

The Honorable Daniel Akaka
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which equitable relief was granted in calendar year 2007.

The report covers instances where a VA beneficiary suffered a loss because of reliance upon an erroneous VA determination of eligibility, without knowing that it was erroneous. This type of relief was granted in four cases, under 38 U.S.C. § 503(b).

Specific dollar amounts awarded in these four cases total \$783,084.08.

Sincerely yours,

James B. Peake, M.D.

Enclosures

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

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James B. Peake, M.D.

Enclosures

The Honorable Steve Buyer
Ranking Republican Member
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Congressman Buyer:

In accordance with the provisions of 38 U.S.C. § 503(c), I am submitting a report covering those cases in which equitable relief was granted in calendar year 2007.

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Enclosures

EQUITABLE RELIEF GRANTED BY THE
SECRETARY OF VETERANS AFFAIRS
IN CALENDAR YEAR 2007

CASE #1

A systems problem at the Veterans Affairs Medical Center (VAMC) in Togus, Maine, resulted in an error causing 3,638 veterans to not be billed for their medication co-payment. Veterans who are 50% disabled or less are required under 38 U.S.C. § 1722A to make a co-payment to receive medications through VA. A programming error did not recognize this group of veterans as being required to make a co-payment. These veterans were not charged the required medication co-payment fees from February 1, 2006, to January 31, 2007. The error was identified in April, 2007, and the group of veterans affected were back-billed the full year's worth of co-payments they should have paid.

The untimely discovery of this problem and late notification made it impossible for the veterans to file claims under health plan contracts (health insurance) for reimbursement for most of the back-billed amount. Health insurers generally require reimbursement claims to be filed within six months from the date of service. The veterans are barred from filing claims for reimbursement for much of the back-billed amount. In addition, the lump-sum bill for a year's worth of co-payment probably placed a financial burden on veterans on fixed income.

In April, 2008, VA billed the 3,638 veterans a total of \$768,712.00 for the unpaid medication co-payment for the past year. VA was responsible for the systems problem which created the error in billing. Rather than pursue collection of the money, the Secretary granted equitable relief under 38 U.S.C. § 503(b). Efforts to collect the back-billed amount will cease and repayment will be made to any veteran who remitted the outstanding amount.

CASE #2

The veteran served three separate periods of active duty, all ending in an honorable discharge. As a result of his service the veteran was eligible for Vietnam-Era GI Bill benefits. The veteran wished to convert from Vietnam-Era GI Bill benefits to Montgomery GI Bill (MGIB) benefits. The veteran did not have the qualifying service for the conversion as he did not serve at least 3 continuous years beginning July 1, 1985. However, the Atlanta Regional Office incorrectly advised the veteran that he did qualify, and the veteran enrolled half-time at Strayer University in the fall of 2005. On October 18, 2005, the veteran reduced his course load to quarter-time, receiving a punitive grade for the incomplete courses. In January 2006, a VA Regional Processing Office determined that the veteran was not eligible for MGIB benefits.

As a result of an erroneous decision by VA, the veteran enrolled in a degree program incurring expenses of \$2,537.19. Under MGIB the veteran would have received \$1,351.72 for his fall 2005 enrollment. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$1,351.72.

CASE #3

The dependent of a veteran submitted an application under the Chapter 35 (Dependents' Educational Assistance) educational benefits program. The dependent submitted an enrollment form in May 2005, with an Enrollment Certificate from the VA certifying official at the educational institution. The dependent enrolled in an interior design course at a university in the United Kingdom. In October 2005, the Regional Office notified the certifying official that approval for the interior design program had been withdrawn effective February 2002. The interior design program was determined to be a technical course rather than an educational program offered at an institution of higher learning.

The Enrollment Certificate submitted in May 2005, had not been processed as of the decision to de-certify the program of study in October 2005. As a result, all expenses incurred by the dependent since May 2005, were disallowed.

As a result of an erroneous decision by VA, the dependent enrolled in the interior design program with the expectation she would receive chapter 35 benefits. She incurred expenses of \$2,553.73, based on her enrollment in this program. Under the chapter 35 program, she would have received \$2,020.36 for the period May through October 2005. As a result of this determination, her benefits would have been reduced to \$574.96, based on her chapter 35 debt of \$1,445.40. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of \$2,020.36. The amount of relief is reduced to \$574.96 due to the outstanding chapter 35 educational debt of \$1,445.40.

CASE #4

In December 2004, the veteran filed a request for automobile adaptive equipment allowance although he had already received the one-time-only automobile allowance in 1946. The VA Regional Office (VARO) informed the veteran that he was eligible for an automobile allowance of \$11,000. In reliance on this determination, the veteran purchased an automobile and submitted the Certificate of Eligibility for reimbursement in November 2005. VARO responded that the allowance could not be paid as the records revealed that the veteran had received his one-time allowance in 1946. The veteran responded that he failed to remember the previous grant because of severe medical conditions and multiple medications that have impaired his memory. 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.