



Advocate

Newsletter of the National Assistive Technology Advocacy Project
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THE DEPARTMENT OF VETERANS AFFAIRS AS A FUNDING SOURCE FOR ASSISTIVE TECHNOLOGY

Introduction

Recently, there has been significant media coverage of the numerous returning war veterans who have significant disabilities and who will be users of assistive technology (AT) as a means of overcoming their acquired disabilities. Many of these returning veterans will look first to the Department of Veterans Affairs (VA) as the primary funding source for their AT needs.

This article will focus on the VA as a funding source for AT. We explain what the VA is; how one qualifies for VA services; the criteria governing approval of AT; and how to appeal a denial by the VA. We hope that many of our readers will look to the VA as a funding source for those men and women who meet the eligibility criteria. As always, we hope to provide information to assist you as you consider a variety of funding sources so that your clients or consumers, who are disabled veterans, have every possible chance of obtaining the AT they need.

Because of the limitations of space, we will not separately discuss the CHAMPVA program, covering certain health care costs for dependents and survivors of veterans, or TRICARE, covering certain health care benefits for active duty personnel, retirees, and family members.

What is the VA?

The Department of Veterans Affairs is a cabinet level government department responsible for administering a system of health care and benefits for veterans, their families and dependents. It was established in 1989, to replace the Veterans Administration, an independent agency that dates

back to 1930.

There were 26.4 million veterans reported in the 2000 United States federal census. While only

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a percentage of veterans are enrolled in the VA, enrollment has jumped in recent years, from approximately 3.6 million in 1999, to 6.2 million in 2002. Of that number, 1.4 million have no other private or public health insurance. Further, it is estimated that 41.2 percent of those enrolled in 2002 reported restrictions or limitations in performing activities of daily living (bathing, eating, getting dressed, using the toilet) or instrumental activities of daily living (shopping, managing money, preparing meals, using the telephone). This is an increase from those reporting limitations in 1999, which was 27.8 percent.

Who Qualifies for VA Services?

The VA oversees programs providing a wide range of benefits for qualifying veterans. These include, for example, cash benefits, educational assistance, health care, home loans, life insurance and vocational rehabilitation. Health care services include a wide range of assistive technology (AT) and AT-related services. The emphasis of this article is the funding available under the health care category to pay for AT and AT-related services for eligible veterans.

Like most funding sources we have discussed in *AT Advocate*, the VA has eligibility criteria that limits who qualifies for its range of benefits. Like Medicaid, for example, the underlying VA program has many complicated requirements that one must satisfy before you even get to the issue of eligibility for AT.

Eligibility for most VA benefits is based on active military service under other than dishonorable conditions. Active service generally means service as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or as a commissioned officer of the Public Health Service, the Environmental Services Administration or the National Oceanic and Atmospheric Administration. 38 U.S.C. § 101(2), 38 C.F.R. § 3.12.

With a few exceptions, veterans must be enrolled in the VA healthcare system in order to receive VA care and services. Upon enrollment, veterans are assigned to a priority category based on a number of factors including, but not limited to, whether the veteran was discharged from active military service, under other than dishonorable conditions, after a minimum period of service; whether the veteran has a service-connected disability and if so, the percentage of service-connected disability (how the disability is rated as a percentage); whether the veteran has been determined to be unable to defray the costs of necessary care; and whether the veteran receives compensation or a pension, or whether service occurred during wartime. 38 U.S.C. § 1705, 38 C.F.R. § 17.36.

Bridges to Better Advocacy Handouts Available

Our 11th annual, "Bridges to Better Advocacy" conference was held in Austin, Texas on March 28-30, 2007. As usual, all of the conference handouts will be available (hard copy or electronic formats) for those who could not attend the conference. To arrange for copies, contact either Jim Sheldon (jsheldon@nls.org) or Diana Straube (dstraube@nls.org) at our National AT Advocacy Project. Most of these will also appear on our website, www.nls.org/natmain.htm.

