

Department of Veterans Affairs 339/21P  
Regional Office  
Pretend Pension Management Center  
VA Denver Regional Office  
155 Van Gordon St  
Lakewood CO 80228

Joe Veteran  
8675309

## **ADMINISTRATIVE DECISION**

### **ISSUE:**

Whether or not the erroneous payment of Survivors Pension benefits paid to Jane Veteran for the period July 1, 2018 to December 1, 2020 was solely the result of VA error.

### **EVIDENCE:**

- VA Form 21-0966 (Intent to File a Claim for Compensation and/or Pension, or Survivors Pension and/or DIC), received June 29, 2018
- VA Form 21P-534EZ (Application for DIC, Death Pension, and/or Accrued Benefits), received August 13, 2018
- VA Form 21-0779 (Request for Nursing Home Information in Connection with Claim for Aid and Attendance), received August 13, 2018
- VA Form 21-0779 (Request for Nursing Home Information in Connection with Claim for Aid and Attendance), received September 19, 2018
- VA Form 21-4138 (Statement in Support of Claim), received September 19, 2018
- Rating Decision, dated November 5, 2018
- Compensation and Pension award, completed December 10, 2018
- Notification letter dated December 11, 2018
- VA Form 21-4138 (Statement in Support of Claim), received January 29, 2019
- VA Form 21-0779 (Request for Nursing Home Information in Connection with Claim for Aid and Attendance), received January 29, 2019
- Compensation and Pension award, completed September 17, 2020
- Notification letter dated September 18, 2020
- Due Process letter dated September 24, 2020

### **PERTINENT LAWS AND REGULATIONS:**

**38 CFR 3.23 Improved pension rate – Veterans and surviving spouses**

**38 CFR 3.105(a): *Error***

**38 CFR 3.500(b)(2): *General.***

**38 CFR 3.151 Claims for disability benefits.**

**38 CFR 3.272(g): Medical expenses**

**38 CFR 3.273: Rate computation**

**38 CFR 3.278: Deductible medical expenses.**

**DECISION:**

The erroneous payment of Survivors Pension benefits paid to Jane Veteran for the period July 1, 2018 to December 1, 2020 was solely the result of VA error.

**REASONS AND BASES:**

On August 13, 2018 the surviving spouse applied for Survivors Pension benefits with Special Monthly Pension, with an Intent to File previously received on June 29, 2018. She claimed medical expenses paid to Summers Landing assisted living and confirmed the care by submitting a VA Form 21-0779, Request for Nursing Home Information in Connection with Claim for Aid and Attendance.

On September 19, 2018, the surviving spouse sent a new VA Form 21-0779 showing she had moved from Summers Landing assisted living to Summerhill nursing home on August 24, 2018. The VA Form 21-4138, Statement in Support of Claim, that accompanied it showed she had applied for Medicaid but not yet been approved.

A Rating Decision was created on November 5, 2018 in which for Aid and Attendance was granted.

VA promulgated the award on December 10, 2018 and granted Survivors Pension benefits counting a continuing medical expense of \$3,060.00 per month paid to Summers Landing assisted living. The Notification Letter sent the next day informed the surviving spouse that VA was counting \$38,334.00 in continuing medical expenses for both Medicare Part B and Assisted Living Fees.

On January 28, 2019, the surviving spouse sent a new VA Form 21-0779, confirming she still lived at Summerhill nursing home. The new form shows she was now being covered by Medicaid and her charged expense lowered.

VA promulgated an award on September 17, 2020, lowering her benefit to the \$90.00 protected Medicaid rate, on the date last paid, October 1, 2020.

Despite the surviving spouse immediately informing the VA that she had changed care facilities, VA never undertook any development to clarify her medical expenses. Rather, VA counted expenses paid to a facility in which the surviving spouse no longer resided.

To date, the surviving spouse has not claimed any medical expenses paid to Summerhill nursing home, as we have received none of the forms required to claim this expense per 38 CFR 3.151.

Payee error was considered, but none was found. While the Notification Letter sent by VA listed an annual medical expense and alluded to Assisted Living Fees, the letter did not clarify what portion of the annual amount the Assisted Living Fees represented, nor did it state which facility's expense VA was considering. As our Notification Letter was not clear, and the surviving spouse may not know that a VA Form 21-0779 is an unacceptable form on which to claim expenses paid, it is likely the surviving spouse assumed we were counting expenses paid to Summerhill nursing home.

By failing to determine what medical expenses the surviving spouse was paying, VA failed to properly determine the surviving spouse's Income for VA Purposes (IVAP) as required by 38 CFR 3.273 to determine the proper payment. In doing so the erroneous payment of \$32,848.00 for the period July 1, 2018 to December 1, 2020 to the surviving spouse was not authorized by law and solely due to an administrative error.

**Total erroneous payment: \$32,848.00**