



President's Corner

By Robert Pecoraro
Col U.S. Air Force (Retired)

Greetings to the WNYMOA members. I am proud and thank you for your outstanding contributions to the local organization and its national advocacy. This winter we have seen an above average snowfall and cold temperatures however, Spring is on the way and we have a lot to look forward. This newsletter highlights the outreach and partnership with The Veteran's One Stop on 18 May, the Armed Forces activities in May, and finally the Chapter's information on hosting the annual combined party with the Royal Niagara Military Institute along the Erie Canal on 3 August. I hope to see many of you at these events and others when more information becomes available. Please check back on the website for all updates.

Veteran One Stop Support on Saturday, 18 May 2019

As a function of my number one initiative to partner/support other Veteran organizations in Western New York, the Veteran's One Stop (VOC), the preeminent Veteran Support agency in the region, will be holding a BBQ Chicken Dinner (leg/thigh, Mac and cheese, baked beans, roll) on 18 May from 1–3 p.m. supported by Jamie's Ice Cream, Smoking Eagles, and Wurlitzer Pizza. Tickets are \$10 per meal and you can obtain a ticket by email (pecoraror@aol.com) or call 716-696-2851 me (Bob Pecoraro's contact info). Please make out your checks to the Veteran's One Stop. The meals can be picked up at Jamie's Ice Cream located at 1401 Nash Road in North Tonawanda. Our goal is to sell 500 tickets earning the VOC \$5K - all the food/preparation is being donated by Jamie's Ice Cream, Smoking Eagles, and Wurlitzer Pizza. If you would like to volunteer for this support, please contact me at the above information.

Community Engagement

By Jamie Scotland
Lt Col, USAF (Ret)

As you may know, MOA of WNY has established a partnership with the Veterans One-Stop Center of WNY (VOCWNY). VOCWNY brings resources and organizations together to improve the well-being of veterans, service members and their families across Western NY. Our MOAA chapter recently submitted a \$5,000 grant request to MOAA National in support of one of VOCWNY's many programs. This particular program is called Operation Children of the Military (OpCOM), a free program available to all military families. OpCOM helps children and families adjust to military deployments and reunifications, while strengthening family bonds. It is a peer-based supportive service program that combats the stressors of military life for children.

OpCOM connects military families to each other in a safe and stable environment, using social outings, arts and crafts, and fun activities to foster positive behavior and coping skills in military children while building healthy relationships. Every event is free and open to all military families, cultivating relationships between family members and others in similar situations. We will find out if the grant was awarded in April. Please let me know if you'd like to volunteer to help support OpCOM or any of the other valuable VOCWNY services.

Membership Report

By Jerome Privitera
Maj U.S. Army (Retired)

Our Board Director Fr. Michael Zuffoletto was appointed by Bishop Malone in February to be the Pastor of St. Anthony's Parish in Buffalo behind City Hall for a period of 6 years.

Membership Report:

As of 31 January 2019 we have 186 members in our Chapter according to MOAA National. We have 156 members who belong to MOAA National out of 186 members, which gives us a percentage total of 83.87%. We have 64 Auxiliary members in our Chapter.

ARMED FORCES WEEK

Opening day ceremony is Sunday 5 May at Riverworks which starts at noon and is free.

Luncheon is Thursday 9 May at 12 noon at Salvatore's Italian Gardens. Ticket cost is \$30.00 per ticket.

For Luncheon Tickets:

- Credit Card purchase:
<https://www.eventbrite.com/e/59th-western-new-york-armed-forces-week-military-luncheon-tickets-50441110720>

- Check or Money Order Purchase:
<https://docs.google.com/forms/d/e/1FAIpQLSd9HkTBB6xiLP9gccmbBola1KV6RCGQB3PPmClwKGxd7JUKuw/viewform>
- From an Armed Forces Week Committee Member either in person or by going to www.wnyafw.com and selecting the WNYAFW Luncheon Ticket by Mail Form (word) link:

Ball is Saturday 18 May at 6:00 PM at Salvatore's. Ticket cost is \$50.00 per ticket.

