



NEW DEPARTMENT OF VETERANS AFFAIRS (VA) RULES FOR NEEDS-BASED BENEFITS

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On October 18, 2018, over three (3) years after the Department of Veterans Affairs (“VA”) originally proposed them, new regulations to qualify for needs based benefits go into effect. The new regulations contain “net worth” limitations, look-back periods, penalties and definitions for those applying for benefits. The new regulations are a substantial change from current regulations which do not contain a prohibition on transferring assets prior to applying for benefits.

Net Worth Limitations: An eligible applicant must have a net worth equal to or less than the prevailing maximum community spouse resource allowance (CSRA) for Medicaid (\$123,600 in 2018). The term “net worth” amount includes both the applicant's assets and income and will increase annually at the same percentage as Social Security. The veteran's primary residence (even if the veteran lives in a nursing home) and the veteran's personal effects will not be considered assets under the new regulations. However, if the veteran's residence is sold, the proceeds will be considered assets unless a new residence is purchased within the same calendar year.

Look-Back Period and Penalty: The regulations establish a thirty-six (36) month look-back period, beginning on the date on which the VA receives either an original or new pension claim after a period of non-entitlement, for the transfer of assets. The regulations include five (5) year penalty period for assets transferred at less than market value to qualify for a VA pension. There are exceptions for transfers made as the result of fraud, misrepresentation or to a trust for a child who is not able to support themselves.

Deductible Medical Expense: The regulations define what the VA considers to be a deductible medical expense for all of its needs-based benefits. The definition includes: payments for items or services that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline. This includes care by a health care provider, medications and medical equipment, adaptive equipment, transportation expenses, health insurance premiums, products to help quit smoking, and institutional forms of care.