

Date: February 6, 1995

O.G.C. Precedent 4-95

From: General Counsel (022)

Subj: Entitlement to Veterans' Mortgage Life Insurance

To: Director, Loan Guaranty Service (26)

QUESTION PRESENTED:

Has a veteran, who has been notified that he or she has met the basic eligibility requirements for a specially adapted housing grant because he or she has a permanent and total service-connected disability due to one of the conditions enumerated in 38 U.S.C. § 2101 and that it is medically feasible for the veteran to reside in the proposed housing unit, been "granted assistance" for purposes of Veterans' Mortgage Life Insurance under 38 U.S.C. § 2106(a)?

COMMENTS:

1. This issue arises in the context of a claim by the parents of a deceased veteran for Veterans' Mortgage Life Insurance (VMLI). They contend the VMLI was automatically issued to that veteran based upon their allegation that he was granted specially adapted housing. The veteran served on active duty in the United States Army from February 5, 1986, to March 19, 1991. On October 4, 1991, the veteran was awarded service-connected compensation at the 100% rate due to a brain stem injury suffered in a car accident on December 22, 1989. He was also granted entitlement to special monthly compensation based on, *inter alia*, paraplegia with loss of use of both legs. On February 22, 1994, the veteran's mother, who was appointed his co-guardian and co-conservator by a state court, applied for specially adapted housing (SAH) assistance under 38 U.S.C. § 2101. On February 28, 1994, the veteran's parents settled on behalf of the veteran on the purchase of a home. In response to a March 3, 1994, letter from the veteran's parents, the veteran's VA doctor stated on March 15, 1994, that the veteran's medical team supported their request to transfer the veteran to his own home and recommended that they care for him in a home environment. The VA regional office found the veteran eligible for specially adapted housing in a March 28, 1994, rating decision. In an April 6, 1994, letter, the regional office notified the

veteran about its eligibility determination, but also stated:

Please understand that this letter is not an approval of a grant to you. Therefore, do not make any agreements or incur any debts or obligations in connection with a specially adapted home until our representative has visited with you.

(Underlining in original). On June 2, 1994, the veteran's mother requested a waiver of the requirement that three bids be obtained for adapting the veteran's house and notified VA of the name of the contractor which she intended to use. The veteran died on July 20, 1994. The veteran's parents filed a claim on August 4, 1994, for the proceeds of the veteran's VMLI policy. On September 14, 1994, the veteran's mother faxed to VA a signed copy of a construction contract for modifications to the home which had been purchased, which was dated May 31, 1994, and a materials list dated June 6, 1994.

2. Section 2106(a) of title 38, United States Code, provides that the "United States shall automatically insure any eligible veteran who is or has been granted assistance in securing a suitable housing unit under this chapter against the death of the veteran." Under 38 U.S.C. § 2101(a), veterans who are entitled to compensation for a permanent and total service-connected disability due to certain conditions¹ are eligible for assistance in acquiring a suitable housing unit with special fixtures or movable facilities which are necessary due to the veteran's disability. The statute is implemented by regulations found at 38 C.F.R. §§ 36.4400 et seq. which set forth the findings required prior to a determination that the veteran is eligible for

¹ This includes those veterans who are permanently and totally disabled "(1) due to the loss, or loss of use, of both lower extremities, such as to preclude locomotion with-out the aid of braces, crutches, canes, or a wheelchair."

a SAH grant.² See e.g. 38 C.F.R. § 36.4402(a)(1)-(6).

3. Under the accepted rules of statutory construction, we initially look to the plain language of a statute to determine its meaning. 2A N. Singer, *Sutherland Statutory Construction* § 46.01 (5th ed. 1992). Congress, in creating the VMLI program, stated that the [then] Administrator "shall automatically insure any eligible veteran who **is or has been granted assistance in securing a suitable housing unit** under this chapter against the death of the veteran." Pub. L. No. 92-95, 85 Stat. 320 (1971). (Emphasis added). It is a fundamental principle of statutory construction that "'effect must be given, if possible, to every word, clause and sentence of a statute.'" 2A *Sutherland* § 46.06. "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Id.*; see also *Director, Office of Workers' Compensation Programs, U.S. Dep't of Labor v. Goudy*, 777 F.2d 1122, 1127 (6th Cir. 1985). The above-highlighted statutory language would be superfluous if VMLI could be paid on account of the death of a veteran who had not been granted assistance in securing a suitable housing unit. The grant of assistance is clearly a condition precedent to coverage under VMLI.

