

EQUITABLE RELIEF GRANTED BY THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2010

CASE #1

The spouse of a Veteran applied for CHAMPVA benefits in June 1989. The spouse is eligible for CHAMPVA benefits if the Veteran is still alive and is rated permanently and totally disabled due to a service-connected disability and the Veteran is not otherwise eligible for Department of Defense (DoD) medical benefits. At the time the spouse submitted the application the Veteran had not yet been adjudicated permanently and totally disabled. The VA Regional Office (VARO) determined the spouse eligible for CHAMPVA. Subsequently, although the Veteran was not adjudicated permanently and totally disabled, the spouse continued to receive CHAMPVA benefits. An audit of the spouse's eligibility file in October 2007 determined that the spouse was not eligible for CHAMPVA. The Regional Office initiated collection actions against the spouse's medical providers to recover CHAMPVA payments made in error.

The failure of the VARO in not notifying the spouse when the Veteran's disability claim was adjudicated that she was not eligible for CHAMPVA benefits led to the erroneous payment of \$22,618.63 for medical treatment costs for the spouse. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) to offset or pay the debt to the spouse's medical providers under CHAMPVA.

CASE #2

In May 2009 the Veteran filed a request for automobile adaptive equipment allowance although he had already received the one-time-only automobile allowance in 1989. The VA Regional Office (VARO) informed the Veteran that he was eligible for an automobile allowance of \$11,000 in July 2009. In reliance on this determination, the Veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement. VARO responded that the allowance could not be paid as the records revealed that the veteran had received his one-time allowance in 1989.

The Secretary granted equitable relief in the amount of \$11,000 under the authority of 38 U.S.C. § 503(b) for a second allowance since the Veteran incurred a financial obligation in reliance on VARO's erroneous initial determination.

CASE #3

In June 2009 VHA discovered during an on-site quality assurance review that a programming error in the Alaska VA Healthcare System was failing to bill Veterans for copayments for services when the Veteran had a refund or prepayment on their account. VA failed to bill approximately 169 Veterans over a six year period.

The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(a) and 38 C.F.R. § 2.7 to forgo the collection of co-payments in an undetermined amount from these Veterans. If the co-payments were collected the Veterans would suffer a loss as a consequence of reliance upon a determination of the VA.

CASE #4

In June 2007 the Veteran filed a request for automobile adaptive equipment allowance although he had already received the one-time-only automobile allowance in 1975. The VA Regional Office (VARO) informed the Veteran that he was eligible for an automobile allowance of \$11,000 in July 2008. In reliance on this determination, the Veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement. VARO responded that the allowance could not be paid as the records revealed that the veteran had received his one-time allowance in 1975. The Secretary granted equitable relief in the amount of \$11,000 under the authority of 38 U.S.C. § 503(b) for a second allowance since the Veteran incurred a financial obligation in reliance on VARO's erroneous initial determination.

CASE #5

In spring 2008 the VA Regional Office (VARO) notified the Veteran he was eligible for 22 months and 26 days of entitlement under the Montgomery GI Bill (Chapter 30). The Veteran, relying on this information, paid educational expenses for spring 2009 term. In February 2009 VARO notified the Veteran his benefits had been exhausted as of September 2008.

The Veteran expended \$1,501.23 in tuition and fees for spring term 2009. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for \$1,501.23, the amount the Veteran spent on tuition and fees based on an incorrect determination by VARO as to the length of his eligibility to use Chapter 30 benefits.

CASE #6

The Veteran served on active duty in the U.S. Army from March 2007 through September 2008. In January 2010 the Veteran applied for benefits under the Post-9/11 GI Bill (Chapter 33). In February 2010 the VA Regional Office (VARO) confirmed that the veteran was eligible for 36 months of Chapter 33 benefits at the 100% rate based on her post-9/11 active duty. The Veteran enrolled in a series of course from March 2010 through June 2010 at a cost of \$6,317. In July 2010 VARO notified the Veteran her benefits would be paid at a 60% rate instead of the 100% initially determined.

The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for \$2,626,81, the difference between the amount VA would have paid had she been entitled to post-9/11 benefits under the 100% rate and the amount the VA did pay under the 60% rate.

