

**VETERANS ADMINISTRATION BENEFITS**

**Basic Pension Benefit  
With  
Aid and Attendance**

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# Qualifying for Veteran's Pension Benefit

## Overview and History

The Veterans Pension benefit has its roots in colonial America with the various colonies providing benefits to those injured in the conflicts with Indians.<sup>1</sup> The Continental Congress immediately after the Revolutionary War again addressed this situation.<sup>2</sup> By the start of the Civil War, the nation had about 80,000 veterans. After the end of the Civil War, this number ballooned to about 1.9 million.<sup>3</sup> The General Pension Act of 1862 is the true precursor to today's Veterans Pension Benefit program and provided disability payments based on rank and degree of disability to veterans, and liberalized benefits for widows, children and dependent relatives.<sup>4</sup>

The Pension Benefit program only represents a portion of the benefits available to veterans and their families. This presentation is limited to the non-service related disability program known as the Veterans Pension benefit.

## Practice Before the VA

### Who can represent a VA claimant when filing for or appealing claims?

Only those approved by the VA or exempted by the VA can represent a claimant in filing a claim for benefits.<sup>5</sup> The following can file a claim:

- The Claimant can represent himself.<sup>6</sup> However, this is often very problematic because most claimants either cannot maneuver the process themselves due to disability or are completely overwhelmed by the process.
- A Veteran Service Organization that is accredited through the VA.<sup>7</sup> Examples of such are the American Legion, the Disabled American Veterans, the Veterans of

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<sup>1</sup> See VA History in Brief, p.3, located on line at [http://www.va.gov/opa/publications/archives/docs/history\\_in\\_brief.pdf](http://www.va.gov/opa/publications/archives/docs/history_in_brief.pdf)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Id.* At 3. This number actually only included Union Soldiers.

<sup>4</sup> *Ibid.*

<sup>5</sup> 38 USC § 5901

<sup>6</sup> 38 USC § 5903

Foreign Wars, or State VA offices, etc. In Idaho, there are a number of such VSOs. The state sponsored office is the Division of Veterans Services.

- An individual “agent” who has been accredited by the VA.<sup>8</sup> Generally this is an individual person who has received training by the VA and has passed a test provided by the VA. The agent must agree not to charge for services rendered in assisting with the claim.
- A “one-time” power of attorney. This person is usually a child or relative of the claimant.<sup>9</sup> For purposes of VA claims, “one-time” means exactly that, one-time – one time per life time.
- An attorney who is a member in good standing with a State Bar *and* has been accredited by the VA, as of June 23, 2008.<sup>10</sup> The attorney’s accreditation covers her staff as well.<sup>11</sup>

When dealing with the VA on behalf of a claimant, please note that the VA does not recognize powers of attorney other than its own.<sup>12</sup> This VA Form 21-22 or Form 21-22a must be submitted in any case in which the attorney, agent, or VSO representative wishes to receive correspondence from the VA or wishes to communicate concerning the claim. As noted below, this form must be signed by the claimant, regardless of physical or cognitive ability.<sup>13</sup>

#### **Attorney’s Fees:**

Veterans may obtain free assistance in filling out a claim for benefits from accredited veteran services organizations. And while only accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation, **no organization or individual, including lawyers, can charge for the preparation, presentation,**

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<sup>7</sup> 38 CFR §§ 14.628 and 629

<sup>8</sup> 38 USC § 5903; 38 CFR § 14.629.

<sup>9</sup> 38 CFR §§ 14.630 and 631.

<sup>10</sup> 38 CFR § 5904

<sup>11</sup> 38 CFR § 14.629

<sup>12</sup> 38 CFR § 14.631

<sup>13</sup> See M21-1MR, Part III, subpart ii, Chapter 2, Section B-7

**and prosecution of a claim (completing and filing applications).**<sup>14</sup> But, if a claimant is denied or approved for fewer benefits than what is expected, a claimant may **then** hire a paid representative to assist with an appeal after a Notice of Disagreement has been filed (for appeals filed on or after June 20, 2007.)<sup>15</sup>

Fee agreements must be in writing and signed by both the claimant and attorney.<sup>16</sup> **Fee agreements must include the following information:** name of veteran, name of claimant (if different from the veteran), name of any third party disinterested payor, applicable VA file number, specific terms under which the amount to be paid for services of the attorney will be determined, and they must also clearly specify if VA is to pay the attorney directly out of past due benefits.<sup>17</sup>

