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Net Worth, Asset Transfers, and Income Exclusions for Needs-Based Benefits: AO73 Rule Changes for Pension

Pension Management Center

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Learning Objectives

- Discuss why the AO73 Rule was drafted
- Learn new procedures for processing net worth issues on Pension claims
- Discuss the new look-back and penalty periods
- Discuss the deductible medical expense clarifications

References

- [AO73 Final Rule](#)
- M21-1 III.ii.1.C.8 *Handling Outdated Forms*
- M21-1 III.v.6.A *Information Exchange Between Department of Veterans Affairs (VA) Regional Offices (ROs) and Medical Facilities*
- M21-1 V.i.3.D *Reduction of Income Due to Unreimbursed Expenses*
- M21-1 V.iii.1.C *Section 306 Pension and Old Law Pension*
- M21-1 V.iii.1.G *Deductible Expenses*
- M21-1 V.iii.1.J *Net Worth, Asset Transfers and Penalty Periods*

Background

- GAO found
 - VA law allows claimants to transfer significant assets and still qualify for Pension
 - Over 200 organizations help claimants transfer assets to qualify for Pension
- VA's regulations respond to GAO recommendations and address other matters



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Purpose of AO73 Rule Changes

- Establish a clear limit for net worth
- Maintain integrity of VA Pension
- Prevent asset transfers
- Better evaluate need for benefits
- Eliminate the need for net worth determinations
- Clarify countable medical expenses



Effective Date of New Procedures

The final rule published on September 18, 2018.

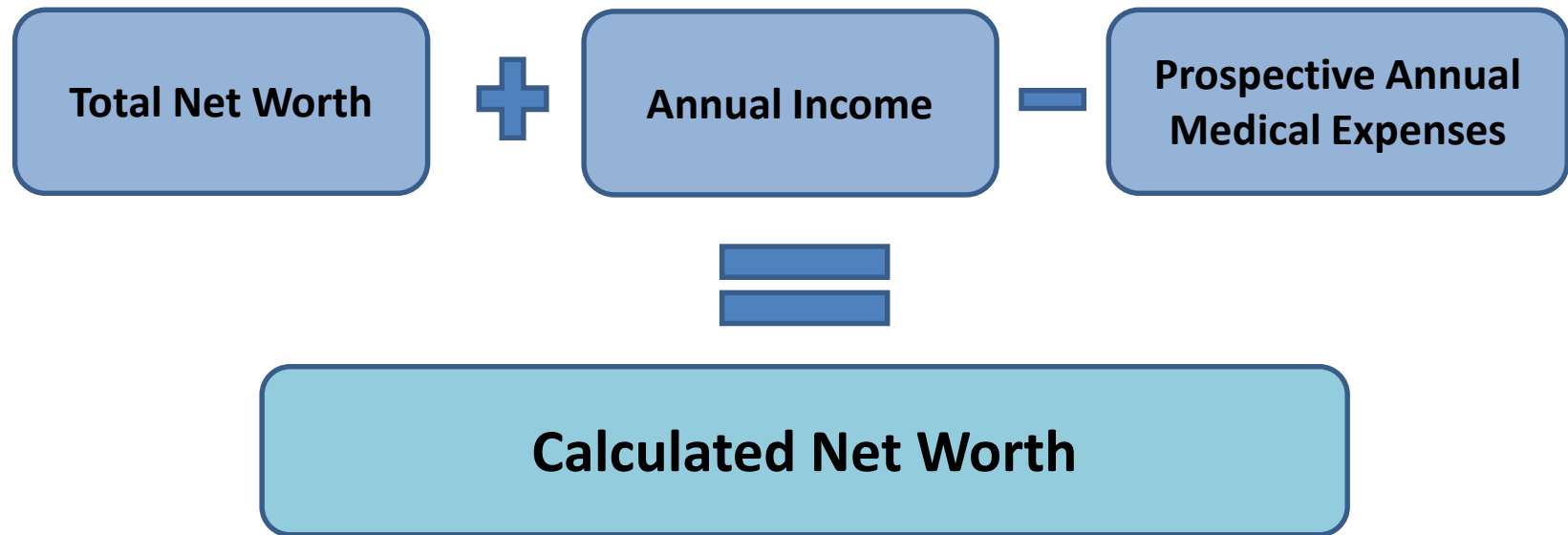
- There is a 30-day grace period.
- All claims received on or after 10-18-2018 must follow new changes required by the rule.
- Claims received before 10-18-2018 will follow the grandfathered net worth determination rules.



