

THE INTERSECTION OF VA PENSION AND MEDICAID PLANNING: AN ANALYSIS OF WHY PLANNING PROFESSIONALS MUST HAVE A WORKING KNOWLEDGE OF BOTH PROGRAMS

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INTRODUCTION

In Episode No. 524,¹ Dr. House and his team encounter a man whose left arm cannot be controlled because of a previous operation which divided the left side of his brain from the right side. This resulted in serious complications because one side of his brain required actions of which the other side was unaware. The patient was the living example of the old adage “the left hand doesn’t know what the right hand is doing.”²

Occasionally, in the practice of law, actions properly taken with the purpose of achieving a given result, may inadvertently cause irreparable, catastrophic damage because all factors were not considered. This usually occurs when planning is concentrated in only one area of law without a proper understanding of potentially adverse pitfalls which exist in related areas of law. One such collision of planning techniques takes place when a professional assisting a veteran to obtain VA Pension benefits³ lacks the appropriate knowledge of Medicaid law⁴ necessary to avoid disqualification should the veteran later require skilled nursing care. Conversely, the elder law attorney addressing Medicaid qualification who fails to acquaint himself with the basics of the VA Pension program may be negligent in not advising the client about valuable benefits available under VA law.

The purpose of this article is to demonstrate why it is necessary that planners – estate planners, veteran benefits practitioners and elder law attorneys alike – attain a reasonable level of knowledge in both VA Pension law and Medicaid law to avoid making decisions and taking actions which, while initially successful in achieving one benefits goal, may actually result in disqualification from equally important benefits if potentially needed in the future.

Part I will discuss basic principles of VA Pension law and planning techniques commonly used to qualify veterans for benefits under that program. Part II will address Medicaid and related public benefits law, with an emphasis on qualification rules and transactions which will result in penalty periods of disqualification from receiving benefits. Part III will demonstrate how implementing planning strategies to obtain VA Pension benefits may result in serious financial hardship if all relevant factors and consequences are not properly considered.

I. THE VA PENSION PROGRAM

A. VA Benefits Overview

Benefits available to United States veterans and their families are generally divided into three separate programs: (1) Veterans Medical Benefits;⁵ (2) Veterans Compensation (“Compensation”);⁶ and (3) Veterans Pension (“Pension”).⁷ Each VA program has its own requirements for eligibility which differ substantially. For instance, Compensation is a non-means tested program, much like the Social Security Disability Insurance program (SSDI),⁸ while Pension is a means tested program, similar to the Supplemental Security Income program (SSI).⁹ While many veterans utilize VA facilities, contrary to popular belief, every veteran is not entitled to VA health care coverage.¹⁰

1. VA Medical Benefits¹¹

The Department of Veteran Affairs (commonly referred to as the “VA”) operates the largest health care system in the United States, consisting of over 1,300 care facilities and caring for about 5 million veterans each year.¹² The VA medical benefits are principally made available to (1) veterans with service-connected conditions, (2) combat veterans, (3) low income veterans, and (4) very elderly veterans with wartime service. Veterans who do not fall within these categories may be required to pay for any medical services they receive.¹³ In the past few years, the VA has adopted a managed care model, emphasizing outpatient care and decreasing hospitalization. Irrespective of these limitations, accessibility to VA health care has expanded significantly since the implementation of The Veterans’ Health Care Eligibility Reform Act of 1996.¹⁴

2. VA Compensation¹⁵

Compensation requires that a veteran be currently suffering from a disability which is proven to be “service-connected” and which results in an ascertainable degree of physical or mental disability.¹⁶ If the veteran can prove the requisite level of current disability and that such disability occurred, or was aggravated during military service, then the value of assets owned by the veteran is irrelevant and not taken into consideration when determining the eligibility of the veteran for benefits under the program. Since the veteran’s assets are not counted, it is not necessary to convert otherwise countable resources to an exempt classification, divest oneself of ownership by gifts or transfers to third parties, or to create trusts to shelter assets making them available only for supplemental needs of the veteran. Compensation is centered around the veteran’s current medical condition, the degree of disability and the original source of the medical problem.

