

DATE: 03-11-91

CITATION: VAOPGCPREC 36-91
Vet. Aff. Op. Gen. Couns. Prec. 36-91

TEXT:

SUBJECT: Application for Automobile.

(This opinion, previously issued as Opinion of the General Counsel 9-76, dated August 25, 1975, 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: District Counsel, Winston-Salem, NC

QUESTION PRESENTED:

Does the present language of 38 U.S.C. § 3202 enable the VA to accept an application for an automobile authorized to an eligible veteran who is incompetent and where the application is signed by a spouse as payee?

COMMENTS:

Solicitor's Opinion 273-52, dated October 13, 1952, states that payment to the wife of an incompetent veteran is limited to three types of benefits, namely, compensation, pension, or retirement pay. The opinion states that these benefits are exclusive and that other benefits may only be paid to a guardian.

This opinion has not been modified or rescinded. Neither title 38, VA Regulations, nor DVB publications specifically direct themselves to this question. However, Public Law 93-295, as restated in 38 U.S.C. § 3202, states that where the interest of the beneficiary may be served thereby, payment of benefits may be made directly to the beneficiary, or to a relative or some other person for the use and benefit of the beneficiary regardless of any legal disability on the part of the beneficiary. This law does, in my opinion, supersede the restrictions imposed by Solicitor's Opinion 273-52.

HELD:

A spouse-payee may file an application for an automobile on behalf of an incompetent veteran and such an application may be properly accepted and processed. Op.Sol. 273-52 is therefore rescinded insofar as it is inconsistent with this opinion.

VETERANS ADMINISTRATION GENERAL COUNSEL
Vet. Aff. Op. Gen. Couns. Prec. 36-91