Defining Net Worth

- A 'bright-line rule' is a clearly defined rule or standard
- 'Net Worth' is defined as the sum of a claimant or a beneficiary's and spouse's assets and annual income for VA purposes (IVAP)
- The bright-line net worth limit is the value that a claimant's combined assets and annual income cannot exceed in order to qualify for pension benefits

How to Calculate Net Worth



At or Under the limit: Eligible for Benefits
Over the limit: Not Eligible for Benefits



What is our Bright Line?

\$123,600 for 2018

- Community Spouse Resource Allowance (CSRA) for Medicaid purposes
- Indexed for inflation
- Will change annually by SSA COLA increases
- Must exceed amount to be over the limit



When to calculate net worth

VA has received—

1. an original pension claim;
2. a new pension claim after a period of non-entitlement;
3. a request to establish a new dependent; or
4. Other information that a Veteran's, surviving spouse's, or child's net worth has increased or decreased

Note: VA may deny a claim for net worth before determining if the claimant meets other entitlement factors. In this case, VA will notify the claimant of the entitlement factors that have not been established.



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Questions



Residential Lot Size Limit

- The new regulation excludes from net worth the primary residence plus the residential lot area.
- Residential lot area is the lot on which a residence sits that does not exceed 2 acres (87,120 square feet)
- If the lot exceeds 2 acres, VA must develop for the value of the additional land

SECTION IX: QUESTIONS REGARDING INCOME AND ASSETS <i>(If more space is needed, attach a separate sheet)</i>	
32. DO YOU OR YOUR DEPENDENTS OWN YOUR OR YOUR FAMILY'S PRIMARY RESIDENCE? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If "Yes," complete Items 33A and 33B) (If "No," skip to Item 34A)</i>	
33A. WHAT IS THE SIZE OF THE LOT ON WHICH THE PRIMARY RESIDENCE SITS? <div style="border: 1px solid black; height: 20px; width: 100px; margin-top: 5px;"></div> _____ Square feet	33B. COULD ANY PART OF THE LOT BE SOLD <i>WITHOUT SELLING THE RESIDENCE</i> ? <input type="checkbox"/> YES <input type="checkbox"/> NO



Sale of Home as an Asset

- VA recognizes one primary residence per claimant
- If the residence is sold, proceeds from the sale count as an asset unless the claimant buys another home within the same calendar year.
- The provision only applies to home sales made after the date of pension entitlement



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Consideration of a Child's Net Worth

- The net worth of the child of a Veteran or surviving spouse can also be a factor for current-law Pension purposes.
- Evaluate the child's net worth independently:
do not add their net worth to the family NW
- If the child's net worth is excessive, remove the child from the award



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Look Back and Penalty Period

- The rule established a 36-month (3 year) look-back period and a penalty period not to exceed 5 years for those who transfer assets in an attempt to qualify for pension.

IMPORTANT: If the transfer involved a trust, annuity, or other similar arrangement please provide a copy of the trust or transfer documents.

29. HAVE YOU OR YOUR DEPENDENTS TRANSFERRED, GIVEN AWAY, OR SOLD ANY PROPERTY IN THE LAST 36 MONTHS (3 years), INCLUDING THE PURCHASE OF AN ANNUITY, TRUST, OR OTHER FINANCIAL PRODUCTS THAT WILL PROVIDE FUTURE INCOME, OR PROPERTY PLACED IN A TRUST, IN THE LAST 3 YEARS? (Report only those transfers over \$1,500, including multiple/separate transfers to an individual or company so that the total equals \$1,500 or more)

EXAMPLES OF TRANSFER ITEMS: Cash, house, mobile home, car tractor, livestock, motorized vehicles, land, time-shares, real property, gifts, etc.

