

TRAINING MODULE 5
Study Plan
NON-SERVICE CONNECTED DISABILITY PENSION

Objective:

To learn how to assist a claimant submit a claim for non-service-connected disability pension, and to become familiar with the requirements for such claims.

References:

Title 38, U.S. Code, Chapter 15

38 Code of Federal Regulations, Parts 3, and 4

Adjudication Manual M21-1, Part 1, Appendix B Parts IV and VI;

Adjudication Manual M21-1MR (Manual Rewrite), Part 5

VA Pamphlet: *Federal Benefits for Veterans and Dependents*

Instructions:

Study the assigned reference materials to learn the requirements for disability pension claims. Pay special attention to the income and net worth information in the application, as that will be a major portion of the development of the claim.

PENSION

**SECTION 1. PENSION FOR NON-SERVICE CONNECTED DISABILITY
—(MEXICAN BORDER), WORLD WAR I, WORLD WAR II
KOREAN CONFLICT, VIETNAM ERA, AND PERSIAN GULF**

There are currently three major pension programs administered by VA: the Old Law pension program formerly known as 'protected pension' for those veterans and dependent applicants receiving benefits on June 30, 1960. The pension program under Public Law 86-211, also known as Section 306 Pension for those who filed on or after July 1, 1960; and the current pension program, the Improved Pension Law (Public Law 95-588), effective January 1, 1979.

IMPROVED PENSION

(1) BENEFIT

- a. Pension is a monthly payment to a veteran who served under honorable conditions during the Mexican border period, World War I, World War II, the Korean Conflict, the Vietnam era, or the Persian Gulf War, with additional money for his or her spouse and dependent children. Pension may be payable to a veteran who is permanently and totally disabled as a result of non-service connected disability.

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- b. Applicants for pension after December 31, 1978, will come under Public Law 95-588, the Improved Pension Law.

Note: Persons currently receiving pension under any of the earlier pension laws may elect to receive pension under the Improved Pension law. Such election is irrevocable, except where election was based on erroneous information furnished by VA.

(2) PERIODS OF WAR

The term "periods of war" means World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and the period beginning on the date of any future declared war by the Congress and ending on the date prescribed by Presidential Proclamation or concurrent resolution of the Congress.

- b. The following are considered periods of war:
 - i. World War I—April 6, 1917, through November 11, 1918, extended to April 1, 1920, for service in Russia, and to July 2, 1921, if the veteran served between April 6, 1917, and November 11, 1918.
 - ii. World War II – December 7, 1941, through December 31, 1946.
 - iii. Korean Conflict – June 27, 1950, through January 31, 1955.
 - iv. Vietnam era – August 5, 1964, through May 7, 1975.
 - v. Persian Gulf War – August 2, 1990, through a date to be set by law or Presidential Proclamation.

(3) SERVICE REQUIREMENTS

- a. Ninety days or more, one of which must have been during a period of war; or
- b. Discharge for service-connected disability from wartime service of less than 90 days; or
- c. Ninety consecutive days or more and such period began or ended during a period of war; or
- d. An aggregate of 90 days or more in two or more periods of service during more than one period of war.
- e. Travel time from place of release from active duty (RAD) to home may be included in the period of active duty.

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- f. If the veteran was released from active duty in less than 90 days, VA may determine if the veteran was released for a service connected disability or had a service connected disability at the time of release from active duty that would have warranted a discharge for disability.

Note: In accordance with 38 CFR 3.12(a), all persons entering active duty must meet the minimum active duty requirements. After September 7, 1980, these requirements are:

- a. Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the VA benefit entitlement (e.g., see 3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served; or
- b. The full period for which a person was called or ordered to active duty.

Persons Included:

- (1) A person who originally enlists (enlisted person only) in a regular component of the Armed Forces after September 7, 1980 (a person who signed a delayed-entry contract with one of the service branches prior to September 8, 1980, and under that contract was assigned to a reserve component until entering on active duty after September 7, 1980, shall be considered to have enlisted on the date the person entered on active duty); and
- (2) Any person (officer as well as enlisted) who enters on active duty after October 16, 1981, and who 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 USC 1171 (early out).

