

**Veterans Benefits Claims
Leveling the Playing Field
Panel Discussion**

Friday September 27, 2013
Moderator Gregory G. Glenn, Esq.

Following is the “wish list” for each of the CLE’s topics submitted for consideration for the panel discussion. Unfortunately, given time constraints there is no way every question will be covered.

The moderator will select topics of most interest for each category. If you want to have a particular question given priority, please advise the moderator before LUNCH.

(Topics will be considered on a first come-first serve basis and coverage of any of the topics is not guaranteed due to the time constraints.)

A. Accreditation

1. Do VA accreditation requirements apply to Veteran Health Administration benefits consults and application for benefits?
2. How do I know if a course on Veterans benefits will meet the requirements for advanced CLE’s?
- 3.

B. Pension (Net Worth/Assets, Income, UME’s)

1. The Net Worth Formula
 - a) Actuarial Life Table Used (VA? Soc Sec Admin?)
 - b) What if Claimant is married? Whose life expectancy is used? All Assets? All UME’s of household?
 - c) UME’s
 - (1) Only those on-going consistent monthly expenses?
 - (2) Projected based on last 12 months?
 - (3) Inflation factor?
 - d) Can one claim other living expenses for rest of life? (i.e., rent, mortgage, food, clothes, credit cards). Can or must those be considered by VA if submitted as part of application on a VA Form 21-8049 (Request for additional Expenses)?
 - e) \$80,000, \$50,000, \$30,000 and the Corpus of the Estate \$80,000 Threshold (M21-1MR, Part V, Subpart iii, Ch 1, Section J(69)(d))
2. Net Worth - What is considered liquid “consumable for claimant’s maintenance and support”? (Convertible to cash w/in 20 days?) Net Worth Test . 38 CFR 3.275(d)
3. Aid & Attendance
 - a) Can a veteran prevail in a claim for Aid & Attendance Special Monthly Pension benefits for a spouse needing aid & attendance of another? If yes, how does a Veteran substantiate need for same(private doctors statement?)
 - b) UME – Assisted Living Facility
 - c) UME – Independent Living Facility (VA Fast letter
4. Sale of Home (Conversion of asset) M21-1MR1 Part V, Subpart iii, Ch 1, Section I(64)(a)

5. Transfers of Life Estate/Retaining a Life Estate. 38 CFR 3.276(b) and M21-MR1 Part V, Subpart iii, Ch 1, Section I(65)
6. IRA (VAOPGPREC 1-97)
7. EVR's – Status of reporting since annual EVR's for all recipients has been eliminated? How does VA determine who will have to submit an EVR?

C. Spouses and Survivor Benefits

1. Must a surviving spouse be married to the veteran (who was already discharged honorably and meets all other criteria for benefits) for one year prior to the veteran's death to collect survivor benefits? (If they had no children or all children are healthy and adults upon death of veteran).
2. To make a claim for DIC, must the claim be filed by the widow within 1 year of the death of the veteran?
3. Can a widow file a service connected claim on behalf of a deceased veteran?

D. Service Connected Compensation (Application and Appeals Process Questions)

1. Must the claimant be honorably discharged?
2. 6 Types of Claims:
 - a) Direct Service Connected Claims Notice of Disagreement (NOD) dated within last 12 months)
 - b) Secondary Condition that is alleged to be service connected
 - c) Claim for increased rating
 - d) Claim for Total Disability based on Individual Unemployability (IU)
 - e) Re-Opened Claims based upon New Material Evidence
 - f) Request for Review or Revisions based upon Clear Unmistakeable Error (CUE)
3. What are most common type of service connected claims
4. Which claims seem to process the fastest?
5. What are claims with highest success rates for a private firm to take on? (i.e., Within 1 year of the NOD?)
6. Should a private firm specialize in a certain types of service connected claim?
7. What claims most difficult?

E. Service Connected Conditions and Exams

1. Can a veteran obtain/request expedited VA physician exam relate to his 10-10EZ? (If elderly age 80?)
2. Can veteran use his own physician's exam to qualify for his 10-10EZ?
3. If a veteran wants to obtain an increased rating and he submits his own private physician's records with an indication it is more likely than not that the condition the veteran suffers from has increased due to service connected injuries, will the veteran be required to submit to examination by a VA doctor?

F. VHA Geriatric and Extended Care Benefits

1. Geriatric Care and Extended Care Services 38 CFR 17.111
2. Is there a cap on the Net Worth/assets the veteran can have to qualify?
3. Is there a cap on the amount of income the veteran can have? Veteran's spouse?
4. Where can one find the examination criteria to qualify for Geriatric skilled service requirements related to Activities of Daily Living (ADL's) and Instruments of Activities of Daily Living (IADL's)

G. Guardianship and Fiduciary Services (Capacity)

1. POA's under state law have no effect for purposes of prosecuting a VA claim M21-1MR Part I, Ch 3, Section A (1)
2. 21-22a and 21022 – VA POA. Is it durable? Does 21-22a survive incapacity in context of fiduciary appointment?

3. Once a fiduciary is appointed by the VA who is authorized to sign VA forms on behalf of the claimant related to Pension & Compensation claims?
4. Veteran knows he has bank accounts, where he lives, and recognizes his family. He has had his daughter helping manage his funds for years now for convenience. His medical chart contains the diagnosis indicating “dementia” with no further explanation. His chart mentions he is prescribed memory drugs. Can one avoid need to appointment of fiduciary? How does one provide further explanation to avoid appointment of fiduciary?
5. What is difference between appointing a fiduciary and a VA Guardianship in Florida? (Fla Statutes created Guardianship in the context of veterans)
6. What if a State court guardianship is already in place for the veteran applicant? Does VA still presume capacity?
7. How does one expedite appointment of fiduciary? Can one complete form upon submitting application?
8. In Context of VHA benefits – How does one assist in incompetent veteran? If no healthcare surrogate form signed? What is test for capacity to sign VHA related forms?
9. What is the best way to obtain a breakout of the amount of Pension and Aid & Attendance/housebound benefits awarded for purposes of State Medicaid agency request?
10. If the veteran is married and in the nursing home, can he still receive Pension Plus Aid & Attendance in the full award amount allowable? What is the veterans spouse is in the nursing home?

H. Application Forms Questions

1. Informal Claims 38 CFR 3.155 (Claimants signature not require don informal claim)
2. Appointment of 3rd Party Disclosure Form.
 - a) Is only one 3rd party allowable? (Each form can only name one party. Separate form for each party?.
 - b) If one is appointed Rep via 21-22a is it necessary to have a 3rd party disclosure form as well?
3. Signature by Mark or Fingerprint 38 CFR 3.203(a)(1)
4. Photocopies of documents acceptable if accredited agent substantiates. 38 CFR 3.204(c). See also M21-MR1 Part III, Subpart iii, Ch 1, Section B(6)((b)
5. ACCRUED BENEFITS – If a claimant dies and he has filed a claim for service connected benefits and it has been pending for years now, is it possible for the deceased claimant’s estate to continue the claim and collect the accrued benefits? Aside from a party collecting for paying the deceased claimant’s funeral costs and last illness, when can a claim for accrued benefits survive the deceased claimant?