

Department of

Memorandum

Veterans Affairs

Date: March 5, 2002

VAOPGCPREC 2-2002

From: General Counsel (022)

Subj: Nonassignability of Benefits—38 U.S.C. § 5301(a)

To: Director, Compensation & Pension Service (21)

QUESTION PRESENTED:

Does 38 U.S.C. § 5301(a) prohibit the Department of Veterans Affairs (VA) from deducting from benefit payments, at the direction of the beneficiary, dental-insurance premiums to be paid to a private insurer as part of the Civilian Health and Medical Program of VA (CHAMPVA)?

COMMENTS:

1. Under the CHAMPVA, VA may provide medical care for the spouses, surviving spouses, and children of certain veterans. 38 U.S.C. § 1781(a).¹ VA is to provide such medical care “in the same or similar manner and subject to the same or similar limitations” as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under 10 U.S.C. ch. 55, either by entering into an agreement with the Department of Defense (DOD) under which DOD shall include coverage for such medical care under the contracts into which DOD enters to carry out 10 U.S.C. ch. 55 or by itself contracting for the insurance, medical service, or health plans VA deems appropriate. 38 U.S.C. § 1781(b).

2. Under authority in 10 U.S.C. ch. 55, DOD has established a dental-insurance plan for retirees of the uniformed services and certain dependents and survivors, the “TRICARE Retiree Dental Program.” See 10 U.S.C. § 1076c; 32 C.F.R. § 199.22. The program is administered through a contract. 32 C.F.R. § 199.22(b)(5). Under this program, enrollees in the plan must pay the premiums charged for their insurance coverage. 10 U.S.C. § 1076c(c)(1); 32 C.F.R. § 199.22(b)(2). In establishing procedures to collect premiums charged for

¹ Until recently, this authority was codified at 38 U.S.C. § 1713, which was redesignated by section 208(c) of the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Pub. L. No. 107-135, § 208(c), 115 Stat. 2446, 2463 (2002).

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coverage under the program, DOD is required, “[t]o the maximum extent practicable,” to deduct and withhold from the retired pay of a member entitled to retired pay the premiums payable by the member. 10 U.S.C. § 1076(c)(2).

3. VA has the opportunity to provide comparable dental-insurance coverage under the CHAMPVA through an agreement with DOD allowing CHAMPVA eligibles to be covered by the contract DOD entered into to provide dental-insurance coverage under the TRICARE Retiree Dental Program. However, as a condition of allowing CHAMPVA eligibles to be covered under the TRICARE contract, VA reportedly must deduct their premiums from their VA compensation and dependency and indemnity compensation and pay the premiums directly to the contractor providing the insurance. The deduction of premiums from VA benefit payments implicates the benefit-nonassignability provisions of 38 U.S.C. § 5301(a).

4. An assignment is a transfer of property or some other right from one person to another that confers a complete and present right to the assignee in the subject matter of the assignment. 6 Am. Jur. 2d *Assignments* § 1 (1999); *see also* Black’s Law Dictionary 115 (7th ed. 1999) (transfer of rights or property). The term “assignment” ordinarily refers to a transfer of intangible rights in property, as opposed to transfer of property itself, 6 Am. Jur. 2d *Assignments* § 1 (1999), i.e., a transfer of a right to receive payments, rather than a transfer of the funds themselves. An assignment is by its nature a voluntary transfer. 6 Am. Jur. 2d *Assignments* § 2 (1999).

5. Generally, VA benefits are not assignable. Pursuant to 38 U.S.C. § 5301(a), “[p]ayments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law.” This office has interpreted this statute as clearly precluding any assignment of VA benefits that would require VA or the Department of the Treasury to make payment directly to an assignee. While this office has in certain non-precedential opinions concluded that a veteran may execute a voluntary, written waiver of section 5301(a)’s exemption in order to authorize VA to pay from the VA benefits payable to him or her a debt due to the United States, VAOPGC 29-79 (10-3-79); VAOPGC 3-58 (1-3-58), the rationale for that exception was not clearly identified, and such an exception has not been consistently recognized, VADIGOP, 3-15-72 (15-3 Allowances—Assignment) (payment of education benefits directly to DOD to ensure payment for training it provided was a prohibited assignment). Further, the fact that all assignments are by their nature voluntary suggests that the voluntary nature of the beneficiaries’ action would be of no consequence. In any event, this office has not sanctioned any such arrangement involving a direction by a beneficiary to pay the beneficiary’s VA benefits directly to a private party. For example, this office has construed the anti-assignment statute as prohibiting what was in essence a voluntary transfer to a private party of the right to receive

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benefit payments intended to compensate the private party for providing job training for which the benefits were intended to pay. VAOPGCPREC 59-90 (O.G.C. Prec. 59-90); see *also* VADIGOP, 5-3-72 (15-3 Allowances—Assignment) (veteran's voluntary instruction to pay education benefits directly to school prohibited).

6. This office has not previously issued an opinion on the specific question of whether a deduction by VA from a beneficiary's benefit payment, made at the beneficiary's request, and paid to a private entity in order to obtain dental-insurance coverage, would contravene section 5301(a). Under current regulations, an individual insured under a National Service Life Insurance (NSLI) policy may authorize the monthly deduction of premium payments from any of various VA benefits. 38 C.F.R. § 8.4. However, NSLI is provided by the United States Government, not by a private insurer. Further, statutes governing the NSLI program authorize VA to prescribe by regulations the method of payment of NSLI premiums. 38 U.S.C. § 1908. VA has no such specific authority with regard to dental-insurance benefits under the CHAMPVA program.

7. Deductions from VA benefit payments to pay premiums for participation in the TRICARE Retiree Dental Program, although they may be authorized by a beneficiary desiring coverage under the dental-insurance plan, would be tantamount to an assignment to pay a debt owed to a private creditor. In view of the statutory anti-assignment provision of section 5301(a) and the lack of any specific authorization for the contemplated deductions, a request by a beneficiary for such deductions must be considered an assignment prohibited by section 5301(a). Legislation would be required to establish an exception to the anti-assignment statute.

HELD:

Section 5301(a) of title 38, United States Code, prohibits the assignment of payments of Department of Veterans Affairs (VA) benefits due or to become due, except to the extent specifically authorized by law. In the absence of a specific statutory exception, VA may not deduct from VA benefits, at the direction of the beneficiary, premiums charged for dental insurance provided by a private insurer through a contract with the Department of Defense.

Tim S. McClain