(4) DISABILITY REQUIREMENTS

A veteran must be permanently and totally disabled to be eligible for disability pension.

A veteran who is over age 65, or a veteran under age 65 who has been determined to be permanently and totally disabled by the Social Security Administration under any of their benefit programs, or a veteran who is confined to a nursing home because of disability which is reasonable to conclude will continue throughout the life of the veteran, will be considered to be permanently and totally disabled for VA pension purposes. All other veterans must be rated permanently and totally disabled by the VA.

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(5) PERMANENT AND TOTAL DISABILITY RATINGS

- a. Permanent and total (P&T) ratings are based on age, the degree of disability, and unemployability. The ratings are determined in accordance with the Schedule for Rating Disabilities. (38 CFR, Part 4)
- b. The Rating Schedule defines total disability as an impairment of mind or body which is sufficient to make it impossible for the average person to follow a substantially gainful occupation. Permanent total disability exists when impairment is reasonably certain to continue throughout the life of the disabled person. Examples of permanent total disabilities include the permanent loss or loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming helpless or permanently bedridden. The Rating Schedule also provides for other total disability ratings.
- c. Veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanent and totally disabled for pension based on un-employability and age, if they have a single disability rated 60 percent or a combined evaluation of 70 percent, with one disability ratable at 40 percent or higher.
- d. Marginal employment such as odd jobs will not be inconsistent with a finding of un-employability if the disabilities prevent full employment. A homemaker may qualify as unemployable if she or he is no longer able to perform the principal household duties without substantial help. Optional or forced retirement is not a basis for determining that a veteran is unemployable; rather, the determining factor is whether his or her disability and age prevent him or her from obtaining new employment. (38 CFR 4.17)
- e. Disabilities due to misconduct or vicious habits may not be considered in rating a veteran's disabilities. However, a P&T disability will not be disallowed by reason of the coexistence of misconduct disability when:
 1. The veteran, regardless of employment status, also has innocently acquired 100 percent disability, or
 2. When unemployable, he or she has other disabilities innocently acquired which meet the percentage requirements, and would make the average person unable to secure or follow a substantially gainful occupation.

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- f. It is the policy of the Secretary that all veterans who are basically eligible for pension, but fail to meet the disability requirements based on the percentage standards of the Rating Schedule and who are unable to secure and follow a substantially gainful occupation by reason of his or her disabilities, age, occupational background, and other related factors, may be eligible for pension. The Adjudication Officer or Veterans' Service Center Manager is authorized to approve, on an extra-schedular basis, a permanent and total rating for pension purposes. (38 CFR 3.321(b)(2))

(6) SPECIAL MONTHLY PENSION - AID AND ATTENDANCE

- a. A veteran will be considered to be in need of regular aid and attendance (A&A) if he or she is a patient in a nursing home or is helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.
- b. In determining the need for regular aid and attendance, the following will be considered:
 1. Inability of the veteran to:
 - Dress or undress;
 - Bath ones self;
 - Feed him or herself;
 - Attend to his or her sanitary needs;
 - Walk in and out of home unattended, or protect himself or herself from hazards or dangers incident to the daily environment, etc., caused by mental or physical disabilities.
 2. "Total blindness" and "bedridden" will be a proper basis for a favorable determination of entitlement.
- c. It is not required that all of the conditions enumerated above be found to exist.

The personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Favorable determinations are not based solely on an opinion based on the severity of the disability; they must be based on the actual requirement of personal assistance from others.
- d. When any veteran is in receipt of increased pension or additional compensation or allowance based on the need of regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the Secretary may furnish the veteran such medical services as he finds to be reasonably necessary.

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- e. The Secretary shall furnish to each veteran who is receiving additional compensation or allowance under chapter 11, or increased pension as veteran of World War I, World War II, the Korean conflict, the Vietnam era, or the Persian Gulf War, by reason of being permanently housebound or in need of regular aid and attendance, such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran. The Secretary shall continue to furnish such drugs and medicines so ordered to any such veteran in need of regular aid and attendance whose pension payments have been discontinued solely because his or her annual income is greater than the applicable maximum annual income limitation, but only as long as the annual income does not exceed such maximum annual income limitation by more than \$1,000.

