medical care to veterans for their service and non-service connected conditions, therefore covering almost all of their medical needs at little or no cost.

Relations to other Disability Benefits
VA disability ratings are generally not related to any other US government disability benefits like Social Security or state programs. However, many governments and state agencies give additional benefits to veterans with VA ratings. Also, VA awards are not a determination of disability – rather they are a disability rating to determine amount of benefits. VA benefits do not restrict employment and are generally NOT awarded based on financial need. The only exception to this rule is the special determination by the VA for "IU" (Individual Unemployability) which awards disability payments at the 100% value level for a veteran without a 100% disability rating. There is a separate and complicated formula for this determination defined at 38 CFR 4.16 through 4.18.

VA Benefits While Incarcerated

By Tod M. Leaven

The fact that a veteran has not been a very good boy or good girl since he or she has left the military does not take away the fact that the veteran has served our Country with honor. However, the fact that the veteran ended up incarcerated does mean that the federal, state, or municipal government will be footing the bill for a lot of the veteran's care and therefore the VA is relieved of some of its duty to provide. Contrary to popular belief, veterans still can apply for and receive VA benefits while incarcerated. What follows is a summary of some of the benefits a veteran may receive and the special rules surrounding them. Because there is a reduction of benefits to some incarcerated veterans and some veterans may be tempted to avoid incarceration by becoming a fugitive, Congress has enacted strict penalties for veterans who the VA designates as fugitive felons.

Disability Compensation and DIC (Dependency and Indemnity Compensation) are significantly limited while in the big house under certain circumstances. 38 U.S.C. § 5313(a) states that

(1) …any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

The three elements here are that (1) the veteran must be incarcerated, (2) the incarceration must be due to a felony conviction, and (3) he or she must be incarcerated for more than sixty (60) days. If all three of these elements are met, the disability compensation or DIC payments will be reduced to the 10% rate. It is important to note that the disability rating will not be reduced. What is reduced is just the payment received by the veteran. The VA defines the term felony as "any offense punishable by death or imprisonment for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction." 38 C.F.R. § 3.665(b). This means that even if a state calls a specific crime a felony, it will not trigger this reduction of compensation or DIC pay unless it meets this specific VA definition. The VA defines the sixty-first (61st) day as exactly sixty-one (61) days after the judge or jury pronounces guilt, not sixty-one (61) days after the date of sentencing. See Mulder v. Gibson, 27 Vet. App. 10, 18 (2014); VA Gen. Coun. Prec. 3-2005 (Feb. 23, 2005).

If the veteran has a family or dependents, all or a portion of the remaining benefits not paid out to the veteran may be apportioned pursuant to 38 U.S.C. § 5313(b). The VA is required to inform the veteran that his or her dependents’ rights to an apportionment of the veteran’s benefits while he or she is incarcerated. The VA is also supposed to notify the veteran’s dependents if the VA is aware of their existence and can obtain their addresses. This apportionment will be paid out to dependents “on the basis of individual need.” 38 C.F.R. § 3.665(e)(1). In determining need, the VA will weigh the total amount of the veteran’s compensation available to be apportioned, the dependent’s personal income and living expenses, the incomes

In my experience, the VA is the best direct source for information and assistance in VA matters. While exceptions will always make the headlines, most VA employees are veterans who embrace their opportunity to assist other veterans. I encourage everyone to seek advice from the VA for their disability needs before seeking outside assistance as it is the VA who truly understand the process.

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and living expenses of other qualified dependents, and any special needs of all qualifying dependents. Id. The dependents covered are the veteran’s spouse, child(ren), and dependent parents. These dependents may not receive any apportionment if they are incarcerated as well. If a veteran’s conviction is overturned upon appeal, the veteran is entitled to retroactive payment of all withheld benefits. Due to the prohibition against duplication of benefits, the veteran cannot receive any benefits already paid out to the veteran’s dependents under apportionment. This right of apportionment is not the veteran’s right; rather it is vested in the dependent. Belton v. Principi, 17 Vet. App. 209 (2003); Ferenc v. Nicholson, 20 Vet. App. 58 (2006).

Unlike Disability or DIC benefits, VA Pensions benefits are completely stopped on the sixty-first (61st) day for either a felony or misdemeanor conviction. 38 C.F.R. §1505(a). As with Disability Compensation and DIC, VA Pension benefits for incarcerated veterans may be apportioned to dependents. VA Pension benefits do not qualify for retroactive payments in the event of an overturned conviction - this is a unique feature of Disability Compensation and DIC benefits only.

Although a veteran is incarcerated, when pertinent the VA still has a duty to assist the veteran in obtaining compensation examinations. The VA Fact Sheet DMA-11-001, Examinations for Incarcerated Veterans (June 10, 2011) states:

VA must fully comply with the duty to assist by obtaining relevant medical records from the facility where an incarcerated veteran is held, and work with state or prison officials both in obtaining such records and in providing medical examinations when warranted….VA is required to provide medical examinations when warranted under the duty to assist, either by arranging for release of an incarcerated veteran to attend an examination or by making arrangements with the relevant state or prison official to conduct an examination at the facility where the veteran is incarcerated. Incarcerated veterans are owed the same duty to assist as non-incarcerated veterans and VA should tailor its assistance to the circumstances of the confinement of these veterans.

Congress enacted strict penalties for veterans who are designated as fugitive felons and their families. A fugitive felon is a veteran who is on the run to avoid prosecution, post-conviction custody, or post-conviction confinement for a felony or an attempt to commit a felony. A fugitive felon is also a veteran who is currently violating a condition of probation or parole imposed for the commission of a felony. The benefits restricted from fugitive felons and their families include Disability Compensation, Pension, DIC, Healthcare, Life Insurance, Educational Benefits, and Vocational Rehabilitation. Fugitive felon status ceases when the veteran clears his or her warrant for arrest by surrendering to the issuing authority, getting arrested, getting the warrant dismissed, or by showing court documents which illustrate that he or she is no longer a fugitive.

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