

Last Post Fund/Veterans Burial Regulations

Recommendation

NCVA proposes that a departmental policy change be implemented to recognize that seriously disabled veterans entitled to a disability pension at 78 per cent or more (SDVs) qualify, as a matter of right, under the Veterans Burial Regulations/Last Post Fund and should be granted automatic entitlement for funeral and burial grants. This would obviate the need to draft lengthy submissions that also place VAC adjudicators in the position of having to consider extremely complex and comprehensive evidence supporting our contention that the interrelationship of the pensioned and non-pensioned conditions of such veterans has contributed to their passing.

At the outset, we must state that a rather disturbing development has occurred with regard to the Last Post Fund administration of the Veterans Burial Regulations. It must be underlined that, over recent months, we have actually encountered a certain amount of procedural and substantive resistance from the Last Post Fund adjudicative team. Indeed, a number of our submissions on behalf of seriously disabled veterans such as war amputees and Hong Kong veterans have met with bureaucratic obstacles and a less positive result upon adjudication than previously experienced.

We must indicate that we were somewhat shocked that a supplementary submission has proven necessary in relation to an individual case of a Hong Kong veteran recently evaluated by the Last Post Fund section of VAC. Given the history of the Canadian Hong Kong veterans and the

horrific experience they suffered as PoWs of the Japanese during the Second World War for some 44 months, this represents an intolerable state of affairs. As is well known, the devastating story of abuse, torture, starvation and gross violations of human rights has long led to the irrefutable conclusion that the family of a Hong Kong veteran should automatically receive Last Post funding as a matter of right.



Last Post Fund/Veterans Burial Regulations

We are currently pursuing a resolution to these difficulties with the deputy minister and the policy director of VAC, as this negative attitude within the Last Post Fund administration is unacceptable.

In general terms, it remains NCVA's position that it is necessary for VAC to recognize that a seriously disabled veteran should be entitled, as a "matter of right," to receive funeral and burial benefits pursuant to the Veterans Burial Regulations.

VAC regulations state that a veteran may be eligible to receive a Funeral and Burial Grant through Veterans Affairs Canada if it can be determined that their cause of death is related to one of their pensioned conditions or is a condition that has been aggravated by their pensioned conditions, leading to their demise.

It is noteworthy that many seriously disabled veterans are in receipt of disability pension from VAC at the rate of 100 per cent. In reality, there clearly is no necessity for the veteran to seek further entitlement given the maximization of their disability pension and the application of the VAC "SDV" policy, wherein 100 per cent pensioners are granted health-care/treatment benefits and long-term care for any and all of their pensioned disabilities and non-pensioned conditions.

We would point out that the department recognizes that as seriously disabled veterans age, their overall medical condition involves ailments from both pensioned and non-pensioned conditions. To eliminate the complication of distinguishing between



these conditions, SDVs are provided with health-care and treatment benefits for both pensioned and non-pensioned conditions, in accordance with VAC health-care regulations.

In our judgement, the overall interrelationship between pensioned and non-pensioned conditions contributes to the SDV's death as direct application of the well-established principle recognized by VAC with reference to the seriously disabled veterans' policy. In this context, it is inconceivable that the impact of the pensioned and non-pensioned disabilities did not play a part in the veteran's ultimate demise.

It is also noteworthy that, when determining eligibility for Exceptional Incapacity under the Pension Act, the department takes into consideration the impact of both the pensioned and non-pensioned conditions.

As indicated in Chapter 7 of VAC's Table of Disabilities, section on Exceptional Incapacity Allowance:

“7.04 ... It is important to be cognizant of the fact that it **is difficult and frequently impossible to medically separate the impact of pensioned and non-pensioned conditions in a severely disabled person and in such cases, one can fairly assume such impact exists.** ... Account should be taken of the **“synergism” principle, i.e., the total effect of the pensioned disabilities may be greater than the sum of the effects of the disabilities taken independently.** Mental and physical deterioration due to age is not excluded in the determination of exceptional incapacity...”.

This synergistic relationship between pensioned and non-pensioned conditions is also acknowledged in the Attendance Allowance provisions of the Pension Act:

“An Attendance Allowance may be awarded to a pensioner when all of the following circumstances are met:

- a. The pensioner is in receipt of at least a one per cent disability pension or prisoner of war compensation
- b. The pensioner is totally disabled, whether by reason of military service or not
- c. The pensioner is in need of attendance.”

It is our basic position that an SDV profile as enacted in the VAC policy guidelines should also apply to the administration and interpretations of the Veterans Burial Regulations when determining matter of right on behalf of an SDV. It is puzzling indeed

that, during their lifetimes, the department recognizes the cumulative and synergistic effect of both the veteran’s pensioned and non-pensioned conditions by approving many health-care and treatment benefits on their behalf but, in death, ignores the relationship between these conditions.

In conjunction with this overall position, we would also ask that the department consider the Benefit of Doubt Section under the Pension Act as a relevant and fundamental principle of veterans legislation and, as such, request that the adjudicators note Section 5 in relation to these SDV claims:

“(3) In making a decision under this Act, the Minister shall:

- (i) Draw from all the circumstances of the case and all the evidence presented to the Minister every reasonable inference in favour of the applicant or pensioner;
- (ii) Accept any uncontradicted evidence presented to the Minister by the applicant or pensioner that the Minister considers to be credible in the circumstances; and
- (iii) Resolve in favour of the applicant or pensioner any doubt, in the weighing of evidence, as to whether the applicant or pensioner has established a case.”

In furtherance of these presumptive principles, we would submit in support of our recommendation that statements emanating from former Minister Lawrence MacAulay, former Deputy Minister Walt Natynczyk

and current Deputy Minister Paul Ledwell support the position that VAC adjudication should adopt a **compassionate and generous philosophy and ensure that a liberal interpretation is followed in relation to individual veteran applications.**

The “veteran-centric” approach adopted by the department has been similarly emphasized by the department in the context of “getting to yes faster” with respect to VAC adjudication.

As a personal note, it is extremely difficult to advise the surviving spouses/children of The War Amputations of Canada and the Hong Kong Veterans Association of Canada that not only has their claim for benefits under the Veterans Burial Regulations/Last Post Fund been turned down, but they will also not be receiving the Memorial Cross that is issued by the Government as a symbol of the personal loss and sacrifice that such surviving spouses/children are facing upon the death of their veteran spouse/parent.