The veteran's category is extremely important because it determines eligibility for both general and specific benefits and services. A wider range of services are available to those in higher priority categories, with category 1 being the highest. For example, a person with a singular or combined rating of 50 percent or greater service-connected disabilities will have access to more benefits and services than a veteran whose enrollment is based on inability to defray the costs of medical care. Therefore, in many instances, the real issue might relate to the rating given the veteran upon enrollment.

Many veterans will face a challenge in establishing disability or the severity of disability (graded up to 100 percent). Others will face the challenge of showing that the disability was service-connected. Others may need to convince the VA that the disability is not the result of the veteran's willful misconduct. Still others may need to produce financial information to prove that they are unable to defray the costs of medical care. With any of these issues, it is possible that the veteran will have to pursue an appeal to establish the right to VA benefits.

These and other VA eligibility issues are beyond the scope of this article and will not be discussed further. Those who wish to have more information are directed to the law and regulations or the many reference materials published by the VA and various advocacy and service organizations. The Department of Veterans Affairs has a variety of helpful materials available on its web site located at www.va.gov.

We recommend that veterans consult with one of the Veterans' Service Organizations if they expect a challenge in establishing VA eligibility. (See box, page 384, for a listing of the key Veterans' Service Organizations.) Many of these agencies will help the veteran with the application itself

Veterans' Benefits Guidebooks and Other References for the VA Advocate

Veterans Benefits Manual, Stichman, Abrams & Addlestone, Editors, 2003 Edition, LexisNexis

Federal Benefits for Veterans and Dependents (Department of Veterans Affairs, 2007 Ed.): For sale by the U.S. Government Printing Office; also available on the the VA website, www.va.gov/OPA/vadocs/current_benefits.asp.

Helpful pages on the VA website include:

- **Decisions of the Board of Veterans' Appeals**, www.index.va.gov/search/va/bva.html
- **Pamphlet: Appeals Process**, www.va.gov/vbs/bva/pamphlet.htm
- **Health Care - Veterans's Health Administration**, www.va.gov/health
- **Survivor Benefits**, www.vba.va.gov/survivors/index.htm
- **CHAMPVA benefits**, www.va.gov/hac/forbeneficiaries/champva/champva.asp
- **Veterans' Service Organizations**, www1.va.gov/vso

and continue to work with the person if VA benefits are denied and an appeal is pursued. If the issue faced by the veteran relates to core eligibility, we recommend contacting one of the Veterans' Service Organizations. If the issue faced concerns eligibility for AT specifically, it is appropriate to contact us at the National AT Advocacy Project.

AT as a Medical Service for Qualified Veterans

The VA provides a "medical benefits package" that includes durable medical equipment and prosthetic and orthotic devices. Considered basic care, these devices are provided to an enrolled veteran receiving any care and service if appropriate healthcare professionals determine that the care is needed to promote, preserve, or restore the health of the veteran and it is in accord with generally accepted standards of medical practice. The VA also uses the term "adaptive equipment" for modifications made to cars and vans. In this article, we will use the term AT (assistive technology) to cover durable medical equipment, prosthetics, adaptive

equipment, adaptive technology and other devices.

It would appear that the VA is more willing than many funding sources to provide the device or service upon a showing that the veteran can benefit from it. Perhaps this is due to the model chosen by the VA for the provision of health care services. The VA operates more than 1400 hospitals, community clinics, nursing homes, domiciliaries and various other facilities, where eligible veterans receive care and services. This contrasts sharply with the Medicaid model, in which the Medicaid agency reviews medical records submitted by ordering and treating medical professionals but is not directly involved in providing healthcare services.

