

Date: January 25, 1995

O.G.C. Precedent 2-95

From: General Counsel (022)

Subj: Applicability of the "\$1,500 Rule" Where an Incompetent  
Veteran Is Hospitalized in a Private, Foreign Hospital at  
VA Expense

To: Under Secretary for Benefits (20)

QUESTION PRESENTED:

Do the provisions of 38 U.S.C. § 5503(b)(1)(A) requiring withholding of compensation and pension payments to certain incompetent veterans apply in the case of a veteran who is being provided hospital care in a non-government facility outside the United States, with the cost of such care being paid by the Department of Veterans Affairs (VA)?

COMMENTS:

1. Section 5503(b)(1)(A) of title 38, United States Code, commonly referred to as the "\$1,500 rule," provides as follows:

In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Secretary . . . as being incompetent, and the veteran's estate . . . from any source equals or exceeds \$1,500, further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to \$500.

The applicability of this rule under the circumstances described in the opinion request turns on whether hospitalization at VA expense in a non-government facility outside the United States constitutes hospital treatment "furnished . . . by the United States."

2. Interpretation of 38 U.S.C. § 5503(b)(1)(A) must begin with the statutory language itself. If the plain meaning of that language is clear and unambiguous, then that meaning is controlling. E.g., West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 98-99 (1991). We do not believe that the plain language of section 5503(b)(1)(A) conclusively resolves whether the "\$1,500 rule" applies to veterans being furnished hospital treatment at VA expense in a non-government institution. Section 5503(b)(1)(A) provides that the rule applies when a veteran receives hospital treatment "furnished . . . by the United States." The term "furnish" ordinarily means "to provide or supply." WEBSTER'S THIRD NEW INT'L DICTIONARY 923 (1981). It is not necessary to infer from use of the term "furnished" that the statute refers only to treatment provided in kind. Thus, the statutory reference to hospital treatment "furnished . . . by the United States" may reasonably be construed to include contract care at a private facility at VA expense. However, another possible construction would be that the statute refers only to treatment provided directly by the United States, i.e., care at a Government facility. Because the statute's plain language does not conclusively resolve the matter, we will examine the statute's history, purpose, and context in an effort to verify Congress' intent. Further, in view of the statute's facial ambiguity with respect to this matter, a consistent and contemporaneous VA interpretation of the statute would generally be entitled to deference. See National Labor Relations Board v. Boeing Co., 412 U.S. 67, 75 (1973).

3. Pursuant to the express language of section 5503(b)(1)(A), the "\$1,500 rule" applies whenever a veteran is "being furnished hospital treatment or institutional or domiciliary care . . . by the United States." The legislative history of Pub. L. No. 86-146 indicates that the rule's purpose is "to prevent gratuitous benefits for incompetent veterans receiving care at public expense from accumulating in excessive amounts and passing upon the death of the veteran to relatives having no claim against the Government on account of the veteran's military service." S. Rep. No. 344, 86th Cong., 1st Sess. (1959), reprinted in 1959 U.S.C.C.A.N. 2048 (emphasis added).  
Applying

the rule when a veteran is hospitalized at public expense in a non-government hospital would be consistent with the stated purpose. The legislative history further states that the 1959 amendment extended to incompetent veterans cared for in other public institutions the advance controls designed to prevent accumulation of excessive estates among certain incompetent veterans who were "hospitalized in VA hospitals." S. Rep. No. 344 at 2, reprinted in 1959 U.S.C.C.A.N. at 2049. This may appear to suggest that Congress had in mind only hospital treatment provided in VA and other public institutions. However, we note that, at the time Pub. L. No. 86-146 was enacted, the statutes governing hospital care of veterans by VA defined the term "Veterans' Administration facilities" to include "private facilities for which the Administrator contracts." 38 U.S.C. § 601(4) (1958). Accordingly, the reference to hospitalization "in VA hospitals" in S. Rep. No. 344 may be viewed as including private hospitals with which the Administrator of Veterans Affairs contracted to provide hospital care.

