

MODULE #5 DISABILITY PENSION

DATE STARTED: _____ **LOCATION:** _____

SERVICE OFFICER/TRAINEE SIGNATURE: _____

TRAINER SIGNATURE: _____

DATE COMPLETED _____

I. Please rate the effectiveness of this training module.

Objective		Acceptable	Marginal	Unacceptable
Acquire working knowledge of NSC, Pension: Housebound & Aid & Attendance	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Eligibility: 1) Service requirements 2) 2) Disability requirements 3) Income & Net Worth	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Effective date of claim. Informal consideration.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Calculating Pension Benefits: Income, Net Worth, applying for un-reimbursed medical expenses.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Re-Opening Pension Claims: and EVR reporting.	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
Differences between NSC Pension & S/C Disability.	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			
Objective				
	Objective achieved			
	Applied objective content through practical exercises			
	Effectiveness of teaching methods used			

MODULE # 5 CONTINUED

Objective		Acceptable	Marginal	Unacceptable
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			
Objective				
	Objective Achieved			
	Applied objective content through practical exercises			
	Effectiveness of methods used			

SUBJECTIVE EVALUATION

	Good	Fair	Poor
1. Please rate the extent to which you met your personal objective for this module			
2. Rate the information provided in the Training Manual & other reference materials			
3. Please evaluate the physical environment where the training was held.			
4. Is there anything that we could have done to make this training better for you? (Please comment)			

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NONSERVICE-CONNECTED DISABILITY PENSION

Objective: To learn how to assist a claimant in submitting a claim for non-service-connected disability pension, and to become familiar with the requirements for such claims.

References:

Title 38, U.S. Code, Chapter 15
38 Code of Federal Regulations, Parts 3, (3.261), and 4
Adjudication Manual 21-1, Parts IV and VI; Part 1, Appendix B
VA Pamphlet: Federal Benefits for Veterans and Dependents

Instructions: Study the assigned reference materials to learn the requirements for disability pension claims. Pay special attention to the income and net worth information in the application, as that will be a major portion of the development of the claim.

PENSION

SECTION 1. PENSION FOR NON-SERVICE-CONNECTED DISABILITY OR DEATH—MEXICAN BORDER, WORLD WAR 1, WORLD WAR 11 KOREAN CONFLICT, VIETNAM ERA, PERSIAN GULF, AND OEF/OIF

There are currently three major pension programs being administered by VA: the Old Law Pension program formerly known as Protected Pension for those veterans and dependent applicants receiving benefits on June 30, 1960; the pension program under Section 306 Pension, formerly known as Public Law 86-211, for those who filed on or after July 1, 1960; and the current pension program, the Improved Pension law (Public Law 95-588), effective January 1, 1979.

IMPROVED PENSION

Pension is a monthly payment to a veteran who has served honorably during the Mexican border period, World War I, World War II, the Korean Conflict, the Vietnam era, or the Persian Gulf War and to his or her surviving spouse and dependent children. Pension may be payable to a veteran who is permanently and totally disabled as a result of a non-service-connected disability. Upon the non-service-connected death of a veteran, his or her spouse and/or dependent children may be entitled to death pension.

Applicants for pension or death pension after December 31, 1978, will come under Public Law 95-588, the Improved Pension law. Persons currently receiving pension under Section 306, the preceding pension program, or under the protected pension law or Old Law may elect to receive pension under the Improved Pension law. Such election is irrevocable except where election was based on erroneous information furnished by VA.

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1. PERIODS OF WAR

- a. The term "periods of war" means the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War and the period beginning on the date of any future declared war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.
- b. The following are considered periods of war:
 - i. **Mexican border period** –May 9, 1916, through April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.
 - ii. **World War I** –April 6, 1917, through November 11, 1918, extended to April 1, 1920, for service in Russia, and to July 2, 1921, if the veteran served between April 6, 1917, and November 11, 1918.
 - iii. **World War II** – December 7, 1941, through December 31, 1946.
 - iv. **Korean Conflict** – June 27, 1950, through January 31, 1955.
 - v. **Vietnam Era** – February 28, 1961, through May 7, 1975, inclusive, if the veteran served in Vietnam during that period. In all other cases, August 5, 1964 through May 7, 1975.
 - vi. **Persian Gulf War** – August 2, 1990, through a date to be set by law or Presidential Proclamation. This includes War in Iraq starting in March 2003.