CASE #7

The spouse of a Veteran is eligible for CHAMPVA benefits if the Veteran is still alive and is rated permanently and totally disabled due to a service-connected disability and the Veteran is not otherwise eligible for Department of Defense (DoD) medical benefits. CHAMPVA beneficiaries who are eligible for Medicare benefits must be enrolled in both Medicare Part A and Part B to retain CHAMPVA eligibility. If a CHAMPVA beneficiary fails to enroll in Medicare Part B, their CHAMPVA benefits will terminate on the start date of Medicare Part A eligibility. The spouse of the Veteran was covered under CHAMPVA when she was notified in June 2007 by Social Security Administration (SSA) that she was entitled to Medicare Part A beginning October 2004 and Medicare Part B beginning June 2008. SSA advised her that she could backdate her Medicare Part B coverage from October 2004 through May 2008 if she would pay \$3,804.20 in past premiums.

The spouse received a letter in July 2008 from the CHAMPVA Eligibility Department informing her she could be subject to debt recovery actions for payments made under CHAMPVA for the period October 2004 through May 2008, the period during which she was not enrolled in Medicare Part B. The letter also stated that if the Medicare benefits were due to a backdated award from the SSA a copy of the award should be sent to the CHAMPVA. The spouse attempted several times to obtain clarification from the CHAMPVA Eligibility Department. When she did not receive a response she arranged to have SSA withhold \$3,804.20 from her SSA disability payments to backdate her Medicare Part B coverage to October 2004. The spouse later determined that she paid this amount to SSA erroneously, as CHAMPVA requirements for Medicare Part B did not apply to the period for which an award by SSA was backdated.

The spouse mistakenly expended \$3,804.20 on Medicare Part B payments to maintain her CHAMPVA eligibility. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for the amount the spouse of the Veteran spent on to provide unnecessary backdated coverage under Medicare Part B based on information from the CHAMPVA Eligibility Department.

CASE #8

The Veteran served on active duty in the U.S. Air Force from January 2006 through November 2008. His enlistment shows he entered active duty under the College Loan Repayment Program. Under 38 U.S.C. § 3322(b), a period of service counted for purposes of the College Loan Repayment Program cannot be counted for entitlement to educational assistance under Chapter 33. In June 2009 the Veteran applied for Chapter 33 benefits which were approved by the VA Regional Office (VARO) in July 2009. The Veteran enrolled for fall 2009 courses paying tuition and fees, as well as incurring expenses for books, supplies and housing. In October 2009 the VARO notified the Veteran he was not eligible for Chapter 33 benefits since his service obligation was based on participation in the Loan Repayment Program.

The Veteran expended \$841.50 in tuition and fees, \$262.52 for books and supplies, and \$3,722.22 for housing for the fall term 2009. The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for \$4,826.24 the amount the Veteran spent on tuition and fees based on an incorrect determination by VARO as to his eligibility to use Chapter 33 benefits.

CASE #9

The Veteran served in the Army Reserves with no active duty service time. The Veteran applied for enrollment at a VA Medical Center (VAMC) in July 2009. The VAMC determined she was not eligible. In November 2009 the Veteran suffered a medical emergency while travelling and sought treatment at a different VAMC. This VAMC determined she was eligible for medical benefits and provided on-site and referral medical service for oncology and urology complaints. In February 2010 the treating VAMC determined that the Veteran was not eligible for medical benefits due to lack of active duty service time. The Veteran was billed for the medical care provided.

The Secretary granted equitable relief under the authority of 38 U.S.C. § 503(b) for \$1,541.00 the amount the Veteran was billed for her medical treatment which was provided because of the incorrect eligibility determination of the VAMC.

The Honorable Jeff Miller
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which I granted equitable relief in calendar year 2010.

The report covers one instance under 38 U.S.C. § 503(a) that involved copayments not being collected from Veterans because of administrative error by the Government. I granted relief in this case for an unknown number of Veterans.

The report also covers cases under 38 U.S.C. § 503(b) in which a VA beneficiary suffered a loss because of reliance upon an erroneous VA determination of eligibility, without knowing that it was erroneous. I granted relief in eight such cases, totaling \$58,918.11.

I believe this report fully summarizes the cases in which I granted equitable relief in calendar year 2010.

Thank you for your interest in our Nation's Veterans.

Sincerely,

Eric K. Shinseki

Enclosure

The Honorable Bob Filner
Ranking Democratic Member
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Filner:

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Eric K. Shinseki

Enclosure

The Honorable Richard Burr
Ranking Republican Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Senator Burr:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which I granted equitable relief in calendar year 2010.

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Enclosure

The Honorable Patty Murray
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Madam Murray:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which I granted equitable relief in calendar year 2010.

The report covers one instance under 38 U.S.C. § 503(a) that involved copayments not being collected from Veterans because of administrative error by the Government. I granted relief in this case for an unknown number of Veterans.

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