For Ball Tickets:

- Credit Card Purchase:
<https://www.eventbrite.com/e/59th-western-new-york-armed-forces-week-military-ball-tickets-50413328623>
- Check or Money Order Purchase:
- https://docs.google.com/forms/d/e/1FAIpQLSdC26fKYqL3td_HwXcmCoKK8PQe5LWgk81YjmORtABRgWRYyg/viewform
- From an Armed Forces Week Committee Member either in person or by going to www.wnyafw.com and selecting the AFWAFW Ball Ticket by Mail Form (word) link

There are three ways you can order your tickets:

- a. On-line using a credit card
- b. On-line using a check or money order
- c. From an Armed Forces Week Committee Member-George Boller, or Marge Price.

Personal Affairs

By Richard A. Scalfani
CWO4 U.S. Army (Retired)

TAPS:

The following chapter members died in previous years and were in good standing at the time of death.

Maj Eugene J Burke, USAF (Ret.)
Died April 16, 2015.

LCDR William J Barnes, USN (Ret.)
Died June 12, 2016

WELL WISHES:

As always, we wish all chapter members that are experiencing health or other life issues a speedy recovery and successful resolution of other issues.

Currently, **COL Richard H. Peters, USA (Ret.)** and his wife, **Delores**, are both experiencing health issues, along with **LTC Joseph Caruso, USA (Ret.)**.

ITEMS OF INTEREST:

Retirees Subject to the UCMJ:

The U.S. Supreme Court has upheld the Defense Department's authority to prosecute retired service members for crimes they commit, even after retirement. The court chose not to hear the case of a retired Marine who was court-martialed for a sexual assault he committed three months after leaving the service in August 2015. By not accepting the case, *Larrabee vs. the United States*, the court upheld the status quo: that military retirees are subject to the Uniform Code of Military Justice.

The case closely resembles that of another retired Marine on the Fleet Marine Corps Reserve list and, later, the Active Duty Retired List, was found to be in possession of and producing child pornography. He was arrested and initially indicted within the civilian courts, but his case ended up in the military court system, where he was convicted and sentenced to nine years' confinement and a dishonorable discharge.

He appealed his discharge, arguing that the case should not have fallen under the military court system and that a dishonorable discharge should be reserved for "those who separated

under conditions of dishonor." His challenge also was petitioned to the U.S. Supreme Court. It was denied last June.

Attorneys for both Marines argued that the cases should have been considered by the U.S. Supreme Court because they have far-reaching consequences for military retirees. The law stipulates that "retired members of a regular component of the armed forces who are entitled to pay" and "members of the Fleet Marine Corps Reserve" are subject to court-martial jurisdiction. The reasoning, the government argues, is that retirement is simply a change of military status and retired personnel are subject to recall should the need arise the attorneys for both argue that this argument no longer holds true with the rise of the reserve component. They called the idea that retirees are reserved for future service "anachronistic," adding that military retirees are no longer among the "pool of persons at the ready" and thus should not be subject to the UCMJ.

"Increasingly, the function has been performed by reserves, not retirees," Furthermore, there are articles in the UCMJ that could place military retirees at risk for arrest, and the U.S. Supreme Court has an interest in weighing in on how cases involving retirees are handled. They cite one provision in the UCMJ that makes "contemptuous words" used by a commissioned officer "against the President, the Vice President, Congress" and others as punishable by court-martial. "From Adm. Bill McRaven to Gen. Michael Hayden and Gen. Martin Dempsey, some of President Donald Trump's more visible critics of late have been retired military officers. and a provision of federal law makes it a crime, triable by court martial,"

"But does the Constitution really allow the government to subject to military trial those who have retired from active duty—in some cases, long ago—even for offenses committed

while they are retired?" Yes, it does, according to the Supreme Court. Retired Maj. Gen. Charles Dunlap, former Deputy Judge Advocate General of the Air Force, concurs. He said Congress explicitly states that the UCMJ applies to retirees and that arguments about the impropriety of senior officers speaking out against the President, as well as the "anachronistic" idea that retirees can be recalled to active duty, aren't valid.