**Attorneys fees must be reasonable**, but there is no limit. Fees can be based on flat fee arrangements, hourly, a percentage of benefits recovered, or a combination of these.<sup>18</sup> If fees are limited by the agreement to 20% of past due benefits, then they are presumed to be reasonable and VA will pay them without question.<sup>19</sup> If fees are for more than 33 1/3 of past due benefits, then the fees are presumed to be unreasonable, which is a presumption that can be rebutted.<sup>20</sup>

### **What Services Can Attorneys Charge For?**

The laws and regulations focus primarily on representation before the VA for appellate purposes. There is not much discussion on whether an attorney can charge for pre-filing consultations. And while no precise guidelines are available, below are some points of interest to assist in determining where and when you should not charge a veteran for your assistance.

First, a “Claimant” is a person who has filed **or has expressed to a** representative, agent, or attorney **an intention to file a written application** for determination of entitlement to

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<sup>14</sup> FR Vol. 73, No. 100, page 29866.

<sup>15</sup> 38 CFR § 14.636

<sup>16</sup> 38 CFR 14.636(g).

<sup>17</sup> 38 CFR 14.636 (g)(1)-(2).

<sup>18</sup> 38 CFR 14.636(f).

<sup>19</sup> 38 CFR 14.636(f).

<sup>20</sup> *Ibid.*

benefits provided under title 38, United States Code.<sup>21</sup> “Proceedings” before the VA include the “preparation, presentation, and prosecution of claims.” In FR Vol. 73, No. 100, page 29866, the drafters state that “... the law is clear that VA’s authority to regulate is limited to accreditation for purposes of preparation, presentation, and prosecution of claims...”.

“Claims” are “application(s) made under 38 USC....for entitlement to VA benefits, reinstatement continuation, or increase of benefits, or the defense of proposed agency adverse action concerning benefits.”<sup>22</sup> “Representation” of a “claimant” may include **“counseling on veterans benefits, gathering information necessary to file a claim for benefits, preparing claims forms, submitting information to VA, and communicating with VA for a claimant.”**<sup>23</sup>

So what’s left? In response to this same question from Representative Lane Evans, the Office of General Counsel provides the legal conclusion that attorneys may charge for pre-filing consultative services, which include meeting with a veteran, reviewing records, doing research, and providing counseling and any other assistance that a “potential” VA claimant might need “short of actually preparing and presenting a specific claim for benefits.” However, once the veteran expresses a desire to file a claim, then no other fees can be charged.<sup>24</sup>

**In sum:**

“No individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim...” unless accredited by the VA. You become an “agent/representative” when the veteran/claimant expresses an intent to file a claim for benefits. Prior to the expression to file a claim, you are not an agent and therefore are not “before the Department.” Prior to the expression to file a claim, you can charge for consultative services, research, counseling, etc. After the expressed intention to file a claim, you become a representative and representation includes counseling, gathering information necessary to file a claim for benefits, etc. and at this point you cannot charge for services.

The key to being paid for such representation is all in the timing. Do not ask and do not receive an answer about your clients’ intention to file a VA claim for benefits until after you

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<sup>21</sup> 38 CFR 14.627.

<sup>22</sup> 38 CFR 14.627.

<sup>23</sup> OGC letter, dated November 21, 2006.

<sup>24</sup> Letter to Honorable Lane Evans from OGC, May 24, 2004.

have discussed all options, assessed whether they are eligible, have gathered all necessary information to determine eligibility, and performed all necessary actions to ensure eligibility. And as noted below, make sure that all Medicaid impacts have also been fully discussed.

### **Basic Qualifications**

For a veteran or the widow or widower of a veteran to receive Improved Pension benefits the following criteria must be met:

1. The veteran must have served at least 90 days of consecutive active duty service, one day of which must have been during a war-time period<sup>25</sup>;  
Congress has identified the following as the covered war periods<sup>26</sup>:
  - World War I
  - World War II - Dec. 7, 1941 - Dec. 31, 1946
  - Korean War - June 27, 1950 - Jan. 31, 1955
  - Vietnam War - Aug. 5, 1964 - May 7, 1975
  - Gulf War - August 2, 1990 through date to be set by law by Presidential Proclamation
2. the veteran must have received a discharge other than dishonorable<sup>27</sup>;
3. the claimant must have limited income<sup>28</sup> and assets available<sup>29</sup>;
4. the claimant must have a permanent and total disability at the time of application<sup>30</sup>;
5. the disability was caused without willful misconduct of the claimant;<sup>31</sup> and
6. The veteran or widow signs an application and provides the application to the Veteran's Administration.

