VA Benefits Regulations:
Key Changes

By: Julieanne E. Steinbacher, CELA*

On January 23, 2015, in an attempt to "maintain the integrity of the program," the VA proposed sweeping changes to its regulations regarding net worth and asset transfers. On September 18, 2018 the proposed rule was adopted as final and it will become effective on October 18, 2018. While some of the changes may be favorable to a claimant by providing some clarity and consistency, many of them may significantly impact a veteran's eligibility for benefits and the timeline in which they will be received.

Establishing a Bright-Line Net Worth Limit

Previously, the VA did not have a clearly established net worth limit. While the VA takes into account such factors as liquidity of assets, number of dependents, and life expectancy of the claimant, there were no definitive criteria for determining whether a claimant's resources are sufficient to meet their basic needs without the pension.

The new rule establishes a clear net worth limit, which will allow less discretion on the part of the adjudicators and provide more consistency in the decision-making process. The net worth limit is the same as the maximum annual community spouse resource allowance used for Medicaid purposes. This amount is currently $123,600, and the limit would be increased at the same time and in the same manner as recipients of Social Security receive for cost-of-living adjustments.

Inclusion of Annual Gross Income in Net Worth

An applicant's annual income will be added to the sum of his or her assets when determining net worth. This means that veterans with higher incomes will be permitted to save a lower amount of assets, and veterans with lower incomes will be permitted to save a larger amount of assets.

Exempt Assets: Primary Residence & Lot Size Limits

Additionally, a claimant's primary residence, including a "reasonable lot area" is currently excluded as an asset for purposes of calculating net worth. The rule change defines "reasonable lot" by limiting the area to 2 acres, unless the additional acreage is not marketable. If the primary residence is sold, the VA will not include the proceeds from the sale as an asset if they are used to purchase another primary residence within the same calendar year. However, to the extent the purchase of the new residence is less than the sale price of the previous primary residence, the excess amount will be considered an asset for purposes of net worth calculations.

36 Month Look-Back Period on Asset Transfers and Penalty Periods

Previously, veterans were permitted to transfer significant assets without penalty prior to applying for a pension. However, the new rule establishes a 36 month look-back period. All transfers for less than fair market value made during the 36 month look-back period are presumed to be for the purpose of decreasing net worth, unless the applicant can prove by clear and convincing evidence that the transfers were made for some reason other than to qualify for the pension benefit.

The transfer penalty applies only to "covered assets" - assets that were part of the claimant's net worth, were transferred for less than fair market value, and would have caused the claimant's net worth to exceed the limit for pension eligibility had they not been transferred.

The penalty period for transfers is calculated in months by dividing the transfer amount by a set divisor of $2,169.00. For example, if an applicant transfers $80,000.00, his or her penalty period would be 36.89 months, which would be rounded down to 36 months.

The VA has proposed a maximum penalty period of 8 years for transfers, opting to deviate from the 36 month maximum consistent with the SSI statute. The VA favored the longer maximum penalty period, indicating it would be inequitable for a claimant who transferred $25,000 to be penalized the same length of time as a claimant who transferred $1,000,000.

Allowable Expenditures

Expenses that can help decrease assets include medical expenses, which are medically necessary, improve a disabled individual's functioning, or that prevent, slow, or ease and individual's functional decline; over-the-counter drugs, vitamins, supplements (prescribed by a medical professional), and incontinence supplies; service animals with vet care; mileage to and from the doctor's office or hospital; and dental, eye, and hearing care.

Additionally, the new regulations allow the costs of a care facility, other than a nursing home, to be deducted. A care facility other than a nursing home is a facility in which a disabled individual receives health care or custodial care. The new regulations define custodial care as regular assistance with two or more activities of daily living (ADLs) or supervision because an individual with a physical, mental, developmental, or cognitive disorder requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment. Furthermore, the new regulations put no hourly cap on caregivers' service fees.

These facility costs can be fully deducted if a physician certifies the need for the individual to live in a "protective environment" and states the physical, mental, cognitive, or developmental reason for such protection. However, a residential facility must be staffed with care providers 24 hours per day.

Prepared by:
Steinbacher • Goodall • Yurchak
Your elder care and special needs law firm
Quality representation in litigation
800.351.8334
www.paeldercounsel.com