

**The**  
**COLORADO GUIDE**  
**to**  
**VA**  
**“Aid and Attendance”**



Including Eligibility Rules,  
Qualification Criteria  
and  
FAQs



**THE HUGHES LAW FIRM**

A PROFESSIONAL CORPORATION

1974

## **Introduction**

America's veterans deserve the best health care and compensation systems we can provide. While there are several different commonly-known types of VA benefits available to veterans or spouses of veterans, most people are unaware of the benefits available to our senior citizens who need health care assistance.

The VA is divided into two branches. One branch is the Veteran's Health Administration. Its primary purpose is to provide health care for prior service members. This would include being able to use VA hospitals, VA nursing homes, state VA nursing homes, prescription drug benefits and many other outpatient services.

The other branch is the Veteran's Benefits Administration. This branch administers monetary benefit programs for eligible veterans. This branch includes the Special Pension discussed in this guide called "Aid and Attendance" (for a veteran, veteran with spouse or just the spouse in need of extra medical help) and the other pension called "Improved Pension (for a "healthy" veteran and a spouse in need of extra medical help). Both of these pensions are available to offset the cost of necessary health care.

Both of these financial benefits are unknown to most veterans. A person must meet certain criteria to be eligible for either type of benefit.

This guide discusses the basics of Aid and Attendance eligibility and planning under the VA guidelines. When dealing with the escalating cost of home care, assisted living and nursing home care, this benefit can be a defining point in the quality of care you or your family member can afford.

### ***Current Aid and Attendance Pension Benefits 2017***

- \$2,127 a month for a veteran and spouse
- \$1,794 a month for a veteran
- \$1,153 a month for a surviving spouse

- \$1,408 a month for a healthy spouse/disabled spouse

This is a tax-free benefit paid directly to the claimant. It is important to note that it could take up to 12 months to start receiving the benefit. Once approved, Aid and Attendance is paid retroactive from the first day of the month following receipt of the application by the Veterans Administration.

***Basic Eligibility***

Basic eligibility is comprised of three requirements. First, the claimant (or the claimant’s deceased spouse) must be a veteran. This includes Reservists and those in the National Guard, under certain conditions. There are also several other categories of personnel that Congress has determined should also be considered veterans. A list of such personnel is included later in this guide.

Second, the veteran must have been discharged under a condition other than dishonorable, Third, the veteran must have served 90 days of continuous active duty before 1980 (or 24 months after 1980) with at least one day of that continuous active duty served during wartime (although the veteran need not have been in a combat zone).

***Wartime Dates***

<b>World War II</b>	<b>12/7/1941 – 12/31/1946</b>
<b>Korean Conflict</b>	<b>6/27/1950 – 1/31/1955</b>
<b>Vietnam Era</b>	<b>8/5/1964 to 5/7/75 (2/28/1961 for veterans who served “in country” before 8/3/1964</b>
<b>Gulf War</b>	<b>8/2/1990 – Not yet determined</b>

Next, financial and medical issues must be faced before eligibility can be determined.

## *Income*

You can't have too much income. The VA defines income as payments of any kind from any source. Additionally, it is the gross amount of income rather than the net. It is also "household" income of the veteran, spouse and any dependent children, calculated on an annualized basis. This means that a monthly rate of income is projected for the twelve months following the date of the VA claim.

## *Net Worth Requirements*

Finally, assuming a veteran (and/or his or her spouse) has tentatively qualified for Aid and Attendance, the final test to complete the qualification process relates to the net worth and the amount of assets the applicant has, at the time the application is filed. The applicant's car, home, household furnishings and personal property are not counted. **BE AWARE THAT IT IS NOT NECESSARILY AMOUNT OF ASSETS THAT AN APPLICANT HAS, BUT HOW MANY MONTHS IT WOULD TAKE UNTIL THE APPLICANT WOULD RUN OUT OF MONEY.** Attorneys knowledgeable in this specialty will advise the claimant what is the appropriate cash-asset level to maintain. This is essential for a qualifying application. There are many deciding factors in this formula as to whether or not the applicant qualifies for Aid and Attendance. In other words, financial figures are "extremely fluid" and can vary greatly from case to case. If you call us for help, we will explain how this works in greater detail.

