

**DISPOSITION OF RECOMMENDATIONS FOR
THE EQUITABLE RELIEF SUBMITTED TO THE
SECRETARY OF THE DEPARTMENT OF VETERANS AFFAIRS (VA)
IN CALENDAR YEAR 2013**

CASE #1

The Infant child of a Veteran was buried at a National Cemetery in 1958. In March 2012, the family requested disinterment of the remains for relocation to a private cemetery. The National Cemetery staff conducted the disinterment but failed through negligent handling to provide the remains to the family of the Veteran. The remains were later found in the cemetery's soil storage area and recovered.

The Secretary granted equitable relief to the family of the Veteran, under 38 United States Code (U.S.C.) § 503(a), not to exceed \$1,000 to allow proper burial of the infant child in a private cemetery.

CASE #2

In October 2011, the Buffalo Regional Processing Office (RPO) determined that the Veteran was eligible for 36 months of Post-9/11 GI benefits under Chapter 33 of title 38, U.S.C., at a 100-percent rate of reimbursement. In January 2012, the Veteran enrolled in a university based on this decision and filed enrollment certification with VA. In February, the RPO found that the initial determination was incorrect and that the rate of reimbursement was 50 percent. The Veteran received payment at the 50-percent rate for the semester.

Since the Veteran had relied on VA's determination of eligibility, without knowing it was erroneous and suffered a loss as a result thereof, the Secretary awarded equitable relief to the Veteran under 38 U.S.C. § 503(b) for \$7,685.54, the educational expenses the Veteran incurred that would have been covered under the 100-percent rate decision.

CASE #3

The Veteran served in Vietnam from 1969 to 1971. In 2003, the Veteran filed a claim for service-connection for cancer from Agent Orange exposure while in Vietnam. The Veteran died from cancer in February 2005, and the Veteran's surviving spouse filed in October 2005 claiming service-connection for cancer due to Agent Orange exposure. In 2006, the claim was denied by the regional office (RO) and the Board of Veterans' Appeals because no supporting information was in the claims folder or in VA constructive custody. This decision was upheld on appeal by the U.S. Court of Appeals for Veterans Claims.

Because VA failed to develop the Veteran's original claim for service-connection for cancer due to Agent Orange exposure, the Secretary awarded the Veteran's surviving

spouse \$35,568.00 equitable relief under 38 U.S.C. § 503(a). This is the amount of compensation that would have been paid to the Veteran had the case been fully developed in 2003 by VA.

CASE #4

The Buffalo RO notified the Veteran that he was eligible for 100 percent of Post-9/11 GI benefits under Chapter 33 of title 38, U.S.C., for 1 month and 4 days. The Veteran called the toll-free hotline several times to determine the amount of compensation for his proposed flight school training. The Veteran was told that he was eligible under Public Law 111-377 § 105 for the "lesser of the actual net cost..., or \$10,000 for the academic year." The hotline made no mention of the limited time period available to the Veteran for educational benefits. In January 2012, the Veteran enrolled in flight school and incurred \$5,643.75 in reimbursable expenses. VA reimbursed the Veteran \$971.92 based on his 1 month and 4 days of eligibility.

The Secretary granted the Veteran equitable relief under 38 U.S.C. § 503(b) in the amount of \$4,671.83, the additional amount the Veteran would have received for flight training if there were no time limitation of 1 month and 4 days. The equitable relief was granted because the Veteran relied to his detriment on the incorrect information received from the VA toll-free hotline.

CASE #5

In April 2011, the Buffalo RO determined that the Veteran was eligible for Post-9/11 GI education benefits under Chapter 33 of title 38, U.S.C., at the 100-percent rate. The Veteran did not apply for financial aid for the March through May class period relying on VA's determination. The RO found that the Veteran was actually entitled to the 50-percent rate in processing the enrollment certification.

Because the Veteran relied on VA's determination of eligibility, without knowing it was erroneous and suffered a loss as a result thereof, the Secretary granted the Veteran equitable relief under 38 U.S.C. § 503(b) in the amount of \$876.00, the amount of education benefits the Veteran would have received under 100-percent eligibility.

CASE #6

In November 2011, the Buffalo RO issued a certificate of eligibility for the dependent of a Veteran for education benefits under Chapter 35 of title 38, U.S.C., for a particular beauty school. When the dependent submitted the enrollment certification to VA in spring 2012, the RO found that the beauty school at that particular location was not an approved training facility. The dependent had already enrolled and incurred the cost of the training program, based on the RO's determination in November 2011.

The Secretary awarded the dependent equitable relief under 38 U.S.C. § 503(b) for \$1,626.90 to cover the cost of expenses for the time in attendance at the beauty school. This amount represents the monthly rate for Chapter 35 benefits.

CASE #7

The Dallas VA Medical Center (VAMC) reported a positive drug screen from a urine sample attributed to the Veteran. The Veteran did not provide the urine sample and was not at the Dallas VAMC on the date in question. The Veteran spent several months trying to clear his record, eventually providing an independent DNA result from a private laboratory proving that the sample was not his.

The Secretary granted the Veteran equitable relief under 38 U.S.C. § 503(a) for the amount of \$150.00. This amount covers the costs the Veteran incurred to get private laboratory results to have the positive drug test removed from his medical records.