### **C. Basic Pension Benefit**

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<sup>25</sup> 38 USC § 1521(j).

<sup>26</sup> 38 USC § 1501

<sup>27</sup> 38 USC § 1521(j)

<sup>28</sup> 38 USC § 1521.

<sup>29</sup> 38 USC § 1522.

<sup>30</sup> 38 USC § 1521(a).

<sup>31</sup> 38 USC § 1521(a).

The VA Pension Benefit or low income pension is roughly the VA's equivalent of SSI. The claimant must meet all the criteria above and with the following income limits:

Permissible family income limits for **2014** to receive Basic Pension:<sup>32</sup>

- |                                |               |               |
|--------------------------------|---------------|---------------|
| • Veteran with no dependents   | \$1,054/month | \$12,652/year |
| • Veteran with one dependent   | \$1,381/month | \$16,569/year |
| • Widow(er) with no dependents | \$707/month   | \$8,484/year  |

While these amounts are the income limits for the claimant, it must also be understood that these amounts are also the maximum benefit rates for qualifying claimants. So for a veteran with no dependents, his income must not exceed \$1,054 per month. At the same time, the benefit that VA will pay is the difference between the maximum benefit rate and the countable income of the veteran. Therefore, if the same veteran has no income, he will qualify for a benefit of the full \$1,054 per month. If his countable income is \$500 per month, he will receive a benefit of \$554 per month. This will be discussed more fully below.

### **Housebound Allowance**

Housebound benefits are really an "allowance" added to the Basic Pension Benefit and are available to a veteran or the widow of a veteran who is determined to be disabled and is essentially confined to the home.<sup>33</sup> To prove entitlement the claimant must show:

- (1) a single permanent disability rated as 100% disabling under the VA schedule and confined to the dwelling,<sup>34</sup> or
- (2) a 100% disability with another 60% disability, regardless of whether or not the person is confined to the dwelling.<sup>35</sup>

This disability rating is not required for people aged 65 or older. To claim the Housebound benefit, the VA will require a physician's affidavit **regarding the claimant's condition.**<sup>36</sup> VA wants to see its own form, VA Form 21-2680, for this. Even if the

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<sup>32</sup> See U.S. Department of Veterans Affairs, *VA Compensation and Pension Payment Rates*, <http://www.vba.va.gov/bln/21/Rates/pen01.htm>.

<sup>33</sup> 38 USC §§ 1502(c).

<sup>34</sup> 38 USC § 1521(e).

<sup>35</sup> 38 USC §§ 1502(c).

<sup>36</sup> M21-1MR, Part V, Subpart iii, Chapter 1, Section A, 1.

claimant is over 65 and does not need to show the disability, the claimant will need to show that he or she is essentially confined to the home.<sup>37</sup>

Permissible family income limits for **2014** to receive housebound benefits are:<sup>38</sup>

- |                                |               |               |
|--------------------------------|---------------|---------------|
| • Veteran with no dependents   | \$1,288/month | \$15,461/year |
| • Veteran with one dependent   | \$1,615/month | \$19,379/year |
| • Widow(er) with no dependents | \$864/month   | \$10,370/year |
- Again, these are also the maximum benefit rates as well.

### **Aid & Attendance Allowance**

The Aid and Attendance allowance is available to a claimant who meets one of the following conditions:

- (1) Claimant is blind; or
- (2) Claimant is living in a nursing home; or
- (3) Claimant is unable to:
  - (a) dress/undress or keep himself or herself clean and presentable;
  - (b) unable to attend the wants of nature; or
  - (c) has a physical or mental incapacity that requires assistance on a regular basis to protect Claimant from daily environmental hazards.<sup>39</sup>

A claimant who is a resident of a skilled nursing facility automatically qualifies for the Aid and Attendance benefit.<sup>40</sup> Residents of assisted living or independent living facilities do not automatically qualify. Documented need for assisted living will generally also prove up eligibility for Aid and Attendance, but not necessarily.

VA Form 21-2680 is the foundational VA form for establishing medical needs. This form needs to be signed by a licensed physician, not a nurse, nurse practitioner, physician's assistant, etc. Form VSO-3 is a document developed by entities dealing with the VA that provides an alternative to the VA's form and that in many ways provides clearer information for determining need for the Pension Benefit.

