



Veteran's Resource Guide

What you should know about special benefits for home care and assisted living for Veterans and spouses of deceased Veterans

Prepared exclusively by

**MOSCHELLA
& WINSTON LLP**
Your Legal Advisor for Life

440 Broadway, Somerville, MA 02145

Phone 617-776-3300 Fax 617-629-7500

www.moschellawinston.com

Copyright © 2000 – 2009 Moschella & Winston, LLP, all rights reserved.

Updated January 2010

Veteran’s Resource Guide 2010

Aid & Attendance Program.....5

State & Federal Veteran’s Cemeteries.....7

Important Contact Information.....10

The information presented in these resource guides and articles is for informational purposes only and should not be construed as legal advice on any subject matter. Receipt of this information does not constitute an attorney-client relationship, and recipients should not act upon it without consulting legal counsel as individual situations and facts vary. The information may also be dated, and you should check the publication date.

**MOSCHELLA
& WINSTON ^{LLP}**
Your Legal Advisor for Life

440 Broadway, Somerville, MA 02145

Phone 617-776-3300 Fax 617-629-7500

www.moschellawinston.com, info@moschellawinston.com

The Moschella & Winston

2010 Veteran's Benefits Resource Guide was prepared by:

Alex L. Moschella, Esq.

With over 30 years of experience representing the elderly and families with disabled children, Attorney Moschella is known throughout the Boston legal community as a leader in the field, with a reputation for bringing legal expertise and compassion to his practice. He has lectured and published extensively on elder and disability law on both a state and national level, and is an adjunct faculty member at Suffolk University Law School in Boston, Massachusetts, where he has taught Elder Law for the past 13 years.

Neal A. Winston, Esq.

With more than three decades of public benefits experience, Attorney Winston is a leading authority on Social Security, SSI, and Supplemental Needs Trusts. He has written many published articles on public benefits, and has been a featured speaker on television and radio stations. He is also a frequent lecturer on elder and disability law to social workers, attorneys, medical providers, and consumers. He is a member and manager of the Special Needs Alliance (SNA), a national organization of attorneys selected to serve families and persons with special needs.

Michelle M. Mulvena, Esq.

Attorney Mulvena has nearly 10 years of experience serving families in Somerville and the neighboring communities. She specializes in elder law, special needs planning, estate and tax planning, probate administration, asset protection planning, Medicare and Medicaid issues, and probate litigation. She is an accredited attorney with the Department of Veterans Affairs, as well as a member of the National Academy of Elder Law Attorneys, the Massachusetts Bar Association, the Board of Directors for SCM Transportation and the Board of Directors for the Somerville Chamber of Commerce. Attorney Mulvena is very active in the community. Her work with the SCM Transportation board addresses the complex issues of transportation for seniors. She participates in the Lawyer of the Day program sponsored by the Somerville Counsel on Aging, which provides free legal advice to seniors in the community.

Michael R. Couture, Esq.

Michael Couture specializes in Veteran's benefits, Veteran's healthcare, Medicaid, Social Security, special needs law, and estate planning. He is an accredited attorney with the Department of Veterans Affairs, as well as a member of the National Academy of Elder Law Attorneys and the Massachusetts Bar Association. Attorney Couture is on the Advisory Board of Directors for the Elder Service Plan of Cambridge Health Alliance, the Human Rights Committee at the Walnut Street Center in Somerville, and the Lowell Folk Festival. He is a member of the National Multiple Sclerosis Society and an active fundraiser for MS. He is also a member of the Ancient and Honorable Artillery Company of Massachusetts and the 100 Club for fallen police officers and firefighters.

Acknowledgement

This Resource Guide is the result of our representation of numerous elders and their families at a point in their lives when they need comprehensible information as they face challenging financial and quality of life issues. We remain grateful to our clients who, through their insightful questions, have made us better elder law attorneys.

Veterans Benefits are confusing and can be difficult to understand. Many elders who have served our country or their elders are struggling with assistance eligibility. This Guide will assist our clients in understanding the complexities of the Veterans Aid and Attendance Pension. We will be regularly updating this guide as soon as new information becomes available.

We are pleased to share this Resource Guide with you because it can lend some clarity and peace of mind during unsettling times. We hope it will serve as a useful tool for any person, family, or professional who has questions about the Veterans Aid and Attendance Pension. Also, we are asking you to help us make this a better Resource Guide in the future. Please feel free to contact us with suggestions or comments on ways to improve this Guide.