A veteran may have had many years of military service during wartime and may have a serious current disability. However, unless the medical problem is proven to be “service-connected,” the veteran is not entitled to Compensation benefits. In order to be considered as “service-connected,” it must be determined that the veteran’s disability or death “was incurred or aggravated during active service in the line of duty, or that the death resulted from a disability that was incurred or aggravated in the line of duty during active military service.”¹⁷

Accordingly, eligibility to receive Compensation benefits is predicated upon satisfying a three-prong test: consisting of (1) a medical diagnosis of a current disability; (2) evidence of an in-service occurrence or aggravation of a disease or injury; and (3) evidence of a link or nexus between the in-service occurrence or aggravation of injury or disease and the current disability.¹⁸ In VA practice, these three requirements are often referred to as the *Caluza* elements.¹⁹ Noticeably absent from this test is any mention of the current financial status of the veteran, since net worth is irrelevant and is not a disqualifying component as we see in means tested public benefits programs.

3. VA Pension²⁰

Unlike the VA Compensation Program, the VA Pension Program is a means tested or “needs based” program.²¹ Both current income and net worth are essential elements considered in determining eligibility for Pension benefits. Details of this program, along with eligibility planning strategies are discussed below.

4. Other Benefits

There are other veteran benefits which are not relevant to the issues discussed in this article but which may be of critical importance to veterans. These include home loans,²² educational assistance,²³ vocational rehabilitation,²⁴ job training,²⁵ life insurance²⁶ and burial benefits.²⁷

B. VA Pension Basics²⁸

Although there are three different VA Pension programs,²⁹ there is only one program under which new applications may be file. The current Improved Pension Program became effective on January 1, 1979.³⁰ There are five criteria which must be satisfied in order to qualify for benefits under the Pension program.³¹ The applicant for Pension benefits must meet each requirement or his application for benefits will be denied.

1. The veteran must have been discharged under conditions other than dishonorable.³²
2. The veteran must meet strict active duty and war time service requirements. The veteran must have served at least 90 days of active duty. At least one of those active service days must have been during a period of declared war.³³
3. The veteran must have limited income³⁴ and a net worth that does not provide adequate maintenance.³⁵
4. The veteran must be permanently and totally disabled at the time that the application is filed.³⁶ In 2001, this requirement was expanded to include any veteran who is age 65 or older.³⁷
5. The permanent and total disability of the veteran must not have been the result of willful misconduct by the veteran.³⁸

For the purposes of this article, we are going to focus on the financial condition of the veteran, since most planning by attorneys deals with limiting the net worth of the veteran.³⁹

C. Countable Income

The income limitation is based upon the “maximum annual pension rate” (MAPR).⁴⁰ A veteran receiving Pension benefits whose income increases above the MAPR will lose benefits. The pecuniary amount of Pension benefit is set by statute. For instance, for 2010, the maximum amount of benefit paid to an unmarried qualified veteran is \$11,830.⁴¹ This amount will increase for changes in support obligations and other factors, such as being married, having dependents, being

housebound and/or needing regular aid and attendance benefits. The monthly benefit paid to the veteran will be decreased one dollar for every dollar of other income received. While the general rule is that all income is counted, there are certain exclusions and deductions from gross income in calculating the veteran's income amount for Pension qualification purposes. These exceptions include SSI income payments (which are not counted) and unreimbursed medical expenses, including payments to a nursing home or assisted living facility (which offset monthly income). For instance, if a veteran has monthly income of \$2,000 but pays a regular monthly amount of \$2,500 to his nursing home, then the \$2,500 is deducted from the \$2,000 resulting in zero income. As a result, the veteran qualifies for the full monthly benefit amount with no deduction for income received.⁴² As these rules demonstrate, a determination of the applicant's income will be based upon numerous factors. There is no "income cap" of 300% times the SSI monthly benefit amount (\$2,022) as we have for Medicaid purposes in Texas.⁴³

