VAOPGCPREC 28-97

Date: July 24, 1997

From: General Counsel (022)

Subj: Eligibility for Supplemental SDVI

To: Acting Under Secretary for Benefits (20)

OUESTION PRESENTED:

Whether a person insured under Service Disabled Veterans' Insurance, who does not receive a waiver of premiums pursuant to 38 U.S.C. § 1912 because the insured died prior to the continuance of total disability for six consecutive months, is nonetheless eligible for supplemental Service Disabled Veterans' Insurance pursuant to 38 U.S.C. § 1922A.

COMMENTS:

- 1. The Veterans' Benefits Act of 1992, Pub. L. No. 102-568, tit. II, § 203, 106 Stat. 4320, 4324-25, established a supplemental insurance program for totally disabled veterans who have Service Disabled Veterans' Insurance (SDVI). Under 38 U.S.C. § 1922A(a), a person insured under SDVI who qualifies for a waiver of premiums under 38 U.S.C. § 1912 is eliqible for up to \$20,000 of supplemental SDVI. qualify for supplemental SDVI, the insured must file an application with the Department of Veterans Affairs within one year after notification of entitlement to a waiver. You inquire as to whether a person insured under SDVI who does not receive a waiver of premiums pursuant to section 1912 because the insured died prior to the continuance of total disability for six consecutive months is nonetheless eligible for supplemental SDVI pursuant to 38 U.S.C. \$ 1922A.
- 2. Your opinion request concludes that, based upon various provisions of title 38, United States Code, "it would appear that totally disabled persons who die prior to continuous total disability of six consecutive months and qualify for a waiver of premiums are eligible for supplemental SDVI." The two phrases in the above-referenced sentence, however, are mutually exclusive. A person who dies prior to six consecutive months of total disability does not

qualify for a waiver pursuant to 38 U.S.C. § 1912. It is a basic principle of statutory construction that effect must be given, if possible, to every word and clause of a statute. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 36 (1992);

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United States v. Menasche, 348 U.S. 528, 538-39 (1955). Under section 1912(a), payment of premiums may be waived only if the insured has six or more consecutive months of continuous total disability. Section 1913, moreover, states that "[w]henever premiums are not waived under section 1912 of this title solely because the insured died prior to the continuance of total disability for six months," and satisfactory proof of such facts is provided to VA within one year after the insured's death, the insurance is deemed to be in force at the date of the insured's death. (Emphasis added). Thus, a person who dies prior to six consecutive months of continued total disability would not qualify for

a waiver under section 1912. Rather, according to section 1913, under such circumstances, the insured's policy would remain in force, but the unpaid premiums are a lien against the insurance proceeds. *United States v. Roberts*, 192 F.2d 893, 895-96 (5th Cir. 1951).

The legislative history of the National Service Life Insurance Act supports the conclusion that totally disabled persons who die prior to six consecutive months of continuous total disability are not entitled to a waiver. tion 602(n) of the National Service Life Insurance Act of 1940, ch. 757, tit. VI, 54 Stat. 1008, 1011 (currently codified as amended at 38 U.S.C. § 1912), provided for a waiver of premiums if the insured's total disability "has existed for six or more months." Section 1913 of title 38, United States Code, was added to the National Service Life Insurance Act of 1940 by the Act of Sept. 30, 1944, ch. 454, § 3, 58 Stat. 762-63, to prevent lapse of insurance where "an insured is not entitled to waiver of premiums on account of total disability because death occurred prior to the continuance of such total disability for 6 months." S. Rep. No. 1105, 78th Cong., 2d Sess. 2 (1944) (letter of Frank T. Hines, Administrator, Veterans Administration) (emphasis added). We therefore cannot accept your conclusion that an insured who dies prior to six consecutive months of continuous total disability is eligible for supplemental SDVI.

4. The opinion request also points out that section 1922A(a) does not require that entitlement to a waiver be established prior to application for supplemental SDVI, but rather only that the insured "qualify" for a waiver under section 1912. In determining the plain meaning of statutory language, "'legislative purpose is expressed by the ordinary meaning of the words used.'" Ardestani v. Immigration & Naturalization Serv., 502 U.S. 129, 135 (1991) (quoting American Tobacco Co. v. Patterson, 456 U.S. 63, 68