We, at Moschella & Winston, LLP, have prepared numerous articles and brochures on specific issues affecting the elderly and the disabled. Please feel free to contact us for complimentary copies. The National Academy of Elder Law Attorneys (NAELA) and the Massachusetts Chapter of NAELA also have informational brochures on the topic of elder law. While this Resource Guide and other materials are helpful, there is no substitute for consultation with an experienced elder law attorney.

Thank you,

Alex L. Moschella, Esq.
Neal A. Winston, Esq.
Michelle M. Mulvena, Esq.
Michael R. Couture, Esq.

Aid and Attendance

1. The Aid and Attendance pension provides benefits for veterans and surviving spouses who meet certain qualifying requirements. If eligible, individuals may receive financial benefits to help pay for assistance with their activities of daily living, such as dressing, bathing, eating. Such assistance includes individuals who, because of mental or physical incapacity, require care either in their homes, in assisted living facilities, or in nursing homes. This is a federal program available in every state.

2. A veteran is eligible for up to \$1,644 per month, a surviving spouse is eligible for up to \$1,056 per month, and a veteran with a spouse is eligible for up to \$1,949 per month. All benefits are tax free. This benefit may not be used in conjunction with service-related disability, however, aid and attendance is a great supplement to other programs, such as Medicaid.

3. The Veteran must generally satisfy the following requirements:
- Served at least 90 days active duty;
 - Served 1 day during a qualifying war period;
 - Has been discharged from service under conditions other than dishonorable;
 - Have limited household assets;
 - Have limited household gross income;
 - Have household medical expenses to offset gross income;
 - Be either 65 years of age or 100% permanently and totally disabled;
 - A widow of a veteran (if applicable) must have been married to and living with the veteran at the time of the veteran's death. If not living together, separation must be for medical or military reasons.

4. The veteran must have served at least one day during one of the following war periods.

- World War II: December 7, 1941 through December 31, 1946
- Korean War: June 27, 1950 through January 31, 1955
- Vietnam War: August 5, 1964 (February 28, 1961 for those who served "in country" before August 5, 1964) through May 7, 1975
- Gulf War: August 2, 2000 through a date yet to be set by law

5. An applicant must fill out the proper Veterans Application for Pension or Compensation. This application will require a copy of DD-214 or separation papers, a medical evaluation from a physician, current medical issues, net worth limitations, and gross income minus out-of-pocket medical expenses.

6. The Claimant must submit the following documents to complete the application (VA Forms in parenthesis):

- A completed application requesting Pension with Aid and Attendance (21-526, Parts A, B, C, and D for veteran or 21-534 for surviving spouse);
- Discharge/separation papers (DD-214);*
- Birth certificate;
- Proof of residency;
- Physician's affidavit as to inability to care for one's self and current diagnosis/status;
- Income/Asset information (evidence of your Social Security income);
- Proof of medical expenses;
- Work history if you are under 65;
- Direct deposit information for benefit check;
- A list of doctors and hospitals visited in the last year;
- Consent to release information forms so the VA may request any additional information they may determine they require (21-4142).
- Death certificate of veteran (if applicable);
- Proof of marriage (if applicable);

7. As a general rule, an applicant is allowed to keep approximately \$80,000 in assets. An individual's home, automobile, and other non-countable assets are not included in the \$80,000 figure. There are no transfer penalties similar to many other community benefits for the disabled or elderly. An applicant, therefore, may be over the asset limitation and transfer the excess assets to a spouse, child or family trust in order to be eligible.

8. A family home or vehicle is not counted when estimating net worth, so long as the individual resides in the community. This may not be the case if the individual resides in an assisted living facility or nursing home and there is no community spouse. Also, life insurance that does not have a cash surrender value is not countable. All liquid assets or assets that may be liquidated are considered countable. Countable assets include CDs, annuities, stocks, bonds, savings accounts, checking accounts, IRAs, and Keoughs. Assets owned solely by a spouse are countable.

9. An individual's net worth can be an ambiguous standard in the application process. It may be best to consult with an expert if you are unsure of how your assets are viewed in the administrative process. The VA workers have the liberty to use their personal judgment in considering an individual's assets and the claimant's needs. They calculate how long an applicant's assets would support their needs before the assets run out.

*If you do not have these papers you may request them from www.archives.gov. You may file the rest of the application and forward this information when you receive it.

