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LEGAL NEEDS OF MILITARY VETERANS, SERVICEMEMBERS, AND THEIR FAMILIES

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What Difference Does It Make if the Client Is a Veteran? None if You Don't Ask About Veteran Status

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Often I hear that legal aid advocates “don’t see many veterans issues.” I believe that this occurs because advocates often fail to ask if the client is a veteran or a family member of a veteran. The failure to inquire about veterans status results in a failure to recognize potential eligibility for U.S. Department of Veterans Affairs (VA) benefits that might help resolve other legal problems. For example, a veteran who is ineligible for Medicaid or Supplemental Security Income (SSI) due to resources may qualify for VA health care and VA pension. For a client who is unable to make rent and utility payments, a VA pension may enable the client to afford these living expenses. But if advocates don’t ask about veterans status, the client won’t tell.

Among clients who may be eligible for needs-based pension benefits are

- World War II, Korean, Vietnam, and Gulf war veterans or their surviving spouses who have assets above the Medicaid limit (generally \$2,000 for elderly and disabled persons and \$1,000 for families with children) but less than the \$80,000 asset limit for VA benefits and who are spending much of their income or assets for medical care;¹
- veterans’ nondisabled surviving spouses who are losing social security benefits when their children reach a certain age; and
- adult disabled children whose deceased parent was a veteran.

By asking a low-income or elderly legal aid client if the client is a veteran, dependent of a veteran, or survivor of a veteran, those who represent poor, elderly, and disabled persons may be able to identify monetary benefits and services from VA or state vet-

¹Medicaid resource limits vary with category and state of residence but are generally a fraction of the U.S. Department of Veterans Affairs (VA) \$80,000 reasonable net worth (see Centers for Medicare and Medicaid Services, Medicaid Eligibility: Are You Eligible? (last modified Dec. 14, 2005), www.cms.hhs.gov/MedicaidEligibility/02_AreYouEligible_.asp#TopOfPage; see also *infra* note 43 (for VA net-worth determinations).

erans agencies.² An advocate need not be an expert in veterans law to identify VA benefits as potential resources and refer a client to VA for assistance.³

Here I discuss monetary benefits (including pensions) and health care benefits available to low-income veterans, their survivors, and their dependents.⁴ After advocates become familiar with these potential benefits, the quick screening guide (see box) may help them identify clients to refer to VA; telephone numbers are listed in VA's *Federal Benefits for Veterans, Dependents and Survivors*.⁵

I hope that this article will encourage advocates to recognize the value of inquiring about a client's veteran status and relevant family members. By doing so, advocates can identify VA benefits as resources that may assist in resolving some of the client's legal issues.

I. Monetary Benefits Available to Veterans and Their Survivors

VA monetary benefits can be untapped sources of income to veterans, their survi-

vors, and their dependents. Cash benefits are paid under Chapter 11 of Title 38, U.S. Code, to veterans with service-connected disabilities. No income or asset limits apply to compensation benefits unless benefits are sought for Individual Unemployment (IU) (service-connected veterans whose earned income is used to determine eligibility receive IU benefits at the 100 percent rate).⁶ Survivors of veterans who die during military service or as the result of a service-connected disability qualify for benefits under Chapter 13 of Title 38, U.S. Code. Non-service-connected cash benefits are paid under Chapter 15 of Title 38, U.S. Code, to aged or disabled low-income veterans and low-income survivors of veterans if the veterans served during a "period of war" and have less than \$80,000 in assets.⁷ VA benefits are not taxable.⁸ Needs-based benefits count all family income on an annualized basis beginning with the month of eligibility, usually the date of application if all requirements for the benefit are met.⁹ In most cases, veterans must have been discharged under condi-

²VA publishes an annual paper and online book describing many of its federal benefits and services. For the 2009 version, see U.S. DEPARTMENT OF VETERANS AFFAIRS, *FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS* (2009), www1.va.gov/opa/vadocs/current_benefits.asp. Some states provide additional benefits, such as cash benefits, tax exemptions, and reduced fees, but such benefits are beyond the scope of this article.

