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CHANGES COMING TO VA AID AND ATTENDANCE PROGRAM

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by David Silver

The Veterans Administration ("the VA") published changes earlier this month to a benefits program commonly referred to as Aid & Attendance ("A&A"). If you are a war-time veteran or a widow(er) of a war-time veteran, you have less than 30 days to take action to potentially preserve some of your hard-earned assets. The VA has added a gifting penalty and a 36-month look-back period for gifts an uncompensated transfers when applying for A&A, and this provision will apply to all gifts made after October 18, 2018.

A&A is a program that pays up to \$2,169 per month to an eligible veteran (or up to \$1,178 per month to the widow/widower of a veteran) who is in need of aid and attendance from a health care provider. This amount of money, coupled with the veteran's or widow(er)'s regular income, is often sufficient to allow that person to stay safely at home for an extra few years. As with everything, there are eligibility rules and limitations for A&A.

First, the veteran (or widow) must be over 65 and actually be in need of aid and attendance from another person. If the veteran can drive and/or take care of him/herself, then the veteran will not be eligible for A&A. It is allowable for the aid and attendance to be provided by a child as long as there is an adequate written caregiver agreement between the parent and child.

Second, the veteran must have been discharged from the military other than dishonorably and served at least 90 days of active duty, with at least one of those days being during wartime. The official wartime dates are as follows: 12/7/1941 – 12/31/1946, 6/27/1950 – 1/31/1955, 2/28/1961-8/4/1964, 8/5/1964 - 5/7/1975, 8/2/1990 – present. There is no requirement that the veteran had to be on the front lines, peeling potatoes in North Carolina would be sufficient. However, for the 2/28/1961 – 8/4/1964 time period, the veteran had to actually have been in Vietnam.

Third, there is an income limitation. The veteran's (and spouse's) income minus unreimbursed medical expenses (like the cost of a caregiver) is subtracted from the A&A benefit to be received. If this net income exceeds the A&A benefits, then there is no benefit. However, when a veteran truly needs A&A, the cost of the caregiver usually exceeds the Veteran's income.

Finally, there is an asset limit. The veteran (and spouse) is allowed to have \$123,600 of countable assets plus annual income in excess of unreimbursed medical expenses (if any). Not all assets are “countable” towards this limit, such as a residence plus up to two acres of land around the residence, household furniture and a vehicle. This asset limit is tied to Medicaid’s Community Spouse Resource Allowance and will increase in the future in accordance with Medicaid.

The VA’s new rules will impose a three-year look-back period for gifts and uncompensated transfers. While the prior lack of a look-back period does created the potential for abuse, it also allowed wartime veterans the ability to leave a farm or some hard-earned savings to their children while still being able to get help to pay for home care or assisted living when they need it the most. If you are already in need of A&A but haven’t submitted an application yet, the

VA will utilize the old rules (no look-back period for uncompensated transfers) if you submit your application before October 18, 2018. If you are not ready to submit an application but wish to preserve assets for your family in the event that you require A&A in the near future, you might consider transferring the farm or other asset into a trust before October 18, 2018. The clock is ticking, and those who help vets might get very busy over the next month, so if you or your parent is a war-time vet or widow(er), it would be to your advantage to act quickly.

David Silver teaches The Legal Environment of Business in ECU’s Department of Finance. Dave is also a Partner with The Graham.Nuckolls.Conner Law Firm in Greenville, specializing in Elder Law.