He added that the very act of receiving retired pay means that retired personnel are choosing to keep a relationship with the military and accept all that goes with the choice not to terminate their commission or request a discharge." As a retired service member subject to military jurisdiction, count me among those of my comrades-in-arms who believe it a small price to pay to maintain the connection with the armed forces," Dunlap wrote. Meanwhile, the Supreme Court's refusal to hear the case may not be the end of the legal road for the retired Marines. They may consider suing for back pay in the Court of Federal Claims believing they are entitled to do so under the Military Pay Act. Source: Military.com

H.R.1151/S.445 | Veterans Medical Marijuana Safe Harbor Act:

Sen. Brian Schatz (D-HI) and Rep. Barbara Lee (D-CA) reintroduced legislation to let Veterans Affairs doctors prescribe medical marijuana in the 33 states where it's legal. The bill also would direct VA to research how medical marijuana might help manage chronic pain and reduce opioid misuse. "There is now abundant evidence that, where medical marijuana is available, opioid abuse goes down," Schatz said. "When I asked the VA administrator about that question, I was expecting resistance but I got the opposite—he agreed and believed that it was worth further study." The bill has a chance to pass Congress: The Veterans Medical Marijuana

Safe Harbor Act, (116)/H.R. 1151 (116), is also backed by numerous veterans' organizations and pain groups. "It will be difficult for even the most ardent cannabis opponents to deny veterans access to cannabis, especially considering worries about opioid addiction."

Navy will Return to Flying the "Union Jack"

The resurgent "great power competition" at sea now officially trumps the Global War on Terror—at least on U.S. Navy ships. Starting with morning colors on 4 JUN, the Navy will return to flying the "Union Jack," a small blue flag emblazoned with the stars of the 50 states (lower left)—identical to the top left corner of the national ensign—from their jack staffs, small flagpoles mounted on the bows of all Navy vessels when in port or at anchor.

Announced in NavAdmin message 039/19 and a Navy press release on 21 FEB, the policy change returns the "First Navy Jack"—and its "Don't Tread on Me" rattlesnake slithering across thirteen red and white stripes (upper right)—to its former role of signifying the oldest commissioned warship in the operational fleet. It currently flies from all Navy jackstaffs. "The Union Jack is deeply connected to our heritage and our rise as a global nation with a global Navy," said Chief of Naval Operations Adm. John Richardson in his released statement. "The Navy is a symbol that projects American values to the world. Just as the Navy embodies the values and principles that we hold dear, our very appearance in port and at anchor communicates important messages." The U.S. Navy's Union Jack shouldn't be confused with the United Kingdom's national flag of the same name.

Richardson's swap out wasn't supposed to happen until the Global War on Terrorism ended. Then-Secretary of the Navy Gordon England ordered all U.S. Navy ships to fly the

First Navy Jack starting on Sept. 11, 2002, the first anniversary of the terror attacks in the United States by Al Qaeda.

But after more than 17 years of war and with the Navy shifting from supporting counterinsurgency operations in Iraq, Syria, Afghanistan, Somalia and other parts of the world to confronting rising rivals, especially in Asia and Europe, Richardson moved to refocus the symbolism of the flag, too.

The June 4th date to switch out the flags also is deeply meaningful to both the Navy and the nation it protects. This year, it marks the 77th anniversary of the beginning of the Battle of Midway. That victory over the Japanese turned the tide of World War II in the Pacific and restored America's Navy as the dominant maritime force in the vast region. "Make no mistake: we have entered a new era of competition," Richardson said in the release. "We must recommit to the core attributes that made us successful at Midway: integrity, accountability, initiative, and toughness."

The Union Jack became the standard "Navy Jack" on June 14, 1777. And except for a symbolic 14-month period during the 1976 U.S. Bicentennial celebrations, it was in constant U.S. Navy service. The only change was a gradual expansion of the numbers of white stars on the banner as more states joined the union. As for the "rattlesnake jack," come June 4 it will be proudly flown on the USS Constitution, the wooden-hulled frigate that's the world's oldest commissioned warship still afloat, and the Blue Ridge, the Japan-based flagship of the 7th Fleet. Before Gordon England's 2002 policy shift, that honor fell to the now-decommissioned aircraft carrier Kitty Hawk. Richardson's message indicated that sailors will still be allowed to sport the First Navy Jack patch on the upper left sleeve of both the Type II and Type III Navy Working Uniforms.