D. The Net Worth Limitation

According to the VA Manual 21-1(M21-1), VA Pension is a needs based program which is intended to afford beneficiaries a minimum level of security, and not intended to protect substantial assets or build up the beneficiary's estate for the benefit of heirs.⁴⁴ There is no specific maximum asset level set out in regulation or statute in order to qualify for VA Pension. Traditionally, the figure \$80,000 has been used as a "rule of thumb" when discussing an applicant's net worth ceiling. The basis for this figure is the requirement of M21-1 that the Veteran's Service Representative file a formal net worth administrative decision if the veteran has an estate of at least \$80,000.⁴⁵

In reality, there is no specific amount of money used to determine the level of assets that will disqualify a claim.⁴⁶ In 2006, the VA began requiring an "age analysis" in order to determine

financial need. As the applicant's age increases, the fewer assets are allowed to be retained and still qualify for Pension benefits.⁴⁷ Accordingly, whether a veteran's net worth is "excessive" is a determination which will be made on a case-by-case basis.

E. Net Worth Planning Through Asset Transfers

In much the same manner as was allowed in the SSI system prior to the enactment of the Foster Care Independence Act of 1999⁴⁸ on 12/14/99, an applicant can gift or transfer all or any part of his assets under certain conditions. Once he divested himself of ownership and no longer has control of the assets, the value of those assets are not attributed to the applicant and he can meet the net worth requirement. The VA regulation governing transfer of assets provides that a gift of property to someone other than a relative residing in the veteran's household will be recognized as reducing the corpus of the veteran's estate if it is clear that the veteran has relinquished all right of ownership, including the right of control of the property.⁴⁹ Additionally, if a transfer of assets is made and the VA Service Representative determines that the veteran's net worth is still excessive, the veteran can give away still more assets and reapply for benefits without penalty.⁵⁰

For planning purposes, it is important to understand the specific allowances and limitations of the Pension transfer regulation. 38 C.F.R. § 3.276(b) addresses three distinct occurrences and states how each is treated, as follows:

1. Gift to a relative residing in the same household – Not recognized as reducing the corpus of the grantor's estate.
2. Sale of property to relative residing in the same household – Not recognized as reducing the corpus of the seller's estate if consideration is so low as to be tantamount to a gift.
3. Gift to someone other than a relative residing in the same household – Not recognized as reducing the corpus of the grantor's estate **unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property.**

Accordingly, a completed gift to a third party not residing in the veteran's household should divest the veteran of that value and reduce the size of his estate for the purpose of calculating net worth.

Based upon the fact that income is reduced by medical expenses, including monthly costs paid to an assisted living facility or nursing home, it is apparent that the majority of elderly veterans needing institutional care will qualify under the income test without the need for planning. Additionally, when one considers that a Pension applicant can give away most or all of his countable assets to reduce his estate in order to meet the net worth requirement, qualifying for VA Pension appears to be relatively simple if the veteran is willing to pay the price.

A basic example is a single, 75 year old Korean combat veteran with income (monthly Social Security and retirement check) of \$2,100 and investment assets of \$140,000 who now lives in an assisted living facility currently charging \$3,000 per month. The veteran can gift \$ 100,000 to his son who lives in another state which will reduce his estate to \$40,000, an amount which should meet the net worth test. His income of \$2,100 is offset by the \$3,000 per month payment to the assisted living facility, resulting in countable income of zero. The veteran will then qualify for VA Pension.⁵¹ He will receive \$985 per month in Pension benefits which will increase his income to the \$3,000 necessary to pay the assisted living facility bill.

II. THE EFFECT OF TRANSFERS ON MEDICAID ELIGIBILITY

Unlike Veterans Benefits Programs, SSI and Medicare which are federal programs, Medicaid is a joint federal-state program. Funding for Medicaid is shared by the federal government and the individual states. While the states are relatively free to enact their own rules with regard to (1) the eligibility of their citizens for Medicaid benefits, and (2) general administration of the program, the states are required to enforce certain of the federal Medicaid mandates.⁵² In my state of Texas,

Medicaid is administered by the Texas Health and Human Services Commission (HHSC) located in Austin. On December 1, 2009, the HHSC implemented the newly revised *Medicaid Eligibility for the Elderly and People with Disabilities Handbook* (MEH). While the MEH codifies all of the Medicaid eligibility rules for the state of Texas, much of its content is an adoption of the federal rules which took affect upon the enactment of the Deficit Reduction Act of 2005 (DRA).⁵³

