

DATE: 03-11-91

CITATION: VAOPGCPREC 13-91
Vet. Aff. Op. Gen. Couns. Prec. 13-91

TEXT:

SUBJECT: Entitlement of certain veterans to drugs and medicines under 38 U.S.C. § 612(h).

(This opinion, previously issued as Opinion of the General Counsel 2-65, dated June 18, 1965, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

To: Chief Medical Director

1. This is in reply to the question in your memorandum of May 6, 1965, viz., whether a veteran who has been adjudicated as eligible for increased pension under 38 U.S.C. § 521(d) based on need of regular aid and attendance, but who elected to receive a greater compensation benefit for his service-connected disabilities, may be considered to be in constructive receipt of such pension and entitled to drugs or medicines for his non-service connected disabilities.

2. Your submission sets forth facts concerning a veteran who is receiving compensation for his service-connected disabilities and has been adjudicated as eligible for increased pension based on need of regular aid and attendance under [38 U.S.C. s 521](#)(d) for his non-service-connected conditions. Medication is required for other than his service-connected disabilities and his non-service-connected conditions apparently are not medically adjunct to his service-connected disabilities.

3. Sections 521(d) and 612(h) of title 38, United States Code, read, respectively, as follows:

Section 521(d)--"If the veteran is in need of regular aid and attendance, the monthly rate payable to him under subsection (b) or (c) shall be increased by \$100."

Section 612(h)--"Any veteran who as a veteran of World War I, World War II, or the Korean conflict is receiving increased pension under section 521(d) of this title based on need of regular aid and attendance may be furnished drugs or medicines ordered on prescription of a duly licensed physician as specific therapy in the treatment of an illness or injury suffered by the veteran."

The obvious purpose of subsection (h) as reflected by the legislative history is to provide drugs and medicines to entitled veterans with severe non-service-connected disabilities requiring regular aid and attendance.

4. It has been held that a veteran who has been adjudicated to be presently eligible for pension based on need of regular aid and attendance may be furnished an invalid lift under 38 U.S.C. s 617, 1 , notwithstanding the non-receipt of such pension by reason of receipt of a greater compensation benefit. (1 Section 617 of title 38, United States Code, provides that the Administrator may furnish an invalid lift, if medically indicated, to any veteran in receipt of pension under chapter 15 of title 38 based on the need of regular aid and attendance.) See Op. GC 1-61. In that opinion this office pointed out that the language "receiving" or "in receipt of" although sometimes required to be construed literally, may be interpreted under the benefit under a particular statute. It would appear proper to apply the principle of constructive receipt of the pension benefit here to carry out the intent of this liberalizing law. It is recognized that there is some difference between the furnishing of an invalid lift, a one-time benefit, and the furnishing of drugs or medicines which most frequently will be a continuing benefit. However, this is a distinction which does not warrant or require a different legal conclusion.

HELD:

5. It is the opinion of this office that a veteran who is adjudicated as presently eligible for increased pension under 38 U.S.C. § 521(d) based on need of regular aid and attendance may be furnished drugs or medicines under 38 U.S.C. § 612(h), notwithstanding the non-receipt of such pension by reason of the receipt of a greater compensation benefit. Since the furnishing of drugs or medicines will usually be a continuing benefit, I wish to point out that the veteran must meet the eligibility requirements for increased pension under 38 U.S.C. § 521(d) at all times when drugs or medicines are being furnished under section 612(h).

VETERANS ADMINISTRATION GENERAL COUNSEL
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