4. We next turn to the legislative history of the pertinent statute to determine whether this literal reading would frustrate Congress' intent. When the VMLI program was created, Congress stated that the program is intended to "provide mortgage protection life insurance for service-connected disabled veterans who **have received grants** for specially adapted housing."³ S. Rep. No. 311, 92d Cong., 1st Sess., reprinted in 1971 U.S.C.C.A.N. 1391, 1392.

² The Loan Guaranty Operations for Regional Offices Manual, M26-12, outlines the procedures for processing a SAH grant.

³ The purpose of the statute is to provide mortgage protection life insurance to seriously disabled veterans who could not obtain such insurance from commercial companies. Cong. Rec. H947 (daily ed. March 1, 1971) (statement of Rep. Teague); Cong. Rec. S12357 (daily ed. July 28, 1991) (statement of Sen. Hughes).

(Emphasis added). See also H.R. Rep. No. 311, 92d Cong., 1st Sess. 1 (1971); Cong. Rec. H946, 947 (daily ed. March 1, 1971) (statements of Reps. Teague, Montgomery and Hammerschmidt). The legislative history also includes statements regarding the cost of the legislation which point to the fact that only 500 new SAH grants are made each year, which indicates that Congress intended that only those veterans who receive a grant would be eligible for VMLI each year. Cong. Rec. at H946, 947 (statements of Reps. Teague, Montgomery and Hammerschmidt); S. Rep. No. 311, reprinted in 1971 U.S.C.C.A.N. at 1393. In 1976, Congress enacted Pub. L. No. 94-433, § 302, 90 Stat. 1374, 1377, which increased the amount of mortgage life insurance available for "those seriously disabled veterans who have **received grants** for specially adapted housing." S. Rep. No. 1226, 94th Cong., 1st Sess., reprinted in 1976 U.S.C.C.A.N. 2537, 2546. (Emphasis added). The Senate report stated that the then "Administrator is authorized to issue life insurance in the maximum amount of \$30,000 covering mortgages of veterans who **receive grants** (under chapter 21, title 38) for specially adapted housing necessitated by certain service-connected disability conditions." *Id.* at 2547. (Emphasis added). This legislative history supports the conclusion that VMLI coverage is only available to veterans who have received a SAH grant.

5. We conclude that a veteran has been "granted assistance" within the meaning of 38 U.S.C. § 2106(a) when VA approves the SAH grant. "[T]he administrative act of approval is a determination that an award will be made," and a letter notifying a veteran of the approval "is official notice of such determination." 110 Op. Sol. 510 (10-26-50). In *Pappalardo v. Brown*, 6 Vet. App. 63, 65 (1993), the United States Court of Veterans Appeals stated that the question of whether a specially adapted housing grant had been approved by VA before the veteran's death is a "factual matter" requiring adjudication based upon the evidence of record and the applicable law and regulations. According to 38 U.S.C. § 2101(a), a veteran is only eligible for a SAH grant if he or she is entitled to compensation for permanent and total service-connected disability due to certain conditions. Section 2101(a) also specifies that at least three additional findings must be

made before a veteran is eligible for a SAH grant. The statute requires that the regulations which implement the SAH program

shall include, but not be limited to, provisions requiring findings that (1) it is medically feasible for such veteran to reside in the proposed housing unit and in the proposed locality; (2) the proposed housing unit bears a proper relation to the veteran's present and anticipated income and expenses; and (3) the nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes.

38 U.S.C. § 2101(a). See 38 C.F.R. § 36.4402(a)(1)-(3). The implementing regulation, 38 C.F.R. § 36.4402(a)(4)-(6), requires findings on additional eligibility factors which are not included in the statute, *i.e.*, the veteran must have or acquire a particular kind of interest in the housing unit, certify on a form prescribed by the Secretary that he or she will comply with certain requirements, and purchase flood insurance if the housing unit is or will be located in a special flood hazard area. We therefore defer to the Veterans Benefits Administration's evaluation of whether, based upon these statutory and regulatory provisions and all evidence and material of record in this case including the April 6, 1994, letter, VA approved a SAH grant for the veteran. See 110 Op. Sol. 510 (10-26-50).

HELD:

A determination of whether a veteran, who has been notified that he or she has met the basic eligibility requirements for a specially adapted housing grant because he or she has a permanent and total service-connected disability based upon one of the conditions enumerated in 38 U.S.C. § 2101 and that it is medically feasible for the veteran to reside in the proposed housing unit, has been "granted assistance" for purposes of Veterans' Mortgage Life Insurance (VMLI) under 38 U.S.C. § 2106(a) depends upon whether a specially adapted housing grant for the veteran was approved by the Department of Veterans Affairs, which is a factual matter requiring adjudication by the Veterans Benefits

Administration based upon applicable statutory provisions and regulations and the evidence of record.

Mary Lou Keener