Based upon the federal mandates of 42 U.S.C. § 1396p, all state Medicaid plans are required to assess penalty periods of ineligibility “if an institutionalized individual or the spouse of an institutionalized individual disposes of assets for less than fair market value on or after the look-back date...”⁵⁴ Imposing penalties for transfers is not optional for state Medicaid agencies. Additionally, a number of the rules regarding how transfer penalties are applied are also specifically required by the federal statute. For instance, prior to enactment of the DRA (generally effective on February 8, 2006), the period of time during which transfer penalties are imposed, called the “look back” period, was 36 months from the date of the transfer.⁵⁵ However, from the effective date of the DRA, the look back period is now 60 months.⁵⁶ This means that any transfer made within the past 60 months will be considered and the appropriate penalty will be calculated and applied.

In addition to the expansion of the look back period, perhaps the most dramatic – if not draconian – change under the DRA is the start date of the penalty period. Prior to February 8, 2006, the start date of the penalty period was “the first day of the calendar month during which the transfer was made.”⁵⁷ The DRA moved the start date to the “Medical Effective Date” defined as the date when the applicant is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care...based upon an approved application for such care but for the application of the penalty period...”⁵⁸ Basically, the penalty period begins to run on the date when

the Medicaid applicant is in the nursing home and would begin receiving Medicaid benefits if it wasn't for the imposition of the transfer penalty. This usually means that the applicant is in the nursing home on a self-pay basis, but has no more than \$2,000 in countable resources.

The exact calculations of the penalties will be left to the states, based upon their average cost of nursing care. In Texas, the Medicaid penalty divisor for 2010 is \$130.88 per day.⁵⁹ The penalty period is calculated by taking the amount of the transfer and dividing that number by \$130.88. For instance, if a current applicant gifted \$100,000 on July 1, 2008, she is not eligible to receive Medicaid benefits for 764 days from the date that she would have otherwise qualified for benefits while in the nursing home.

It is also important to note that Medicaid transfer penalties are not capped at 60 months. If an applicant transfers \$300,000 to her children on September 15, 2007 and then applies for Medicaid benefits on September 16, 2012, the penalty will be $300,000 / (130.88 \times 30) = 81.63$ months.⁶⁰ In light of the federal mandate under the DRA, it should be safe to assume that anyone in any state who makes a transfer of assets and subsequently enters a nursing home and applies for Medicaid benefits will be subjected to a penalty period of disqualification as specifically dictated by that state's Medicaid statutes.

III. THE COLLISION OF VA AND MEDICAID PLANNING TECHNIQUES

A. When VA Benefits Planners Fail to Understand Medicaid Law

Most Medicaid planning techniques are concrete and objectively measured; that is, if certain steps are taken according to the law and regulations, then eligibility is assured.⁶¹ Eligibility limits for income (\$2,022 cap in Texas) and countable assets (\$2,000 is universal) are fixed at any given point in time. VA Pension planning much different. Eligibility for Pension is very subjective in

nature. No specific income or asset ceilings are published. It is probable that different VA Service Representatives in different offices will apply different criteria for determining what asset levels will qualify an applicant.

VA Pension planning is become very popular. There are now companies offering training, software, affiliation and membership in order to induce attorneys into utilizing their services for Pension planning. It is even more alarming that non-attorneys are becoming aggressive in offering VA benefit qualification services. Some financial services advisors see a fertile market for selling annuities or funding trusts with transferred assets. Most any discussion about VA Pension planning is going to involve asset transfers with the goal of reducing the veteran's estate below an acceptable qualification level. Unfortunately, rarely is such a planner adequately familiar with Medicaid law. This applies to veterans as well. My experience is that veterans know more about VA law than most attorneys. Many have spent years trying to obtain Compensation benefits. Since attorney representation was very limited until July of 2007,⁶² veterans were largely on their own and were forced to learn the law. It is not unusual that an elderly veteran or family member seeks my assistance in qualifying the veteran for Pension benefits because his income is insufficient to pay the cost of the assisted living facility. They know that a veteran can give away his assets and still qualify for benefits. They are short-sighted, however, because they are unfamiliar with 1000 pound gorilla lurking just down the road. The same can be said of most professionals involved in VA Pension planning. To them, the goal is obtaining Pension eligibility, period.

