

# Servaes Consulting Group, LLC

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*With VA accredited individuals to serve you better*

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After FAST 12-23 in October 26, 2012 the VA started to deny benefits to those in assisted living who needed help with what was defined as Independent Activities of Daily Living (IADLs) in FAST 12-23. This was despite the fact that FAST 12-23 seemed to limit the exclusion of IADLs as counting towards the two Activities of Daily Living requirement for senior or Independent Living facilities and **not** Assisted Livings.

It was very fortuitous that, on this last day before comments end, an on point denial letter was faxed to me. I have included the redacted relevant page.

This surviving spouse filed for benefits in September of 2012. She was 89 years old when she originally filed and is 92 today.

She has a lot of mobility issues and her physician's evaluation on the 21-2680 from 2012 states:

- Unsteady gait
- She cannot prepare meals and needs assistance due to physical limitation
- She needs assistance getting out of the bathtub
- Assisted living is required for help with ADLS
- She needs assistance with her finances due to memory issues
- She has difficulty with her grip
- She has poor balance
- She cannot leave the assisted living facility independently. She can leave the facility only with the assistance of another person.

Subsequently, information was provided that she needs assistance with medication management because she had both overdosed and skipped her medications all together. She receives assistance from her daughter in order to keep the assisted living costs down.

Prior to FAST 12-23 she would have been approved as she is in Assisted living, needs an environment modified for seniors because of memory and balance issues, needs medication management for safety and needs a standby assist whenever she leaves the facility. Because they are applying FAST 12-23 to her, she has been denied due to lack of ADL assistance although it is quite clear she requires Assisted Living.

Codifying that IADLs do not count in Assisted Living will result in many more people, like this 92 year old surviving spouse with a \$4,000 assisted living bill whose daughter assists her every day, being denied this benefit.

She only has \$35,000 left in assets and they will not last the next 12 months without the VA benefit. She has already moved her to a less expensive room to try and save money, forcing her to purchase the level of care, instead of receiving it from a family member seems fiscally irresponsible – no one with her income, assets and care needs is living in a \$4,000 a month

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assisted living because they enjoy the hotel lifestyle – clear medical evidence that you cannot live alone safely and require assistance with some IADLs and one ADL should be enough.

A history of medication errors should result in medication management being an ADLS as it is over and above medication reminders – it is not a nice to have, it is a necessity.

Often the move to assisted living occurs after a child realizes mom is eating spoiled food and not taking her medications properly – so removing the need for meal preparation and medication management seems geared only towards reducing the payout and not in the best interest of the veteran or surviving spouse.

Sincerely,

Patricia Servaes

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We denied your claim for Death Pension because your adjusted income effective April 1, 2013 exceeds the maximum annual limit set by law for death pension at the Aid and Attendance rate. The maximum allowed income is \$13,362/year and your adjusted income is \$23,683/year.

We counted the following income:

	<b>Annual IRA Distributions</b>	<b>Annual Social Security</b>	<b>Annual Retirement</b>	<b>Annual Bank Interest &amp; Dividends</b>
Yourselves	\$6,610	\$17,614	\$0	\$3,468

We considered your expenses for Medicare premiums and private medical insurance which totaled \$4,426.00, but your income for VA purposes is still greater than the allowable limit. We can only consider medical expenses that are more than \$417.00 which represents 5% of your maximum annual death pension rate, \$8,359.00.

We were not able to count your fees from Emeritus as a medical expense because it can't be considered custodial care. The VA may consider a facility providing custodial care if they provide assistance with **at least two** Activities of Daily Living (ADL's). **ADL's are assistance with bathing, dressing, eating and toileting.** We do not consider access to a dining hall as assistance with eating or standing by in a hallway during showing as assistance with bathing. Also, we do not consider emergency pull cords, emergency pendants, bathroom bars and transportation to physician appointments as assistance with ADL's.

We spoke to the business office at Emeritus and we told you do not receive assistance with any ADL's. When asked if they assist you with bathing, dressing, eating or toileting, we were told you only received housekeeping, access to a dining hall and rides to physician appointments. We were also told you "do not have any level of care."

## Reapplying for Death Pension

You may reapply for death pension when:

- your income drops, *or*
- the medical expenses you pay increase.

Should your circumstances change, complete and return the enclosed VA Form 21-8416, "Medical Expense Report" and VA Form 21-0518-1 "Improved Pension Eligibility Verification Report (Surviving Spouse With No Children)." To claim an income change and family medical expenses, you must return the completed forms to this office no later than December 31, 2015.

**Those are ALL of the ADL's? What about assistance with mobility? Getting in and out of bed? Assistance with showering, shaving? Cuing and redirection for appropriate behavior? How can medication management not be included on some level?**