HYPO

- To determine Jane's monthly pension rate:
  - Take the MAPR of \$27,609 (Vet with no dependents who qualifies for A&A)
  - SUBTRACT her countable income of \$0
  - DIVIDE the resulting \$27,609 annual pension rate by 12 months
    - Jane will get **\$2,300.75** per month of VA pension

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## REDUCTIONS IN NET WORTH

- When annual income decreases
- When assets are spent / sold for fair market value
- When value of assets decrease



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## ASSETS

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## WHAT ARE ASSETS?

- Assets: the fair market value of all property an individual owns, including all real and personal property, unless excluded under 38 C.F.R. § 3.275(b), minus the amount of mortgages or other encumbrances specific to the mortgaged or encumbered property
- 38 C.F.R. § 3.275(a)(1)

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## PRIMARY RESIDENCE



- A claimant's primary residence is excluded from the net worth calculation, BUT
- The "residential lot area," excluded cannot exceed 2 acres, unless additional acreage is not marketable
- VA should accept a claimant's statement that additional acreage is not marketable, unless there is contradictory evidence of record
  - Manual M21-1, IX.iii.1.J.6.e (change date Oct. 26, 2018)

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## SURVEY #3




- Will VA include a claimant's primary residence as an asset if the claimant resides in a nursing home, medical foster home, other care facility, or the home of a family member for health care or custodial care?

A. Yes

B. No

C. Not sure



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## PRIMARY RESIDENCE





- In determining net worth, VA does not include a claimant's primary residence as an asset, even if the claimant resides in a nursing home, medical foster home, other care facility, or the home of a family member for health care or custodial care
- But, rental income on the property is countable income and sale of the property is a conversion of assets
  - Manual M21-1, IX.iii.1.J.6.c (change date Oct. 26, 2018)

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## PRIMARY RESIDENCE

- If the claimant owns and resides in a multifamily dwelling, the claimant can exclude from the net worth calculation only the value of the unit actually occupied by the claimant
- Manual M21-1,IX.iii.1.J.6.c. (change date Oct. 26, 2018)

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## PERSONAL EFFECTS

- Certain personal effects are excluded from calculation of assets
- Personal effects consistent with “a reasonable mode of life,” such as appliances and family transportation vehicles
- 38 C.F.R. §§ 3.275(b) and 3.279 provide full list of exclusions from assets

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## ASSET TRANSFERS AND PENALTY PERIOD

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## VA POLICY STATEMENT REGARDING 2018 REGULATION CHANGES



VA pension is a needs-based benefit and is not intended to preserve the estates of individuals who have the means to support themselves. Accordingly, a claimant may not create pension entitlement by transferring covered assets. VA will review the terms and conditions of asset transfers made during the 36-month look-back period to determine whether the transfer constituted transfer of a covered asset. In accordance with § 3.277(a), for any asset transfer, VA may require a claimant to provide evidence such as a Federal income tax return transcript, the terms of a gift, trust, or annuity, or the terms of a recorded deed or other evidence of title.

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## ASSET TRANSFERS AND PENALTY PERIOD



- Claimants may not create pension entitlement by transferring “covered assets” to put their net worth below the limit
- Claimants who transfer “covered assets” may be subject to a penalty period
- Penalty period is a length of time when a claimant isn’t eligible for pension benefits, because they transferred assets for less than fair market value during the look-back period

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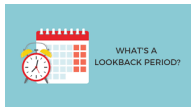
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## ASSET TRANSFERS AND PENALTY PERIOD



- Look-back period: 36 months immediately preceding date VA received pension claim
- 38 C.F.R. § 3.276(a)(7)



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## ASSET TRANSFERS



- **“Covered asset” means:**
  - Part of claimant’s net worth;
  - Was transferred for less than fair market value; and
  - If the asset had not been transferred, it would have caused or partially caused claimant’s net worth to exceed limit

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## ASSET TRANSFERS



- Only the amount that is in excess of net worth limit will be subject to a penalty
- Fair market value = price a willing buyer would pay and a willing seller would sell
- VA determines fair market value



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## ASSET TRANSFERS



- **“Transfer for less than fair market value” means:**
  - Selling, conveying, gifting, or exchanging an asset for an amount less than the fair market value of the asset; **OR**

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## ASSET TRANSFERS



- A voluntary asset transfer to, or purchase of, any financial instrument or investment that reduces net worth by transferring the asset to, or purchasing, the instrument or investment, unless the claimant establishes that he or she has the ability to liquidate the entire balance of the asset for the claimant's own benefit. If the claimant establishes that the asset can be liquidated, the asset is included as net worth.