2. SERVICE REQUIREMENTS

- a. Ninety days or more during a period of war; or
- b. Discharge for service-connected disability from wartime service of less than 90 days; or
- c. Ninety consecutive days or more and such period began or ended during a period of war; or
- d. An aggregate of 90 days or more in two or more periods of service during more than one period of war.
- e. Travel time from place of RAD (release from active duty) to home may be included in the period of AD (active duty).
- f. If the veteran was RAD in less than 90 days, VA may determine if the veteran was released for a SCD (service-connected disability) or had a SCD at the time of RAD that would have warranted a discharge for disability.
- g. In death claims, entitlement is granted when the veteran had less than 90 days wartime service but was entitled at time of death to receive compensation or

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retired pay for a service-connected disability based on service during a period of war.

- h. A widow is entitled if the veteran died in service under circumstances which precluded payment of service-connected death benefits and the veteran had at least 2 years of honorable service. 38 CFR 3.3 (b) (4) (iii)

Note: In accordance with 38 CFR 3.12a all persons entering active duty must meet the minimum active duty requirements. These requirements are:

- a. Twenty-four months of continuous active duty. Non-duty periods that are excludable in determining the Department of Veterans Affairs benefit entitlement (e.g., see 3.15) are not considered as a break in service for continuity purposes but are to be subtracted from total time served; or
- b. The full period for which a person was called or ordered to active duty.

Persons Included:

- (1) A person who originally enlists (enlisted person only) in a regular component of the Armed services after September 7, 1980 (a person who signed a delayed-entry contract with one of the service branches prior to September 8, 1980, and under that contract was assigned to a reserve component until entering on active duty after September 7, 1980, shall be considered to have enlisted on the date the person entered on active duty); and
- (2) Any person (officer as well as enlisted) who enters on active duty after October 16, 1981, and who has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under 10 U.S.C. 1171 (early out).

3. DISABILITY REQUIREMENTS

A veteran must be considered permanently and totally disabled to be eligible for disability payments. There are no disability requirements for a surviving spouse or child.

A veteran who is over age 65, or a veteran under age 65 who has been determined to be permanently and totally disabled by SSA (Social Security Administration) under any of their benefit programs, or a veteran who is confined to a nursing home because of disability which is reasonable to conclude will continue throughout the life of the veteran, will be considered to be permanently and totally disabled for VA purposes. All other veterans must be rated permanently and totally disabled by the VA.

4. PERMANENT AND TOTAL DISABILITY RATINGS

- a. P&T (permanent and total) ratings are based on age, the degree of disability, and unemployability. The ratings are determined in accordance with the Schedule for Rating Disabilities. (38 CFR, Part 4)
- b. The Rating Schedule defines total (100 percent) disability as an impairment of mind or body, which is sufficient to make it impossible for the average person to follow a substantially gainful occupation. Permanent total disability exists

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when impairment is reasonably certain to continue throughout the life of the disabled person. Examples of permanent total disabilities include the permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes or becoming helpless or permanently bedridden. The Rating Schedule also provides for other total (100 percent) disability ratings.

