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Housing for Veterans in Need of Assistance and the Negative Impact of the VA's Recent "Fast Letter"

By Richard M. Morgan & Loraine M. DiSalvo

One of the more challenging aspects of aging involves figuring out what housing is appropriate for us at different stages of life and how we are going to pay for that housing. Most individuals try to live at home for as long as possible, and they will modify the house or hire home care to provide the assistance that they need. People have a lot of creative options in financing the upgrades and home care: they can pull from savings, take out a home equity loan, file a claim with their long term care insurance carrier, or even take out a reverse mortgage on the house.

On the other end of the spectrum are individuals who are very disabled and require assistance with the most basic of their daily activities, including bathing and dressing. Because of the high level of care that these individuals require, they may be appropriate for nursing home care. Here, a person can either pay for the care from savings or from a long term care insurance policy. If need be, that individual may be able to qualify for [Nursing Home Medicaid](#) (a type of Aged, Blind and Disabled Medicaid), a public benefit that subsidizes the cost of the nursing home care.

The challenge arises where someone is no longer appropriate to live at home but does not require the level of care provided in a nursing home. If that person cannot perform multiple activities of daily living without assistance, that person may be appropriate for an assisted living facility (also known as a personal care home). Georgia, like most states, does not offer any public benefits to assist with the payment for this type of facility. Individuals who do not have long term care insurance must privately pay the entire cost of the assisted living facility.

Because of this gap in public benefits for assisted living facilities, people who served in the military and their spouses have increasingly turned to the "[improved pension](#)" offered by the Veterans Administration (VA) for assistance. The term "improved pension" is a misnomer because it is not a retirement benefit. Rather it is a monthly payment offered to qualifying veterans to help that veteran maintain a minimum standard of living. Generally speaking, a veteran must show the following to qualify for a pension:

1. He must have served for 90 days, at least one of which is during a wartime period. If he entered service after September 7, 1980, he must have served 24 months or the full period of service, and at least one day in a wartime period;
2. He must have been discharged from services for reasons other than dishonorable;
3. He must be over age 65 or permanently disabled for reasons he did not cause;
4. His resources must not be of a "sufficient amount that the claimant could live off these assets for a reasonable period of time"; and



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5. His income must not exceed the maximum annual pension rate (MAPR) set by Congress.

There are three levels of pension available to the veteran and his surviving spouse or his dependent child (including, in some circumstances, an adult disabled child): the basic improved pension, the “Housebound” pension and the “Aid and Attendance” pension. A basic pension is available to individuals who satisfy the five criteria mentioned above. Individuals who satisfy the improved pension criteria and who are permanently and substantially confined to their “immediate premises” are entitled to a supplementary “housebound” pension. Similarly, individuals who require assistance with activities of daily living, who are bedridden, who are blind, or who live in a nursing home are entitled to yet an additional supplement, known as “Aid & Attendance.” As of December 1, 2013, the MAPR for a Veteran with no dependents who receives Aid & Attendance is \$20,772 (\$1,731 per month). The 2013 MAPR for a surviving spouse or dependent child receiving Aid & Attendance is \$13,344 (\$1,112 per month).

In determining income for purposes of improved pension eligibility, the VA offsets from that individual’s income any [medical expenses](#) of the individual that are greater than 5% of the MAPR. Thus, a veteran without dependents can offset from his income all of his medical expenses above \$1,039 (5% of \$20,772). If a veteran earning \$20,000 annually incurs \$12,000 in annual medical expenses (\$1,000 each month), the VA will offset the \$20,000 by \$10,961 (\$12,000 - \$1,039), and that individual will be deemed to have annual income of \$9,039.

Claims for VA pension benefits are processed regionally, and an inconsistency developed as to whether the cost of assisted living facilities counted as “medical expenses.” Some regions, like Georgia, allowed the entire cost of the facility, including the cost of room and board, to count as medical expenses. The ability to offset the entire cost of an assisted living facility has a significant impact on whether someone is eligible for a pension benefit. Take the example of Victor, a hypothetical Korean War veteran who receives \$5,000 in Social Security and a monthly pension for an annual income of \$60,000. Victor lives in an assisted living facility in which he pays a total of \$4,000 per month (\$48,000 per year), \$3,000 for room and board and \$1,000 for additional assistance. Prior to the “Fast Letter” clarification discussed below, Victor often qualified for pension benefits. Victor could offset all of his assisted living expenses but \$1,039 from his income, giving him an annual income of only \$13,039 (\$60,000 - \$46,961 in medical expenses). Clearly, this income is well below the \$20,772 limit.

In response to the regional processing inconsistencies, the VA issued a “[Fast Letter](#)” on October 26, 2012, clarifying the treatment of room and board when calculating a veteran’s income. Under the clarification, the VA will not automatically allow room and board in senior, independent, or assisted living facilities to count against income. Instead, the VA will look to see:

1. whether the facility assists the veteran with two or more activities of daily living, narrowly defined as “bathing or showering, dressing, eating, getting in our out of bed or a chair, and using the toilet”; or



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2. the veteran's physician must certify in writing that the veteran must live in *that* facility to receive care by a third party provider in *that* facility.

What is especially interesting is that the VA no longer considers the inability to perform instrumental activities of daily living (IADLs), such as housecleaning, cooking, medication assistance, or using the telephone, as sufficient justification for deducting the cost of room and board from income. It has taken the position that these activities are not medical or nursing services and, thus, cannot be used to determine the claimant's income. There is an exception, however. If a claimant needs assistance with IADLs and (1) is entitled to an improved pension with a Housebound or A&A supplement OR has a letter from his physician certifying that he needs to be in a protected environment; AND (2) receives medical or assistance with ADLs from the facility, then the VA will offset the cost of providing the IADLs from the claimant's income.

This clarification may cause many assisted living residents to lose their veterans benefits. Let's consider Victor's situation again. He can no longer deduct \$46,961 in medical expenses from his income. Instead, he can only deduct \$10,961 in medical expenses - \$12,000 in annual payments for medical assistance less the \$1,039 exclusion. Victor's income under the clarified rules is \$49,039 (\$60,000 income - \$10,961 in medical expenses), well above the \$20,772 limit.

Residents of independent or assisted living facilities who currently receive Aid & Attendance need to speak to an attorney or other veterans' organization to determine how the clarification will impact their ability to pay for their personal care home. The attorney or organization can help the veteran assess what steps need to be taken, if any, to help them retain their benefits.

(NOTE: The official 2013 VA pension benefit rates have not been posted as of the time of this writing. Any minor errors will be corrected once the official figures are published.)