



Frequently Asked Questions About The Agent Orange Benefits Act

What is the *Agent Orange Benefits Act*?

President Clinton signed the *Agent Orange Benefits Act*, Public Law 104-204, into law in 1996. The law established a benefits package for Vietnam veterans' children who were born with spina bifida, possibly as a result of exposure of one or both parents to herbicides during active service in the Republic of Vietnam during the Vietnam era. The *Agent Orange Benefits Act* authorized the Department of Veterans Affairs to provide certain benefits effective October 1, 1997. These benefits include lifetime health care services for spina bifida and "any disability associated" with spina bifida, a monthly monetary allowance ranging from \$200.00-\$1,200.00, and Veterans Affairs (VA) vocational training/rehabilitation services. The VA defines spina bifida as *all* forms of spina bifida (except spina bifida occulta).

What is the History of the *Agent Orange Benefits Act*?

In 1993, the National Academy of Science (NAS) report entitled *Veterans and Agent Orange – Health Effects of Herbicides Used in Vietnam* concluded there was "inadequate or insufficient evidence" to determine whether an association exists between exposure to herbicides used in Vietnam and birth defects among offspring. An update to the report, published in 1996, concluded that there was "limited/suggestive evidence" of an association between exposure to herbicides used in Vietnam and spina bifida. On July 25, 1996, The VA introduced legislation that would provide an "appropriate remedy" for Vietnam veterans' children who suffer from spina bifida. The *Agent Orange Benefits Act* became public law 104-204 on September 26, 1996, when it was signed by President Clinton.

Who is Eligible to File a Claim for Benefits under the *Agent Orange Benefits Act*?

If you can answer “yes” to **ONE** of the following questions, you should submit an application (VA Form-21-0304) to the Department of Veterans Affairs.

Are you a Vietnam veteran who has a natural born child with spina bifida?

If so, apply for benefits on behalf of your child if your child is under 21 years of age.

OR

Are you a natural born child of a Vietnam Veteran and have spina bifida?

If so, apply for benefits on behalf of yourself if you are over 21 years of age.

How is the Term “Vietnam Veteran” Defined for Purposes of Eligibility under the *Agent Orange Benefits Act*?

This has been a confusing question since the passage of the law. For purposes of the *Agent Orange Benefits Act*, the term “Vietnam veteran” means a veteran who performed active military, naval, or air service in the Republic of Vietnam (RVN). Service in RVN includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the RVN. Spraying of Agent Orange is believed to have begun on January 9, 1962 and Congress also made this the operative date for purposes of the VA program for children with spina bifida. A child conceived prior to January 9, 1962 would not likely be approved for benefits by the VA.

If I Believe I Meet the Eligibility Criteria, How Do I Apply for Benefits?

Call the Department of Veterans Affairs at 1-800-827-1000. You will be asked for your address and you will be sent the relevant application forms. The application form you receive will provide you with the address and phone numbers for your VA regional office. The VA regional offices, which exist under the VA’s Veterans Benefits Administration, process applications for benefits and make determinations. It is suggested that you send the form via certified mail, so that you could prove the date of application should the VA misplace your application form.

Proof that verifies that the applicant/beneficiary is the child of a Vietnam veteran (usually DD Form-214), proof that the child was conceived by the veteran after service in Vietnam began (usually birth certificate will suffice), and proof that the child was born with spina bifida (a doctor’s statement) are required. Proof of the degree of disability will require more detailed medical evidence. Documentation of those factors will be addressed in the materials you receive from the VA.

What Happens After I Submit My Application to the VA?

After you submit your completed application to the VA regional office, the regional office will determine general eligibility. Notification regarding eligibility will come to you as the applicant/beneficiary. Assuming you receive an eligibility letter, you must then contact the VA’s

Health Administration Center in Denver, CO to register for your health care benefits. This office can be reached by phone at **1-800-733-8387**. It is important that you notify the VA's Health Administration Center. The VA Health Administration Center is responsible for the administration of the VA Spina Bifida Health Care Benefits Program.

What Are the Benefits Under the *Agent Orange Benefits Act*?