(7) SPECIAL MONTHLY PENSION - HOUSEBOUND

A veteran will qualify for the housebound rate if he or she has a single disability rated as permanently 100 percent disabling and (a) has additional disabilities rated 60 percent or more or; (b) is permanently housebound but does not qualify for aid and attendance. A veteran will be considered "permanently housebound" when he or she is substantially confined to the house (ward or clinical areas, if hospitalized) or immediate premises due to a disability which it is reasonably certain will remain throughout his or her lifetime.

(8) CORPUS OF THE ESTATE - NET WORTH

This is the net value of all real estate and personal property owned by the claimant, except his or her home, furnishings, and automobile. Public Law 95-588, Improved Pension, provides for the denial or discontinuance of pension to a veteran when the corpus of estate of the veteran and the veteran's spouse is a such that under all circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estate be used for the veteran's maintenance. There is no specific dollar limitation. (38 CFR 3.274) However, if a claimant has an estate of \$80,000 or greater, development action will be taken by adjudication to determine if net worth is excessive and a bar to pension entitlement. (M21-1, Part IV, Subchapter VIII, paragraph 16.39) To assist the VA in development, the claimant must complete VA Form 21-8049 and answer "net worth" questions. (See sample copy at end of this module.)

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(9) DETERMINATION WITH RESPECT TO ANNUAL INCOME

Income and net worth limits for improved pension are spelled out in 38 USC 1521 and 1522. The income limits are adjusted periodically. The adjusted limits are published in the "Notices" section of the *Federal Register*, and are listed in Adjudication Manual M21-1, Part I, Appendix B. All of the veteran's family income from all sources is counted, unless specifically excluded. Specific categories of countable income are discussed in 38 CFR § 3.271. Categories of excluded and/or excludable income are listed in 38 CFR § 3.272. In addition, an extensive (but not comprehensive) listing of specific sources of countable and non-countable income is contained in M21-1, Part IV, Chapter 16, **Income and Net Worth**, Subchapter IX, **Improved Pension—Counting Specific Types of Income**. Medical and certain other expenses, paid by the veteran and/or family and not reimbursed from any source, may be *deducted* from otherwise countable income to reduce the levels used for determining pension rates payable. See Module 8, Section 2, **Deductible Expenses**, for more information.

Higher income limits apply if the veteran has dependents; however, the dependents' incomes are then also counted, as well. In addition, higher income limits also apply if the veteran is housebound or in need of regular aid and attendance. Finally, if the veteran served during the Mexican Border Period or during World War I, the income limit is further raised in addition to any other consideration.

Pension is not payable if the veteran's and/or the family's net worth is of such size that it would be reasonable for the net worth to be consumed for the maintenance of the veteran and family. This is determined on a case-by-case basis, taking into account such factors as the nature, source(s), and amount(s) of income and assets; the nature and amount(s) of debts and expenses; the number and age(s) of any dependents; the amount of anticipated educational expenses for dependents; the veteran's and dependents' state of health; and the anticipated life expectancy of the veteran and/or the dependents. In general, net worth is not a factor for consideration unless it is greater than \$80,000.

- a. Public Law 95-588 provides generally that all income, regardless of source, of a veteran, the income of the veteran's spouse and any child for whom pension is paid, shall be considered in determining the rate of pension. The following are either exceptions or offsets to income:
 - (1) Private or public welfare. (Exception)
 - (2) Expenses of last illness and burial of veteran, child or spouse of veteran and just debts of deceased veteran. (Offset to income)
 - (3) Reimbursement for all casualty losses as long as the payments do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. (Exception)
 - (4) Profits realized from the sale of non-business property. (Exception)
 - (5) Un-reimbursed unusual medical expenses provided such expenses exceed 5 percent of the applicable maximum annual pension rate without consideration of the aid and attendance or housebound rate. (Offset to income, see medical expenses sheet module 21 for examples of unusual medical expenses.)