Experienced elder law attorneys know that it is a natural progression from the assisted living facility (ALF) to the nursing home. Few ALF residents get better. They get older and sicker. As a result, many will need skilled nursing care, soon or later. The veteran receiving Pension benefits

in an ALF who finds it necessary to transition to skilled nursing may be shocked to learn 3 facts which can be financially disastrous: (1) A skilled nursing facility generally costs substantially more than an ALF; (2) His monthly income plus maximum Pension benefit is probably not sufficient to pay the nursing home bill; (3) He gave away most or all of his assets and has no money to supplement his income to pay the nursing home; and worst of all, (5) He cannot qualify for Medicaid benefits because the asset transfer implemented to qualify him for Pension benefits resulted in a Medicaid penalty period of disqualification which may be for a substantial period of time and which has not yet begun to run.

Consider our example of the Korean veteran who gave \$100,000 to his son in order to qualify for Pension upon entering the ALF. Let's say that he has a massive stroke 2 years later and will now require skilled nursing care. In Texas, he will not qualify for Medicaid benefits for 25 months. If the nursing home costs \$5,500 per month, his shortfall is \$2,415 [$5,500 - (2,100 + 985)$] each month, or \$60,375 for the 25 months of ineligibility. In all probability, over the past 2 years, he has been using his remaining assets to pay expenses which are not otherwise covered, such as home taxes and insurance, clothing, glasses, hearing aid, or dental expenses. If he has spent \$10,000 of his remaining \$40,000, he will need \$60,375 to cover the most basic expenses – but he only has \$30,000 left. When the \$30,000 runs out, he will still not qualify for Medicaid benefits as a result of the Medicaid transfer penalty. If an attorney assisted him in qualifying for Pension benefits without warning him of the Medicaid transfer penalty issue, is that attorney guilty of malpractice?

B. When Medicaid Planners Fail to Understand Veterans Benefits Law

While most experienced elder law attorneys are familiar with at least the basics of Medicaid law and practice, very few have had any serious exposure to veterans benefits law.⁶³ I began my

practice of elder law in 1995 and became certified in 2002.⁶⁴ In the course of a 6 hour specialization exam, there were at most 3 short multiple choice questions addressing veteran law issues. As a regular CLE speaker, it has become clear that most elder law attorneys consider veterans benefits law to be a specialty to be handled by those who choose this area as a part of their law practice. It seems to be their attitude that if any VA issues come up, they will refer the case to the nearest VA attorney. Unfortunately, this means that most attorneys who consult with the elderly on a daily basis do not know how to recognize VA planning opportunities and usually do not ask if the client or their spouse is a veteran. I was a part of this majority until 2005 – three years after becoming certified in elder law.

How often do we consult with elders or their family when they have little assets and little income but are not yet to the point of needing skilled nursing care? Mom or dad (or both) are having trouble living at home, but cannot afford private sitters. The attorney may look at \$60,000 in assets and advise that Medicaid does not pay for sitters at home and that the client's countable resources exceed Medicaid limits. In reality, if the client is a veteran – or the surviving spouse of a veteran – he or she may qualify for Pension benefits which can cover the cost of an assisted living facility. If the client doesn't know that he or she qualifies for benefits, and if the attorney doesn't know enough to ask the right questions, isn't the client being cheated?

SUMMARY

We argue vociferously that legal planning should be left to lawyers. While I strongly agree with this proposition, to do so places a duty upon me to understand at least the basic tenants of every field of law that may impact my elderly or disabled client. If I regularly advise veterans, I must understand how Medicaid laws can help or hurt my client. Conversely, if I am an elder law attorney,

I must be familiar with the basics of veterans law in order to recognize potential benefits to which my client may be entitled.