There are **three primary benefits** available to qualified individuals under the *Agent Orange Benefits Act*. The benefits include: (1) health care for services for spina bifida and "any disability associated" with spina bifida, (2) a monthly monetary allowance, and (3) VA vocational training/rehabilitation benefits. If you are eligible for benefits, you are automatically entitled to benefits in all three areas regardless of your level of disability (Level I, II or III). A description of the three benefit categories is listed under the monthly monetary allowance section below.

(1) HEALTH CARE: Health care benefits available under this program are specific to those necessary for the treatment of spina bifida and related medical conditions. The *Agent Orange Benefits Act* does **not** cover health care unrelated to spina bifida. It is imperative to maintain your present insurance or purchase a supplemental policy to cover those official visits or medical conditions unrelated to spina bifida. Beneficiaries may select the provider of their choice as long as the provider is appropriately licensed/certified and is practicing within the scope of that license/certification. In most instances you can continue to use your own health care providers. Some services require pre-authorization, however. Detailed information regarding coverage is provided by the VA to the applicant once the applicant has been determined eligible for benefits.

The regulations provide the VA to be the exclusive payer for services rendered under the spina bifida regulations. **Eligibility for VA spina bifida health care benefits is limited to Vietnam veterans' birth children who have been diagnosed with spina bifida.** This program is designed solely for the children of veterans, not the veterans themselves.

In addition to basic health care services relevant to spina bifida, benefits also include coverage for out-patient care, preventive care, nursing home care, hospital care, durable medical equipment, respite care, home care, habilitative and rehabilitative care, pharmaceuticals, direct transportation costs to and from approved health care providers and mental health services. The VA will send a comprehensive benefits packet to the beneficiary detailing available services.

The beneficiary will be issued a health care ID for use at medical visits. Payments are made directly to the health care provider based on a bill submitted to the VA Health Administration Center by the health care provider. The Health Administration Center reviews and authorizes payments.

For answers to questions regarding health care benefits, call the Health Administration Center toll free at **1-800-733-8387**.

It does not matter what type of discharge the veteran received while serving in Vietnam. Healthcare will be provided to the beneficiary based on the veteran's service in Vietnam.

(2) MONTHLY MONETARY ALLOWANCE: When applying for monthly benefits, the VA will determine the appropriate disability rating for the beneficiary based on an assessment of the level/category of disability as demonstrated by supporting documents that are submitted by the beneficiary. There are three levels of ratings and your level of monthly monetary compensation will correspond to your level/category of disability. You can only be in one level/category. The VA will adjudicate your claim solely on the evidence of disability that the applicant/beneficiary submits for review. It is important to educate your physician on the VA rating system so proper documentation is submitted to support the appropriate level of disability. The VA will accept statements from private physicians or examination reports from government or private institutions for the purpose of rating spina bifida claims without further examinations, if the statements or reports are adequate in assessing the level of disability due to spina bifida. The rating system evaluates the orthopedic, urological and neurological systems of the applicant. The following is the latest (March 2000) information from the VA:

Level I: (Approx. \$200.00/month) The individual walks without braces or other external support as his or her primary means of mobility in the community, has no sensory or motor impairments of the upper extremities, has an IQ of 90 or higher, and is continent of urine and feces without the use of medication or other means to control incontinence.

Level II: (Approx. \$700.00/month) Provided that none of the disabilities is severe enough to warrant payment at Level III, and the individual is characterized by at least one of the following: (1) walks with braces or other external support as his or her primary means of mobility in the community; (2) has sensory or motor impairment of the upper extremities, but is able to grasp pen, feed self, and perform self care; (3) has an IQ of at least 70 but less than 90; (4) requires medicating or other means to control the effects of urinary bladder impairment and is unable to remain dry for at least three hours at a time no more than two times per week during waking hours; or (4) requires bowel management techniques or other treatment to control the effects of bowel impairment but does not have fecal leakage severe or frequent enough to require wearing of absorbent materials.

