



THE COULSON
LAW GROUP

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Special Report

- VA Cracking Down
- Who Is Authorized to Assist You?
- Should You Pay Someone to Process Your VA Benefits Application?
- Beware of Those Who Promise Certain Benefits

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Your Life, Your Legacy

Volume I Issue 4

May 2008

8 Things You Need to Consider Before Choosing Someone to Assist You in Planning and Applying for VA Benefits

1. The Department of Veterans Affairs is engaged in an active effort to crack down on individuals employed by private companies who claim to help veterans and their dependents apply for VA



benefits. These individuals lead claimants and facilities to believe they have special knowledge of VA laws and can maximize claimants' entitlement to VA benefits, and often give claimants the impression they are employed by or connected to the VA. (See the January 3, 2007 letter from Bradley Mayes, Acting Director of Compensation and Pension Services, Department of Veterans Affairs reprinted in this newsletter on Page 2.)

2. If your claim for benefits is denied or only partially allowed, and you want to appeal, **ONLY** a licensed attorney or a recognized representative (a list of those can be accessed on the General Counsel's webpage at www.va.gov) can represent you before the Department of Veterans Affairs. Anyone else (such as a family member) **can only prepare** a benefit claim for one veteran on a one-time basis, and must get approval from the VA's General Counsel to do that for anyone else.

3. Anyone who suggests they are doing you a favor by filing your VA benefits application for free is misleading you. It is against the law to charge for filing a VA benefits application. However, an attorney can appropriately charge fees for assisting a client with legal planning toward establishing your eligibility for VA or other benefits and for preparing legal documents utilized to carry out that planning.

4. Although annuities, like any other forms of investment, are appropriate for some people under certain circumstances, it is absolutely **not** necessary for anyone to purchase an annuity in order to establish eligibility for VA benefits. In this situation as in any other, a competent and scrupulous investment advisor should consider all possible investment vehicles and assist you in choosing the one or ones that are most suitable to your situation. We are proud to work hand-in-hand with ethical investment advisors who will work with you toward achieving that goal.

5. Any annuity salesperson who leads you to believe that there are no costs associated with your purchase of an annuity **is misleading you**. Insurance producers are paid commissions, in some cases as high as 8-10% of the amount you invest, to sell you an annuity. While there are legitimate charges associated with purchase of investments, someone who sells you a high-commission annuity you don't need isn't really benefitting you – that person is making a hefty profit at your expense.

6. Any gifts or other transfers of assets made for the purpose of establishing eligibility for VA benefits can cause **ineligibility** for Medicaid nursing home benefits if you need to later need to (continued on Page 3 "8 Things You Need To Consider")

Letter From VA Acting Director Regarding Unauthorized Representation



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

January 3, 2007

Director (00/21)
All VA Regional Offices and Centers

In Reply Refer to: 216C
Fast Letter 06-29

SUBJ: Unauthorized Representation of Claimants and Unlawful Solicitation of Fees

There have been reports about individuals employed by private companies who claim to help veterans and their dependents apply for VA benefits. Some of these individuals have targeted elderly claimants at assisted living facilities. They give claimants the impression that they are employed by VA.

Background

Some regional offices have received inquiries or complaints about individuals that were paid by assisted living facilities to "represent" veterans and other claimants with their VA benefits. These individuals lead claimants to believe they have special knowledge of VA laws and can maximize claimants' entitlement to VA benefits. Although these individuals work for private companies, they may have job titles that suggest a government connection, e.g. Veterans Benefits Analyst.

Representation

Representation before VA consists of actions associated with the preparation, presentation, and prosecution of claims for a VA claimant. A claimant is a person who has filed or has expressed an intention to file a written application for benefits. Among other things, representation may include counseling on veteran's benefits, gathering information necessary to file a claim for benefits, preparing claim forms, submitting information to VA, and communicating with VA on a claimant's behalf.

Organizations and individuals that represent claimants for VA benefits are subject to specific statutory and regulatory requirements. Section 5901 of title 38, United States Code, provides "no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary [of Veterans Affairs] unless such individual has been recognized for such purposes by the Secretary". While VA can authorize an individual to prepare a benefit claim for a veteran on a one-time basis, this authorization cannot be used a second time without the approval of the VA's General Counsel.

Solicitation of Fees

Accredited attorneys and agents are allowed to charge fees for representational services they provide after the Board of Veteran's Appeals makes a final decision in a case. VA's regulations provide a narrow exception to the general rule whereby a "disinterested" third-party may pay an accredited attorney or agent for services provided before a final Board decision, and that representation can include preparation of claims.

Some organizations that do not qualify for VA recognition structure their business to receive payment for their services from claimants' private care providers in an effort to avoid criminal penalties. The care providers typically do not know that these organizations are prohibited by law from preparing claims and charging fees, and are generally unaware of the services provided freely by recognized veteran's service organizations.

Recognized Representatives

VA currently recognizes 87 veteran's service organizations consisting of 37 national organizations and 50 State and regional organizations for purposes of representing veterans before the Department. All of these organizations provide representation at no cost to the veteran, and by law may not charge any other person for representation before the Department.