³Special rules apply to those actually representing a veteran on a claim before VA (see 38 U.S.C. §§ 5901 *et seq.*; 38 C.F.R. §§ 14.626 *et seq.* (2008)); see also Barton F. Stichman, *Advocating Benefits for Veterans*, in this issue. However, pre-filing consultation for identification of potential benefits is permissible (see Letter from Tim McClain, General Counsel, VA, to [Rep.] Lane Evans (D-Ill.) (May 24, 2004), <http://veterans.house.gov/democratic/officialcorr/pdf/5-24-04attorneys.pdf>). Clients may hire an attorney to represent them after receiving an unfavorable decision and filing a notice of disagreement, but generally the attorney must be certified by VA to represent clients before VA (see 38 U.S.C. §§ 5901 *et seq.*). A simple letter requesting benefits serves as an informal claim and protects an eligibility date (see 38 C.F.R. § 3.155 (2008)). Veterans service officers located at VA regional offices or locally may provide free assistance. To locate a VA regional office, see U.S. Department of Veterans Affairs, *Benefits—Veterans Benefits Administration—Locations* (reviewed/updated July 20, 2009), http://www2.va.gov/directory/guide/division_flsh.asp?dnum=3.

⁴Other benefits not discussed here—such as home loans, housing adaptations, automobiles and automobile adaptations, education benefits, vocational rehabilitation benefits, life and mortgage insurance, and burial benefits—may also be available for certain disabled veterans (see U.S. DEPARTMENT OF VETERANS AFFAIRS, *supra* note 2; see also Rick Little & Stacy Garrick Zimmerman, *Helping Veterans Overcome Homelessness*, in this issue).

⁵U.S. DEPARTMENT OF VETERANS AFFAIRS, *supra* note 2; see also Meg Bartley et al., *VA Benefits Available to Low-Income Veterans*, 40 CLEARINGHOUSE REVIEW 324 (Sept.–Oct. 2006). See generally Stichman, *supra* note 3; David Ackerly, *Special Considerations When Representing Military Veteran Clients*, in this issue.

⁶38 C.F.R. § 4.16 (2008).

⁷"Period of war" refers to the dates, not the location of service (see *id.* § 3.2). A veteran must have at least one day of active service during a period of war and have served for a total of ninety days or have been discharged for a service-connected disability to meet the requirement of wartime service for pension benefits (38 U.S.C. § 1521).

⁸38 U.S.C. § 5301.

⁹See *id.* § 5110(a); see also *id.* § 5110(b) (among exceptions are veterans who apply within year of discharge or who apply within year of becoming disabled or survivor who applies within one year of veteran's death).

tions other than dishonorable to receive VA benefits.¹⁰

A. Compensation for Service-Connected Disabilities

If the client is a veteran, the client may qualify for service-connected compensation for disabilities incurred or aggravated during active military service.¹¹ Veterans who were exposed to certain environmental toxins, such as Agent Orange or radiation, may qualify for service-connected compensation many years after leaving military service.¹² Applying for compensation benefits has no time limit. Veterans who have a service-connected disability may request an increase in or additional benefits if the service-connected disability worsens, results in secondary conditions, is affected by a change in laws or regulations, or aggravates a non-service-connected disability.¹³

The amount of compensation is based on disabilities rated from 10 percent to 100 percent.¹⁴ Payments for 2009 range from \$123 to \$7,909 per month depending on the severity of the veteran's disability.¹⁵ Severely disabled veterans and those who are housebound or blind or need aid and

attendance (help with activities of daily living) qualify for the higher amounts as special monthly compensation.¹⁶ Additional amounts are paid if the veteran's disability rating is 30 percent or more and the veteran has a spouse or dependent children (including adult disabled children) or low-income parents.¹⁷ Additional aid and attendance may be paid if a disabled spouse of such a veteran requires such care.¹⁸

B. Dependency and Indemnity Compensation for Survivors of Veterans

If the client is the surviving spouse of a veteran who died during military service, as the result of a service-connected disability, or after the veteran was totally disabled for a certain period, the spouse may qualify for Dependency and Indemnity Compensation (DIC).¹⁹ The veteran must have been married to the spouse at the veteran's death.²⁰ DIC benefits are terminated if a surviving spouse remarries unless the subsequent marriage occurred on or after January 1, 2004, and the surviving spouse was at least 57 at remarriage.²¹ If DIC benefits were terminated due to remarriage, the survivor may re-

¹⁰See *id.* § 101(2). In some cases, a veteran with a less-than-honorable-conditions discharge may qualify for health care (but not monetary benefits) for service-connected disabilities (see 38 C.F.R. § 3.12(c) (2008)). The eligibility of children for benefits due to spina bifida or a congenital condition, discussed *infra* I.C., does not depend on the character of the veteran's discharge.

