

Department of Veterans Affairs

§ 3.276

Payments made under the Energy Employees Occupational Illness Compensation Program.

(Authority: 42 U.S.C. 7385e(2))

(6) *Payments to Aleuts.* Payments made to certain Aleuts under 50 U.S.C. App. 1989c-5.

(Authority: 50 U.S.C. App. 1989c-5(d)(2))

(7) *Statutory exclusions.* Other amounts excluded from assets by statute. See § 3.279. VA will exclude from assets any amount designated by statute as not countable as a resource, regardless of whether or not it is listed in this section or in § 3.279.

(Authority: 38 U.S.C. 1522, 1543)

[83 FR 47271, Sept. 18, 2018]

§ 3.276 Asset transfers and penalty periods.

(a) *Asset transfer definitions.* For purposes of this section—

(1) *Claimant* has the same meaning as defined in § 3.275(a)(2)(i).

(2) *Covered asset* means an asset that—

(i) Was part of a claimant's net worth;

(ii) Was transferred for less than fair market value; and

(iii) If not transferred, would have caused or partially caused the claimant's net worth to exceed the net worth limit under § 3.274(a).

(3) *Covered asset amount* means the monetary amount by which a claimant's net worth would have exceeded the limit due to the covered asset alone if the uncompensated value of the covered asset had been included in net worth.

(i) *Example 1.* For purposes of this example, presume the net worth limit under § 3.274(a) is \$123,600. A claimant's assets total \$115,900 and his annual income is zero. However, the claimant transferred \$30,000 by giving it to a friend. If the claimant had not transferred the \$30,000, his net worth would have been \$145,900, which exceeds the net worth limit. The claimant's covered asset amount is \$22,300, because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered asset.

(ii) *Example 2.* For purposes of this example, presume the net worth limit under § 3.274(a) is \$123,600. A claimant's annual income is zero and her total assets are \$125,000, which exceeds the net worth limit. In addition, the claimant transferred \$30,000 by giving \$20,000 to her married son and giving \$10,000 to a friend. The claimant's covered asset amount is \$30,000 because this is the amount by which the claimant's net worth would have exceeded the limit due to the covered assets alone.

(4) *Fair market value* means the price at which an asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. VA will use the best available information to determine fair market value, such as inspections, appraisals, public records, and the market value of similar property if applicable.

(5) *Transfer for less than fair market value* means—

(i) Selling, conveying, gifting, or exchanging an asset for an amount less than the fair market value of the asset; or

(ii) A voluntary asset transfer to, or purchase of, any financial instrument or investment that reduces net worth by transferring the asset to, or purchasing, the instrument or investment unless the claimant establishes that he or she has the ability to liquidate the entire balance of the asset for the claimant's own benefit. If the claimant establishes that the asset can be liquidated, the asset is included as net worth. Examples of such instruments or investments include—

(A) *Annuities.* *Annuity* means a financial instrument that provides income over a defined period of time for an initial payment of principal.

(B) *Trusts.* *Trust* means a legal instrument by which an individual (the grantor) transfers property to an individual or an entity (the trustee), who manages the property according to the terms of the trust, whether for the grantor's own benefit or for the benefit of another individual.

(6) *Uncompensated value* means the difference between the fair market value of an asset and the amount of compensation an individual receives

§3.276

38 CFR Ch. I (7–1–21 Edition)

for it. In the case of a trust, annuity, or other financial instrument or investment described in paragraph (a)(5)(ii) of this section, *uncompensated value* means the amount of money or the monetary value of any other type of asset transferred to such a trust, annuity, or other financial instrument or investment.

(7) *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. This definition does not include any date before October 18, 2018.

(8) *Penalty period* means a period of non-entitlement, calculated under paragraph (e) of this section, due to transfer of a covered asset.

(b) *General statement of policy pertaining to pension and covered assets.* VA pension is a needs-based benefit and is not intended to preserve the estates of individuals who have the means to support themselves. Accordingly, a claimant may not create pension entitlement by transferring covered assets. VA will review the terms and conditions of asset transfers made during the 36-month look-back period to determine whether the transfer constituted transfer of a covered asset. However, VA will disregard asset transfers made before October 18, 2018. In accordance with §3.277(a), for any asset transfer, VA may require a claimant to provide evidence such as a Federal income tax return transcript, the terms of a gift, trust, or annuity, or the terms of a recorded deed or other evidence of title.

(c) *Exception for transfers as a result of fraud or unfair business practice.* An asset transferred as the result of fraud, misrepresentation, or unfair business practice related to the sale or marketing of financial products or services for purposes of establishing entitlement to VA pension will not be considered a covered asset. Evidence supporting this exception may include, but is not limited to, a complaint contemporaneously filed with State, local, or Federal authorities reporting the incident.

