

Harvell and Collins, P.A., Quarterly Report

1107 Bridges Street
Morehead City, North Carolina 28557

phone 252-726-9050

facsimile 252-727-0055

charvell@harvellandcollins.com

wcollins@harvellandcollins.com

JULY 2011

*It is our pleasure to send you the JULY Edition of our **NEWSLETTER** for the year 2011.*

*This **NEWSLETTER** will concentrate on various legal concepts and we would suggest that you keep it with your important files to refer to from time to time.*

*For those of you who have not received our **NEWSLETTER** in the past and are new clients, our **NEWSLETTER** attempts to keep you informed of any new developments in local, state, and federal law that might affect your personal life or your business. The **NEWSLETTER** will advise you on these developments and, when appropriate, make suggestions that will help you deal effectively with these changes. Also, the **NEWSLETTER** will serve as a way to communicate with you. As always, if you would like to have us address a particular matter, please feel free to call or write, and we will address that issue in a future **NEWSLETTER**.*

We are now archiving our most recent Quarterly Newsletter on the website so that our clients may easily access this information once again by visiting our website at www.harvellandcollins.com.

NEW STAFF ANNOUNCEMENT

It is our pleasure to announce the addition of Brian Shaefer to the attorney staff of Harvell and Collins, P.A.! Brian graduated from the University of North Carolina School of Law, and also possesses a Ph.D. in philosophy. Prior to coming to Harvell and Collins, Brian taught for several years as a professor in philosophy and co-authored a treatise on the area of elder law. Brian's law practice will be centered around the areas of estate planning, estate administration, elder law, and veterans' benefits. Brian is accredited by the Veterans Administration ("VA"). He is qualified to assist veterans and their family members in the filing of claims for benefits as well as appealing any denials of those claims. We welcome Brian to Harvell and Collins, P.A. and are anxious to begin assisting the extensive community of veterans within Carteret County and

the surrounding areas with their VA-related matters. Accordingly, this newsletter is intended to familiarize you with some basic information about veterans' benefits, including the types of benefits that are available and who may qualify for these benefits.

AN INTRODUCTION TO VETERANS ADMINISTRATION (VA) BENEFITS

Eastern North Carolina is populated with veterans who have honorably served our country as members of the armed forces. By reason of their sacrifice and service, a wide range of possible benefits may be available to veterans by the Veterans Administration (VA). All veterans, as well as their family members, need to know about the benefits that may be available to them. Often times, the process of obtaining VA benefits can be complex and fraught with forms and jargon that are difficult for a layperson to understand. We at Harvell and Collins, P. A., are honored to guide veterans and their family members through this difficult process, advising them each step along the way.

The following types of benefits are those which may be available to veterans and their families and are discussed below:

- Compensation for service-related disabilities;
- A pension based on financial need; and
- A death benefit if you are a surviving spouse, child, or parent of a deceased veteran.

COMPENSATION FOR SERVICE-RELATED DISABILITIES

Many veterans have injuries or illnesses that can be traced back to their time of service in the military. What some may not realize is that they are eligible to receive monthly compensation for their disability. If you are a veteran with a disability, an attorney can help you to determine whether you are eligible for disability compensation, and then help you to file a claim for it quickly and easily.

1. Am I eligible for disability compensation?

In order to be eligible for disability compensation, the veteran must meet two (2) conditions. Those conditions are (1) that the veteran currently has an injury or illness; and (2) either that the injury or illness occurred during the period of the veteran's service, or the injury or illness was pre-existing, but became aggravated during the period of service.

It is crucial that the veteran make the strongest possible case for disability to the VA. This requires the veteran to show convincing evidence regarding three (3) specific items: (1) proof of

the current disability (an expert medical opinion is very helpful); (2) proof that the disability was incurred or aggravated during the period of military service (this may involve obtaining medical records from the VA); and (3) proof that the current disability is a continuation of the disability incurred or aggravated in service. The third item can be the most complicated, because the veteran must convince the VA that the disability is not the result of any new factors that might be considered "intervening." For example, it may be that the veteran was injured during military service but that injury is not the cause of his or her current medical condition. It is the third issue in which the assistance of an attorney can be of extraordinary benefit to the applicant.

2. How much compensation will I receive?

The amount of compensation a veteran is entitled to receive depends on the nature of the veteran's disability. When it is established that the veteran has a service-related disability, the VA assigns a disability rating which indicates the severity of the disability. Ratings are assigned in multiples of 10, so a veteran may have a disability rating of 10%, 20%, 30%, all the way up to 100%. Not surprisingly, if the veteran has a disability rating of 100%, this is called "total disability." A veteran may also qualify for total disability if he or she has a disability rating of at least 60% and is unable get a job or to keep one.