Like the VA's eligibility criteria referenced above, a thorough discussion of all the standards for obtaining AT is beyond the scope of this article. We will, however, describe some significant provisions governing AT and provide illustrations of

Veterans' Service Organizations

These national service organizations may be available in your region for free representation before the VA Regional Office or the Board of Veterans' Appeals:

- American Legion
- American Red Cross
- AMVETS
- Catholic War Veterans, USA, Inc.
- Disabled American Veterans
- Jewish War Veterans of the U.S.A., Inc.
- Military Order of the Purple Heart of the U.S.A., Inc.
- Paralyzed Veterans of America
- Veterans of Foreign Wars of the United States
- Vietnam Veterans of America

Generally, these organizations, which are independent of the VA, will have offices in the VA's regional offices. To contact a service officer with one of these organizations, look in the phone book under U.S. Government, Department of Veterans Affairs or under the name of the organization. A list of chartered and non-chartered veterans' service organizations can be accessed through the VA website, www.va.gov/vso. Check with each organization to determine what services they can offer your clients.

how eligibility for AT will be determined. If the reader wants to determine a specific veteran's eligibility for AT, you need to look to the person's individual circumstances. In many cases, the Prosthetic Representative who works for the VA Medical Center will help ensure that the person gets all the AT to which he or she is entitled. In other cases, you may want to dig more deeply in the law and regulations or consult with a Veterans' Service Organization or other advocacy agency.

Definition of Needed "Care"

Care is defined as that which is needed to promote, preserve, or restore health and must be in accord with generally accepted standards of medical practice. 38 C.F.R. § 17.38(b).

Promote health means care that will:

- enhance the quality of life or daily functional level of veteran;
- identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment; or
- prevent future disease.

Preserve health means care that will:

- maintain the current quality of life or daily functional level of a veteran;
- prevent the progression of disease; or
- extend life span.

Restoring health means care that will:

- restore the quality of life or daily functional level that has been lost due to illness or injury.

Specific Items of Available AT

I. Durable Medical Equipment and Prosthetic and Similar Appliances, In General

While the term "durable medical equipment" appears to have no definition in federal regulations involving Veterans Benefits, "prosthetic and similar appliances" have been defined to include: artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, similar appliances including invalid lifts and therapeutic and rehabilitative devices, and special clothing made necessary by the wearing of such appliances. Where feasible and medically necessary, the VA will purchase, make or repair the item in question for eligible veterans as part of outpatient care or when the veteran is receiving hospital, domiciliary or nursing home care in a VA facility. 38 C.F.R. § 17.150.

II. Specific Devices

Invalid Lifts. A veteran who is receiving special monthly compensation or an increased pension based on the need for aid and attendance may

be eligible for an invalid lift or any type of therapeutic or rehabilitative device, if the veteran has loss, or loss of use, of both lower extremities and at least partial loss of one upper extremity, has been medically determined incapable of moving himself or herself from a bed to a wheelchair or from a wheelchair to a bed without the aid of an attendant, and an invalid lift would be a feasible means of accomplishing those maneuvers and is medically necessary. 38 U.S.C. § 1717(a)(3)(b), 38 C.F.R. § 17.151. Invalid lifts may include van lifts, residential elevators, and electric hospital beds.

The Board of Veterans' Appeals has ruled that a residential elevator could meet this invalid lift criteria:

The veteran had a permanent and total disability rating and received special monthly compensation. He requested a Minivator Residential Elevator so that he could access the second floor in his new home. The Board held that a residential elevator may fit more than one legal ground for payment and the VA Medical Center (VAMC) must make a determination considering ALL potential legal grounds for VA payment. The matter was remanded back to the VAMC to determine whether the elevator might qualify as a prosthetic or an invalid lift. Board of Veterans' Appeals, Docket No. 92-09 702, BVA 93-00220.

Decisions of the Board of Veterans' Appeals can be found through a search function available on the VA website at www.index.va.gov/search/va/bva.html.

Devices for Assisting in Overcoming a Handicap of Deafness. Any veteran who is profoundly deaf (rated 80 percent or more disabled for hearing impairment) and is entitled to compensation on account of a hearing impairment may be furnished devices for assisting in overcoming the handicap of deafness, including telecaptioning television decoders. 38 U.S.C. § 1717(a)(3)(c), 38 C.F.R. § 17.152.