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<sup>37</sup> M21-1MR, Part V, Subpart iii, Chapter 2, Section A. 2.

<sup>38</sup> See U.S. Department of Veterans Affairs, *VA Compensation and Pension Payment Rates*, <http://www.vba.va.gov/bln/21/Rates/pen01.htm>.

<sup>39</sup> 38 USC § 1502(b).

<sup>40</sup> 38 USC § 1502(b).



When presenting the application to the VA, it can be helpful to give the VA a copy of any medical bills or expenses the claimant pays on a regular basis, including the cost of home health aides, or assisted living facility charges. Moreover, as noted below, it can be extremely helpful to detail all non- medical expenses as well. Providing this information at the time of the application will increase the likelihood of increased monthly benefits.

The permissible family income limits for **2014** to receive aid and attendance allowance are:

- |                                |               |               |
|--------------------------------|---------------|---------------|
| • Veteran with no dependents   | \$1,759/month | \$21,107/year |
| • Veteran with one dependent   | \$2,085/month | \$25,022/year |
| • Widow(er) with no dependents | \$1,130/month | \$16,179/year |

## **Determining Eligibility Based on Income and Assets**

### **Assets**

The VA considers the net worth of the individual seeking benefits. The standard is whether the person has “sufficient means” to pay for their own care. The claimant’s personal residence, regardless of value, is excluded in determining eligibility. There is no bright test to determine the amount of resources a person may have and still qualify for the benefit.<sup>41</sup>

No specific dollar amount can be designated excessive net worth.<sup>42</sup> What constitutes excessive net worth is a question of fact for resolution after considering the facts and circumstances of each case.<sup>43</sup> Moreover, the VA considers a number of factors to determine financial need. These include income from other sources, family expenses, life expectancy and the “convertibility” into cash of the assets involved. Under the age analysis, a person who is 98 years of age who has \$75,000 worth of assets may not be eligible; while, a 78 year old with \$75,000 may be considered eligible. The VA takes into account out of pocket costs and other income as well as the needs of the other spouse.

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<sup>41</sup> Pursuant to the VA handbook, if the claimant has a net worth of more than \$80,000 or a net worth of any amount that bars entitlement, the VA case worker must prepare a formal administrative decision for approval by a superior. M21-1MR, Part V, Subpart iii, Chapter 1, Section J, 70.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

The asset test is based on the “household”.<sup>44</sup> Thus, the assets of the claimant and the spouse *and* any dependents living at home, are counted.<sup>45</sup> Assets that are counted toward the “sufficient means” include bank accounts, certificates of deposit, money market accounts, investment accounts, annuities, retirement accounts, life insurance cash surrender values, rental property, etc.

An interesting difference between Medicaid and VA rules involves jointly held assets. Medicaid ignores any other owners of cash assets.<sup>46</sup> The VA does not.<sup>47</sup> Thus, the value of assets owned by multiple owners not in the same household is divided by the number of owners.<sup>48</sup> The fractional value is then counted toward the claimant’s asset limit. Moreover, The VA does not (yet) penalize claimants for transfers of assets as does Medicaid.<sup>49</sup> Thus, many people will “gift” assets to another person (not in the household) and qualify for the VA benefit. Because of this lack of a “look-back” period, a claimant can become eligible for VA benefits almost overnight. The only limiting factors are: how the assets are held; how quickly can the assets be transferred to another person; and whether the person is either competent to direct the transfers or has a power of attorney that permits large gifts. The claimant can transfer to one or more persons, usually family members, or to a trust. This last option will be discussed at length later.

As noted above, personal residences are exempt from the determination. However, the proceeds from the sale of the house are not. This becomes a big issue, since personal residences are frequently sold after a person moves into assisted living. The sale of the house can cause the benefits to terminate for up to one year if the net proceeds increase the person’s assets beyond the threshold set by the VA. There are a few strategies to use to avoid losing the benefits. The claimant may add another person’s name to the title of the residence *before* it’s sold or simply gift the entire house before applying.<sup>50</sup> At closing, a check should be made directly to the joint

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<sup>44</sup> 38 USC § 1522(a).

<sup>45</sup> *Ibid.*

<sup>46</sup> IDAPA 16.03.05.208

<sup>47</sup> M21-1MR, Part V, Subpart iii, Chapter 1, Section J, 65.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Adding a name to the title of any asset is a gift. M21-1MR, Part V, Subpart iii, Chapter 1, Section J, 65.

owners or the new owner, and minimize the amount received by the VA benefits recipient. In the alternative, a claimant may wish to wait and apply for VA benefits after the sale of the house is complete and the assets have been reduced or gifted. This situation can also benefit from the use of an irrevocable trust as will be discussed below.