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## ASSET TRANSFERS



- **Examples of such instruments or investments include:**
  - **Annuities:** A financial instrument that provides income over a defined period of time for an initial payment of principal
  - **Trusts:** A legal instrument by which an individual (the grantor) transfers property to an individual or an entity (the trustee), who manages the property according to the terms of the trust, whether for the grantor's own benefit or for the benefit of another individual
  - 38 C.F.R. § 3.276(a)(5)

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## ASSET TRANSFERS



- **“Uncompensated value” = the difference between fair market value of asset and amount of compensation the individual received for asset**
- **In case of trusts, annuities, or other financial instruments, uncompensated value is amount of money or monetary value of any other type of asset transferred to trust, annuity, or other financial instrument**

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## ASSET TRANSFERS



- Any asset converted into an annuity will confer a transfer penalty (if the claimant would have otherwise been over net worth limit)
- VA wants to eliminate trusts and annuities that are designed to get around VA net worth limit

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## ASSET TRANSFERS



- **Exceptions to Transfer Penalty**
  - Assets transferred as result of fraud, misrepresentation, or unfair business practice related to sale or marketing of financial products or services
  - Assets transferred to trust for child incapable of self-support

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## PENALTY PERIOD



- **Penalty Period = time during which claimant prohibited from receiving pension**
  - 5 year limit
  - Length of penalty period = [total covered asset amount] divided by [monthly penalty rate] (rounded down to nearest whole number)
  - Monthly penalty rate = **MAPR for Vet in need of A&A with one dependent divided by 12** (rounded down to nearest dollar)
    - **MAPR based on when Vet filed pension claim**

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## PENALTY PERIOD EXAMPLE



- 1/15/2024: Vet transferred covered asset amount of \$30,000
- 3/1/2024: Vet filed pension claim
  - MAPR A&A w/ 1 dependent: \$32,729
- Monthly penalty rate = \$2,727 ( $32,729 \div 12$ )
- Penalty period = 11 months ( $30,000 \div 2,727$ )

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## PENALTY PERIOD



- Beginning of Penalty Period
  - Penalty period begins the first day of the month that follows the asset transfer (or if there were multiple transfers, the first day of the month following the last transfer)
  - In previous example:
    - 11 month penalty period would be 2/1/2024-12/31/2024
    - Claimant would be entitled to pension with effective date of 1/1/2025

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## ASSET TRANSFERS AND PENALTY PERIOD



- If covered assets are returned to claimant, VA will recalculate or eliminate penalty period if VA receives evidence that assets have been returned within 90 days of VA's notice to claimant of decision concerning penalty period
- 38 C.F.R. § 3.276(e)(5)

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ASSET TRANSFERS AND  
PENALTY PERIOD

- VA Forms 21P-527 and 21P-527EZ ask if the claimant has transferred any assets over the past 3 years

SECTION IX: QUESTIONS REGARDING INCOME AND ASSETS

NOTE: Assets are all the money and property you or your dependents own. Assets do not include your family's primary residence or personal effects such as clothes and vehicles you or your dependents need for transportation.

**A. DO YOU AND YOUR DEPENDENTS HAVE OVER \$25,000.00 IN ASSETS (NOT INCLUDING THE VALUE OF YOUR PRIMARY RESIDENCE)?**

☐ YES ☐ NO (If "YES," please submit VA Form 21P-0989, Income and Asset Statement in Support of Claim for Pension or Parent's Dependency and Indemnity Compensation (D.I.C.).

**B. IN THE THREE CALENDAR YEARS BEFORE THIS YEAR, DID YOU OR YOUR DEPENDENTS TRANSFER ANY ASSETS? (Examples of asset transfers include giving assets away, selling assets, purchasing an annuity, or using assets to establish a trust)**

☐ YES ☐ NO (If "YES," please submit VA Form 21P-0989.)

**C. DO YOU OR YOUR DEPENDENTS OWN YOUR/YOUR FAMILY'S PRIMARY RESIDENCE?**

☐ YES ☐ NO (If "NO," skip to Item WG.)

**D. IF PRIMARY RESIDENCE SITS ON A LOT OVER 2 ACRES (87,120 SQ. FT.), WHAT IS THE VALUE OF LAND OVER 2 ACRES? (Do not include the value of the residence or the first 2 acres.)**

☐ \$  00

**E. DO YOU OR YOUR DEPENDENTS HAVE MORE THAN FOUR (4) SOURCES OF INCOME?**

☐ YES ☐ NO (If "YES," please submit VA Form 21P-0989 and ONLY report your Social Security Income below.)

**NO. IS THE SIZE OF THE LOT ON WHICH THE PRIMARY RESIDENCE SITS OVER 2 ACRES (87,120 SQ. FT.)?**

☐ YES ☐ NO (If "NO," skip to Item WG.)