Rule 1.1 of the Model Rules of Professional Conduct requires that, “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation.”⁶⁵ Comment 1 to Rule 1.1 states that whether a lawyer employs the requisite knowledge and skill in a particular matter will depend in part upon the “relative complexity and specialized nature of the matter.”⁶⁶ Comment 2 to Rule 1.1 provides two methods which may be utilized to attain the appropriate level of competency in dealing with a highly specialized matter: (1) through necessary study, or (2) through the association of a lawyer of established competence in the field in question.⁶⁷ Most attorneys will stipulate that Medicaid and veterans benefits are highly complex areas of law. In order to properly comply with Rule 1.1, a lawyer representing a client in one of these matters should be able to recognize when issues from the other field are present which need concurrent analysis and consideration. Attorneys who take Comment 2 to heart should have little trouble in properly addressing the planning needs of the client.

Competent representation begins with a commitment to study related fields of practice and to ask relevant questions in the client consultation in order to more readily recognize important issues and determine when it is advisable to associate specialists in furtherance of the most beneficial representation of our clients. I have found elder law practitioners to be among the most conscientious and ethical attorneys in the profession. In a day when lawyers are no longer held in as high esteem as in previous generations, it is of paramount importance that we take whatever steps necessary to guarantee thorough and comprehensive attention to our clients’ planning needs.

ENDNOTES

1. *House, MD: Both Sides Now* (Episode No. 524, Fox television broadcast May 11, 2009).
2. The Phrase Finder, <http://www.phrases.org.uk/meanings/225650.html>. Originates from the Bible, *Matthew* 6:3; Reiterated by Henry David Thoreau, *Walden; or, Life in the Woods* (1854);
3. 38 C.F.R. § 3.3 (2008).
4. 42 U.S.C. § 1396a.
5. 38 C.F.R. § 17.38 (2008).
6. 38 C.F.R. §
7. 38 C.F.R. § 3.3 (2008).
8. Title XVI of the Social Security Act.
9. 42 U.S.C. §423.
10. BARTON F. STICHMAN, ET. AL., *VETERANS BENEFITS MANUAL* (Barton F. Stichman & Ronald B. Abrams, ed., LexisNexis 2009 ed.), at § 10.1.1.
11. For a detailed analysis of the VA Medical Benefits Program, see STICHMAN, ET. AL., *VETERANS BENEFITS MANUAL*, *supra.*, at Ch. 10.
12. *Id.*
13. *Id.*
14. Pub. L. No. 104-262, 110 Stat. 3177 (1996).
15. For a detailed analysis of the VA Compensation Program, see STICHMAN, ET. AL., *VETERANS BENEFITS MANUAL*, *supra.*, at Ch. 3.
16. 38 U.S.C. § 101(16); 38 C.F.R. §§ 3.1(k), 3.303(a) (2008).
17. *Id.*
18. STICHMAN, ET. AL., *supra.*, at § 3.1.5.
19. *Caluza v. Brown*, 7 Vet. App. 498 (1995).
20. For a detailed analysis of the VA Pension Program, see STICHMAN, ET. AL., *VETERANS BENEFITS MANUAL*, *supra.*, at Ch. 6.
21. STICHMAN, ET. AL., *supra.*, at § 6.2.1.
22. 38 U.S.C. § 3702(a)(2).