¹¹See 38 U.S.C. § 1110. Some disabilities, e.g., diabetes or prostate cancer, for a veteran who served in Vietnam during the Vietnam era are presumed to be service-connected (see 38 C.F.R. §§ 3.307–3.309, 3.311, 3.313, 3.316, 3.318 (2008)). For compensation for veterans with disabilities due to VA medical care or vocational rehabilitation, see 38 U.S.C. § 1151.

¹²See 38 U.S.C. §§ 1112, 1116–1118. The requirement is that of a nexus or link between military service and the disability (see *id.* § 1110). In some cases a disability incurred during military service may not develop until many years after exposure or the event.

¹³See *id.* § 5110.

¹⁴See *id.* § 1114. In determining the rating that a veteran receives, separately rated disabilities are not added but combined (see 38 C.F.R. § 4.25 (2008)).

¹⁵All 2009 benefit amounts used in this article for compensation, Dependency and Indemnity Compensation, and pension benefits are from U.S. Department of Veterans Affairs, VA Compensation and Pension Payment Rates: Benefits Rate Tables (reviewed/updated Nov. 25, 2008), www.vba.va.gov/bln/21/rates/index.htm [hereinafter Rate Tables]. Note that current rates on this website should be used. The current rate may not be listed in the U.S. Code because the Code may not be updated when cost-of-living adjustments are authorized under a general law.

¹⁶See 38 U.S.C. § 1114(k)–(s).

¹⁷*Id.* § 1115.

¹⁸See *id.* § 1115(1)(E).

¹⁹See *id.* §§ 1310 *et seq.*

²⁰*Id.* § 101(31); 38 C.F.R. § 3.50 (2008).

²¹38 C.F.R. § 3.55(a)(10) (2008).

quest reinstatement of the benefit upon termination of the subsequent marriage (e.g., if a surviving spouse of a veteran who died during World War II remarries but the second spouse dies, the veteran's surviving spouse may request reinstatement of DIC benefits).²² Monthly benefits are \$1,154 with additional amounts payable for dependent children.²³ Survivors who are housebound or blind or in need of aid and attendance or whose veteran spouse was totally disabled for eight years before death receive higher amounts.²⁴

If there is no surviving spouse, DIC benefits are payable to surviving dependent children (including adult disabled children and students under 23).²⁵ Parents of veterans who died of a service-connected disability may qualify for Parents' DIC benefits only if they have very limited income and assets.²⁶

C. Benefits for Children of Vietnam Era Veterans

Children (including adult disabled children) who have spina bifida and whose veteran parent was exposed to herbicides, such as Agent Orange, in Vietnam or in certain units in Korea during the Vietnam era qualify for cash benefits,

health care, and vocational rehabilitation.²⁷ Monthly benefits depend on the level of such child's disability and range from \$286 to \$1,678.²⁸ These VA benefits are not counted as income or resources for purposes of other federal or federally assisted programs, such as SSI, Medicaid, educational assistance, or food stamps.²⁹

Children with certain congenital defects whose mother served in Vietnam during the Vietnam era also may qualify for cash benefits, health care, and vocational rehabilitation.³⁰ Monetary benefits depend on the level of such child's disability and range from \$131 to \$1,678 per month.³¹ As in the benefits for children with spina bifida, these benefits are not counted for purposes of other federal or federally assisted programs.³²

D. Pension Benefits for Low-Income Disabled Veterans

Low-income veterans who served during a period of war and are permanently and totally disabled for any reason may qualify for needs-based Improved Disability Pension benefits.³³ Veterans who require nursing home care or have been found disabled by the Social Security Administration automatically meet the disability requirement.³⁴ The disability does not

²²See 38 U.S.C. § 103; 38 C.F.R. § 3.55(a)(3) (2008).

