

Department of **Memorandum**
Veterans Affairs

Date: May 3, 1999

VAOPGCPREC 5-99

From: General Counsel (022)

Subj: Scope of the Term Spina Bifida for Purposes of
Benefits Under Section 421 of Pub. L. No. 104-204

To: Director, Compensation and Pension Service (21)

QUESTION PRESENTED:

For purposes of benefits authorized by section 421 of Pub. L. No. 104-204, does the term "spina bifida" include neural tube defects, such as encephalocele and anencephaly, which do not involve the spinal column?

DISCUSSION:

1. This issue arose in connection with a memorandum to the Director of the Compensation and Pension Service from the Chief Public Health and Environmental Hazards Officer which concluded that "encephalocoeles represent the same process as spina bifida." The Chief Public Health and Environmental Hazards Officer also concluded that an "occipital encephalocoele defect is the equivalent of spina bifida."

2. Chapter 18 of title 38, United States Code, as added by section 421 of Pub. L. No. 104-204, 110 Stat. 2874, 2923 (1996), authorizes health care, vocational training and rehabilitation, and a monetary allowance for individuals who are the natural children of Vietnam veterans and who suffer from spina bifida. Section 1802 of that chapter states that, "[t]his chapter applies with respect to all forms and manifestations of spina bifida except spina bifida occulta." (Emphasis added.) See also 38 C.F.R. § 3.814(c)(3) (containing same definition). According to the March of Dimes, spina bifida is a birth defect of the backbone and, sometimes, the spinal cord, that is often called "open spine." It can range from a mild defect that causes no problems to a serious condition involving muscle paralysis, infection, and loss of bowel and bladder control. It is our understanding that the term spina bifida generally is considered to encompass three main conditions: (A) spina bifida occulta, which is an opening in one or

more of the bones of the spinal column and which does not involve any damage to the spinal cord (this form of spina bifida is expressly excluded by 38 U.S.C. § 1802 from application of the provisions of chapter 18); (B) meningocele, a more serious form of spina bifida in which the membrane surrounding the spinal cord pushes out through an opening in the spinal column; and (C) myelomeningocele, the most severe form of spina bifida, in which the nerve roots of the spinal cord, and often the spinal cord itself, protrudes from the open spine. Spina bifida is one of a group of birth defects called neural tube defects. "Ask NOAH About: Pregnancy." (March of Dimes; Spina Bifida; Public Health Information Sheets) http://www.noah.cuny.edu/pregnancy/march_of_dimes/birth_defects/spinabif.html (Dec. 22, 1998).

3. Neural tube defects are a category of birth defects which involve incomplete development of the brain, spinal cord, and/or the protective coverings of these organs. There are three types of neural tube defects, spina bifida, encephalocele, and anencephaly. Spina bifida is distinguished from the latter two types of neural tube defects in that it relates to malformations of the spine. Anencephaly is a birth defect which results in infants being born with underdeveloped brains and incomplete skulls. Encephalocele is a birth defect which results in a hole in the skull through which brain tissue protrudes. "Neural Tube Defects (NTDs)" (Neural Tube Defects Fact Sheets, National Information System for Vietnam Veterans and Their Families) <http://www.cdd.sc.edu/ntde.htm> (Dec. 22, 1998); see also "Anencephaly" (Pediatric Database (PEDBASE)) <http://www.icndata.com/health/pedbase/files/ANENCEPH.HTM> (March 2, 1999); "Encephalocele" (Pediatric Database (PEDBASE)) <http://www.icndata.com/health/pedbase/files/ENCEPHAL.HTM> (March 2, 1999); Dorland's Illustrated Medical Dictionary 74, 548 (28th ed. 1994).

4. Turning to the meaning of the term "spina bifida" for purposes of benefits under chapter 18 of title 38, United States Code, the Supreme Court has stated that, "[t]he starting point in interpreting a statute is its language." Good Samaritan Hosp. v. Shalala, 508 U.S. 402, 409 (1993). There is a "strong presumption 'that the legislative purpose [of a statute] is expressed by the ordinary meaning of the words used.'" Ardestini v. Immigration and Naturalization Serv., 502 U.S. 129, 136 (1991) (quoting American

Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982)) (internal quotation marks omitted). "Absent a clearly expressed legislative intention to the contrary, that language must be regarded as conclusive." Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). The term "spina bifida" is commonly defined as referring to "a developmental anomaly characterized by defective closure of the bony encasement of the spinal cord." Dorland's Illustrated Medical Dictionary 1557 (28th ed. 1994). Thus, the term typically refers to an abnormality of the spinal column, not a defect of the skull or brain tissue.