Guide Dogs and Equipment for the Blind. Blind veterans entitled to compensation for a service-connected disability may be furnished a trained guide dog and expenses related to travel, lodging and meals where the veteran receives training to use the dog. They may also be furnished with mechanical and/or electronic communication equipment necessary to overcome blindness, such as adaptive computers, and computer-assisted devices such as reading machines and electronic travel aids, talking books, tapes and braille literature. 38 U.S.C. § 1714, 38 C.F.R. § 17.154.

VA Civilian Health and Medical Program (CHAMPVA)

CHAMPVA covers a percentage of the cost of health care for eligible dependents and survivors of veterans, unless the service is available directly from a VA medical facility, in which case there is no cost. Eligible dependents include:

- the spouse or child of a veteran adjudicated with a permanent and total service-connected disability;
- the surviving spouse or child of a veteran who died as a result of a service-connected condition or who, at time of death, was adjudicated with a permanent and total service-connected disability;
- the surviving spouse or child of a person who died in the line of duty while on active military service, not due to his own misconduct.

An eligible child retains eligibility for a period of time if he or she incurs a disabling illness or injury while pursuing a full-time course of instruction approved under 38 U.S.C. Chapter 36, not due to the child's own misconduct, and which results in an inability to continue said course of study. For more information on CHAMPVA, see the VA website at www.va.gov/hac/forbeneficiaries/champva/champva.asp. For specific information about AT covered under categories such as durable medical equipment or prosthetic devices, see the *CHAMPVA Handbook*, on the VA website at www.va.gov/hac/forbeneficiaries/champva/handbook.asp.

Automobile Adaptive Equipment. Automobiles and adaptive equipment may be provided to eligible veterans receiving compensation for a number of enumerated service-connected disabilities if the disability is the result of an injury incurred or disease contracted in or aggravated by active service. 38 U.S.C. §§ 3901, 3902. Adaptive equipment includes but is not limited to power steering, power brakes, power window lifts, power seats, special equipment necessary to assist a person into and out of the automobile or other conveyance, and air conditioning when necessary for the health and safety of the veteran, even if the automobile will not be operated by the veteran, and any modification of the size of the interior space if needed because of physical condition of such per-

son in order for such person to enter and operate the vehicle. 38 U.S.C. §§ 3901(2), 3902, 38 C.F.R. § 17.156.

The Board of Veterans' Appeals has held that a veteran who was unable to transfer from his wheelchair to the driver's side seat safely was entitled to have his truck lowered to the maximum extent possible under safety guidelines for the vehicle. Docket No. 03-18 663A, Citation Nr. 0522921.

III. Training in the Use of Appliances

Veterans who are provided prosthetic and similar appliances are also entitled to training in the use of the prosthetic or appliance. 38 U.S.C. § 1714(a), 38 C.F.R. § 17.153.

IV. Acquisition of Housing with Special Features or Adaptations to Current Residence

Because there are so few funding sources for home modifications and adaptations, having a source of funding through the VA for ramps, wheelchair accessible showers, and other accommodations may mean the qualifying veteran will be able to live in a family home and remain independent. Veterans who are entitled to compensation for a permanent and total service-connected disability and who meet other medical criteria, are eligible for financial assistance in acquiring suitable housing with special or movable features, including land, made necessary by the nature of the disability. 38 U.S.C. § 2101(a). No more than three such grants may be given to an eligible veteran and the maximum aggregate amount available under this provision is \$50,000.

Veterans entitled to compensation for a permanent and total service-connected disability who do not meet the medical criteria under section 2101(a) may be eligible for adaptations to their residences if owned by the veteran or a family member and the veteran can reasonably be expected to continue residing there. 38 U.S.C. § 2101(b). Once again, no more than three grants may be given to an eligible veteran and the maximum aggregated amount available is \$10,000.