²³For current rates, see Rate Tables, *supra* note 15 (Dependents Indemnity Compensation—Effective 12/1/08: Surviving Spouse's Rates & Children's Rates (reviewed/updated Nov. 26, 2008), www.vba.va.gov/bln/21/Rates/comp03.htm).

²⁴See *id.* Higher amounts may be paid according to the rank of a veteran who died before January 1, 1993 (see 38 U.S.C. § 1311(a)(3)).

²⁵38 U.S.C. §§ 1313–1314.

²⁶See *id.* § 1315. For current rates, see Rate Tables, *supra* note 15 (Parents Dependency and Indemnity Compensation—Effective 12/1/08 (reviewed/updated Nov. 26, 2008), www.vba.va.gov/bln/21/Rates/comp04.htm).

²⁷See 38 U.S.C. §§ 1802–1805, 1821.

²⁸For current rates, see Rate Tables, *supra* note 15 (VA Other Benefits Rate Tables: Spina Bifida Benefits and Children of Women Vietnam Veterans Born with Certain Birth Defects—Effective 12/1/08 (reviewed/updated Nov. 24, 2008), www.vba.va.gov/bln/21/Rates/special2.htm).

²⁹38 U.S.C. § 1833.

³⁰See *id.* §§ 1811–1816.

³¹For current rates, see Rate Tables, *supra* note 15 (VA Other Benefits Rate Tables: Spina Bifida Benefits and Children of Women Vietnam Veterans Born with Certain Birth Defects—Effective 12/1/08 (reviewed/updated Nov. 24, 2008), www.vba.va.gov/bln/21/Rates/special2.htm).

³²See 38 U.S.C. § 1833.

³³See *id.* § 1521. Three pension programs have different requirements (see chart, 38 C.F.R. § 3.261). Here I cover only those pension programs that are accepting new applications (38 U.S.C. § 1503 (service pension based on age); *id.* § 1521 (non-service-connected disability pension); *id.* §§ 1532–43 (pensions for survivors)).

³⁴38 U.S.C. § 1502.

have to be related to military service. A veteran who qualifies for a small service-connected compensation benefit but who has other severe non-service-connected disabilities may elect pension in lieu of compensation if a pension pays a greater benefit.³⁵

All income received by a veteran and the veteran's dependents is counted in determining income unless explicitly excluded.³⁶ Note that welfare payments such as SSI received by a dependent are excluded from income in determining eligibility for or the amount of a VA pension.³⁷ For SSI purposes, a dependent of a pensioner is considered to be in a "public assistance household"; thus no deeming of income is allowed.³⁸ However, the amount of pension paid to the veteran because of a dependent may be counted as income of the dependent for SSI and Medicaid purposes.³⁹ Some income earned by a dependent child also may be excluded from family income.⁴⁰

An important exclusion in determining low-income status is the amount of out-of-pocket medical expenses—referred to as "unreimbursed medical expenses"

(UME)—paid by the beneficiary for the beneficiary and the beneficiary's dependents. Expenses that exceed 5 percent of the basic pension benefit (\$591 for a veteran with no dependents) are deducted dollar for dollar from income.⁴¹ Because UMEs are deducted from income, even if paid from resources, veterans who are paying medical care from assets may qualify for a VA pension.⁴² Thus a veteran who has a \$30,000 annual income and who is paying \$50,000 per year from savings for nursing home care or assisted living would be calculated to have zero income for pension purposes. Although medical expenses are counted on an annual basis, VA can project recurring medical expenses—such as insurance premiums, medication, or medical supplies—that are reasonably ascertainable. The asset limit for a pension is generally \$80,000, not counting a home, furnishings, or a motor vehicle.⁴³

Disability pension benefits range from \$11,830 per year for a single veteran with no dependents to \$23,396 per year for a veteran who requires aid and attendance and has a spouse.⁴⁴ Additional benefits are payable for dependents if the veter-

³⁵See *id.* § 5304; see also *id.* § 5306 (renunciation of right to benefits). A veteran who qualifies may be paid compensation or pension but not both at the same time (*id.* § 5304).