Level III: (Approx. \$1,200.00/month) The individual is characterized by at least one of the following: (1) uses a wheelchair as his or her primary means of mobility in the community; (2) has sensory or motor impairment of the upper extremities severe enough to prevent grasping a pen, feeding self, and performing self care; (3) has an IQ of 69 or lower; (4) despite the use of medication or other means to control the effects of urinary bladder impairment, is unable to remain dry for three hours at a time at least three times per week during waking hours; (5) has fecal leakage severe or frequent enough to require daily wearing of absorbent materials, despite bowel management techniques or other treatment to control the effects of bowel impairment; or (6) regularly requires manual evacuation or digital stimulation to empty the bowel.

If an individual who would otherwise be paid at Level I or II has one or more disabilities such as blindness, uncontrolled seizures, or renal failure that result either from spina bifida or from treatment procedures for spina bifida, the Director of Compensation and Pension Services may increase the monthly payment to the level that best represents the extent to which the disabilities resulting from spina bifida limit the individual's ability to engage in ordinary day-to-day activities, including activities outside the home.

(3) VOCATIONAL TRAINING: Under this program, VA will pay all costs of any training, including tuition, fees, books, supplies, and equipment. After receipt of the initial eligibility letter from the VA, a letter should be written by the applicant to the Vocational Rehabilitating and Counseling Division at the nearest VA regional office.

Include in the applicant's letter: 1) A statement of desire to take part in vocational training for children with spina bifida; 2) Full name, address and daytime telephone number; 3) VA file number of the applicant; 4) Full name and VA file number of the parent on whom the claim for a monetary allowance for spina bifida was based; and 5) Signature and date. The VA will arrange an appointment for an evaluation of feasibility to achieve the vocational goal.

What Happens if I Believe My Initial Claim Was Not Properly Evaluated by the VA Regional Office?

Once a rating for monetary allowance is received and if you believe the claim has not been properly adjudicated, you have the right to appeal the decision. When you receive your letter stating eligibility, you will receive a standard VA Notice of Procedural and Appellate Rights as attachment to benefit award letter. The appeal goes to the Board of Veterans' Appeal (BVA) and then to the Court of Veterans' Appeals (CVA). **Free Veteran Service Organization representation is available at the VA Regional Offices and at the BVA. SBAA cannot file an appeal.** You must appeal directly to the VA. If you feel that you need support in the appeal process, you should contact an advocate at one of the national veteran service organizations. A list of these organizations follows. Local phone books also lists these organizations.

What If I Believe My Health Care Claim Was Unfairly Adjudicated by the VA Health Administration Center?

A beneficiary, beneficiary's representative or health care provider who disagrees with a health claim determination can request reconsideration of the disputed determination. The request for reconsideration must be in writing, accompanied by a copy of the Explanation of Benefits (EOB); state the specific issue that is being disputed and the reason the VA determination is considered to be in error, and include any new, relevant information not previously considered. **SBAA cannot file your appeal.** Requests for reconsideration must be submitted within one year of the initial EOB and be mailed to the following:

Chief, Administrative Division
VA Health Administration Center
PO Box 65025
Denver, CO 80206-9025

If the beneficiary is not satisfied with the result of the appeal, the beneficiary can appeal within 90 days, to the above address, ATT: Director. A further appeal can be made to the Board of Veterans' Appeals.

SBAA recommends that the services of an advocate from one of the National Service Organizations listed at the end of this fact sheet is used if an appeal is filed.

Will the Money Received From the VA Affect Any Other Federal Benefits Received by the Beneficiaries?

No. The monthly allowance will not be considered income or resources in determining eligibility for, or the amount of, benefits under any federal or federally assisted program.

Why is Spina Bifida Occulta Excluded as a Type of Spina Bifida?

The VA made the decision not to include spina bifida occulta in the benefits package.

In establishing rules to determine the monthly monetary allowance, the VA indicated that “neurological deficit is the main determinant of disability for a person with spina bifida.” Spina bifida occulta rarely affects the nervous system and it is estimated that up to 25% of the population may have spina bifida occulta.

What if My Health Care Provider will not Accept the VA ID Card?

