

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 (seriously disabled veterans [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 we have experienced great success over the last year with regard to the Last Post Fund administration of the veterans' burial regulations. It will be recalled that we had encountered in the past 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 (SDVs) such as war amputees and Hong Kong veterans had met with bureaucratic obstacles and a less positive result upon adjudication than previously experienced.

Following our discussions with the new Director of Policy for VAC, we have been pleased with the results of recent applications and give the department significant credit for moving the markers and providing a more realistic assessment of Last Post Fund claims for seriously disabled veterans such as the Hong Kong veterans, war amputees et al. In



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conclusion, seriously disabled veterans are finally receiving a form of automatic Last Post funding as a matter of right.

In general terms, it has been the long-standing position of NCVA 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 VAC 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 his 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 judgment, 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:

- (i) The pensioner is in receipt of at least a one per cent disability pension or prisoner of war compensation;

- (ii) The pensioner is totally disabled, whether by reason of military service or not; and
- (iii) 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 became 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 was their claim for benefits under the Veterans Burial Regulations/Last Post Fund turned down, but they would 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 face upon the death of their veteran spouse/parent.

We are pleased to have gained support of our position through the current adjudicative team within the Last Post Fund wherein they have adopted a compassionate and generous philosophy to ensure that a liberal interpretation is followed in relation to individual veteran applications.