It is imperative to note that the gifting strategies discussed above, while effective for VA planning, can have disastrous consequences for a VA recipient who needs or counts on Medicaid for future care. Medicaid imposes a five year look-back period for transfers for less than fair market value.<sup>51</sup> Thus, if significant assets were gifted to qualify for VA benefit, a claimant may be out of options for as long as five years, even though the cost of care has out stripped the amount of the monthly VA benefit. Therefore, any transfer for the VA benefit must be analyzed for its impact on future eligibility for Medicaid benefits. This is a situation where it's extremely easy to commit malpractice.

### **Income Limits**

With regard to income requirements, the applicant will be denied benefits if the claimant's countable income exceeds the maximum permissible family income limits or benefit rates set out above. Countable income is all income attributable to the claimant's household, that is, the claimant, claimant's spouse, and the claimant's dependent children.<sup>52</sup>

Although most veterans have income that exceeds the permissible family income limits, to determine "countable" income, the VA will deduct **unreimbursed medical expenses paid by the claimant from the claimant's income.**<sup>53</sup> Unreimbursed medical expenses (or "UMEs") include: doctor's fees, dentist's fees, prescription glasses, Medicare premium deductions and co-payments, prescription medications, health insurance premiums, transportation to physician offices, therapy, and funeral expenses, assisted living and skilled nursing costs, in home health care, personal care services and a host of others. The costs of home health care, assisted living facilities and skilled nursing homes are the most expensive and, thus, are the most effective costs for reducing income.

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<sup>51</sup> See IDAPA 16.03.05.834.02.

<sup>52</sup> 38 USC §§ 1521(h) and 1522(a).

<sup>53</sup> M21-1MR, Part V, Subpart iii, Chapter 1 Section E.

As noted above, the income reduced by UMEs (countable income) is subtracted from the maximum allowable benefit rate. The difference (if greater than zero) is the monthly benefit rate. For example, if the claimant has a \$2500 per month assisted living facility payment and income of only \$1500 per month from Social Security, the “countable income” is \$0 (\$1500 minus \$2500). This countable income is subtracted from the maximum benefit allowed (\$1759 per month for a single vet - \$1759 minus \$0 = \$1759.) This is the monthly benefit payable to the claimant.

In many situations, a family member can provide services to the claimant.<sup>54</sup> Payments made to a family member (not residing in the household) pursuant to a “family services contract” or an “independent contractors” contract, for services to care for the claimant can be used to reduce income for VA purposes. However, the VA is scrutinizing such contracts, thus, it is important to be able to verify the actual payments made to the caregiver. The IRS is also scrutinizing these contracts and whether and how payments are made and whether the appropriate taxes are paid.<sup>55</sup>

## **Application Process**

To file for VA Improved Pension benefits, a claim application is submitted to the Veterans Affairs Office. Applications are now available on-line; however, the supporting documentation must be sent separately to the VA. Each claim must go to the appropriate service center for processing. For information on the different offices, go to the website, <http://benefits.va.gov/>.

## **Appropriate Forms**

The claim application for veterans is the VA Form 21-526 and for widows or widowers, VA Form 21-534. These forms are the complete traditional forms that have been recently supplanted by the EZ forms – VA Form 21-527EZ and VA Form 26-534EZ. These EZ forms were designed to accommodate a fully developed claim that the VA can process more quickly

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<sup>54</sup> For the Basic Pension and the House bound allowance, only trained personnel can provide services. For the Aid and Attendance allowance, untrained personnel, such as family members, can provide services. M21-1MR, Part V, Subpart iii, Chapter I, Section G-7.d. The Aid and Attendance allowance can be used to pay for these services, which can be used to adjust income.

<sup>55</sup> See IRS Publication 926, Household Employer’s Guide.

than the traditional forms. These forms still require the submittal of supporting documentation outlined below, but have proven to be more time effective.

Please note that the VA applicant must personally sign the form. The VA does not and will not recognize a traditional power of attorney. Even if the applicant is incapacitated, missing the hand he usually signs with or is unconscious, his signature or “mark” is needed.<sup>56</sup> The VA does have their own form wherein a person can be designated as representative agent for the VA applicant. If this form is completed and signed by the VA applicant, the VA will discuss the application with only the designated representative. The form is VA Form 21-22 for VSOs or VA Form 21-22a for lawyers to act as representative.