Because the VA looks only at the claimant's net worth **at the time of the actual Aid and Attendance application** (with no penalty period for a transfer of assets made before filing the application), just about any veteran or spouse can, with proper planning, qualify for the pension if assets are given away to children or other family members. While the thought of giving away assets sounds drastic or unthinkable, using a special trust called a "VET Trust" can qualify the veteran or spouse for Aid and Attendance benefits,

utilizing specific approved language regarding the use of those assets. Unlike Medicaid, there is no penalty for “gifting” and there is no “look-back” period **at this time** (January 2017). **IMPORTANT:** There **will** be a change to a look back period sometime in 2017.

**PLEASE NOTE:** We anticipate a law change, requiring a “look back” period to be implemented within in a year or so. It is not too early to research this pension now, so purposeful planning will be to your advantage. If you anticipate needing this VA pension in three years, it is not too early to discuss these options.

Each case must be carefully evaluated; applicants should not be discouraged if they think they may have too many assets. An experienced attorney can build a qualifying case for most applicants working within the rules and guidelines set forth by the VA to qualify the applicant for up to the maximum amount of the available pension.

### ***Medicaid Trap***

An important factor that one must consider when thinking about trying to meet the VA asset limitation is that giving away cash or other things of value can create problems for senior citizens if or when they later need to apply for Medicaid to assist them with nursing home care. Giving away assets can create a long penalty period of ineligibility for Medicaid benefits. Any senior facing long-term care should seek the advice of an attorney who is skilled in the areas of estate planning, asset-protection strategies, Medicaid, VA benefits and trust law (especially VET Trust law).

### ***Medical Eligibility***

The phrase “permanently and totally disabled” means that a veteran must require “care or assistance on a regular basis” This phrase can be established by showing one or more of the following conditions:

- The veteran or surviving spouse is a resident in an assisted living property, or in a nursing home or hospice facility because of mental or physical incapacity;
- The veteran or surviving spouse is unable to dress or undress or keep him or herself clean and presentable;
- The veteran or surviving spouse needs adjustments to any special prosthetic, orthopedic appliance, or is not able to attend to the wants of nature;
- The veteran or surviving spouse has a physical or mental incapacity that requires assistance on a regular basis to protect the veteran from the hazards of his or her environment; or
- **The veteran or surviving spouse needs ongoing help from another person with their “activities of daily living” (ADLs).**

If the veteran or surviving spouse is in need of services from home health care, home care (non-medical) or is utilizing a personal care provider, the need for such care must then be substantiated by a physician’s statement and/or signed document from the provider. This is a requirement for an application to be submitted!

### ***Service Documents***

In order to complete the application for Aid and Attendance, there are number of documents that need to be compiled. The most common problem arises in retrieving the veteran’s DD214 or military discharge papers. One source that can be accessed is the National Personnel Records Center located in St. Louis, Missouri.

[www.archives.gov](http://www.archives.gov)

National Personnel Records Center  
Military Personnel Records

9700 Page Avenue  
St. Louis, MO 63132-5100  
FAX 314-801-9195

If you will be applying for Aid and Attendance and you cannot locate your paperwork, start contacting government agencies now. This process takes time and could hold up the application.

### ***In Summary***

Aid and Attendance is designed to help veterans and/or their surviving spouses receive the financial support necessary to ensure their continuing care in an assisted living property or nursing home setting or with additional in – home care.

The benefit amount paid is in addition to any other existing resources the applicant uses to pay for care.

### Summary of Eligibility Requirements:

- Service: Veteran must have served at least 90 days of active duty, with at least one day served during a time of war with a discharge of “something other than dishonorable”;
- Assets: Many variables require each case to be evaluated individually regarding the level of assets an applicant may have. Essentially, the lower the level of assets, the easier it is to qualify for benefits.
- Financial need: In general, there must be less income each year than the cost of care provided, including the monthly charges by the assisted living, nursing home or home care agency for family caregivers.
- Medical diagnosis: There must be a medical reason why you cannot live independently and you have a need for regular assistance and care with activities of daily living

(ADLs), such as bathing, dressing, using the bathroom, literally being fed by someone, and requires assistance transferring in and out of a chair or bed.

