

DATE: 03-11-91

CITATION: VAOPGCPREC 10-91  
Vet. Aff. Op. Gen. Couns. Prec. 10-91

**TEXT:**

**SUBJECT:** Application of 38 U.S.C. § 102(a) to claims for PFOP.

(This opinion, previously issued as Opinion of the General Counsel 12-61, dated October 9, 1961, 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.)

**To: Chief Benefits Director**

The opinion of the Chief Attorney, VA Regional Office, Chicago, Illinois, dated August 14, 1961, copied below with addition to paragraph 8, has been approved by this office:

1. This is in reply to your memorandum requesting an advisory opinion on the question of whether there is authority for the VA to pay PFOP to a veteran's widow recognized under PL 85-209, now covered in 38 U.S.C. § 103(a).
2. The veteran died January 12, 1961 at VA Hospital, Danville, Illinois having been rated mentally incompetent. The sum of \$635.53 gratuitous funds and private source funds of \$79.56 were on deposit in the account of the Manager of the VA Hospital. The gratuitous funds were derived from pension.
3. Apparently, the private source funds have been paid to the Administrator of the veteran's estate, since there are legal heirs entitled to inherit.
4. The claimant, "X", has not been able to establish entitlement as the veteran's legal widow. However, she has been granted death pension under the provisions of PL 85-209 (VAR 1052), 38 U.S.C. § 103(a).
5. It was held in Op.G.C. 6-58 that "accrued benefits" are "gratuitous death benefits" and as such are payable to a woman who meets the qualifications set forth in PL 85-209. Also, VAR 2000(D)(1)(b) permits payment of accrued benefits to a woman who qualified under PL 85-209.
6. The question in this case is whether the Personal Funds of Patients account held by the manager of the hospital as trustee, derived from the veteran's pension may be considered "gratuitous death benefits."
7. As pointed out in Op.G.C. 6-58, the phrase, "gratuitous death benefits", does

not appear to have a precise definition in the statutes or regulations. The phrase appears in remedial legislation which is to be construed liberally.

8. 38 U.S.C.A. § 3202(D) as amended by PL 86-146, August 7, 1959 provides that in the event of death of a mentally incompetent or insane veteran, all gratuitous benefits deposited in Personal Funds of Patients' Account shall be paid only to people within a specified degree of relationship, first of which is surviving spouse. No logical reason is apparent for distributing these funds in a manner different from accrued funds. As a matter of fact, this conclusion is adequately supported by the legislative history of Public Law 86-146. In H.R. Report No. 303, in explanation of the bill which became Public Law 86-146, the Committee stated in pertinent part as follows:

"Final control over these funds remains in the Veterans' Administration. Therefore, the committee feels that it is appropriate that, in the event of an incompetent veteran's death, the same general rules should govern the payment of these funds derived from veterans benefits as govern the payment of other accrued veterans benefits where a veteran dies ..." (Underscoring supplied).

9. To hold that accrued benefits are gratuitous death benefits within the meaning of 38 U.S.C. § 103(a) and payable to the spouse recognized thereunder and that PFOP is not payable to such presumptive spouse, would be an artificial and inequitable distinction.

**HELD:**

10. In my opinion PFOP deposits may be paid to the spouse qualifying under 38 U.S.C. § 103(a).

VETERANS ADMINISTRATION GENERAL COUNSEL  
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