The higher the disability rating, the more compensation the veteran is entitled to receive. The levels of compensation are set by federal law. For example, a veteran rated at 10% disability is currently entitled to \$115.00 per month; a veteran rated at 50% disability is entitled to \$712.00 per month; and a veteran rated at total disability is entitled to \$2,471.00 per month.

Notwithstanding those particular levels of compensation, disability compensation can be even greater for veterans with particularly severe disabilities. A veteran who is so seriously disabled that he or she is in need of regular "aid and attendance" may be entitled to as much as \$4,313.00 per month, depending on the nature of the disability. This scenario is limited to those instances in which the veteran is in need of close supervision and care from others.

Disability compensation is a critically important part of our nation's obligation to support and honor its wounded and disabled veterans. Accordingly, every veteran should be aware of the opportunity to claim disability compensation. However, disability benefits may sometimes be a tricky proposition due to the complex process and list of requirements. The assistance of an attorney is vital so that the veteran is properly advised and fully equipped to successfully navigate the VA process.

THE SPECIAL NEEDS PENSION

The Special Needs Pension is a monthly payment for the purpose of assisting veterans or their surviving spouses who are currently experiencing financial hardship. The veteran is not required to have a service-related disability in order to qualify.

1. Am I eligible for the pension?

The Special Needs Pension can be claimed by a veteran or a veteran's surviving spouse. We will focus on the veteran first. There are certain conditions the veteran must meet to qualify for this pension. Some of those conditions have nothing to do with finances. Those conditions include:

- At least ninety (90) days of active-duty service, with a least one (1) of those days occurring in a designated time of war. These "designated times of war" include World War II, the Korean Conflict, Vietnam, and any service from the time of the first Gulf War to the present.
- The veteran must have received a discharge and that discharge must not be dishonorable.
- The veteran must be totally disabled or over the age of sixty-five (65).

If the veteran is still eligible at this point, then the VA considers certain financial tests that must be met. Since the purpose of this pension is to help those who most need monetary assistance, the veteran will not qualify if he or she is making several thousand dollars a month. Large amounts of liquid assets, such as a cash account or a stock portfolio, may also act to disqualify the veteran from obtaining this benefit. The particular financial conditions are as follows:

(1) The veteran's total assets must be sufficiently low in value. How low this value must be depends on age and marital status. Younger persons are allowed to have greater assets and still qualify. If the veteran is married, that also raises the value threshold. The maximum amount of total assets allowed is never greater than \$80,000.00, but certain kinds of assets are not "countable" toward the total, such as a house, a car, and personal possessions like household items.

(2) The veteran's income must be sufficiently low in value. The income threshold varies based on physical condition. A weaker physical condition makes it easier to qualify. For example, a single veteran in relatively good physical health (but who still satisfies the three non-financial criteria above) receives a pension if his monthly income is less than \$985.00. However, if the veteran is blind, living in a nursing home or assisted living, or needs the consistent "aid and attendance" of another person, the veteran can receive a pension if his or her monthly income is lower than \$1,644.00. For married veterans, the threshold is higher, making it easier to qualify for this particular benefit.

As the reader may have determined, the regulations and financial tests regarding VA benefits can be very strict and narrow in application. The good news about these financial tests is that there is no penalty for engaging in benefits planning with your attorney. In other words, you

can spend money on items that are not "countable" as assets before making your claim. For example, you could devote some of your liquid assets to the purchase of a new car, thus putting your "countable" assets below the threshold in order to qualify for the pension. The advice of a competent attorney on these issues is crucial because the rules regarding countable and non-countable assets can be confusing.

Of course, planning your assets to qualify for the Special Needs Pension should often be done with an eye toward qualifying for Medicaid as well, especially if there is a chance that the veteran or the veteran's spouse may require nursing home care in the future. The rules of qualification for Medicaid are somewhat different from the rules of qualification for the VA's Special Needs Pension. It is therefore imperative to enlist the help of a skilled attorney if you wish to navigate these two systems at the same time. With the help of an attorney, you may be able to qualify for both Medicaid and Special Needs Pension, giving your assets additional protection when it comes time for the veteran or his or her spouse to enter a nursing home.

2. What amount of pension may I receive?

If the veteran qualifies for the Special Needs Pension, the amount of the pension received depends on the veteran's level of income. The amount received will be the difference between the veteran's actual income and the income threshold that applies to the veteran.