### ***Conclusion***

The bottom line is this: if you or your loved one fit within the military service requirements set forth in this guide, are in assisted living, nursing home or at home getting home care services from an agency or family member, you need to dig into this benefit. It could mean thousands of dollars of extra care that could ease the financial strain for you and your loved ones.

### **Who Qualifies**

**Full time Services in the Army, Navy, Marine Corps, Air Force, Coast Guard, Merchant Marines, Women's Corp, Nursing Corp, other than Active Duty for Training.**

**In addition to active duty vets from the armed services, these little-known groups also meet the active duty qualifications for VA benefits.**

*If you belong to any of these groups and received a discharge by the Secretary of Defense, your service could meet the active duty service requirement for benefits:*

- Female clerical employees of the Quartermaster Corps serving with the American Expeditionary Forces in WWII
- Recipients of the Medal of Honor
- Women Air Force Service Pilots (WASPs)
- WWI Signal Corps Female Telephone Operators Unit
- WWI Engineer Field Clerks

- Women's Army Auxiliary Corps (WAAC)
- Reconstruction aides and dietitians of WWI
- Male civilian ferry pilots
- Wake Island defenders from Guam
- Civilian personnel assigned to OSS secret intelligence
- Guam Combat Patrol
- U.S. civilians who participated in the defense of Bataan
- American merchant marines in the oceangoing service during WWII
- Quartermaster Corps members of the Keswick crew on Corregidor during WWII
- Civilian Navy IFF radar technicians who served in combat areas of the Pacific during WWI
- U.S. Merchant seaman who served on Block ships in support of Operation Mulberry in the WWII invasion of Normandy
- U.S. civilians of the American Field Service who served overseas under U.S. Armies
- U.S. civilians of the American Field Service who served overseas under U.S. armies and U.S. army groups in WWII
- U.S. civilian employees of American Airlines who served overseas in contract with the Air Transport Command between 12/14/41 and 8/15/45

- Civilian crewman of certain U.S. Coast and Geodetic Survey vessels between 12/7/41 and 8/14/45
- Members of the American Volunteer Group (Flying Tigers) who served between 12/7/41 and 8/15/45
- U.S. civilian flight crew and aviation ground support of TWA who served overseas between 12/14/41 and 8/14/45
- U.S. civilian flight crew and aviation ground support of Consolidated Vultee Aircraft Corp, who served overseas between 12/14/41 and 8/14/45
- Honorably discharged members of the American Volunteer Guard, Eritrea Service Command, between 6/21/42 and 3/31/43
- U.S. civilian flight crew and aviation ground support of Northwest Airlines who served overseas between 12/14/41 and 8/14/45
- U.S. civilian female employees of the U.S. Army Nurse Corp who served in the defense of Bataan and Corregidor between 1/2/42 and 2/3/45
- U.S. civilian flight crew and aviation ground support of Braniff Airways who served overseas in the North Atlantic between 2/26/42 and 8/14/45
- Chamorro and Carolina former native police who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6<sup>th</sup> Provisional Military Police Battalion to accompany U.S. Marines on active, combat patrol between 8/19/45 and 9/2/45

- The operational Analysis Group of the Office of Scientific Research and Development, Office of Emergency Management, which served overseas with the U.S. Army Air Corps between 12/7/41 and 8/15/45
- Honorably discharged members of the Alaska Territorial Guard during WWII
- Cadets and midshipmen
- Coast Guard, active service in Coast Guard on or after January 29,1915 while under the jurisdiction of the Treasury Department, Navy or Department of Transportation
- Male Nurses who were enlisted in Medical Corps

Give us a call if you don't see your group listed above. There are many other groups considered to have performed active military, naval or air service that qualify for this pension.