☐ YES ☐ NO (If "Yes," complete Items 30A through 30G)

30A. ITEM THAT YOU OR YOUR SPOUSE TRANSFERRED, SOLD OR GAVE AWAY	30B. DID THIS TRANSFER INVOLVE THE CREATION OF A TRUST OR PURCHASE OF AN ANNUITY?	30C. WHAT WAS THE MARKET VALUE AT THE TIME OF TRANSFER?	30D. TRANSFERRED TO WHOM? (If the transfer involved a trust, include tax id number for the trust)	30E. THEIR RELATIONSHIP TO YOU (If the transfer involved an annuity, include the type of annuity purchased)	30F. DATE OF TRANSFER (mm/dd/yyyy)	30G. AMOUNT YOU RECEIVED IN EXCHANGE FOR THIS TRANSFER (If you will receive recurring payments as a result of transfer, include that information in Section IX)
<input type="text"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No	\$ <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>



Definition: Covered Asset

A **covered asset** is an asset that was part of the claimant's net worth, was transferred for less than fair market value within the 36-month period prior to applying for benefits, and if not transferred, would have caused or partially caused the claimant's net worth to exceed the net worth limit.

Discuss Example



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Look Back and Penalty Period Cont'd

- Claimant who transfers \$125,000 in covered assets incurs a longer penalty period than a claimant who transfers \$75,000.
- The length of the period is calculated based on the amount of covered assets.
- ***Important:*** The look back period does not include any date before October 18, 2018.



Penalty Period

- Calculated by dividing the “Covered Asset Amount” by the maximum monthly benefit at the aid and attendance rate for a Veteran with one dependent for that year. (\$2,169 for 2018)
- *The monthly rate is the same for all pension claimants*
- The maximum amount of months is 60, or 5 years.
- Begins the first of the month following the last transfer of assets
- End the last day of the last month of the penalty period.



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Example: Penalty Period Calculation

- VA receives a pension claim in January 2019.
- The claimant's net worth is equal to the net worth limit. However, the claimant transferred covered assets totaling \$10,000 on October 20, 2018, and November 23, 2018.
- Therefore, the total covered asset amount is \$10,000, and the penalty period begins on December 1, 2018.
- The monthly penalty rate is \$2,169. The penalty period is $\$10,000 / \$2,169 \text{ per month} = 4 \text{ months}$ (drop the decimals). The fourth month of the penalty period is March 2019.
- The claimant may be entitled to pension effective March 31, 2019, with a payment date of April 1, 2019, if other entitlement requirements are met.



Rebutting the Penalty

VA will not recalculate a penalty period unless:

- the original calculation is shown to be erroneous, or
- Evidence is received within 90 days of VA's notification to the claimant of the penalty period, showing some or all covered assets were returned to the claimant before the date of claim or within 60 days after the date of VA's notice to the claimant of the penalty period decision.. 3.276 (e)(5)(ii)

Note: Claimants can notify VA of a cure or a partial cure to a transfer.



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Ways to Decrease Net Worth

3 allowable ways to decrease net worth:

- Expenditures for items or services for which fair market value is received
- a decrease in annual income, and
- qualifying payments, such as unreimbursed medical expenses.

Note: The expenses must be those of the Veteran, surviving spouse, or child, or a relative of the Veteran, surviving spouse, or child. The relative must be a member or constructive member of the Veteran's, surviving spouse's, or child's household.



Transfer for Less than Fair Market Value (FMV)

- *Fair Market Value*: The price at which an asset would change hands between a willing buyer and seller.
- *Transfer for less than FMV*: selling, conveying, gifting, or exchanging an asset for an amount less than fair market value, *or* a voluntary asset transfer to, or purchase of, any financial instrument that reduces net worth.



Transfers Under the Limit

- Example: Veteran has \$110,000. Before applying for pension, he transfers \$100,000 into an irrevocable trust for his children, and keeps \$10,000.
- Because the \$100,000 asset transfer would not have made his net worth excessive, we do not penalize the Veteran.

Exception: Trust Established for Child Incapable of Self-Support

VA will not consider a transfer to a trust as a transfer for less than Fair Market Value (FMV) if the trust is established on behalf of a child whom VA has rated incapable of self-support.

This transfer will not result in a penalty period.