For example, the threshold that applies to married veterans is \$1,291.00 per month. If a married veteran's income is \$800.00 per month, he or she would receive the difference between the two amounts as a pension, for a total of \$491.00 per month.

While there tend to be fewer awards of Special Needs Pensions compared to disability compensation, Special Needs Pensions may be more important to claim. After all, for those wishing to protect their assets for years to come, every dollar is important.

What about surviving spouses of veterans? Can they get the pension too? Yes! If a deceased loved one was a veteran who meets all the non-financial tests, and if the surviving spouse meets the financial tests, then the spouse is eligible to receive the Special Needs Pension.

The income thresholds for the pension are somewhat lower for a surviving spouse than for the veteran, but the pension can still be of significant assistance. For example, a surviving spouse of a qualifying veteran with no dependents, with income of less than \$808.00 per month, is eligible to receive a pension that represents the difference between his or her actual income and the \$808.00 threshold. So, a surviving spouse with an income is \$500.00 per month is entitled to a pension of \$308.00 per month. This can make a big difference when it comes to paying bills and in providing income for daily living during the retirement years.

Although a key component of the benefits offered by the VA, many surviving spouses of military veterans, who are otherwise qualified, have no idea they are eligible for the Special Needs Pension! An attorney can help surviving spouses determine whether they qualify and can make the submission of a claim as easy as possible.

DEATH BENEFITS FOR SURVIVING SPOUSES AND OTHER FAMILY MEMBERS

If a loved one makes the ultimate sacrifice and dies in service to our country, it is possible to file a claim for a death benefit known as Dependency and Indemnity Compensation ("DIC"). Because the veteran is no longer able to provide the surviving spouse or family member with the income they would have otherwise enjoyed, the spouse or family member receives monetary compensation to offset the financial burden created by the veteran's passing.

1. Who can file a claim for the DIC benefit?

Generally it is the surviving spouse of the deceased who makes the claim. Any eligible, surviving spouse of the deceased veteran is always the first to receive DIC payments. If there is no surviving spouse, then a child of the deceased veteran may make a claim for DIC payments. If there is no claim from a surviving spouse or child of the deceased veteran, and if one, or both, of the veteran's parents is still alive, then the parent(s) may file a claim for DIC payments.

2. The amount of the benefit.

The basic monthly rate of the DIC is \$1,154.00 for an eligible surviving spouse. This base amount is increased for each dependent child. It is also increased if the surviving spouse's health is poor to the point that he or she qualifies as "housebound" or is in need of "aid and attendance." If the surviving spouse has a child under the age of eighteen (18), then the DIC is automatically increased to \$1,440.00 per month.

If the deceased veteran has no surviving spouse, but has surviving children, then the children may claim the DIC benefit. If there is one (1) child, the benefit is \$488.00 per month. If there are two (2) children, they share in a benefit of \$701.00 per month. If there are three (3) children, the monthly amount shared is \$915.00. If there are more than three (3) children, each additional child increases the amount by \$174.00 per month.

If there is no surviving spouse and there are no surviving children, a surviving parent can claim the DIC benefit. The amount paid to a single parent is \$569.00 per month, while the amount split between two parents is \$824.00 per month.

HOW AN ATTORNEY CAN HELP YOU TO FILE A CLAIM

When you decide to file for a veterans benefits claim, an attorney can help you to do any of the following:

- Determine whether you are likely to qualify for any benefits, and if so, for which ones;
- Gather the necessary forms and materials you will need to complete your benefits claim;
- Cut through the jargon on the forms and tell you plainly what is required;
- Present your strongest case to the VA, helping you to marshal evidence that has worked for similar kinds of claims in the past; and
- Appeal your case if your initial claim is denied.

There are no legal fees involved in the initial filing of a claim with the VA. Only if you are denied at the first level and you wish to retain an attorney to file an appeal would you be charged a fee. Keep in mind, however, that the attorney may assist you in benefits planning to increase the likelihood of your claim's success. Finally, the attorney can point out what other legal services you may require in conjunction with VA-related matters, such as wills, powers of attorney, Medicaid planning, and other services.

CONCLUSION

We hope that this overview of VA benefits has been informative. Please do not hesitate to contact us if we may be of any help in explaining these matters further. In our next newsletter, we will provide an overview of the appeals process after the initial VA claim is denied. As we will see, an initial denial is only the beginning of the story, as several avenues of appeal are available, with many of them resulting in success.

Postscript

This writing is intended to generally familiarize you with various legal issues. The scope of this document is necessarily limited, and consultation with your attorney should always precede taking any action.