**WF. IS THE LAND OVER 2 ACRES (87,120 SQ. FT.) REPORTED IN QUESTION 4E DURING YEAR?**

☐ YES ☐ NO (If "YES," please submit VA Form 21P-0989.)

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OTHER ISSUES

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CALCULATING IVAP

- Income for VA purposes (IVAP) is not always computed on a calendar-year basis; the income-reporting period for pension beneficiaries may extend over any 12-month period
- IVAP can be re-computed within a 12-month income-reporting period if there is an intervening income change

- Manual M21-1, IX.iii.1.A.1.b (change date Feb. 20, 2020)

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OVERPAYMENTS

- How do overpayments happen?

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OVERPAYMENTS

- Overpayment may happen when:
  - Vet does not report change in dependents
  - Vet does not report a change in income
  - There is a determination that Vet is no longer
    - Permanently and totally (P&T) disabled
    - Housebound
    - In need of Aid & Attendance

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SURVEY #4

- If a pension recipient knows of any material change or expects a change in income or other circumstances that would impact entitlement to receive pension or the rate of pension, when must they notify VA?
  - A. Within 12 months
  - B. As soon as they are aware of the material or expected change
  - C. They do not - VA will find out and notify them

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## WHEN TO NOTIFY VA



### B

- Vet must notify VA when Vet acquires knowledge that he or she will begin to receive additional income or when marital or dependency status changes
- Vet must also notify VA of any material increase in net worth
  - 38 C.F.R. § 3.660(a)

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## REPORTING INCOME



- For changes in income favorable to pension award (including deductions), a beneficiary has until the end of the calendar year following the calendar year in which the change occurs to furnish the new income information and get a retroactive increase.
- Until the time limit has expired, the pension rate/amount is provisional
  - 38 C.F.R. § 3.660(b)(1)

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## REPORTING DEDUCTIBLE EXPENSES



- There is no time limit for submitting a report of deductible expenses to reduce or eliminate an overpayment in a pension account
  - But, the deductible expenses must have been paid during the same reporting period in which the overpayment was created
- If the overpayment was previously repaid or recouped, deductible expenses can be used to issue a retroactive payment, if the retroactive amount does not exceed the amount repaid or recouped

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### EFFECTIVE DATE WHEN NET WORTH NO LONGER EXCESSIVE



- **After denial, reduction, or discontinuance due to excessive net worth**
  - **Effective date = day net worth ceases to exceed limit**
  - **Claimant must submit certified statement to VA that net worth has decreased**
    - VA must receive statement w/in one year of VA's notice to claimant that pension was denied, reduced, or discontinued
    - If decision appealed, claimant can submit statement during appeal
      - 38 C.F.R. § 3.274(g)

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### EXCESSIVE NET WORTH EFFECTIVE DATE FOR DISCONTINUANCE



- **Last day of calendar year in which net worth exceeds limit**
  - 38 C.F.R. § 3.274(h)(1)
- **But, if net worth then decreases below limit before end of calendar year, VA will not discontinue pension**
  - 38 C.F.R. § 3.274(h)(2)

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### EXCESSIVE NET WORTH EFFECTIVE DATE



- **Example:**
  - 2/2024: Vet receiving pension; net worth \$120K
  - 6/2024: Net worth rises to \$160K (over limit)
  - 10/2024: Net worth falls to \$130K
  - **VA will not discontinue pension award**

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## § 3.551 REDUCTION BECAUSE OF HOSPITALIZATION

- If one of the following beneficiaries receives Medicaid-covered nursing home care, the max amount of pension that person can receive per month is \$90:
  - Vet w/out a spouse or child
  - Surviving spouse w/out a child
  - Surviving child

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## § 3.551 REDUCTION BECAUSE OF HOSPITALIZATION

- Beneficiary is not liable for any pension paid in excess of the \$90 per month by reason of VA's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment, by the beneficiary, of information necessary to make that reduction

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## QUESTIONS



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- Previous NVLSP webinars are available at <https://productsbynvlsp.org/product-category/on-demand-webinars-attorney/>
- Webinars are available for 72 hours after purchase
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  - Navigating VA's Modernized/AMA Review System
  - VA Benefits Based on National Guard and Reserve Service

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## NVLSP VA BENEFIT IDENTIFIER APP

- Questionnaire/App: Helps Vets and advocates figure out what VA service-connected disability benefits or non-service-connected pension benefits they might be entitled to
- 3 WAYS to Access:
  - [NVLSP Website](#)





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## NVLSP TRAINING OPPORTUNITIES



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- If you are interested in finding out more info, please contact Director of Training and Publications, Rick Spataro, at [richard@nvlsp.org](mailto:richard@nvlsp.org)

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