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Questions



Development

- Forms were submitted for update the date the regulation was published
- New forms will request new net worth info
- M21-1 III.ii.1.C.8 “Handling Outdated Forms” applies to claims received after October 18, 2018.
- If an older form is received and accepted under one of the exceptions listed under III.ii.1.C.8.a, missing look-back information must be developed
- Use the VA Form 21P-0969, Income And Asset Statement In Support of Claim For Pension or Parents' Dependency and Indemnity Compensation (DIC)

Effective Dates

Entitlement or Increased Entitlement:

- The day net worth ceases to exceed the limit. Claimant must submit a certified statement that net worth has decreased and VA must receive the certified statement within 1 year after its decision notice.
- Otherwise, the effective date is the date VA receives a new pension claim.

Reduction or Discontinuance: Date of reduction or discontinuance is the last day of the calendar year in which net worth exceeds the limit.

Net worth decreases before the effective date. If net worth decreases to the limit or below the limit before the effective date, VA will not reduce or discontinue the pension award on the basis of excessive net worth.



Intent to File

Although we may receive an Intent to File on a case, look back period will be determined by the DOC.

V.iii.1.J.6.A: Look-back period means the 36-month period immediately preceding the date on which VA receives either an original pension claim or a new pension claim after a period of non-entitlement.



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Deductible Medical Expenses

- Define and Clarify Medical Expenses for VA Purposes
- New regulation defines:
 - Activities of daily living (ADLs)
 - Instrumental activities of daily living (IADLs)
 - Custodial care
- Clarifies: The medical expense deduction should be contingent on the sort of care the disabled individual is receiving in the facility and the necessity for the individual to be there, not the name of the facility



Deductible Medical Expenses- Definitions

Activities of daily living (ADLs): Defined as “mean basic self-care activities and consist of bathing or showering, dressing, eating, toileting, transferring, and ambulating within the home or living area. Transferring means an individual’s moving himself or herself from one position to another, such as getting in and out of bed.”

Instrumental activities of daily living (IADLs): Defined as “mean independent living activities, such as shopping, food preparation, housekeeping, laundering, managing finances, handling medications, using the telephone, and transportation for non-medical purposes..”

Custodial care: Defined as regular assistance with two or more ADLs, or supervision because an individual with a physical, mental, developmental, or cognitive disorder requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment.



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In Home Health Care Expenses

Payments for assistance with ADLs and IADLs are medical expenses as long as the attendant provides the disabled individual with health care or custodial care. The attendant must be a health care provider unless:

- The disabled individual needs A&A or is housebound; or
- A physician, physician assistant, certified nurse practitioner, or clinical nurse specialist states in writing that, due to a physical, mental, developmental, or cognitive disorder, the individual requires the health care or custodial care that the in-home attendant provides



Worksheets for Care Expenses

- 2 Worksheets are added to the original application forms (21P-527EZ, 21P-534EZ, and 21P-534)
- Worksheet for an Assisted Living, Adult Day Care, or a Similar Facility (care facility other than a nursing home)
- Worksheet for In-home Attendant Expenses
- *Demonstration:* New Worksheets



Expansion of \$90 Medicaid Rate to Surviving Children

\$90 Rate can now be expanded to surviving children.

No pension or survivors pension in excess of \$90 per month will be paid to or for the beneficiary for any period after the month in which the Medicaid payments begin.

Applies to a Veteran without a spouse or child, to a surviving spouse without a child, and to a surviving child.



Forms Update

- Forms were updated to get additional net worth information
 - VA Form 21P-527
 - VA Form 21P-527EZ
 - VA Form 21P-534
 - VA Form 21P-534EZ
 - VA Form 21P-8416
 - VA Form 21P-0969

Reminder: Outdated forms are accepted for one year.
Outdated forms will not have required info

Questions?



- Bright Line Net Worth Limit
- Residential Lot Size Limit
- Sale of Residence
- Look Back Period/Penalty Period
- Inclusion of Annuities and Trusts in Definition of “Transfer for Less Than Fair Market Value (FMV)”
- Presumption Regarding Asset Transfers
- Penalty Period Recalculations
- Deductible Medical Expenses
- Expansion of \$90 Medicaid Rate to Surviving Children