

educational institution. Effective Date: March 19, 1998.

VAOPGCPREC 4-98

Question Presented

Does 38 U.S.C. § 2305 have any application in claims for burial benefits involving veterans who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the United States Armed Forces during World War II?

Held

The saving provision currently codified at 38 U.S.C. § 2305 preserved potential eligibility for burial benefits under chapter 23 of title 28, United States Code, for individuals who could have qualified for those benefits under "the laws in effect on December 31, 1957." The statute governing benefits eligibility based upon service in the Philippine Commonwealth Army in World War II that was in effect on that date did not confer potential eligibility for burial benefits for individuals with such service. Consequently, section 2305 has no application in claims for burial benefits based on service in the Philippine Commonwealth Army during World War II. Effective Date: April 1, 1998

VAOPGCPREC 5-98

Questions Presented

a. What is the proper disposition of funds derived from Department of Veterans Affairs (VA) benefits and held by a legal custodian, when a beneficiary dies intestate but with known heirs?

b. Does VA have a legal duty to supervise estate assets derived from VA benefits and in the hands of a legal custodian, after the death of the beneficiary?

c. Does VA have authority to distribute a deceased beneficiary's estate assets, derived from VA benefit payments, and, if so, how should the distribution be made?

Held

When a veteran or other VA beneficiary dies without a will but with known heirs, VA-derived funds held by a legal custodian should be distributed by an appropriate estate administrator in accordance with applicable state law governing intestate succession. VA is not authorized to recover such funds and distribute them to the beneficiary's heirs. Generally, VA is authorized to supervise the estate only to the extent necessary to assure that the fiduciary fulfilled his or her responsibilities to the beneficiary and to assure preservation of

assets which may be reclaimed by the Government pursuant to 38 U.S.C. § 5502(e).

Effective Date: April 2, 1998.

VAOPGCPREC 6-98

Question Presented

If a veteran both challenges the validity of a debt assessed by the Department of Veterans Affairs (VA) and, in the alternative seeks waiver of such debt, must VA first fully adjudicate the debt validity issue, and the veteran exhaust all appeals on that issue, before waiver may be considered?

Held

When a veteran both challenges the validity of a debt and seeks waiver of the debt, the Regional Office must first fully review the debt's validity and, if the office believes the debt to be valid, prepare a written decision fully justifying the validity of the debt. At that point, the veteran's request for waiver should be referred to the Committee on Waivers and Compromises. If waiver is denied, the veteran must be informed of his or her right to appeal both decisions to the Board of Veterans Appeals.

Effective Date: April 24, 1998

VAOPGCPREC 7-98

Questions Presented:

a. Where eligibility under the Restored Entitlement Program for Survivors (REPS) is based on service connection established under a Department of Veterans Affairs (VA) regulation establishing a presumption of service connection for a disease, is the effective date of the award of REPS benefits limited by the effective date of the regulation establishing the presumption?

b. If, pursuant to the *Nehmer* stipulation, an award of dependency and indemnity compensation (DIC) is made effective prior to the effective date of the VA regulation establishing presumptive service connection for the cause of death, is the effective date of an award of REPS benefits also governed by the *Nehmer* stipulation?

Held

In the case of a member or former member of the Armed Forces who died on active duty prior to August 13, 1981, or who died from a service-connected disability which was incurred or aggravated in service before such date, the Department of Veterans Affairs (VA) is authorized, under Pub. L. No. 97-377, § 156, 96 Stat. 1830, 1920 (1982), and 38 C.F.R. § 3.812, to award benefits under the Restored Entitlement Program for

Survivors (REPS) to the member or former member's surviving spouse or child for all periods in which such spouse or child meet the eligibility requirements for such benefits. If a claimant meets the statutory requirements governing eligibility for REPS benefits, the fact that service connection for a former member's death has been established pursuant to regulatory presumptions of service connection which became effective subsequent to the initial period of eligibility does not limit VA's authority to award REPS benefits retroactive for all periods of eligibility.

Effective Date: May 4, 1998.

John H. Thompson,

Acting General Counsel.

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DEPARTMENT OF VETERANS AFFAIRS

The Enhanced-Use Development of the VAMC Sioux Falls, SD

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Sioux Falls, SD, Department of Veterans Affairs Medical Center (VAMC) for an Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the Children's Care Hospital and School (CCH&S). The CCH&S will construct and maintain a parking area on the site, and will, as consideration for the lease, provide specified facilities and services to the Department at no cost.

FOR FURTHER INFORMATION CONTACT:

Jacob Gallun, Asset and Enterprise Development Office (189), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC, 20420, (202) 565-4307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec. 8161 *et seq.*, specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the least will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: May 27, 1998.

Togo D. West, Jr.,

Secretary.

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