- c. All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanent and totally disabled for pension based on unemployability and age, if they have a single disability rated 60 percent or a combined evaluation or 70 percent, with one disability ratable at 40 percent or higher.
- d. Marginal employment such as odd jobs will not be inconsistent with a finding of unemployability if the disabilities prevent full employment. A homemaker may qualify as unemployable if she or he is no longer able to perform the principal household duties without substantial help. Optional or forced retirement is not a basis for determining that a veteran is unemployable; rather, the determining factor is whether his or her disability and age prevent him or her from obtaining new employment. (For a more detailed explanation of marginal unemployment in pension determinations see M21-1, Part VI, Par. 7.48)
- e. Disabilities due to misconduct or vicious habits may not be considered in rating a veteran's disabilities. However, a P&T disability will not be disallowed by reason of the coexistence of misconduct disability when:
 - i. The veteran, regardless of employment status, also has innocently acquired 100 percent disability, or
 - ii. When unemployable, he or she has other disabilities innocently acquired which meet the percentage requirements, and would make the average person unable to secure or follow a substantially gainful occupation.
- f. It is the policy of the Secretary that all veterans who are basically eligible for pension, but fail to meet the disability requirements based on the percentage standards of the Rating Schedule and who are unable to secure and follow a substantially gainful occupation by reason of his or her disabilities, age, occupational background, and other related factors, may be eligible for pension. The Adjudication Officer is authorized to approve, on an extraschedular basis, a permanent and total rating for pension purposes. (38 CFR 3.321 (b) (2).

5. SPECIAL MONTHLY PENSION (AID AND ATTENDANCE)

- a. A veteran will be considered to be in need of regular A&A (aid and attendance) if he or she is a patient in a nursing home or is helpless or blind, or so nearly helpless or blind as to need or require the regular A&A of another person.

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- b. In determining the need for regular A&A, the following will be considered:
- i. Inability of the veteran to:
 - Dress or undress;
 - Keep clean;
 - Feed himself or herself; attend to his or her sanitary needs;
 - Walk in and out of home unattended, protect himself or herself from hazards or dangers incident to the daily environment, etc., caused by mental or physical disabilities.
 - ii. "Total blindness" and "bedridden" will be a proper basis for a favorable determination of entitlement.
- c. It is not required that all of the conditions enumerated above be found to exist. The personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular A&A, not that there be a constant need. Favorable determinations are not based solely on an opinion based on the severity of the disability; they must be based on the actual requirement of personal assistance from others.
- d. When any veteran is in receipt of increased pension or additional compensation or allowance based on the need of regular A&A or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation, or allowance, the Secretary may furnish the veteran such medical services as he finds to be reasonably necessary.
- e. The Secretary shall furnish to each veteran who is receiving additional compensation or allowance under Chapter 11, or increased pension as veteran of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, by reason of being permanently housebound or in need of regular A&A, such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran. The Secretary shall continue to furnish such drugs and medicines so ordered to any such veteran in need of regular A&A whose pension payments have been discontinued solely because his or her annual income is greater than the applicable maximum annual income limitation, but only as long as the annual income does not exceed such maximum annual income limitation by more than \$1,000.

6. SPECIAL MONTHLY PENSION (HOUSEBOUND)

A veteran will qualify for the housebound rate if he or she has a single disability rated as permanently 100 percent disabling and (a) has additional disabilities rated 60 percent or more or; (b) is permanently housebound but does not qualify for aid and attendance. A veteran will be considered "permanently housebound" when he or she is substantially confined to the house (ward or clinical areas, if hospitalized) or immediate premises due to a disability which it is reasonably certain will remain throughout his or her lifetime.

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7. CORPUS OF THE ESTATE – NET WORTH

This is the net value of all real estate and personal property owned by the claimant, except his or her home, furnishings, and automobile. Public Law 95-588, Improve Pension, provides for the denial or discontinuance of pension to a veteran when the corpus of estate of the veteran and the veteran's spouse is such that under all circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estate be used for the veteran's maintenance. ***There is no specific dollar limitation (38 CFR 3.274). However, if a claimant has an estate of \$80,000 or greater, development action is taken by adjudication to determine if net worth is excessive and a bar to pension entitlement.*** (M21-1, Part IV, Subchapter VIII 16.39 (c)(e). To assist claimant in development, claimant must complete VA Form 21-8049 and answer "net worth" questions. See sample copy at end of this module.