10. The formula to determine financial eligibility is subtracting the out-of-pocket medical expenses from gross income. All income must be included, such as Social Security, pension, interest, dividends, rental income, and annuity payouts. A spouse's income and medical expenses are also considered if the individual is married. The VA will reduce all unreimbursed recurring medical expenses from gross income. Such medical expenses include nursing home costs, assisted living costs, home health services, health insurance premiums, Medicare premiums, and prescription costs.

11. To be eligible for Aid and Attendance, a single veteran must have countable income of less than \$18,228 per year, and a veteran with a spouse must have countable income of less than \$21,612 per year. A widow must have countable income of less than \$11,712 per year. These figures may be increased accordingly if a veteran or their surviving widow has one or more dependents.

Example:

$\$3,000$ (monthly income) - $\$2,600$ (medical expenses) = $\$400$ (net income)

$\$1,644$ (possible benefit) - $\$400$ (net income) = $\$1,244$ VA Benefit per month

12. It may take anywhere from 4-6 months to actually receive payment from the Department of Veterans Affairs. Payments are made retroactively from the first day of the month after the date the application was filed. It is important to note that the application must be filed no later than the third week of the month prior to the month you anticipate receiving benefits. For example if you would like to be eligible for benefits on February 1st, then you must file the application no later than the week of January 25th.

13. If the individual filing has any mental incapacity then it is likely that the Department of Veteran's Affairs will require that a fiduciary be appointed, as they may declare the individual incompetent to handle their own financial affairs. A power of attorney will not be accepted by the VA. The fiduciary will have to go through an interview process before the VA will release any payments to the fiduciary.

14. Our office can consult with you on this and other possible benefits you may be eligible for. You may also apply at your local Veterans office, however, it should be noted that many local offices are fully trained on Aid and Attendance.

State & Federal Veterans' Cemeteries

1. Massachusetts has two state Veterans' Memorial Cemeteries located in Agawam and in Winchendon. There is no fee for a veteran's burial in a state veterans' memorial cemetery. A nominal fee will be charged for the burial of spouses, widows/widowers, and qualified dependents.

2. Eligibility is established if the veteran meets one requirement under A and one requirement under B:**

- a. Services Term;
- The veteran was discharged or released from active duty service under honorable conditions, *OR
 - The veteran served at least 20 years in the National Guard or United States Reserve and is in receipt of a military pension or has documentation verifying s/he will receive retirement pay at age 60 (in accordance with Title 10, Chapter 1223, of the United States Code), OR
 - Any member of the armed forces of the United States who dies on active duty and whose home of record is Massachusetts.

* With certain exceptions, service beginning after September 7, 1980, as an enlisted person, and service after October 16, 1981, as an officer, must be for a minimum of 24 months OR the full period for which the person was called to active duty (examples include those serving less than 24 months in the Gulf War or Reservists who were federalized by Presidential Recall).

- b. Residency;
- The veteran's home of record on his discharge form (DD Form 214) indicates that he/she was a resident of Massachusetts at the time they entered into active duty, OR
 - The veteran resided in a state other than Massachusetts when s/he entered military service and resided in Massachusetts at least one day after discharge from active duty, OR
 - The veteran was a resident of Massachusetts at the time of his/her death.

3. Eligibility is established if a family member of a veteran meets one of the following requirements:**

- They were legally married to a veteran at the time of their own death or at the time of the veteran's death. The spouse or surviving spouse of an eligible veteran is eligible for interment even if that veteran is not buried or memorialized in a state veterans' cemetery. In addition, the spouse or surviving spouse of a member of the armed forces of the United States whose remains are unavailable for burial is also eligible for burial.
- The surviving spouse of an eligible veteran, who had a subsequent remarriage to a non-veteran and whose death occurred on or after January 1, 2000, is eligible for burial in a state veterans' cemetery based on his or her marriage to the eligible veteran.
- A minor child of an eligible veteran must be unmarried and:
 - (a) under 21 years of age; or,
 - (b) under 24 years of age and pursuing a full-time course of instruction at an approved educational institution.

- An unmarried child of an eligible veteran is one of any age but permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or before reaching 24 years of age if pursuing a full-time course of education at an approved educational institution.