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- (6) Amounts in joint accounts in bank acquired by reason of death or other owner. (Exception)
 - (7) Amounts equal to tuition, fees, books and materials paid by veterans or surviving spouses for education or vocational rehabilitation. Also, if in need of aid and attendance, un-reimbursed unusual transportation expenses in connection with such courses. (Offset to income)
 - (8) Post-secondary educational expenses, including tuition, fees, books, and materials paid by a child not to exceed the amount of the child's earned income. (Offset to income)
 - (9) A child's earned income not exceeding the amount specified as the 38 CFR 3.272(j)(1) exclusion in the Improved Disability Pension rate chart in M21-1, Part 1 Appendix B.
- b. Net worth or corpus of estate of both the veteran and his/her spouse will be considered by VA in determining veteran's entitlement to receive pension.

(10) AMOUNT OF PENSION

(See Pension Rate Tables)—M21-1, Part 1, Appendix B

(11) PAYMENT OF PENSION DURING CONFINEMENT IN PENAL INSTITUTIONS (38 USC 505 AND 38 CFR 3.666)

Pension may not be paid to or for any person who has been imprisoned in a federal, state, or local penal institution as a result of conviction of a felony or misdemeanor, for any period beginning 61 days after imprisonment begins and ending when imprisonment ends. "This is interpreted as requiring that *any* person who is incarcerated for more than 60 days for conviction of a crime must be removed from a pension award, regardless of whether the incarcerated person is the beneficiary or a dependent of the beneficiary. This can be particularly significant when the incarcerated person is the dependent of a veteran receiving pension, and the family income is such that the dependent's continued inclusion on the award is necessary for the veteran to remain within the applicable income limits. See, <http://www.warms.vba.va.gov/052407.html>.

However, if the veteran continues to be eligible except for the provisions of this paragraph, VA may pay to the spouse or children the rate payable under the death pension law based on their countable income or the rate which the veteran was receiving at the time of imprisonment, whichever is less. (M21-1, Part IV, par. 25.04 and 26.04)

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Study Questions: Non-service-Connected Disability Pension

Using the assigned references and reading materials, answer the following questions:

1. Which of the following sources is not counted as income for NSC Pension purposes?
 - a. Social Security
 - b. SSI (Public Welfare)
 - c. Rental income
 - d. Tobacco allotment

2. Veteran had traumatic amputation of both feet in an industrial accident. He returned to work and continued until reaching normal retirement. Can he be rated Permanent and Total for pension purposes?
 - a. True
 - b. False

3. Veteran was inducted into service in early 1945. Six weeks after starting basic training, he was found to have a small duodenal ulcer. This disqualified him for overseas duty, so he was discharged after being on active duty for two months and ten days. SC was established for the ulcer, but it was never again symptomatic and was always rated 0% disabling. Does he meet service requirements for VA pension?
 - a. True
 - b. False

4. While driving under the influence of alcohol, Gulf War veteran hit a freeway overpass abutment. He suffered massive head and neck injuries, and is now quadriplegic and demented. Can he be rated Permanent and Total for pension purposes?
 - a. True
 - b. False

5. A blind veteran, with no light perception in either eye, is considered to be in need of regular aid and attendance.
 - a. True
 - b. False

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6. Additional pension for aid and attendance based on blindness will be reduced when the veteran is admitted to a VA medical facility.
 - a. True
 - b. False

7. Veteran's spouse inherited \$100,000 from a deceased relative. This makes the veteran's family income over the limit for VA pension for the twelve months following receipt.
 - a. True
 - b. False

8. The home in which the veteran and his or her spouse reside is considered as part of the corpus of their estate for improved pension purposes?
 - a. True
 - b. False

9. A wartime veteran age 69, did not complete grade school, and does only menial, unskilled jobs on an occasional basis. He works on average two or three days each month, and survives only by the kindness of friends. He is in good health, and his only ratable disability is moderate varicose veins. He/she is presumed to be PT for pension purposes.
 - a. True
 - b. False

10. Can a veteran who is receiving Section 306 pension claim additional benefits for aid and attendance?
 - a. True
 - b. False

11. The veteran served from February 15, 1998 to June 30, 1998. He was administratively discharged under honorable conditions because of inadaptability. He/she have met the service requirements for disability pension.
 - a. True
 - b. False