8. DETERMINATION WITH RESPECT TO ANNUAL INCOME

- a. Public Law 95-588 provides generally that all income, regardless of source, of a veteran, the income of the veteran's spouse and any child for whom pension is paid, shall be considered in determining the rate of pension. The following are either exceptions or offsets to income:
 - (1) Private or public welfare. (exception)
 - (2) Expenses of last illness and burial of veteran, child or spouse of veteran and just debts of deceased veteran. (offset to income)
 - (3) Reimbursement for all casualty losses as long as the payments do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. (exception)
 - (4) Profits realized from the sale of non-business property. (exception)
 - (5) Unreimbursed unusual medical expenses provided such expenses exceed 5 percent of the applicable maximum annual pension rate without consideration of the aid and attendance or housebound rate. (Offset to income. See medical expense sheet module 21 for examples of unusual medical expenses.)
 - (6) Amounts in joint accounts in bank acquired by reason of death or other joint owner. (exception)
 - (7) Amounts equal to tuition, fees, books and materials paid by veterans or surviving spouses for education or vocational rehabilitation. Also, if in need of A&A unreimbursed unusual transportation expenses in connection with such courses. (offset to income)

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- (8) Postsecondary educational expenses, including tuition, fees, books, and materials paid by a child not to exceed the amount of the child's earned income. (offset to income)
 - (9) Earned income of a child not exceeding the amount specified as the 38 CFR 3.272 (j) (1) exclusion in the Improved Disability Pension rate chart in M21-1, Part 1 Appendix B.
- b. All income of a surviving spouse and children of the veteran in the surviving spouse's care shall be considered in determining the amount of pension payable to a surviving spouse. (However, if the child's net worth is excessive, the child is removed as a dependent.).
 - c. Net Worth or Corpus of estate of both the veteran and his/her spouse will be considered by VA in determining veteran's entitlement to receive pension.

9. AMOUNT OF PENSION

The Maximum Annual Pension Rate (MAPR) is determined by the medical level of care of the claimant (i.e. P/T, HB, or A&A) and number of eligible family members living in the claimant's home. (See Pension Rate Tables) – M21-1, Part 1, Appendix B

10. PAYMENT OF PENSION DURING CONFINEMENT IN PENAL INSTITUTIONS (38 U.S.C. 505 and 38 CFR 3.666)

Pension may not be paid for any person who has been imprisoned in a Federal, State, or local penal institution as a result of conviction of a felony or misdemeanor, for any period beginning 61 days after imprisonment begins and ending when imprisonment ends. However, if the veteran continues to be eligible except for the provisions of this paragraph, VA may pay to the spouse or children the rate payable under the death pension law based on their countable income or the rate which the veteran was receiving at the time of imprisonment, whichever is less. (M21-1, Part IV, par. 25.04 and 26.04)

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Review Questions: Non-Service-Connected Disability Pension

Using the assigned references and reading materials, answer the following questions:

1. Which of the following sources is not counted as income for VA NSC Pension purposes? 5-6
 - a. Social Security
 - b. SSI (Public Welfare)
 - c. Rental income
 - d. Tobacco allotment

2. Veteran had traumatic amputation of both feet in an industrial accident. He returned to work and continued until reaching normal retirement at age 65. Can he be rated Permanent and Total (PT) for pension purposes? 5-4
 - a. Yes
 - b. No

3. Veteran was inducted into service in early 1945. Six weeks after starting basic training, he began to vomit blood and was found to have a small duodenal ulcer. This disqualified him for overseas duty, so he was discharged after being on active duty for two months and ten days. SC was established for the ulcer, but it was never again symptomatic and was always rated 0% disabling. Does he meet service requirements for VA pension? 5-2
 - a. Yes
 - b. No

4. While driving, a Gulf War veteran hit a freeway overpass abutment. The hospital medical report indicates the veteran presented with massive head injuries, and a blood alcohol level well above legal impairment. This injury left the veteran quadriplegic and demented. Under these circumstances would the veteran be eligible for NSC pension? 5-4
 - a. Yes
 - b. No

5. A blind veteran, with no light perception in either eye, is considered to be in need of regular aid and attendance. 5-5
 - a. True
 - b. False

6. Additional pension for aid and attendance based on blindness will be reduced when the veteran is admitted to a VA medical facility. 5-1 (38 CFR 3.552)
 - a. True
 - b. False