23. 38 U.S.C. Chapters 30-34.
24. 38 U.S.C. Chapter 41.
25. 38 U.S.C. § 4102.
26. STICHMAN, ET. AL., *supra*, at § 11.6.
27. 38 C.F.R. § 3.1600 (2008).
28. The VA Pension regulations are found at 38 C.F.R. § 3.3.
29. STICHMAN, ET. AL., *supra*, at § 6.1.3.
30. *Id.*, at § 6.1.3.3.
31. Pi-Yi Mayo and Bryn Poland, *Giftng for VA Pensions vs. Medicaid Giftng* (11th Annual Estate Planning, Guardianship and Elder Law Conference, August 2009), at p. 7. See also, STICHMAN, ET. AL., *supra*, at § 6.1.2.
32. There are 5 grades of discharge from military service: (1) Honorable; (2) General, under honorable conditions; (3) Other than honorable; (4) Bad Conduct; and (5) Dishonorable. See Tina R. Green, *Veterans Pension Benefits* (State Bar of Texas Advanced Elder Law Course 2008), at p. 4.
33. What constitutes a period of war is defined by statute. See 38 U.S.C. § 1101(2)(A) , (B). See also, STICHMAN, ET. AL., *supra*, at § 2.3. The requirement that service falls within a declared period of war is strictly construed. I recently had a client whose service missed a declared period of war by one day, resulting in failure to qualify for Pension benefits.
34. 38 U.S.C. § 1521; 38 C.F.R. §§ 3.271 - .273 (2008).
35. 38 U.S.C. § 1522; 38 C.F.R. §§ 3.274 (2008).
36. 38 U.S.C. § 1521(a); 38 C.F.R. § 4.17 (2008).
37. Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107–103, 115 Stat. 91 (2001), *codified at* 38 U.S.C. § 1513.
38. 38 U.S.C. § 1502(a); 38 C.F.R. §3.1(n) (2008).
39. This is not always the case, however. For instance, it is sometimes necessary to attempt to reclassify the status of separation from service to something other than dishonorable by an administrative procedure.
40. The MAPR is adjusted annual based upon the Social Security cost of living adjustment.
41. The benefit amounts did not change from 2009 since there was no Social Security cost of living adjustment.
42. The actual rules and regulations involved in determining income for Pension purpose are extensive and complex. A detailed discussion of income can be found in STICHMAN, ET. AL., *supra*, at § 6.2.
43. Randy Drewett, *Disability Planning with Trusts 2010* (State Bar of Texas Building Blocks of Wills, Trusts and Probate 2010 Course), at 10.

44. VETERANS AID AND ATTENDANCE BENEFIT (Thomas Day, ed., National Care Planning Council 2007) at p. 93. paraphrasing provisions of the “VA Manual 21-1.” This manual is technically the “Veterans Benefits Administration Reference: Web Automated Reference Manual System (WARMS). According to the WARMS, M21-1 deals specifically with the adjudication of claims for compensation, pension, and related benefits within the province of the veterans service center. It applies to all VA regional offices, to include centers with regional office activities, and the VA Records Management Center (RMC), St. Louis, Missouri.
45. Mayo, et. al., *supra.*, at p. 11. See M21-1Mr, Part V, Subpart I, Chapter 3, Section A 4, p. 3-A-9.
46. DAY, *supra.*, at p. 93.
47. Victoria Collier, *In the Trenches: VA Aid and Attendance Benefits Workshop* (2008), at p. VI-6.
48. Pub. L. No. 106-169 (H.R. 3443), 113 Stat. 1822 (1999).
49. STICHMAN, ET. AL., *supra.*, at § 6.4.3.2; 38 C.F.R. § 3.276(b) (2008).
50. Mayo, et. al., *supra.*, at p. 14.
51. Wesley E. Wright and Molly Dear Abshire, *When VA, Medicaid Rules Collide*, Houston Chronicle, November 11, 2009 (Senior Living Section).
52. 42 U.S.C. 1396a.
53. Pub. L. 109-171, 120 Stat. 4 (February 8, 2006).
54. 42 U.S.C. 1396p(c)(1)(A).
55. 42 U.S.C. 1396p(c)(1)(B)(i).
56. Id.
57. H. CLYDE FARRELL, *FINANCING LONG TERM CARE IN TEXAS* (15.0 Ed. 2010), at p. 106.
58. 42 U.S.C. 1396p(c)(1)(D)(ii).
59. Randy Drewett, *Introducing Elder Law Through F.A.Q.’s 2010* (State Bar of Texas Building Blocks of Wills, Trusts and Probate 2010 Course), at p. 4.
60. FARRELL, *supra.*, at p. 105.
61. Mayo et. al., *supra.*, at p. 13.
62. The Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. No. 109-461, 120 Stat. 3403(2006).
63. Randy Drewett, *The Estate Planner’s Introduction to Veterans Benefits*, Elder Law, North Carolina Bar Association, Vol. 13, No. 1 (2008), at p. 3.
64. Certified Elder Law Attorney by the National Elder Law Foundation.

65. ANNOTATED RULES OF PROF'L CONDUCT, R. 1.1, ABA Center for Professional Responsibility (6th Ed. 2007).

66. *Id.*, Comment 1 to R. 1.1 at p. 19.

67. *Id.*, Comment 2 to R. 1.1 at p. 19.