CITATION: VAOPGCPREC 64-90
Vet. Aff. Op. Gen. Couns. Prec. 64-90

TEXT:

Subject: Payment Provision of Section 2, Public Law 87-574

(This opinion, previously issued as Administrator's Decision 982, dated December 27, 1962, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

QUESTION PRESENTED:

May incompetent patients and members in VA hospitals and domiciliaries for whom guardians have been appointed, whose services are utilized for therapeutic and rehabilitation purposes, be paid directly the nominal remuneration authorized as payable under section 618 of title 38, United States Code, added by section 2, of Public Law 87-574, or is the VA accountable to the guardian for the amounts payable, if the State law so requires?

COMMENTS:

Section 618 of title 38, United States Code, reads as follows:

"The Administrator, upon the recommendation of the Chief Medical Director, may utilize the services of patients and members in Veterans' Administration hospitals and domiciliaries for therapeutic and rehabilitative purposes, at nominal remuneration, and such patients and members shall not under these circumstances be held or considered as employees of the United States for any purpose. The Administrator shall prescribe the conditions for the utilization of such services."

This legislation was sponsored and enacted at the request of the VA.

The intent and purposes of the law are reflected in the legislative history. In the VA comments on the proposed legislation, incorporated in the Report to accompany H.R. 8992, the Administrator stated:

"Section 2 would specifically authorize utilization of the services of patients and members in Veterans' Administration hospitals and domiciliary homes, for therapeutic and rehabilitative purposes, without conferring an employment status. At the present time, such positions are included in Schedule A, Civil Service Commission rule VI, 'Exceptions from the Competitive Service.' Technically, therefore, those who occupy the positions are Federal employees, although they are not covered under certain employee benefit programs and are paid only a nominal stipend.

"There is an inconsistency between Federal employee status, with its statutory and regulatory requirements, and the basic concept of the member-employment program as a means toward the medical, psychological, and social rehabilitation of the veteran. This inconsistency is highlighted by the fact that participants in the program are not eligible for such Federal employment benefits as retirement, insurance, or unemployment compensation, and yet they have been held to come within the purview of certain other statutory employee programs.

"The proposed amendment would avoid confusion and controversy which has sometimes arisen in connection with the application to such persons of various statutes, regulations, or bills relating to Federal employees. It would enable the Veterans' Administration to prescribe the conditions and benefits which will best serve the therapeutic and rehabilitative objectives of the program."

It is clear from the legislative history quoted above that the new law specifically divests participating patients and members of an employee status for any purpose.

The words "nominal remuneration" as used in the statute are interpreted to mean a token grant of money in the nature of a "gratuity" or an "award," in an amount to be determined administratively, payable by the VA to the patient or member as a part of the expense of the therapeutic and rehabilitation program, as distinguished from "salary or wages" or "earnings" or an additional monetary "benefit" to the veteran. The language of section 618 makes it abundantly clear that payments thereunder are not intended as a consideration for the services rendered but rather as an inducement to selected patients and members to enter into activities which will assist them in regaining self- reliance and aid in their return to normal life. In other words, such payments are merely one more "tool" available to the professional personnel of DM & S for use in the treatment of patients and members. Payments under section 618 are an expense for medical care and are chargeable to appropriations for the medical care program. They do not fall within the category of benefits otherwise payable to a guardian.

Paragraph 5 of an opinion of the Chief Attorney of the Veterans' Administration Regional Office, Pittsburgh, Pennsylvania, dated August 31, 1962, approved by the General Counsel November 14, 1962, is of particular significance to the problem presented. This paragraph reads as follows:

"5. Under the Pennsylvania Mental Health Act, above cited, 50 PS Sec. 1484(a) and (f), patients in state-maintained institutions are given the opportunity to participate in gainful occupational activities for rehabilitative purposes without formal compensation and 'gratuity grants may be awarded patients who participate in institutional employment, but these shall not be considered as payment for services rendered.' Similarly, Public Law 87-574 approved August 6, 1962, amends Chapter 17 of Title 38 of the United States Code by adding a new section, 618, Therapeutic and Rehabilitative Activities. Under this section there is authorized the use of the services of patients and members in Veterans Administration hospitals and domiciliaries for therapeutic and rehabilitative purposes, at nominal remuneration, and such patients and members shall not under

these circumstances be held or considered as employees of the United States for any purpose. By necessary implication it would appear to be the legislative intent to approve of the program of therapeutic and rehabilitative employment of patients in Veterans Administration hospitals without constituting such patients employees of the United States. In the case of incompetents, the program is designed to restore confidence in the patient in his ability to engage in useful tasks to which he is encouraged by the nominal remunerations. This encouragement can best be achieved by direct payment of the remuneration to the veteran rather than by transmittal to the guardian for credit to his
estate and then returned to the Hospital Director for credit to the patient's account for incidental needs in order that a distinction may appear in the mind of the incompetent between Veterans Administration benefits paid because of his disability and compensation for his services performed. The program being therapeutic in purpose, the remuneration may be considered in the same category as the dispensing of drugs or other treatment and not as additional compensation or benefits because of the veteran's disability. Considering that the earnings of the patient in this program are defined in the statute as nominal remuneration we believe that the legal maxim 'De minimis non curat lex'--the law does not take notice or concern itself with trifles--is properly applicable. 38 Pa. Sup.60. "

Also in an opinion, rendered by the General Counsel to the Chief Medical Director, dated October 29, 1962, it was held that section 618 does not permit the continuation of a presently operative member-employee program as opposed to a new program in which the participants are not to be considered employees for any purpose. As thus interpreted, the effect of the law, insofar as the member-employee program is concerned, is to create a new program, designed to accomplish the purposes of the legislation, which supersedes the prior existing member-employee program and renders obsolete the provisions of VA Circular 10-62-59 and related publications. The Chief Medical Director was further advised in the cited opinion that the responsibility for continuing former member-employees in duties now assigned rests with the appropriate DM & S officials.

HELD:

The provision for utilization of the services of patients and members in VA hospitals and domiciliaries, at nominal remuneration, contemplates that, when medically indicated, payments will be made directly to the veterans as part of the cost of the therapeutic and rehabilitation program of the VA and that, in such event, the guardian of an incompetent patient or member would have no right to demand these payments, irrespective of any provision of the guardianship laws of the State in which the guardian was appointed. (Opinion of the General Counsel dated December 21, 1962, approved December 27, 1962.)
This decision is hereby promulgated for observance by all officers and employees of the Veterans' Administration.

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