³⁶See *id.* § 1503; 38 C.F.R. § 3.272 (2008).

³⁷38 U.S.C. § 1503(a)(1).

³⁸See 20 C.F.R. § 416.1161 (2008).

³⁹See *id.* § 416.1123(e). Different income rules may apply in "209(b)" states—those using more restrictive criteria than the Supplemental Security Income (SSI) rules for Medicaid eligibility (see Benefits Assistance Resource Center, Virginia Commonwealth University (n.d.), www.vcu-barc.org/FAQs/specmed-209b.html (list of 209(b) states that do not use SSI eligibility rules for Medicaid)).

⁴⁰See 38 U.S.C. § 1503(a)(10). For the current amounts excluded, see Rate Tables, *supra* note 15 (Improved Death Pension Rate Table—Effective 12/1/08: Child Earned Income Exclusion (reviewed/updated Nov. 25, 2008), www.vba.va.gov/bln/21/rates/pen02.htm).

⁴¹See 38 U.S.C. § 1503(a)(8). For improved disability pension rates (including the current 5 percent threshold), see Rate Tables, *supra* note 15 (Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), www.vba.va.gov/bln/21/Rates/pen01.htm).

⁴²See 38 U.S.C. § 1503(a)(8) (medical expenses that exceed 5 percent of pension amount for family of beneficiary's size paid by veteran, by veteran's surviving spouse, or by or on behalf of veteran's child shall be deducted from income).

⁴³U.S. Department of Veterans Affairs, Web Automated Reference Materials System (WARMS) (reviewed/updated June 15, 2009), www.warms.vba.va.gov/M21_1MR.html#5i (links to Veterans Benefits Manual M21-1MR provisions). Net worth (asset) dollar limits are found only in VA's Veterans Benefits Manual (see M21-1MR [Manual], pt. V, subpt. i, ch. 3 § A: General Information on Income and Net Worth Development (rev. Dec. 13, 2005); pt. V, subpt. iii, ch. 1 § J: Net Worth (rev. Feb. 13, 2005)).

⁴⁴For current rates, see Rate Tables, *supra* note 15 (Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), www.vba.va.gov/bln/21/Rates/pen01.htm).

an is housebound or blind or in need of aid and attendance.⁴⁵ A veteran who has one disability rated at 100 percent and a separate disability rated at 60 percent or more is paid at the housebound rate even if not actually confined to the home.⁴⁶ A VA pension may increase the amount of income available to a noninstitutionalized spouse in cases where an institutionalized spouse receives Medicaid for long-term care.⁴⁷ If a veteran with no dependents receives Medicaid in a nursing facility, the pension benefit is reduced to \$90 per month, which is not counted for purposes of Medicaid eligibility or share of cost.⁴⁸

Veterans who qualify for housebound or aid and attendance benefits may receive prescription medication from VA medical facilities even if the prescription is written by a private or non-VA physician.⁴⁹ If VA provides such prescription medication without charge, the cost would not be paid by the veteran and therefore would not be counted as a UME. Veterans who receive aid and attendance pension benefits may qualify for—if medically indicated—therapeutic or rehabilitation devices (e.g., lifts and ramps) as well as other medical equipment and supplies from VA.⁵⁰

E. Need-Based Pension Benefits for Low-Income Aged Veterans

Low-income veterans who served during a period of war and are 65 or older may qualify for service pension benefits.⁵¹ Pension benefits provide income of \$11,830 per year for a single veteran with additional amounts paid for dependents.⁵² In computing income and net worth, the same rules used for the Improved Disability Pension program apply.⁵³ A veteran who meets both the age and disability requirements will be paid only under the Improved Disability Pension program.⁵⁴

F. Need-Based Death Pension Benefits for Surviving Spouses

Low-income surviving spouses of wartime veterans, regardless of the survivor's age or disability, may qualify for a death pension.⁵⁵ The surviving spouse must have been married to the veteran at the veteran's death.⁵⁶ Remarriage after October 30, 1990, is a permanent bar to death pension benefits.⁵⁷ The benefit level is \$7,933 per year for a survivor with no dependents; the amount is \$9,696 per year if the survivor is housebound, and \$13,195 per year if the survivor is blind

⁴⁵See 38 U.S.C. § 1521(d)–(e) (authority for aid and attendance and housebound rates). For current rates, see Rate Tables, *supra* note 15 (Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), www.vba.va.gov/bln/21/Rates/pen01.htm).

