Leimberg Information Services, Inc.

Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter Archive Message #700

Date:25-Oct-18

Subject: Marc J. Soss - New Department of Veterans Affairs Rules for Needs-Based Benefits

"The Department of Veterans Affairs ('VA') pension program, which includes the Veterans Aid & Attendance Pension Benefit and Housebound Special Pension Benefit, was originally enacted to help veterans in financial distress and modest annual incomes or none at all. Eligibility for the VA pension is solely determined by the veteran's financial condition at the time of their application and not intended to preserve the estates of veterans who have the means to support themselves.

In January 2015, the VA proposed new regulations in response to a Government Accountability Office investigation that found veterans and their survivors being enticed into plans intended to hide or reallocate their assets to qualify for VA pensions. At the time the new regulations were proposed the VA did not penalize veterans for asset transfers prior to filing their application or have a formal 'look-back' period. On October 18, 2018, over three (3) years after the VA originally proposed them, the 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 will disregard any asset transfers made prior to October 18, 2018."

We close the week with **Marc Soss**'s commentary on regulations recently issued by the VA Department regarding needs-based benefits.

Marc Soss' practice focuses on estate planning; probate and trust administration and litigation; guardianship law; and corporate law in Southwest Florida. Marc is a frequent contributor to **LISI** and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar, Association of the United States Navy and Military.Com. Marc also serves as an officer in the United States Naval Reserve.

Here is his commentary:

EXECUTIVE SUMMARY:

The Department of Veterans Affairs ("VA") pension program, which includes the Veterans Aid & Attendance Pension Benefit and Housebound Special Pension Benefit, was originally enacted to help veterans in financial distress and modest annual incomes or none at all. Eligibility for the VA pension is solely determined by the veteran's financial condition at the time of their application and not intended to preserve the estates of veterans who have the means to support themselves.

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COMMENT:

Service Eligibility. Eligibility for the VA pension program required a veteran (i) to have served on active duty for at least ninety (90) days; (ii) at least one (1) day of which occurred during a period designated as wartime; and (iii) there must have been an honorable discharge. Single surviving spouses of such veterans are also eligible for the pension program.

Medical Eligibility. Eligibility for a veteran under age sixty-five (65) requires them to be totally disabled. Eligibility for a veteran age sixty-five (65) and over requires the veteran or spouse to need regular aid and attendance benefits. This includes an inability to dress or undress; feed themselves; keep themselves clean and presentable; or incapacity, physical or mental, which requires care or assistance on a regular basis.

Assets and Income. Under the new regulations, a veteran's assets will include their financial assets and income, including those of their spouse. In contrast, their assets will not include the following: (i) one primary residence, even if the veteran resides in a nursing home, care facility or home of a family member for health care or custodial care; and (ii) personal effects consistent with a reasonable mode of life, appliances and family transportation vehicles. If the primary residence is sold after the establishment of pension entitlement any net proceeds will not count as an asset if the proceeds are utilized to purchase another residence within the same calendar year.

Net Worth Limitations: An eligible veteran 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 net worth amount will increase annually at the same percentage as Social Security. The VA will deny or discontinue pension benefits if the veteran net worth exceeds the net worth limit at any time.

Look-Back Period and Penalty: The new 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 a five (5) year penalty period for assets transferred at less than market value to qualify for a VA pension.

A transfer for less than fair market value is defined as a sale, conveyance, gift, exchanging an asset for an amount less than the fair market value or an asset transfer to or for the purchase of a financial instrument or investment that reduces the veterans net worth to qualify for pension benefits. 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. The new regulations also establish a presumption, absent clear and convincing evidence to the contrary, that asset transfers made during the look-back period were made to establish pension entitlement.

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. If unreimbursed, these medical expenses may be deducted from countable income for purposes of eligibility. In contrast, deductible medical expenses will not include assistance with IADLs or meals and lodging in an independent living facility and cap an in-home care attendant's hourly rate.

Pension Payments: The new rules leave the $90 limit on VA Pension payments to a Medicaid nursing home benefit recipient in place and provide that a beneficiary is not liable for any Pension payments in excess of the $90 per month by reason of VA's failure to reduce payments, unless the VA Pension beneficiary willfully conceals the overpayment from VA.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Marc Soss

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