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7. Veteran's spouse inherited \$100,000 from a deceased relative. This makes the veteran's family income over the limit for VA pension for the twelve months following receipt. 5-6
 - a. True
 - b. False

8. Is the home in which the veteran and his or her spouse reside considered as part of the corpus of their estate for improved pension purposes? 5-6
 - a. Yes
 - b. No

9. A veteran age 59, did not complete grade school, and does only menial, unskilled jobs on an occasional basis. He works on average two or three days each month, and survives only by the kindness of friends. He is in good health, and his only ratable disability is moderate varicose veins. Could he be rated as PT for pension purposes? 5-4
 - a. Yes
 - b. No

10. A veteran or surviving spouse who is receiving NSC pension may claim additional benefits for aid and attendance? 5-5
 - a. Yes
 - b. No

11. The veteran served from February 15, 1998 to June 30, 1998. He was administratively discharged under honorable conditions because of in-adaptability. Does he meet service requirements for disability pension? 5-3
 - a. Yes
 - b. No

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FORMS

ORIGINAL CLAIM

Certified DD 214

VA Form 21-22 – Appointment of Veterans Service Organization as Claimant's Representative

VA Form 21-526 - Application for Nonservice-Connected Pension

Current Medical Evidence confirming disability or confirming need for aid and attendance.

"Patient Financial Liability Letter" from Nursing Home

Social Security Numbers for all dependents

Marriage Certificate (current spouse)

Divorce Decrees or Death Certificates (previous spouses)

Birth Certificates or Dependents or adoption papers

(minor children and those over 18 in school)

Social Security Benefit award letter

Proof of other reported income

REOPEN A NONSERVICE-CONNECTED DISABILITY PENSION CLAIM

VA Form 21-527- Income & Net Worth Statement

(If original NSC Claim Was filed more than one year ago)

VA Form 21-4138- Requesting reconsideration of Nonservice-connected Pension

Social Security Award Letters

Written Verification of Other Income

Income Verification Report- (EVR)

VA Form 8416- Request for Medical Expenses

Current Medical Evidence

VA Form 21-686c - For Dependents not previously claimed

Social Security Numbers (not previously submitted)

Any "New & Material Evidence"

NOTE: SEE INFORMAL CLAIMS, MODULE 4

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MEDICAL EXPENSES – ITEMS TO BE CONSIDERED

Listed below are items to be considered as medical and dental expenses in the determination of medical expenses. This list is not inclusive but is merely a guide.

Abdominal supports	Orthopedic Appliances
Acupuncture service	Osteopath, licensed
Ambulance fees	Pediatrician
Arch supports	Physical Examinations
Artificial limbs and teeth	Physician
Back supports	Physical therapist
Braces	Prescriptions
Cardiographs	Psychiatrist Psychotherapy
Chiroprapist	Psychoanalyst
Convalescent Home (for medical treatment only)	Psychologist
Crutches	Psychotherapy
Dental service (e.g. cleaning, x-ray, filling teeth)	Radium therapy
Dentures	Sacroiliac Belt
Dermatologist	Seeing-eye dog and maintenance
Eyeglasses	Speech Therapist
Food or Beverages specially prescribed by a physician (for treatment of illness, and in addition to, not as substitute for, regular diet; physician's statement needed)	Splints
Gynecologist	Supplementary medical insurance (Part B) under Medicare
Hearing aids and batteries	Surgeon
Home Health Services	Telephone/Teletype or special communications equipment for the deaf or Life Line for seniors
Hospital expenses	Transportation expenses for medical purposes (20 cents per mile plus parking or fares for public transportation)
Insulin Treatment	Vaccines
Invalid Chair	Vitamins prescribed by a doctor (but not as a food supplement or to preserve general health)
Lab tests	Wheelchairs
Lip reading lessons (designed To overcome a handicap)	Whirlpool baths for medical purposes
Neurologist	X-rays
Nursing services (for medical care, Including nurse's board paid by you)	
Occupational Therapist	
Ophthalmologist	
Optician	
Optometrist	
Oral Surgery	