## **Questions & Answers**

### VA Improved Pension with Aid and Attendance

**Q. What is non-service connected pension?**

A non-service connected pension is a financial assistance program payable to any veteran or a veteran's surviving spouse who meets specific requirements as set by Congress. By definition, a non-service connected pension is available to qualified veterans who have disabilities that were not caused or exacerbated by their service in the military. In certain circumstances, children and parents of qualified veterans can also receive pension benefits. It is designed to assist these individuals in paying for medical care.

**Q. What types of non-service connected pensions are available for assisted living and nursing home residents?**

For the most part, two programs can be of benefit to a veteran (with or without a spouse) or their surviving spouse.

1.) Improved Pension:

This pension is provided to qualified veterans who meet the requirements of age (over 65), and whose income and assets fall within prescribed limitations.

2.) Improved Pension and Aid and Attendance:

To qualify for this pension, a veteran or surviving spouse must meet the same qualifications for the Improved Pension, plus the veteran or surviving spouse must be deemed disabled and in need of aid and attendance by another individual or facility. The benefit award and the income limitations are substantially higher for this program than for the standard version of the Improved Pension.

**Q. What qualifies an individual as a veteran for non-service connected pension benefits?**

Eligibility for most VA benefits is based upon discharge from active military service under other-than-dishonorable conditions. Active service means fulltime service as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the National Oceanic and Atmospheric Administration. Men and women veterans with similar service are entitled to the same VA benefits.

**Q. What is the length of service requirements for non-service connected benefits?**

- Veterans serving prior to the Viet Nam war must have been in the military for at least 90 consecutive days with at least one day of that service occurring during a wartime period. For service during and after the Viet Nam era, veterans must, in general, have either served their entire enlistment or have been discharged due to injuries received.

**Q. Must the veteran have served in combat or in a combat zone?**

No. All that is required is that the veteran served during a wartime period.

**Q. If the veteran served only during peacetime, is he/she eligible for Aid and Attendance benefits?**

Military service is classified as wartime or peacetime services. This distinction is important because there are significant advantages specifically accruing only to veterans with wartime service. For example, only veterans with wartime service are eligible for non-service-connected disability pension benefits such as Aid and Attendance.

**Q. What if the veteran is independent and the spouse is the one in need of aid and attendance?**

The veteran is always the claimant if living, never the spouse or dependent child. If the veteran is totally independent, and at least 65 years of age then he/she may file for Base pension alone. However, the medical costs for the spouse or child would be considered as unreimbursed medical expenses to offset total household gross income, provided that the dependent's doctor affirms the need for such care expenses.

**Q. What is considered Unreimbursed Medical Expenses?**

Unreimbursed medical are generally defined to include the cost associated with:

- a.) A care provider/assisted living facility/memory care unit/nursing home.
- b.) Medical insurance premiums – Medicare, a supplemental, dental and/or vision coverage. A prescription plan premium, but not the cost of prescriptions.
- c.) The cost of incontinent supplies.
- d.) The cost of doctors' appointments
- e.) Travel to and from doctors' appointments
- f.) Medical equipment rental

Note: only non-reimbursed medical expenses are allowed to be used to reduce income.

**Q. How is adjusted income calculated?**

The VA adjusted income is calculated as follows: overall family income, minus recurring monthly medical expenses. To receive the full amount of the Aid and Attendance benefit, it is advised that your monthly medical expenses exceed your monthly income.

**Q. How does the VA determine how many assets a claimant can keep?**

The amount of assets a claimant may keep and still qualify for pension are dependent upon the total household gross income, total household unreimbursed medical expenses and the life expectancy of the claimant.

**Q. How long does the application approval process take?**

Most applications average approximately 6 months from the time of submission to the VA. Length of time can range from 2 to 12 months depending on the location of the VA's Regional office and their backlog of claims. Payment is

retroactive to the following month after the application is received. **Our average as of this writing is 2.5 months.**

**Q. Are pension benefits taxable?**

No. The veteran or surviving spouse will not receive a Form 1099 at the end of each year and the monthly award is not included as income on the individual's tax return.