Tricare Marriage QLE:

Getting married? Congratulations! You and your family members may experience changes in TRICARE eligibility and coverage after getting married. A change in family composition, such as marriage, is a TRICARE Qualifying Life Event (QLE). QLEs are certain life changes, like getting married, moving, giving birth, adopting a child, or retiring. QLEs may mean different TRICARE health plan options are available to you and your family.

A QLE allows you to make changes to your health plan enrollment outside of the fall annual Tricare open season.

Following any QLE, you have 90 days to enroll in a new TRICARE health plan or change your health plan coverage, if you choose. New spouses have 90 days from the date of the marriage to enroll in TRICARE, if they choose. Otherwise, they can enroll following another QLE or during open season. A QLE for one family member creates a QLE for all family members. This means any new eligible family members can also make an eligible health plan enrollment change within 90 days of the QLE. That means stepchildren are also eligible for TRICARE benefits following the marriage and can now enroll within the same 90-day period. No matter when you initiate the health plan enrollment change following a QLE, coverage starts on the date of the QLE. Your health plan coverage will continue unless you lose eligibility or disenroll from the plan.

After you get married, register your new spouse in the Defense Enrollment Eligibility Reporting System (DEERS). This step makes him or her show as TRICARE-eligible. You can go to any ID card office to add your spouse to DEERS. You'll need to bring either originals or certified copies of the following documents:

- Marriage Certificate
- Spouse's Birth Certificate
- Spouse's Social Security card
- Spouse's photo ID

Your spouse's TRICARE health plan options will depend on your military status and your location. Keep in mind that different family members may be eligible for different plans. If your marriage changes your family composition in terms of children, your children are eligible for TRICARE until age 21 (or 23 if in college). At age 21 or 23, he or she may qualify to purchase TRICARE Young Adult. This includes unmarried biological children, stepchildren, and adopted or court-placed children. Sponsors don't always adopt their stepchildren. The marriage to the stepchild's parent is the QLE that will allow the stepchild to enroll.

To get TRICARE coverage for your kids, you must first register them in DEERS at your local ID card office. You'll need to show a certificate of birth or adoption and submit DD Form 1172-2. Find the form and other required documents to update DEERS on the TRICARE website. Once registered in DEERS, you may choose a TRICARE plan for your children. Remember, enrollment is required to participate in a plan. After registering in DEERS and choosing a plan, be sure to follow the steps to enroll your spouse or children in a TRICARE plan. If you have questions, call your regional contractor.

AGING CARE:

Long-Term Care Medicaid Guidelines for Homeowners:

The basic rule is that a person's primary residence is an exempt asset and therefore will not be counted when they apply for Medicaid. However, when a senior specifically applies for Medicaid coverage of long-term care services, including nursing home care, their equity interest in their home must fall below

\$585,000 to be considered exempt in 2019. Some states, especially those with high property values, have chosen to raise this limit to \$878,000. Equity interest is the Medicaid applicant's interest in the equity value of the home (fair market value (FMV) minus any debts secured by the home).

If a Medicaid applicant is married and their spouse continues to live in the home (officially making them the "community spouse"), then the home is exempt regardless of its value. Furthermore, some states require that the Medicaid applicant indicate orally or in writing that they "intend to return" to their home should they ever become physically able to do so, regardless of how unlikely this may be. If the applicant is unable to understand or communicate this, then a family member can communicate this intention to the state Medicaid workers.

Note that, although the house may be exempt at the time the owner applies for Medicaid, a few states will begin to count the house once six months have passed, if it is clear the owner will never be able to return to the house based on a physician's examination and conclusion. However, this is the minority position. In most states the house will continue to be exempt for the duration of the Medicaid recipient's lifetime.