⁴⁶See 38 U.S.C. § 1521(e) (authority for this payment). For current rates, see Rate Tables, *supra* note 15 (Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), www.vba.va.gov/bln/21/Rates/pen01.htm).

⁴⁷E.g., if the at-home spouse has out-of-pocket medical expenses, these may be excluded from the amount of income used to compute pension benefits. This would increase the amount of VA pension paid and result in more of the at-home spouse's income being available for other needs.

⁴⁸See 38 U.S.C. § 5503.

⁴⁹38 C.F.R. § 17.96(i) (2008).

⁵⁰See 38 U.S.C. § 1717(b).

⁵¹See *id.* § 1513.

⁵²The rates paid for pension based on age are the same as the rates paid for Improved Disability Pension (see *id.*) For current rates, see Rate Tables, *supra* note 15 (Improved Disability Benefits Pension Rate Table—Effective 12/1/08 (reviewed/updated April 13, 2009), www.vba.va.gov/bln/21/Rates/pen01.htm).

⁵³See 38 U.S.C. § 1513.

⁵⁴See *id.* § 1513(b).

⁵⁵See *id.* § 1541.

⁵⁶38 C.F.R. § 3.50 (2008).

⁵⁷See *id.* §§ 3.50, 3.55.

or in need of aid and attendance.⁵⁸ Additional amounts are paid for dependent children.⁵⁹ The same rules used for the Improved Disability Pension apply in computing income and net worth.⁶⁰ If a survivor with no dependents receives Medicaid in a nursing facility, the pension is reduced to \$90 per month; the amount is not counted for Medicaid eligibility or share of cost.⁶¹

G. Need-Based Pension Benefits for Surviving Dependent Children

Low-income surviving unmarried children (including adult disabled children and students who are under 23) of veterans who served during a period of war may qualify for death pension benefits if they are not residing with the veteran's surviving spouse.⁶² Income and assets are computed in the same manner as for other pension programs, but benefits are lower.⁶³

II. Health Care Benefits Available to Veterans and Their Survivors

Veterans with service-connected disabilities are eligible for VA health care for those disabilities.⁶⁴ VA prioritizes care.⁶⁵ This means that veterans with higher disability ratings have a higher

priority than veterans with lower-rated disabilities or no service-connected disabilities.⁶⁶ Low-income veterans and severely disabled veterans have a higher priority than higher-income veterans, who may be required to make copayments for non-service-connected disabilities.⁶⁷ Because VA health care is provided in accordance with annual funding amounts and if funding is inadequate, enrollment may be restricted to higher-priority veterans.⁶⁸ So-called priority 8 veterans with no compensable service-connected disabilities and income above certain thresholds had not been allowed to enroll for a number of years. However, income criteria were expanded on June 15, 2009, effective on January 1, 2009, so that veterans who were denied enrollment for VA health care because of income or net worth may now be eligible for care.⁶⁹

Dependents of veterans who are totally and permanently disabled due to a service-connected condition may obtain health care from VA under the Civilian Health and Medical Program (CHAMPVA).⁷⁰ Surviving spouses and children receiving DIC benefits may also qualify for CHAMPVA benefits.⁷¹



⁵⁸For current rates, see Rate Tables, *supra* note 15 (Improved Death Pension Rate Table—Effective 12/1/08 (reviewed/updated Nov. 25, 2008), www.vba.va.gov/bln/21/Rates/pen02.htm).

⁵⁹See *id.*

⁶⁰See 38 U.S.C. § 1541(a).

⁶¹See *id.* § 5503.

⁶²See *id.* § 1542.

⁶³See *id.* For current rates, see Rate Tables, *supra* note 15 (Improved Death Pension Rate Table—Effective 12/1/08 (reviewed/updated Nov. 25, 2008), www.vba.va.gov/bln/21/Rates/pen02.htm).