**Note that proper supporting documentation must be provided.

4. The following are exceptions to eligibility that should be noted:

- A former spouse of an eligible individual whose marriage to that individual has been terminated by annulment or divorce, if not otherwise eligible.
- Those excluded from eligibility according to Title 38, United States Code, Section 2411 and other applicable federal laws which prohibit burial in a national or state cemetery of anyone convicted of a federal or state capital crime and sentenced to death or life imprisonment.
- Those who served only on active duty for training.
- Those whose only separation from the armed forces was under dishonorable conditions or whose character of service results in a bar to veterans' benefits.

5. An application must be filed on behalf of the individual for whom burial in a veteran's cemetery is being sought. To simplify the process for the veteran's next-of-kin, the following documents should be set aside to be available at the time of need:

- An application by either the veteran or next-of-kin
- All discharge papers for the veteran
- Birth certificate
- Proof of residency (required if discharge papers do not show "home of record" as a Massachusetts resident)

At the time of need, these documents should be forwarded to one of the Massachusetts Veterans' Cemeteries for approval (see contact information in the conclusions section).

6. In addition to State Veterans Cemeteries there are also Federal Veteran's Cemeteries. The Department of Veterans Affairs (VA) National Cemetery Administration maintains 120 national cemeteries in 39 states (and Puerto Rico) as well as 33 soldier's lots and monument sites. The Massachusetts national cemetery is located in Bourne.

7. VA burial benefits include a gravesite in a national cemetery, opening and closing of the grave, perpetual grave, a government headstone or marker, a burial flag, and a Presidential Memorial Certificate, at no cost to the family. Cremated remains are buried or inurned in national cemeteries in the same manner and with the same honors as casketed remains.

Important Contact Information

Boston

Veterans' Services Officer
43 Hawkins St.
Boston, MA 02114
617-635-3037
Fax: 617-635-395
Application Forms are available online:
vabenefits.vba.va.gov

VA Benefits: (800) 827-1000

MASS • ALFA

460 Totten Pond Road, Suite 600
Waltham, MA 02451
Telephone 781-622-5999
Fax 781-622-5979
massalfa@massalfa.org

U.S. Department of Veterans Affairs

National Cemetery Administration
1-800-827-1000
www.cem.va.gov

Massachusetts National Cemetery

Connery Avenue
Bourne, MA 02532
(508) 563-7113

Massachusetts Veterans' Memorial Cemetery

Agawam, MA 01001
(413) 821-9500
and
111 Glenallen Street
Winchendon, MA 01475
(978) 297-9501
www.mass.gov/veterans

National Veterans' Cemeteries

For eligibility criteria or application, visit the National Cemetery Administration website at www.cem.va.gov or call 1-800-827-1000 to talk to a VA Veterans Benefits Coordinator.

Military honors at funeral

Contact the branch of service to request military honors for a funeral.
Army 1-888-325-1601
Air Force (781) 377-4850
Coast Guard (617) 223-3485
Marine Corps 1-866-826-3628
Navy 1-860 694-3475

About Moschella & Winston

Moschella & Winston has specialized in legal planning and protection for individuals and families for over 30 years, and our attorneys are experts in elder, disability and special needs law. We are a unique law practice concentrating on restoring peace of mind to elderly individuals, individuals with special needs, and their families.

With extensive experience in mental health, elder, disability, fiduciary, and guardianship matters, the Moschella & Winston team offers clients the convenience, continuity, and value of legal planning, implementation, and continuing care services—all handled through a single entity.

Moschella & Winston helps clients in the following areas:

- Elder & Disability Law
- Probate Administration
- Estate Planning
- Guardianships
- Special Needs Trusts
- Conservatorships
- Asset Protection
- Trust Administration
- Medicaid Eligibility
- Professional Fiduciary
- Social Security & SSI
- Professional Trustee

We also offer referrals to a network of ancillary services such as geriatric care managers, financial advisors, elder care specialists, and social workers.

All Moschella & Winston attorneys are members of the National Academy of Elder Law Attorneys (NAELA) and the Massachusetts Chapter of NAELA, and the firm partners are Certified Elder Law Attorneys by the National Elder Law Foundation. Partner Neal Winston is president elect of the Special Needs Alliance, a national invitational group of attorneys who advise and represent individuals and their families to create and administer special needs trusts. Moschella & Winston is affiliated with James G. Nelligan, Esq. of Metro Elder & Disability Law (MEDLAW) who specializes in the field of guardianships and conservatorships.



440 Broadway Somerville, MA 02145

617-776-3300 Fax 617-629-7500

www.moschellawinston.com