4. The provisions of chapter 17 of title 38, United States Code, which authorize the Secretary of Veterans Affairs to provide hospital care at VA facilities or at private institutions pursuant to contract, offer some guidance in determining whether private hospital treatment at VA expense is treatment "furnished . . . by the United States." Section 1710(a)(3) of title 38, United States Code, states that "[i]n addition to furnishing hospital care and nursing home care . . . through Department facilities, the Secretary may furnish such hospital care in accordance with section 1703 of this title." (Emphasis added.) Section 1703(a) of title 38 authorizes the Secretary to "contract with non-Department facilities in order to furnish" hospital care. Accordingly, the fact that 38 U.S.C. §§ 1703(a) and 1710(a)(3) expressly authorize the Secretary to "furnish" hospital care by contracting with non-Department facilities suggests that such hospital treatment supplied at private institutions under contract may be considered care "furnished" by VA for purposes of 38 U.S.C. § 5503(b)(1)(A). See United Savings Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (a provision which may seem ambiguous in isolation may be clarified by the

remainder of the statutory scheme, where the same terminology is used elsewhere in a context which makes its meaning clear).

5. We note that 38 U.S.C. § 5503(e) provides for reduction of a veteran's aid-and-attendance allowance whenever the veteran is "hospitalized at Government expense." Use of this language might be viewed as raising an implication that Congress would have used the phrase "hospitalized at Government expense" if it intended the "\$1,500 rule" of section 5503(b)(1)(A) to apply to hospitalization at government expense in a non-government hospital. Pursuant to this analysis, the phrase "furnished . . . by the United States" in section 5503(b)(1)(A) might be viewed as establishing a more restrictive standard applicable only when the veteran is hospitalized in a government facility. However, we do not believe that the language of section 5503(e) compels such an interpretation.

6. Congress' use of different language in similar subsections of 38 U.S.C. § 5503 does suggest that Congress intended a distinction by use of the different terms. It does not follow, however, that Congress intended to exclude from the coverage of section 5503(b)(1)(A) hospitalization at government expense in a non-government facility. A more likely explanation is that Congress did not use the phrase "at Government expense" in section 5503(b)(1)(A) because it intended the "\$1,500 rule" to apply when a veteran is hospitalized in a government facility, even though he or she is required to pay for such hospitalization. Section 5503(b)(1)(A) provides that the "\$1,500 rule" applies when a veteran is furnished hospital care "without charge or otherwise" by the United States. We have interpreted this provision to require application of the rule even though a veteran is required to pay for his or her hospital care in a VA hospital. Op. G.C. 5-85 (9-16-85). Use of the term "hospitalization at government expense" in section 5503(b)(1)(A) would have been inconsistent with the language of that section making the rule applicable to veterans who are charged for hospital care.

7. VA regulations at 38 C.F.R. §§ 3.551-3.559, implementing section 5503, appear to indicate that hospital care is "furnished by" the United States whenever such care is provided in any hospital at the expense of the United States. Section 3.557(b) provides that the "\$1,500 rule" applies where a veteran "[i]s hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge." Section 3.551(a) provides that "[e]xcept as otherwise indicated the terms 'hospitalized' and 'hospitalization' in §§ 3.551 through 3.559 mean . . . [h]ospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense." (Emphasis added.) Although section 3.551 deals generally with pension reduction under 38 U.S.C. § 5503(a), the application of the referenced definition provision is not so limited and refers to other regulation sections dealing with both compensation and pension under other provisions of section 5503.

8. The definition in 38 C.F.R. § 3.551(a), however, appears to be incomplete for purposes of 38 U.S.C. § 3.557(b), which applies to hospitalization by the United States or any political subdivision thereof, rather than only to hospitalization by VA. (In contrast, 38 C.F.R. § 3.557(a), implementing 38 U.S.C. § 5503(a), applies only to veterans "hospitalized by VA.") Nonetheless, we see no basis on which to differentiate reductions under section 5503(a) from withholding of benefits under section 5503(b) in light of the consistent terminology of the two statutory provisions with respect to care "furnished . . . by" particular government entities. Further, we find the application of the definitional provision of 38 C.F.R. § 3.551(a) to cases covered by 38 C.F.R. § 3.557(b) to be consistent with the language of the governing statute.