Medicaid Estate Recovery Program:

Upon the death of a Medicaid recipient, the state may seek repayment of its outlays for the senior's long-term care. This has become increasingly common as more seniors require long-term care but do not have the personal funds to pay for it. The Medicaid Estate Recovery Program (MERP) recoups this money by filing claims against any assets a Medicaid recipient held an interest in at the time of their death, such as a home. However, if a senior died without any assets (or with very few assets), then there is no way for the state to be repaid.

As a very basic example, say Mom was in a Medicaid-certified nursing home for two years and the state paid the nursing home \$4,000 each month for her care. Once Mom passes away, MERP will file a claim against her estate in the amount of \$96,000 (\$4,000 x 24 months). If Mom's house was still in her name at the time of her death, then to repay the state the \$96,000, the house will have to be sold. Any amount of proceeds exceeding the \$96,000 can then be distributed in accordance with Mom's will.

Each state handles MERP a little differently, and cases are often determined on an individual basis because they are so unique. I strongly advise families who are trying to achieve or maintain Medicaid eligibility for an aging loved one to seek out a reputable attorney with plenty of experience in Medicaid and estate planning strategies. Unless a senior has very low income and no assets, legal assistance is necessary to ensure all steps have been taken and prevent any surprises down the road.

In summary, the general rule is that, while a senior is alive, their home will not be "taken" or required to be sold to pay the nursing home or the state government. However, their home may need to be sold to repay the state after their death.

VA Pension Provides Veterans with Supplemental Income:

The U.S. Department of Veterans Affairs (VA) is probably most well-known for providing veterans with health care coverage and medical services, but the VA also offers a wide array of other benefits to servicemembers and their families. One such program provides qualifying vets with a monthly monetary benefit to supplement their income. This benefit is known as the basic veterans' pension.

Eligibility Requirements for the Veterans Pension:

There are several eligibility requirements that veterans must meet to qualify for the VA pension program. The first and simplest requirement is that a veteran must have received a discharge other than dishonorable. All other requirements are described in detail below.

Wartime Service Requirements:

The veteran must have served at least 90 days of active military, naval or air service, with at least one day taking place during a recognized period of war. The VA recognizes the following wartime periods:

- **Mexican Border Period:**
May 9, 1916–April 5, 1917, for veterans who served in Mexico, on its borders or on adjacent waters
- **World War I:**
April 6, 1917–November 11, 1918
- **World War II:**
December 7, 1941–Dec. 31, 1946
- **Korean Conflict:**
June 27, 1950–January 31, 1955
- **Vietnam Era:**
February 28, 1961 – May 7, 1975, for veterans who served in the *Republic of Vietnam* during that period; otherwise August 5, 1964–May 7, 1975
- **Gulf War:** August 2, 1990, through a future date to be set by law or Presidential Proclamation.

(Veterans who entered active duty after September 7, 1980, must have either served 24 months or the full period for which they were called into active duty with at least one day during a wartime period defined above.)

Financial Requirements

Because this pension is intended to

supplement the income of financially needy veterans, it makes sense that the VA requires applicants to demonstrate their financial need. Prior to October 18, 2018, the VA used a household income cap to determine if applicants were eligible for pension and, if so, the amount they were eligible to receive. There was no set maximum amount of assets that an applicant could have, which resulted in claims processors inconsistently and arbitrarily approving and denying applications. To eliminate these inconsistencies, the VA has switched to using an applicant's net worth to determine financial eligibility.

The VA chose to use Medicaid's maximum community spouse resource allowance (CSRA) as the new bright-line net worth limit for needs-based benefits like the veterans' pension. As of October 2018, the maximum CSRA is \$123,600. Like social security benefits and the CSRA, a cost-of-living adjustment will be made annually to the VA's net worth limit to ensure these numbers keep pace with inflation. In order to qualify for a VA pension under the new rules, an applicant's net worth (assets plus annual income) must be less than or equal to the maximum CSRA.