(d) *Exception for transfers to certain trusts.* VA will not consider as a covered asset an asset that a veteran, a

veteran's spouse, or a veteran's surviving spouse transfers to a trust established on behalf of a child of the veteran if:

(1) VA rates or has rated the child incapable of self-support under §3.356; and

(2) There is no circumstance under which distributions from the trust can be used to benefit the veteran, the veteran's spouse, or the veteran's surviving spouse.

(e) *Penalty periods and calculations.* When a claimant transfers a covered asset during the look-back period, VA will assess a penalty period not to exceed 5 years. VA will calculate the length of the penalty period by dividing the total covered asset amount by the monthly penalty rate described in paragraph (e)(1) of this section and rounding the quotient down to the nearest whole number. The result is the number of months for which VA will not pay pension.

(1) *Monthly penalty rate.* The monthly penalty rate is the maximum annual pension rate (MAPR) under 38 U.S.C. 1521(d)(2) for a veteran in need of aid and attendance with one dependent that is in effect as of the date of the pension claim, divided by 12, and rounded down to the nearest whole dollar. The monthly penalty rate is located on VA's website at www.benefits.va.gov/pension.

(2) *Beginning date of penalty period.* When a claimant transfers a covered asset or assets during the look-back period, the penalty period begins on the first day of the month that follows the date of the transfer. If there was more than one transfer, the penalty period will begin on the first day of the month that follows the date of the last transfer.

(3) *Entitlement upon ending of penalty period.* VA will consider that the claimant, if otherwise qualified, is entitled to benefits effective the last day of the last month of the penalty period, with a payment date as of the first day of the following month in accordance with §3.31.

(4) *Example of penalty period calculation.* VA receives a pension claim in November 2018. The claimant's net worth is equal to the net worth limit.

However, the claimant transferred covered assets totaling \$10,000 on August 20, 2018, and September 23, 2018. Therefore, the total covered asset amount is \$10,000, and the penalty period begins on October 1, 2018. Assume the MAPR for a veteran in need of aid and attendance with one dependent in effect in November 2018 is \$24,000. The monthly penalty rate is \$2,000. The penalty period is \$10,000/\$2,000 per month = 5 months. The fifth month of the penalty period is February 2019. The claimant may be entitled to pension effective February 28, 2019, with a payment date of March 1, 2019, if other entitlement requirements are met.

(5) *Penalty period recalculations.* VA will not recalculate a penalty period under this section unless—

(i) The original calculation is shown to be erroneous; or

(ii) VA receives evidence showing that 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 VA's decision concerning the penalty period. If covered assets are returned to the claimant, VA will recalculate or eliminate the penalty period. For this exception to apply, VA must receive the evidence not later than 90 days after the date of VA's notice to the claimant of VA's decision concerning the penalty period. Once covered assets are returned, a claimant may reduce net worth at the time of transfer under the provisions of §3.274(f).

(Authority: 38 U.S.C. 1522, 1543, 1506(1))

(The Office of Management and Budget has approved the information collection requirement in this section under control numbers 2900-0002, and 2900-0004.)

[83 FR 47271, Sept. 18, 2018]

§3.277 Eligibility reporting requirements.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Department of Veterans Affairs may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child for whom the person is

receiving or is to receive increased pension (such child is hereinafter in this section referred to as a *dependent child*), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a *surviving child*), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Obligation to report changes in factors affecting entitlement.* Any individual who has applied for or receives pension must promptly notify the Secretary of any change affecting entitlement in any of the following:

- (1) Income;
- (2) Net worth or corpus of estate;
- (3) Marital status;
- (4) Nursing home patient status;
- (5) School enrollment status of a child 18 years of age or older; or

(6) Any other factor that affects entitlement to benefits under the provisions of this Part.

(c) *Eligibility verification reports.* (1) For purposes of this section the term eligibility verification report means a form prescribed by the Secretary that is used to request income, net worth, dependency status, and any other information necessary to determine or verify entitlement to pension.

(2) The Secretary may require an eligibility verification report under the following circumstances:

(i) If the Social Security Administration has not verified the beneficiary's Social Security number and, if the beneficiary is married, his or her spouse's Social Security number;

(ii) If there is reason to believe that the beneficiary or his or her spouse may have received income other than Social Security during the current or previous calendar year; or

(iii) If the Secretary determines that an eligibility verification report is necessary to preserve program integrity.

(3) An individual who applies for or receives pension as defined in §3.3 of this part shall, as a condition of receipt or continued receipt of benefits, furnish the Department of Veterans Affairs an eligibility verification report upon request.

(d) If VA requests that a claimant or beneficiary submit an eligibility verification report but he or she fails