All health care providers approved by HCFA/Medicare, CHAMPUS/TRICARE, CHAMPVA, JCAHO, or any other health care provider approved for licensing should accept the VA Health Card. If your provider does not accept the card, you may submit your claim directly to the VA Health Administration Center, PO Box 65205, Denver, CO 80206-9025.

Approved providers will be paid 100% of the VA determined allowable charge for covered services. VA payment for covered services constitutes payment in full. Federal regulations prohibit providers from seeking any additional payment from beneficiaries and third party private insurers for services paid by the VA.

What is the *Women Vietnam Veterans’ Children’s Birth Defect Benefits Act*? Can I Receive Benefits Under Both Laws?

The answer to the second question is NO. This piece of legislation was signed into law in 2000 and was modeled after the *Agent Orange Benefit’s Act*. This Act provides benefits to children of women Vietnam veterans whose children suffer from certain types of birth defects, **with the exception of spina bifida**. “The law applies to any birth defect, other than spina bifida, which result in permanent physical or mental disability, except for a birth defect resulting from a familial disorder, birth related injury, or fetal or neonatal infirmity with well established causes. Where affirmative evidence is established that a particular birth defect suffered by an individual resulted from a cause other than the service of the individual’s mother in the Republic of Vietnam during the Vietnam era, the provision of health care or other benefits under this subchapter is not authorized.” The law provides for a monthly allowance, health care benefits, and vocational and rehabilitation training for the children of women Vietnam veterans.

Where Can I Go for Support to File Appeals and Understand my Legal Rights if I Believe my Claim has been Unfairly Adjudicated?

There are a number of Veteran National Service Organizations that will provide guidance and support in interpreting the *Agent Orange Benefits Act*. These national service organizations are your advocates and will work with you to file an appeal or answer many of the technical questions you have about benefits.

You may get a referral from the VA regional office or call the national service organization directly yourself.

NATIONAL SERVICE ORGANIZATIONS

American Legion

<http://www.legion.org/aboutal/about.htm>

Disabled American Veterans

807 Maine Ave., S.W.
Washington, D.C. 20024
(202) 554-3501
<http://dav.org/>

Paralyzed Veterans of America

801 Eighteenth Street, NW
Washington, DC 20006-3517
PVA Health Care Hotline
(800) 232-1782
PVA National Headquarters
(800) 424-8200
<http://www.pva.org/>

Veterans of Foreign Wars

406 West 34th Street
Kansas City, Missouri 64111
(816)756-3390 - FAX (816)968-1149
<http://www.vfw.org/home.shtml>

Vietnam Veterans of America

8605 Cameron Street, Suite 400
Silver Spring, Maryland 20910-3710
(301) 585-4000, Fax (301) 585-0519, 1 (800) VVA-1316
<http://www.vva.org/>

LEGAL SERVICES

National Veterans Legal Services Program

Specialize in legal issues and referrals

Main Line: (202) 265-8305

Agent Orange Resource Center: (202) 797-8364

Email: aorc@nvlsp.org

Website: <http://www.nvlsp.org>

The VA has set up a new hotline to answer veterans' questions about health care benefits for their children who have spina bifida. The number for the hotline is 1-888-820-1756. Callers can speak to a benefits advisor Monday through Friday, from 10 am to 1:30 pm, and from 2:30 pm to

4:30 pm, Eastern Time. For general information on the VA's spina bifida program, visit the VA website at <http://www.va.gov/hac>.

You may also visit the Spina Bifida Association of America's website: www.sbaa.org for more information on Agent Orange benefits and the *Agent Orange Benefits Act of 1996*.

***As of yet, the VA has not approved benefits for the grandchildren of Vietnam Veterans, but a list is being compiled which will be given to the VA demonstrating that Agent Orange can be transferred to the third generation as well. If you would like to add your name to the list, please e-mail: sbaa@sbaa.org.

Questions?

Call (800) 621-3241

URL: <http://www.sbaa.org>

This information does not constitute medical advice for any individual. As specific cases may vary from the general information presented here, SBAA advises readers to consult a qualified medical or other professional on an individual basis.

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