V. Home Improvements and Structural Alterations (HISA)

Those veterans who do not qualify for housing with special features or adaptations to housing as described in the preceding paragraphs may qualify for HISA as a home health service. HISA may be furnished only as necessary to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. It can be used for example, to widen doorways, lower kitchen counter tops and build ramps. This benefit is subject to the follow-

ing limitations:

- Payment of up to \$4,100 is available for a veteran with a service-connected disability or a non-service connected disability rated at 50 percent or more;
- Payment of up to \$1,200 is available to other veterans eligible for outpatient care;
- Once the veteran has used the maximum amount, he or she is not eligible for another HISA grant. 38 U.S.C. § 1717(2).

VI. Clothing Allowance

A veteran with a service-connected disability, or a disability compensable as if it were service-connected, is eligible for a \$662 annual clothing allowance when the veteran uses certain devices, including wheelchairs, that wear and tear clothing. 38 U.S.C. § 1162, 38 C.F.R. § 3.810.

VII. AT And Vocational Rehabilitation

The VA provides a wide range of services to enable veterans with service-connected disabilities to attain maximum independence in daily living and overcome an employment handicap. A veteran who is involved in a rehabilitation plan may receive, among other things:

- Prosthetic appliances, eyeglasses and other corrective or assistive devices;
- Services to the veteran's family as necessary for effective rehabilitation;
- Services necessary to enable a veteran to achieve maximum independence in daily living;
- Language training, speech and voice correction, training in ambulation, and one-handed typing;
- Orientation, adjustment, mobility, reader, interpreter, and related services;
- Telecommunications, sensory and other technical aids and devices. 38 U.S.C. § 3104.

Generally, a veteran is eligible for these services for a period of 12 years after the date of the veteran's discharge from active service. There are several instances in which the 12 year period does not begin to run immediately upon discharge, including the following instances:

- The veteran was prevented from participating in a vocational rehabilitation program because of a medical condition which made it infeasible for the veteran to participate;
- The veteran had not established the existence of a service-connected disability at the time of discharge;

TRICARE: AT-Related Benefits for Some Active Duty Personnel, Retirees, and Family Members

Military retirees under the age of 65 and their dependents or family members may be entitled to TRICARE, a health care benefit provided by the Department of Defense. TRICARE also covers active duty military personnel and their dependents. Benefits include rehabilitation therapy, prosthetics, and any durable medical equipment to aid a body function, to maximize the person's function consistent with physiological or medical needs, or to prevent the deterioration of the person's function or condition. More information about TRICARE can be found at: www.military.com/benefits/tricare.

Although TRICARE is an extremely important funding source, a further description of it is beyond the scope of this newsletter.

- The veteran had not met the requirement of a discharge from service under conditions other than honorable until a later date; or
- The VA has made a determination that the veteran is in need of services to overcome a serious employment handicap. 38 U.S.C. § 3103.

The Right to Appeal a VA Decision

All claims are filed in one of 58 VA regional offices or other VA field level offices. Claims must be submitted on forms approved by the VA and are available from the VA upon request. 38 U.S.C. § 5102.

The VA is obligated to assist the claimant in developing the facts relevant to his or her claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the government. The VA is required to consider all the lay and medical evidence in the record, and when the positive and negative evidence is balanced, give the benefit of the doubt to the claimant. 38 U.S.C. § 5107(b). The claimant is entitled to written notice of the decision made on the claim. 38 CFR § 3.103(a).

Veterans and other claimants have the right to appeal decisions made by a regional office or

Medical Center. A claimant has one year from the date the VA decision was mailed to file an appeal. The claimant commences the appeal process by filing a written Notice of Disagreement with the regional office. A Notice of Disagreement is considered timely if postmarked within one year of the mailing of the VA decision. 38 U.S.C. § 7105(b)(1). If no Notice of Disagreement is filed within the year, the regional office decision will be considered final. 38 U.S.C. § 7105(c).

Following receipt of the Notice of Disagreement, the VA will furnish the claimant a Statement of the Case. The Statement of the Case must include a summary of the evidence relevant to the contested issues, citation to relevant laws and regulations, and a decision on each issue with a summary of the reasons for each decision. 38 U.S.C. § 7105(d)(1).