**Q. How are the benefits distributed?**

Once the award has been made, the veteran or surviving spouse will receive a payment each month via direct deposit.

**Q. How often are benefits reviewed for cost of living increases?**

Typically, benefits are reviewed each December and adjusted for cost of living increases, usually at the same increase as Social Security.

**Q. What happens when the claimant goes on Medicaid?**

Once a single claimant without any dependents qualifies for and is receiving nursing home Medicaid, the VA pension award is reduced to \$90.00 after the VA received notification of nursing home Medicaid status.

There is no such automatic personal needs reduction for community Medicaid (waived programs). If Medicaid is paying only a portion of an assisted living fee (leaving a co-payment to the claimant) he/she may still be able to receive a pension amount, dependent upon other unreimbursed medical expenses.

**Q. What happens if the veteran is currently receiving veteran's benefits such as compensation?**

In this type of case the VA will determine the pension award and the veteran will receive the larger of the two benefits. Only one benefit will be awarded.

**Q. If a veteran with a spouse is receiving pension benefits, will the wife continue to receive the pension after the death of the veteran?**

No. The surviving spouse must apply and qualify to continue receiving pension benefits.

**Q. If the surviving spouse was divorced from the veteran at the time of his or her death, can they still qualify for benefits under their ex-spouse's service record?**

No. All veteran's benefits belong solely to the veteran. Upon divorce the non-veteran ex-spouse loses all claims to the veteran's benefits.

**Q. How does the VA address individuals that have been deemed incompetent?**

Applicants that are diagnosed with dementia or otherwise deemed unable to manage their financial affairs are, by default, considered permanently and totally disabled and qualified for the Aid and Attendance program as it relates to need. However, the VA does not recognize a power of attorney of any type, only legal guardians. The VA is only concerned about the ability of the veteran or surviving spouse to handle his or her finances. If he or she is not capable of managing their own affairs (it requires a doctor's opinion) and does not have a legally-appointed guardian, the VA will appoint a fiduciary (normally a relative who is working with a veteran or spouse). If the veteran or spouse is deemed incompetent and does not have a legally-appointed guardian, they must sign all the required documents, if even only with an "X", and two individuals must sign and provide their address after witnessing the signature. If the individual is

deemed incompetent, your attorney should ask the VA to appoint the appropriate individual (typically the spouse of POA) to be the financial fiduciary.

**Q. How is the pension calculated?**

Total household income, **minus**, total household unreimbursed medical expenses. VA calculates pension on an annual basis projected outwards for twelve months from the date of entitlement – which is the date that the VA received the first intent to first intent to file. It then takes the annual maximum pension rate and divides by twelve to get the monthly amount after deducting a small amount from the medical expenses.

**Q. Is there a Penalty or a “Look Back” on asset transfers or gifts?**

At this time, there is no look-back penalty for the transfer of gifting of assets to become eligible for VA pension provided that the individual has forfeited all rights of ownership, control and benefits from the assets. However, this is subject to change at any time. We are anticipating a three year look back.

It is important to note that transfers made for VA benefits purposes, or any other purposes, may seriously jeopardize his/her ability to qualify for Medicaid should the need arise. For this reason, it may be prudent for claimant to seek legal advice from a VA accredited elder law or estate planning attorney before taking such a step.

The VA has the right to question previously transferred assets in order to verify that all rights of ownership control, and benefits have been fully relinquished. Typically, this is being done upon the initial application and when the claim is audited.

For assistance or more information, call us at (303)-268-3984 and talk to Pam Peterson-Hohs, our VA Benefits Consultant. She will take you through our 10-point Pre-qualification Checklist to see if you have a good chance of receiving this amazing benefit. This benefit could mean the difference between no care, or sub-par care and what you really need and deserve.

Being educated on the Aid and Attendance Pension before making some of those huge long term care decisions is a very prudent step. It could mean thousands of dollars to help contribute to rising health care costs for you or your loved one.

We will educate you thoroughly on this benefit. Again, call our office and speak to Pam, our VA Benefits Coordinator at **(303) 268-3984**.



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