9. The provisions of 38 C.F.R. § 3.551(a) defining "hospitalization" to include hospital treatment at VA expense were issued in 1959. See Compensation and Pension Trans. Sheet 198 (5-29-59). Previously, provisions governing reductions of compensation, pension, or retirement pay during hospital treatment "furnished" by VA were contained in former 38 C.F.R. § 3.255, which implemented the Act of August 8, 1946, ch. 869, 60 Stat. 908. The "\$1,500 rule," which then

applied only to hospital treatment furnished by the Veterans' Administration, as opposed to the United States, was contained in 38 C.F.R. § 3.255(b). The caption of section 3.255 stated: "Reduction when disabled person is in a Veterans' Administration institution or other institution at the expense of the Veterans' Administration." 38 C.F.R. § 3.255 (1949) (emphasis added). Additionally, VA Administrator's Instruction No. 1 to section 1 of Pub. L. No. 662, 79th Cong. (the Act of August 8, 1946), issued on September 11, 1946, provided in paragraph 4 procedures for implementing the "\$1,500 rule" upon a veteran's "admission . . . to a hospital, center, or other institution at the expense of the V.A.." (Emphasis added.) Accordingly, construing current 38 C.F.R. § 3.557 to require application of the "\$1,500 rule" when a veteran is hospitalized at VA expense in a private institution is consistent with the apparent practice under prior VA regulations and instructions.

10. In 1959, Pub. L. No. 86-146, § 2, 73 Stat. 297, 298 (1959), broadened the "\$1,500 rule" to include care and treatment furnished by the United States or any political subdivision thereof, not just that furnished by VA. Emergency Interim Issue (EM) 27-12 (11-25-60), issued by the Chief Benefits Director, established interim guidelines for applying the "\$1,500 rule" of Pub. L. No. 86-146. Paragraph D.4. of EM 27-12 stated that the "[p]rovisions of PL 86-146 apply to any case where an incompetent veteran is confined for any reason at the expense of the United States or a political subdivision thereof." The pertinent provisions of section 3.557(b) were amended in 1962 to implement Pub. L. No. 86-146. The VA transmittal sheet accompanying the 1962 amendment to 38 C.F.R. § 3.557(b) provided: "As stated in EM 27-12, this law is applicable to incompetent veterans confined for any reason at the expense of the Government or a political subdivision." Compensation & Pension Trans. Sheet 250 (8-3-62) (emphasis added).

11. In view of their language and history, VA regulations at 38 C.F.R. §§ 3.551 and 3.557 must be construed as providing that the "\$1,500 rule" applies whenever a veteran is hospitalized in a facility of the United States or a political subdivision thereof, or is hospitalized in any facility

at the expense of the United States or a political subdivision thereof. This construction is controlling unless inconsistent with the governing statute. In view of the above discussion of the language, purpose, and context of 38 U.S.C. § 5503(b), we believe that the regulations are fully consistent with that statute.

12. The foregoing authorities indicate a consistent administrative interpretation that the "\$1,500 rule" of 38 U.S.C. § 5503(b)(1)(A) and prior statutes applies when a veteran is hospitalized at VA expense in a private facility. In view of the terms, purpose, and context of section 5503(b)(1)(A), VA regulations, and the consistent and contemporaneous administrative interpretation of that and similar statutory provisions, we conclude that the "\$1,500 rule" is applicable to veterans hospitalized in any facility, including facilities located in foreign countries, at Government expense.

HELD:

The provisions of 38 U.S.C. § 5503(b)(1)(A), which require withholding of compensation and pension payments to certain institutionalized, incompetent veterans whose estates equal or exceed \$1,500, are applicable to veterans hospitalized in any hospital, including a private facility outside the United States, when care is provided at the expense of the United States.

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