



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

October 26, 2012

Director (00)
VA Regional Offices and Centers

In Reply Refer To: 21P
Fast Letter: 12-23

ATTN: All Pension Management Center and Veterans Service Center Personnel

SUBJ: Room and Board as a Deductible Unreimbursed Medical Expense

Purpose

This letter clarifies Department of Veterans Affairs (VA) policy regarding the unreimbursed medical expenses (UMEs) that may be deducted from income for pension purposes, specifically whether the cost of room and board at a facility is a deductible UME.

Background

Current VA regulations require deduction of UMEs from income for purposes of the pension program. 38 C.F.R. § 3.272(g). VBA has interpreted this deduction in its Adjudication Procedures Manual (Manual), M21-1MR, to mean the unreimbursed cost of medical and nursing services. However, claimant's representatives have recently expressed concern about VA's inconsistent consideration of the cost of room and board at certain facilities, particularly senior or independent living facilities, and the resulting inconsistent pension decisions. Although the Manual defines medical and nursing services and addresses the deductibility of nursing home fees and custodial care, it does not provide adequate guidance on determining whether the room and board paid to certain facilities should be treated as a UME. See M21-1MR, Part V, Subpart iii, Chapter 1, Section G, 43, 44.

Representatives further contend that many senior living facilities are equivalent to assisted living facilities because such facilities provide expanded services including emergency pull cords, 24-hour staffing, and locked exterior doors. Based on the availability of these services and the fact that many residents are pension recipients, representatives assert that room and board at such a facility constitutes a UME. As will be explained, room and board is only a UME when the facility provides custodial care.

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Clarification – Custodial Care

Current guidance could be read to mean that “custodial care” is the same as room and board. See M21-1MR at 43.h. (“because the individual needs to live in a protected environment, all unreimbursed fees paid to the institution for custodial care ('room and board') . . . are deductible expenses”). However, as defined by Medicare, custodial care assists persons with the activities of daily living (ADL). See e.g., Medicare Benefits Policy Manual, Chapter 16, section 110. As defined in VA regulations, ADLs are “basic self-care and includes bathing or showering, dressing, eating, getting in or out of bed or a chair, and using the toilet.” 38 C.F.R. § 4.124a note 3. To preserve the integrity of the pension program, VA considers a facility to provide custodial care if it assists an individual with two or more ADLs. Accordingly, for pension purposes, we interpret VA regulations as follows:

- The cost of room and board at a residential facility is a UME if the facility provides custodial care to the individual, or the individual's physician states in writing that the claimant must reside in that facility to separately contract for custodial care with a third-party provider.
- A facility provides custodial care if it assists the individual with two or more ADLs.
- If the facility does not provide the claimant custodial care, or the claimant's physician does not prescribe care by a third-party provider in that facility, VA will not deduct room and board paid to the facility but will deduct the cost of any medical or nursing services obtained from a third-party provider.

In addition, VA does not consider emergency pull cords, 24-hour staffing, and locked exterior doors as a medical or nursing service.

VA will revise M21-1MR, Part V, Subpart iii, Chapter 1, Section G, 43.d, h, and i to reflect these clarifications.

Clarification – When does assistance with Instrumental Activities of Daily Living (IADL) constitute a UME for room and board?

VA continues to receive claims for room and board as a UME when a facility provides assistance with IADLs, e.g., meal preparation. VA regulations define IADLs as “activities other than self-care that are needed for independent living, such as meal preparation, doing housework and other chores, shopping, traveling, doing laundry, being responsible for one's own medications, and using a telephone.” 38 C.F.R. § 4.124a note 3. As a general rule, charges for assistance with IADLs are not UMEs for pension purposes because such assistance is not a medical or nursing service.

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However, VA will deduct the cost of assistance with IADLs from the individual's income when:

- The individual is entitled to pension at the A&A or housebound rate, or a physician has certified that the claimant has a need to be in a protected environment, **AND**
- The facility provides medical services or assistance with ADLs to the individual.

Room and Board Procedures

Effective the date of this letter, for pension applicants residing in other than nursing homes and assisted living facilities, apply the following procedures to determine if unreimbursed fees for room and board are a deductible medical expense under 38 C.F.R. § 3.272(g):

| STEP | ACTION |
|------|--|
| 1. | Is the claimant rated for pension at the A&A or housebound rate? <ul style="list-style-type: none">• If no, go to step 2.• If yes, go to step 3 |
| 2. | Has a physician stated in writing that the claimant needs to be in a protected environment? <ul style="list-style-type: none">• If yes, go to step 3.• If no, VA will not deduct as a UME the cost of room and board based on custodial care. |
| 3. | Does the residential facility provide the individual assistance with two or more ADLs? <ul style="list-style-type: none">• If yes, VA will deduct as a UME the cost of room and board based on custodial care.• If no, go to step 4. |
| 4. | Does a third-party contractor provide the individual assistance with two or more ADLs in the residential facility? <ul style="list-style-type: none">• If yes, is there a statement of record from the individual's physician that the individual must reside in that facility to receive the contractor's assistance with ADLs?<ul style="list-style-type: none">• If yes, VA will deduct as a UME the cost of room and board based on custodial care.• If no, VA will not deduct as a UME the cost of room and board based on custodial care. |

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Applicability

In applying these procedures, VA's intent is not to displace persons who have relied upon VA's previous interpretation of what constitutes an UME under VA regulations. Accordingly, these procedures apply to all original claims pending on or filed after the date of this fast letter. For running awards, do not terminate benefits based solely on the elimination of room and board expenses paid to a facility other than a nursing home or assisted living facility, which VA previously counted as a valid UME. However, if a claimant relocates to a different facility other than a nursing home or assisted living facility, these procedures will apply.

VA will continue to require documentation for in-home attendants as outlined in M21-1MR, Part V, Subpart I, Chapter 3, Section D, 13.i, when the claimant has contracted with a third party for custodial care.

To ensure that all decision makers are fully aware of this guidance, Pension and Fiduciary Service is providing a 30-day grace period for cases reviewed by the National STAR staff and will continue to note these cases with a comment. However, any decision promulgated more than 30 days after the release of this letter may be subject to a STAR quality error.

Questions

Additional questions regarding this letter may be sent to VAVBAWAS/CO/PMC.

/S/

David R. McLenachen
Director
Pension and Fiduciary Service