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- (1982)); Jones v. Brown, 41 F.3d 634, 638 (Fed. Cir. 1994). Webster's Ninth New Collegiate Dictionary 963 (1990) defines "qualify" as to "meet the required standard." Therefore, in order to "qualify" for a waiver, a person insured under SDVI must meet the required standard set forth in section 1912(a) of six consecutive months of continuous total disability. A person insured under SDVI who dies before meeting this requirement would not be eligible for supplemental SDVI, irrespective of when the insured filed an application for the supplemental insurance.
- We must also disagree with your statement that "disqualification of . . . insureds [who die prior to six months of continued total disability] from entitlement to supplemental SDVI may be inconsistent with the legislative purpose of providing additional insurance coverage for totally disabled individuals." Another fundamental rule of statutory construction is that one must first look to the literal language of a statute prior to resorting to secondary sources to determine legislative intent, and, if the statutory terms are plain and do not lead to absurd or impracticable consequences, then the literal language of the statute is the "sole evidence of the ultimate legislative intent." Caminetti v. United States, 242 U.S. 470, 485, 490 (1917). See also West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 98-99 (1991); 2A Norman J. Singer, Sutherland Statutory Construction §§ 46.01-46.04 (5th ed. 1992) (plain meaning rule). Sections 1922A(a) and 1912 unambiguously provide that supplemental SDVI is only available to a person insured under SDVI who qualifies for a waiver of premiums under section 1912, which requires that the insured be totally disabled for six consecutive months. Moreover, as noted earlier, section 1913 specifically provides that where the requirements of section 1912 are not met, the insurance remains in force but the premiums are a

lien against the proceeds. VA simply cannot disregard the limiting language of the statute which restricts supplemental SDVI to insureds whose total disability has continued for six consecutive months. See Travelstead v. Derwinski, 978 F.2d 1244, 1250 (Fed. Cir. 1992).

- 6. Where the terms of a statute are unambiguous, only the most extraordinary showing of contrary intention would justify a departure from the plain meaning of the statute. See Garcia v. United States, 469 U.S. 70, 75 (1984). The legislative history of section 1922A, however, also indicates Congress' intent to extend supplemental SDVI only to those insureds whose total disability has continued for at least six consecutive months. When considering the legislation to <Page 4>
- create supplemental SDVI, the House Committee on Veterans' Affairs explained that the supplemental insurance would be provided to veterans who are eligible for a waiver of premiums due to total disability, and "veterans not currently eligible for waiver of premiums would have one year upon notification of waiver eligibility to apply for this supplemental coverage." H.R. Rep. No. 753, 102d Cong., 2d Sess. 13-14 (1992). We therefore can find no basis to depart from the plain meaning of the statute.
- 7. Your opinion request also states that since section 1922A(c) requires that supplemental SDVI "be granted under the same terms and conditions as insurance granted under section 1922(a)" and "[s]ince individuals insured under section 1922 who die prior to 6 months of total disability may still qualify for a waiver of premiums, these persons would presumably also qualify for supplemental insurance." However, as discussed above, according to 38 U.S.C. § 1913, "[w]henever premiums are not waived under section 1912 of this title solely because the insured died prior to the continuance of total disability for six months," and satisfactory proof of such facts is provided to VA within one year after the insured's death, the insurance is deemed to be in force at the date of the insured's (Emphasis added). Thus, contrary to the statement in the opinion request, if a SDVI policyholder died prior to six months of continuous total disability, he or she would not qualify for a waiver of premiums.
- 8. According to the opinion request, the fact that section 1922(a) provides that a waiver of premiums under sec-

tion 1912 may not be denied on the basis that the serviceconnected disability became total before the effective date of such insurance, indicates Congress' intent to provide insurance benefits for totally disabled persons. dispute that this was the intent of Congress in enacting sections 1922 and 1922A. However, the inclusion of the above-referenced statement in section 1922(a) indicates that when Congress intends to waive one of the requirements for obtaining a waiver of premiums under section 1912, it so specifies. Congress has not indicated any intent to waive the section 1912 requirement of six months continued total disability for any persons, including applicants for supplemental SDVI. The opinion request also points out that, a policyholder who dies prior to receiving a waiver would not be eligible for supplemental SDVI "solely on the basis of their death." That is in fact true. While section 1922A was intended to permit severely disabled veterans to purchase supplemental insurance, we find no evidence of

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congressional intent to provide supplemental insurance coverage to deceased SDVI insureds. The House Committee on Veterans' Affairs stated its belief that "this deserving group of severely disabled service-connected veterans should be afforded this opportunity to further enhance their estates. This provision will permit these veterans to purchase, at reasonable rates, coverage that otherwise could not be obtained due to the nature of their disabilities and the prohibitive costs that would otherwise be incurred." H.R. Rep. No. 753, 102d Cong., 2d Sess. 14 (1992). We do not find anything in the legislative history to suggest an intent on the part of Congress to authorize an extension of the prescribed group of insureds who are eligible for supplemental SDVI.

HELD:

A person insured under Service Disabled Veterans' Insurance, who does not qualify for a waiver of premiums pursuant to 38 U.S.C. § 1912 because the insured died prior to the continuance of total disability for six months, is not eligible for supplemental Service Disabled Veterans Insurance pursuant to 38 U.S.C. § 1922A.

Mary Lou Keener