Should the VA need additional records from medical providers, VA Form 21-4142 will need to be submitted. Any additional information submitted in regard to a claim, or any clarification of information previously submitted must be done on VA Form 21-4138. Without this form, the VA will not accept additional information.

### **Supporting Documentation for VA Special Monthly Pension Applications**

The VA requires the following documents:

- Income statements, Social Security New Benefit Amount Letters, pension statements, copies of pay checks/stubs, all other verification of any other type of income (interest on securities, rental income, etc.)
- Latest bank statements from all financial institutions
- Retirement account statements
- Life insurance policies
- Marriage licenses, divorce decrees, and/or death certificates **for all prior and current spouses of the applicant and the dependent spouse**
- Printout from the pharmacy for all medication of applicant and spouse (and other household members)
- All other medical expenses paid on behalf of applicant and spouse, including the fees for home health care, assisted living, and skilled nursing facilities
- Military discharge papers (DD 214)
- Birth certificate

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<sup>56</sup> See M21-1MR, Part III, subpart ii, Chapter 2, Section B-7

The VA will “need” to see the original documents for certain verifications. This is particularly true with discharge papers, i.e. the DD-214. However, given the organizational challenge of the VA and the backload of claims, these documents will likely never be returned. A better option is to order the certified DD-214, which takes approximately two months to get, but is much preferable to sending the original.<sup>57</sup>

The claimant must also submit supporting medical documentation. VA Form 21-2680 is the standard form to submit to the doctor for her assessment of the claimant’s needs. It is important to note that the VA will accept only a physician’s signature on this form, not a nurse, nurse practitioner, physician’s assistant, etc. However, the VA will accept other medical information or reports, not just the VA Form 21-2680. Again though, each such report must be signed by the physician. A common form used by many practitioners is the VSO 3, which allows for more and, in many ways, better information to be submitted to the VA. However, the VA will require a VA Form 21-2680 as well.

It can take the VA anywhere from three months to over a year to process a claim and award eligibility.<sup>58</sup> The VA will often ask for more information or for clarification of information submitted. Each such action letter will specify the time allotted for a response. The VA will either approve the claim for full VA benefits, partial benefits, or deny the claim. While the denial can be appealed, each case is “open” for up to a year for the claimant to provide additional information. Again, this could be information not submitted in the first place or documentation to clarify what was submitted.

### **Appealing a VA Decision**

After the Regional Office issues a determination, the applicant can request an evidentiary hearing at the Regional Office in front of a hearing officer. To do so, the applicant files a notice of disagreement to the **Regional Office**, which is typically in letter form. The VA then issues a statement of the case. The applicant must file a substantive appeal within 60 days of mailing the statement of the case or within one year of filing the claim, whichever is later.

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<sup>57</sup> See <http://www.archives.gov/veterans/military-service-records>

<sup>58</sup> The experience of the author is that claims for the veterans take from three to six months. The claims for widows take at least nine months to a year.

If the appeal to the Regional Office is not successful (and it usually isn't), the applicant can appeal to the **Board of Veteran's Appeals (BVA)**. The Board of Veterans Appeals is the highest tier in the VA adjudication system. The review is de novo and new evidence can be presented.

If the applicant is still not satisfied with the result of the adjudication by the BVA, the applicant can appeal to the **U.S. Court of Appeals for Veterans Claims (CAVC)**. The Court of Veterans Appeals for Veterans Claims is an appellate court in Washington D.C. Very few cases are taken to the CAVC. The CAVC review is of the administrative record created at the BVA, therefore, no new evidence may be presented. At this level, the attorney is mainly drafting briefs and motions. There is a relatively high success rate at the CAVC level.

**United States Court of Appeals for the Federal Circuit**; <http://www.fedcir.gov/> The United States Court of Appeals for the Federal Circuit was established under Article III of the Constitution on October 1, 1982. The court was formed by the merger of the United States Court of Customs and Patent Appeals and the appellate division of the United States Court of Claims. The court is located in the Howard T. Markey National Courts Building on historic Lafayette Square in Washington, D.C.

The Federal Circuit has nationwide jurisdiction in a variety of subject including veterans benefits. Frequently VA cases before the Federal Circuit become precedent for future VA claims, cases, and appeals. To research recently published opinions, go to: <http://www.cafc.uscourts.gov/dailylog.html>. Look at the column of origin from the CAVC.