CASE #8

The Milwaukee RO informed the Veteran on November 6, 2003, that his service-connected disabilities were rated permanent and total (P&T) and no further examinations were needed. The wife of the Veteran applied for VA's Civilian Health and Medical Program (CHAMPVA) benefits on October 15, 2003, and was made eligible on November 24, 2003. The RO audited the Veteran's account and discovered on September 28, 2004, that the 2002 P&T decision was erroneous and that the Veteran was required to have future examinations. On June 29, 2009, the RO issued the Veteran a rating decision granting the P&T status effective May 14, 2009. This change to the effective date for the Veteran's P&T decision caused the wife of the Veteran to lose eligibility for CHAMPVA benefits from April 21, 2002, to May 13, 2009. Debt collection for CHAMPVA payments in the amount of \$48,731.60, made on behalf of the Veteran's spouse and her health care providers before May 14, 2009, was requested.

The Secretary granted the spouse of the Veteran equitable relief in the amount of \$48,731.60 under 38 U.S.C. 503(b). The equitable relief consists of cessation of VA debt collection efforts for \$48,731.60, of which \$32,020.84 is to be refunded to the spouse's health care providers. The RO made an administrative error in determining the Veteran's P&T status, which in turn, changed the spouse's eligibility for CHAMPVA benefits.

CASE #9

The Muskogee RPO determined that the Veteran was eligible for 36 months of Post-9/11 GI benefits under Chapter 33 of title 38, U.S.C., at a 100-percent rate of reimbursement in September 2009. The Veteran enrolled in a university based on this decision and filed enrollment certification with VA in December 2009. In January 2010, the RPO found that the initial determination was incorrect and that the rate of

reimbursement was 60 percent. The Veteran received payment at the 60-percent rate for the courses in process and those already completed.

Because the Veteran relied on VA's determination of eligibility, without knowing it was erroneous and suffered a loss as a result thereof, the Secretary granted the Veteran equitable relief under 38 U.S.C. § 503(b) in the amount of \$4,232.62, the amount of education benefits the Veteran would have received under 100-percent eligibility.

CASE #10

Between 2001 and 2013, the VA Connecticut Healthcare System (VACHS) placed approximately 112 Veterans into three non-VA community rest homes at VA expense, based on VACHS' erroneous belief that the homes had been "grandfathered in" as community nursing homes (CNH) eligible for VA placement and payment. VA discovered the error in February 2013 and immediately stopped placing Veterans in these homes. VA was able to relocate all but 25 of the Veterans because VACHS staff determined that the 25 Veterans currently living in the homes could not be immediately relocated to qualified CNHs without risk to the Veterans' physical and/or mental well-being. As a result, the Secretary granted equitable relief under 38 U.S.C. § 503(b) on September 20, 2013, to authorize VA to continue to pay the homes to care for these Veterans until the Veterans could be safely relocated to qualified CNHs. On November 8, 2013, the Secretary extended that authority through September 30, 2014. The total cost of relief granted was estimated to be \$11.2 million.

CASE #11

The Veteran presented to Dallas VAMC in July 2007 to enroll and request treatment. The Veteran was denied treatment even though his service in Vietnam made him eligible for enrollment in Priority Group 6. At this time, the Veteran was not notified of his appeal rights for the denial of enrollment.

In February 2012, the Veteran experienced a heart attack and related renal failure and was hospitalized for ten days at private medical hospitals, incurring substantial medical expenses. During his hospitalization, the spouse of the Veteran requested that VA reevaluate her husband's enrollment denial. As a result of this review, the Veteran received determination of his eligibility for medical care in Priority Group 5.

The Secretary granted equitable relief to the Veteran under 38 U.S.C. § 503(a) in the amount of \$217,026.53. The VAMC incorrectly determined that the Veteran was ineligible for enrollment without telling him of his appeal rights. This decision caused the Veteran to seek emergency medical care at private hospitals for an extended period of time, incurring substantial medical bills.

CASE #12

The Atlanta RO issued a Certificate of Eligibility to the Veteran for Post-9/11 GI educational benefits under Chapter 33 of title 38, U.S.C., for 36 months at the 100-percent rate in February 2011. The Veteran enrolled in five Internet courses in January 2012, and submitted the enrollment certificate to the RO. In late January 2012, VA, in processing the certificate, determined that the Veteran did not qualify for Chapter 33 benefits. The Veteran had already incurred expenses for the courses.

The Secretary granted equitable relief to the Veteran under 38 U.S.C. § 503(b) in the amount of \$3,434.64. This is the amount the Veteran would have received had she been entitled to Chapter 33 benefits at the 100-percent rate.

**Estimate of Cost to Prepare
Congressionally-Mandated Report**

Short Title of Report: Report to Congress on Equitable Relief Cases Granted – CY13

Report Required By: 38 U.S.C. § 503(c)

In accordance with Title 38, Chapter 1, Section 116, the statement of cost for preparing this report and a brief explanation of the methodology used in preparing the cost statement are shown below:

Manpower Cost:	<u>\$2,308.19</u>
Contract(s) Cost:	<u>\$0</u>
Other Cost:	<u>\$0</u>
<u>Total Estimated Cost to Prepare Report:</u>	<u>\$2,308.19</u>