The claimant may request a review of the regional office decision by an individual who was not involved in the original decision. Upon receipt of the Notice of Decision, the VA will notify the claimant in writing of his or her right to this review. The claimant then has 60 days from the date of the mailing of the regional office notice in which to request the review. If no request is timely filed, the VA will proceed with the appeals process by issuing a Statement of the Case. 38 C.F.R. § 3.2600(a), (b). The regional office reviewer may request additional information, hold an informal conference with the claimant, and if requested by the claimant, may hold a hearing. 38 C.F.R. § 3.2600(c).

The reviewer may not revise the decision to the detriment of the claimant, except for clear and unmistakable error. Like the original decision, the review decision must include a summary of the evidence, a citation to relevant laws and regulations, a discussion of how these affect the decision, and a summary of the reasons for the decision. 38 C.F.R. § 3.2600(d), (e). A request for review does not affect the claimant's right to proceed with an appeal, unless the claimant withdraws the appeal. 38 C.F.R. § 3.2600(f). This may happen if the claimant receives a favorable decision after review.

A veteran who wants to proceed with the appeal, with or without a regional office review, must file a Substantive Appeal before the Board of Veterans Appeals (BVA) within 60 days of the date the Statement of the Case is mailed. This time may be extended upon a show of good cause. The formal appeal must set forth specific allegations of error of law or fact made in the

decision and must clearly identify the benefits sought. 38 U.S.C. § 7105(d)(3), (5). A claimant may request a hearing before the BVA, to be held at its principal location or at a VA facility located within the area served by a regional office. 38 U.S.C. § 7107(d)(1). The BVA does not have jurisdiction to review a medical determination. 38 C.F.R. § 20.101(b), 38 U.S.C. § 511 (See Board of Veterans' Appeals, Docket No. 93-25 678, Citation Nr. 9601144, involving a wheelchair stairway glide.)

Veterans who lose at the BVA can appeal the decision before the U.S. Court of Veteran Appeals. A Notice of Appeal must be filed within 120 days of a BVA decision. As in all court appeals, the appellant should be represented by an attorney.

Re-Opening Claims and Requests for Revision

A veteran may re-open a final claim upon submission of new and material evidence. 38 U.S.C. § 5108. New evidence is that existing evidence not previously submitted to the VA, while material evidence relates to an unestablished fact necessary to substantiate the claim. It can not be cumulative nor redundant and must raise a reasonable possibility of substantiating the claim. 38 C.F.R. § 3.156(a).

A decision may be revised or reversed, upon the VA Secretary's own motion or request of the claimant, upon a showing that the decision of the VA Secretary was based on clear and unmistakable error. The request for revision may be made at any time. 38 U.S.C. § 5109A.

Conclusion

A large problem facing veterans and their advocates is ignorance — ignorance of how the VA operates, what AT is available, what laws and regulations apply, and what to do when a claim for AT is denied. Armed with the information in this article, we hope more advocates will consider the VA as a funding source for their clients or consumers who need AT. If you know veterans who might benefit from this article, share it with them. Also, let them know that they can contact their local VA Medical Center or the various Veterans' Service Organizations for further information and assistance. While we do not assume that many PAAT attorneys and advocates will become involved in representing veterans before the VA, we hope this article can be used as a resource to help you identify potential eligibility for the wide range of AT-related services for veterans with disabilities.

The **AT Advocacy Project** will provide nationwide services to PAAT projects including technical assistance to advocates wanting to access funding for assistive technology for individuals with disabilities.



If you would like the
AT Advocate Newsletter
sent to you in a large-print
or other alternative format,
please let us know.

Update on The National Assistive Technology Resource Library

We have designed a word-searchable digest, using computer technology, to store and retrieve hearing decisions and other administrative documents. We also have indexed nearly 700 documents from more than 125 pending and decided court cases. All documents are available through our AT Resource Library. Please send us your hearing decisions, briefs and other documents involving AT.

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