



## Pitfalls to Avoid When Planning for Clients Who Are Veterans

By: James Swain, J.D. and Valerie Peterson, J.D.



Helping clients obtain benefits through the Veterans Administration (“VA”) is a rapidly growing area. Estate planning and elder law attorneys alike are adding this to their repertoire of services to offer clients. It is easy to understand why: We are helping veterans who fought for our country to obtain much deserved benefits, of which many of them are currently unaware.

Veterans and their surviving spouses may be eligible for monthly cash payments as a result of a veteran’s wartime service (referred to as “pension”) or because the veteran suffered a permanent debilitating injury as the result of their service (referred to as “compensation”). Increased pension allowances (commonly referred to as “aid and attendance” or “housebound”) are available when a veteran or surviving spouse requires ongoing medical care to assist with activities of daily living.

Helping veterans or surviving spouses qualify for pension with an allowance for aid and attendance is a very rewarding practice area for attorneys. This benefit provides a significant monthly cash payment to a veteran or surviving spouse. However, there are income and asset restrictions that require similar analysis and planning as if the client was trying to qualify for Medicaid. Since Medicaid and VA Pension are two very different programs, each requires a great deal of technical knowledge and training. Any attorney who wants to assist a client in obtaining any benefit through the VA Pension must first become accredited.

There are a number of pitfalls for the unsuspecting attorney who enters the area of VA Benefits. Failing to understand the distinction between compensation and pension is one example. A veteran who is eligible for compensation could receive a higher monthly payment than a pension claim, depending on the disability rating of the veteran. If the attorney advising the veteran is not aware of the available monthly payment for compensation and only discusses pension, the result is the veteran has now had his or her

assets and income reduced needlessly and could receive a smaller monthly payment than if a claim for compensation had been made.

A second example is failing to provide proper documentation when submitting a pension claim. If a claim is submitted and necessary paperwork or information is missing, it will either delay the claim for many months or result in the client missing out on several month’s payments totaling thousands of dollars.

Perhaps the most damaging pitfall has nothing to do with planning in this area, but rather deals with a lack of knowledge on the part of the attorney. The following is a situation that unfortunately happens more often than it should. A son and his mother visit an attorney regarding his father (and her husband) who is a World War II Veteran. The father is currently at home with a caregiver that comes in eight hours every day. The expense is getting to be too much. The son and his mother were told to consult an attorney to see if anything could be done before the couple runs out of money completely.

Medicaid in this particular state does not pay for in-home care or assisted living care so the attorney informs them that the only way to get any type of financial help is to move the husband into a nursing home and qualify him for Medicaid. The son and his mother are distraught as they had hoped to keep the father at home or at least in assisted living.

In this scenario, a huge opportunity was missed. With proper planning, the veteran could have received up to \$1,949 each month to help pay for the in-home care. Unfortunately, the attorney was not aware of the pension benefit available through the VA.

Even if you do not intend to practice in this area, these pitfalls can seriously impact your law practice.

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To learn more about pitfalls to be aware of and how to avoid them, be sure to attend our live breakout session Thursday, August 12th in Chicago, "Pitfalls to Avoid When Planning for Clients Who Are Veterans."

## About the Authors

*James (Jim) B. Swain has a law degree and a Masters of Business Administration Degree (MBA) from Memphis State University (now University of Memphis), and a BA in Human Resource Management from Pepperdine University. He is an accredited Attorney with the Veterans Administration. He is licensed to practice law in Georgia and Tennessee. Jim has a unique background with extensive knowledge and experience in Wealth Transfer and Estate Planning, Business Planning, Charitable Giving Planning, Executive Compensation Plans, developing and administering Qualified and Nonqualified Benefit Plans, and advising about Veterans Benefits. He is a co-developer of the ElderCounsel Advanced VA Pension Planning Course. He is a member of WealthCounsel, ElderCounsel, NAELA and is the Founder and CEO of the Academy of VA Pension Planners and Swain Law Firm. For questions about The Academy of VA Pension Planners, you can reach Jim at 1-888-928-2779 or jim@avapp.org.*

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