Certain assets are not included in the VA's net worth calculation, such as an applicant's primary residence of any value (regardless of whether they currently live there, in a family member's home or in a long-term care facility) and an applicant's personal effects that are "consistent with a reasonable mode of life" (a car, household appliances, furniture, etc.). However, there is a two-acre limit to the size of the lot area upon which an applicant's primary residence is located. Any additional marketable acreage and properties are considered assets by the VA.

Additionally, unreimbursed medical expenses that exceed five percent of the current

maximum annual pension rate (MAPR) are used to reduce an applicant's countable income. At first glance, an applicant may appear to have excessive income and assets, but if he or she is very ill and requires extensive care, these medical expenses can greatly reduce his or her financial resources. Factoring in high health care costs allows veterans in need to qualify financially for benefits like the basic pension.

The VA will calculate (or recalculate) a claimant's net worth when it receives a new pension claim, a secondary claim following a period of non-entitlement, a request to establish a new dependent, or finds information that an applicant's net worth has increased or decreased. An example of a change in information would be the income tax reporting that is required whenever anyone sells real estate, such as a house.

Keep in mind that beginning October 18, 2018, the VA has established a 36-month look-back period for disqualifying transfers and an associated penalty period not to exceed five years for applicants who dispose of assets for less than fair market value in an attempt to qualify for pension.

Functional Requirements

The VA enforces certain functional requirements for recipients of this pension to ensure that vets who are unable to work, whether due to disability or age, receive the financial assistance they deserve. An eligible applicant must meet at least ONE of the following criteria:

- At least 65 years old.
- Permanently and totally disabled (non-service-connected).
- Living in a nursing home.
- Receiving Social Security Disability Insurance (SSDI).
- Receiving Supplemental Security Income (SSI)

Legislative Affairs

By Tony Caruana

Brig. General U.S. Army (Retired)

The Key Legislative Goals for MOAA in 2019 reflect many of those from the previous year. With the 116th Congress, MOAA will concentrate on issues of greatest importance to our members, the men and women in our uniformed services, their families, and their survivors. They will reintroduce legislation that was not passed in the previous legislation cycle. MOAA's national and grassroots supporters will work directly with members of Congress to ensure our interests are properly represented by proposed and reintroduced legislation.

The Top 10 Goals for 2019:

- 1 Ensure any TRICARE reform sustains access to top-quality care.
- 2 Prevent disproportional TRICARE fee increases.
- 3 Sustain military pay comparability with the private sector.
- 4 Stop erosion of compensation and non-pay quality -of -life benefits.
- 5 End financial penalties for military survivors.
- 6 End concurrent receipt penalties for military retirees.
- 7 Achieve equity of benefits for Guard and Reserve members with their active duty counterparts.
- 8 Strengthen DoD-VA collaboration and services to support wounded warriors and expanding population of women veterans.
- 9 Ensure timely access to service-earned benefits.
- 10 Protect military and veteran family support programs and policies.

All of us can help in the efforts to achieve these goals. In the latest issue of **The Military Officer magazine (March issue)** there are pre-written letters for us and our spouses to

send to our Congressional representative leaders and the leaders of the Senate and House. It is important that we send these. We have been told they have great impact on our efforts to move legislation. This issue is on ending the "Widows Tax" one of the main issues we pursued last year, and we need to push again. If you receive the MOAA email from their website and look under "widows' tax", you can see a video of the surviving Navy wife, Kathy Thorp, with whom I lobbied 15 of our NY State representatives last year when we were in DC as part of the "Storming the Hill". She is explaining the problem and importance of the issue to a local TV station in Maryland. This key issue still needs our support.

Please fill out the letters with your signature, and if possible have you spouse sign the duplicate. Also, if you can, add a personal note at the end thanking our legislators for their support. It makes it more impactful when they see our efforts with our letters.

Hopefully, this year we can finally get surviving spouses their rightful due.

Editor's Note

By JoAnne Lichwala
Editor

Winter is finally close to ending. Personally, I'm looking forward to warmer weather and being outside.

I hope to see you at some of our planned activities.

I appreciate all the inputs that make our newsletter so informative. If you have any further inputs or recommendations for future newsletters please feel free to forward them to me at: lichwala@verizon.net.