5. Our review of the legislative history of Pub. L. No. 104-204 has revealed nothing indicating an intention by Congress to cover neural tube defects other than spina bifida in chapter 18 of title 38, United States Code. The provision of benefits and services under chapter 18 to the children of Vietnam veterans suffering from spina bifida derived from a legislative proposal submitted by the Secretary of Veterans Affairs in a July 25, 1996, letter to the Speaker of the House of Representatives and to the President of the Senate. That proposal was based on a March 14, 1996, report of the Institute of Medicine (IOM) of the National Academy of Sciences entitled Veterans and Agent Orange: Update 1996. The IOM report reflects an analysis of several studies relating to possible associations between herbicides and various birth defects in the offspring of Vietnam veterans. These studies assessed the incidence of neural tube defects, generally differentiating between spina bifida and anencephaly. Although the IOM report contains a statement that the results of one study "suggest the possibility of an association between dioxin exposure and risk of neural tube defects," page 9-15, the IOM ultimately concluded, at page 9-17, only that, "[t]here is limited/suggestive evidence of an association between exposure to the herbicides considered . . . and spina bifida." As part of its discussion of this possible association, the IOM noted, at page 9-17, that certain epidemiologic studies "suggest an association between herbicide exposure and an increased risk of spina bifida in offspring," but noted a "failure to find a similar association with anencephaly." Not only was the conclusion reached by the IOM limited to "spina bifida," the IOM also concluded, at page 9-17, that there was "inadequate or insufficient evidence to determine whether an association exists between exposure to the herbicides and all other birth defects."

6. In offering the amendment which became section 421 of Pub. L. No. 104-204, Senator Thomas Daschle made clear that the amendment was based on the IOM report and the Secretary of Veterans Affairs' conclusions based on that report. 142 Cong. Rec. S9878-81 (daily ed. September 5, 1996). Further, statements by the Secretary of Veterans Affairs and the co-sponsors of the amendment consistently indicated that the framers of the legislation were concerned only with defects of the spinal column as opposed to neural tube defects in general. See Letter of July 25, 1996, from Secretary of Veterans Affairs to Speaker of the House and President of the Senate (referring to spina bifida as "a neural tube birth defect in which the bones of the spine fail to close over the spinal cord"); 142 Cong. Rec. at S9878 (statement of Sen. Daschle) ("[s]pina bifida occurs when the spinal cord does not close fully"); 142 Cong. Rec. at S9886 (statement of Sen. Rockefeller) (spina bifida "results from the failure of the spine to close properly;" "[w]hat is covered in the proposed amendment are the two much more severe forms of spina bifida" in which "a cyst holding the spinal cord membranes, nerve roots of the spinal cord, or the cord itself, usually malformed, pokes through an open part of the spine; or there may be, in fact, no cyst, but only a fully exposed section of the spinal cord and the nerves").

7. The legislative history of chapter 18 is consistent with the commonly-accepted meaning of the statutory terms in indicating Congress' intention to limit the application of chapter 18 to only those children of Vietnam veterans who suffer from spinal defects. We believe that, had Congress intended to include neural tube defects such as anencephaly and encephalocele, it would not have used the term "spina bifida." Accordingly, since there is no indication in either the statute or its legislative history that Congress intended the provisions of chapter 18 of title 38, United States Code, to apply to any neural tube defect other than spina bifida itself, we conclude that, for purposes of chapter 18, the term "spina bifida" does not include other neural tube defects such as encephalocele and anencephaly.

HELD: Pursuant to 38 U.S.C. § 1802, chapter 18 of title 38, United States Code, applies with respect to all forms of spina bifida other than spina bifida occulta. For purposes of that chapter, the term "spina bifida" refers to

a defective closure of the bony encasement of the spinal cord, but does not include other neural tube defects such as encephalocele and anencephaly.

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Attachment