⁶⁴See 38 U.S.C. § 1710(a)(1)(A).

⁶⁵See *id.* § 1710. See generally U.S. Department of Veterans Affairs, Health Care—Veterans Health Administration, www1.va.gov/health/index.asp (information and links to information concerning eligibility for VA health care and services).

⁶⁶Compare 38 U.S.C. § 1710(a)(1) and (2) (mandatory care to extent that funds are appropriated by Congress) with *id.* § 1710(a)(3) (care to extent that resources and facilities are available).

⁶⁷See *id.* § 1710(f).

⁶⁸See *id.* § 1710.

⁶⁹See U.S. Department of Veterans Affairs, VA Health Care Eligibility & Enrollment: Changes to the Priority Group 8 Enrollment Restriction (reviewed/updated July 28, 2008), www.va.gov/healtheligibility/eligibility/PG8Relaxation.asp.

⁷⁰See 38 U.S.C. § 1781.

⁷¹See *id.* For information on the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), see Health Administration Center, U.S. Department of Veterans Affairs, CHAMPVA (reviewed/updated Dec. 31, 2008), www.va.gov/hac/forbeneficiaries/champva/champva.asp.

COMMENTS?

We invite you to fill out the comment form at www.povertylaw.org/reviewsurvey. Thank you.

—The Editors

Monetary benefits (including pension) and health benefits—as well as housing, automobile, education, vocational rehabilitation, life and mortgage insurance, and burial benefits—can assist low-income clients in meeting basic needs and improve the quality of their lives. These benefits may not be recognized or used unless advocates ask the critical question, Are you a veteran or the spouse, child, or parent of a veteran? If you do ask, the client's answer may result in the

client receiving these benefits and a solution to the legal problem that the client presented.

Author's Note

Professional information is given for identification only. This article does not represent the position of the Committee on Veterans' Affairs of the U.S. Senate or its chairman, Daniel K. Akaka (D-Haw.). I am solely responsible for its contents. No U.S. Senate resources were used in the preparation of this article.

Quick Screening Guide

I. Screen for Veteran Eligibility

Are you a veteran or the dependent spouse, child, adult dependent child, or dependent parent of a veteran?

If yes, does the veteran receive any cash benefits or health care from the U.S. Department of Veterans Affairs (VA)?

If yes, advise the veteran to contact VA to inquire if additional benefits may be available.

If no, does the veteran believe that the veteran has a disability that was incurred or aggravated by active military service?

If yes, refer the veteran to apply for service-connected compensation and VA health care.

Also screen for veteran pension eligibility.

II. Screen for Pension Eligibility

Do you have a discharge under conditions other than dishonorable?

Did you serve during a period of war, such as World War II, Korea, Vietnam, or after August 2, 1990?

Do you have resources less than \$80,000 not counting your home, normal personal effects such as furnishings, and motor vehicles used for normal transportation?

Is your income less than [current income amount for pension] after subtracting out-of-pocket medical expenses?

Are you 65 or older or permanently and totally disabled?

Refer a veteran who answers yes to all of these questions to VA for possible pension eligibility.

III. Screen for Surviving Spouse Eligibility

Are you the surviving spouse of a veteran?

If yes, were you married at the veteran's death?

If no, stop. No VA benefits are payable.

If yes, have you remarried since the veteran's death?

If no, screen for the veteran's wartime service, character of discharge, and resources as outlined above and substitute current death pension income amounts for the family's size. Note that the surviving spouse may be eligible for a death pension even if not aged or disabled.

Refer a survivor who appears to meet the criteria to VA to apply for a death pension.

IV. Screen for Dependency and Indemnity Compensation Eligibility

Did the veteran die of a service-connected disability or a disability that VA recognizes as presumptively service-connected due to service during the Vietnam or Gulf war or due to prisoner-of-war status?

Is the survivor currently remarried?

If no, refer the survivor to VA to apply for Dependency and Indemnity Compensation (DIC).

If yes, were you remarried after December 31, 2003, and after you were at least 57?

If yes, refer the survivor to VA to apply for DIC benefits.

If no, DIC benefits are not available while the survivor is married.

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