You can verify the recognition of organizations and accreditation of individuals on the General Counsel's web page. Go to www.va.gov. Click on Organizations at the top of the page. Under *Staff Organizations*, click on *General Counsel*. When that page opens, click on *Recognized Veterans Service Organizations* on the left side and then click on *Current Bulletin 23-S*. This will give you the list of recognized organizations. If you want to see the list of individuals who are accredited through each organization, click on *Current Bulletin 2-151*.

The Office of General Counsel maintains these bulletins and updates them periodically.

Instructions

If you receive reports from veterans, their dependents, or other interested parties about any individual contacting them about VA benefits or claiming to for any group that has not been recognized by VA, please notify Compensation and Pension Services through the Outreach Staff Mailbox (VAVBAWAS/CO/OUTREACH). Provide all pertinent information that is available, such as the individual's or organization's name, phone number, address, and e-mail, as well as the date and place of contact and what the individual discussed.

Unauthorized representation of claimants and unlawful solicitation of fees is a serious matter. VA is interested in any individual or group that may be engaged in these activities. Regional offices should contact their local VA Regional Counsel with any information regarding the unauthorized representation of claimants for VA benefits. You should contact your local VA Office of the Inspector General with information regarding anyone who may be violating the law by charging fees.

RO Actions

Elderly coordinators must establish working relationships with state offices of national organizations, such as AARP or Assisted Living Federation of America, if they have not yet done so. These organizations should be provided information about VA benefits for their newsletters, web sites, and conferences. Information about non-service-connected pension, household benefits, and aid and attendance is particularly relevant. The more information these organizations receive directly from VA, the less chance they will need information from other sources.

Questions

If you have questions or need additional information, e-mail the Outreach Staff mailbox (VAVBAWAS/CO/OUTREACH).

Bradley G. Mayes
Acting Director
Compensation and Pension Service

8 Things You Need to Consider (continued from page 1)

apply for those. For most people, the maximum monthly VA benefit isn't enough to enable them to cover nursing home costs.

Since many folks with care needs will end up needing nursing home care, planning that focuses exclusively on VA benefits can turn out to be a "quick fix" that causes costly and serious problems later on (**See "Benefit or Boondoggle?" article in our April 2008 newsletter**).

7. A competent elder law attorney who has a close working knowledge of the Medicaid eligibility laws and regulations, as well as those of the VA, can assess your or your loved-one's situation and help you to develop a plan that looks at the "big picture" of evolving healthcare needs and enables you or your loved-one to qualify for VA and/or Medicaid benefits in a way that will do the best job of preserving the most assets in the long run, and not "fix" one problem while creating another.

8. You need to be concerned about the protection available to you if the person who advises you about establishing eligibility for VA benefits gives you bad advice that causes problems in your establishing eligibility for those benefits or in later establishing eligibility for Medicaid nursing home benefits. Before you agree to work with anyone, ask for a written assurance that the person carries professional liability insurance that will protect you against those risks, and make sure the assurance isn't limited by a disclaimer that, since the person is only helping you with VA benefits planning, the protection isn't there if that planning causes otherwise avoidable problems in establishing Medicaid eligibility.

Want To Learn More? Be Sure To Sign-Up For Our FREE VA Teleseminars. See Page 4 For Registration Information!!

"Your Life, Your Legacy, Your Lawyers"

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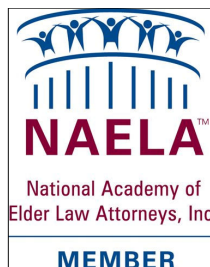
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Your Life, Your Legacy is written by the attorneys of the Coulson Law Group, Wesley J. Coulson and Joseph Ilges, and is published as a service of the Coulson Law Group, 1001 Craig Road, Suite 224, St. Louis, Missouri, 63146; 101 Southpointe Drive, Edwardsville, Illinois, 62025. This is for general purposes only and does not constitute legal advice. For specific questions, you should consult a qualified attorney.



THE COULSON
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VA AID AND ATTENDANCE TELESEMINARS

Our MAY 2008 tele-seminars will focus on VA Benefits—so be sure that you don't miss out!!! Wes Coulson will present two teleseminars this month. If you register you will also receive a FREE multi-media

CD with the audio recording and the accompanying presentation.

We're sure you'll find our seminars helpful, but don't take our word for it. Here's what **Steve Voss, a financial advisor with Edward Jones** said

recently in an email "Both the seminars and your website are becoming my reference points for estate planning. The website is a wealth of information of which I have only scratched the surface. Again thank you and Wes for invaluable information."

FREE LUNCH-HOUR TELESEMINARS

VA BENEFITS

TUESDAY, MAY 20 AT 12 NOON

WEDNESDAY, MAY 28 AT 12 NOON

CONTACT STEVE HELD AT 314.567.9292 OR 618.659.9292 TO REGISTER, OR EMAIL STEVE@COULSONLAWGROUP.COM

DO YOU HAVE CLIENTS WHO ARE VETERANS?

DO YOU HAVE RESIDENTS WHO ARE VETERANS?

IS A LOVED-ONE A VETERAN?

IF YOU ANSWERED YES, THEN YOU WILL BENEFIT FROM THE MAY 2008 TELESEMINARS