

**Department of  
Veterans Affairs**

**Memorandum**

Date: February 9, 2005 VAOPGCPREC 1-2005

From: General Counsel (023)

Subj: Applicability of the Veterans Claims Assistance Act to Claims by States that Pertain to the State Home Program

To: Acting Chairman, Board of Veterans Appeals (01)

**QUESTION PRESENTED**

Does the Veterans Claims Assistance Act of 2000 apply to claims by states regarding the construction, recognition, and payment of per diem to State homes?

**DISCUSSION**

1. You have requested an opinion regarding the applicability of the Veterans Claims Assistance Act of 2000 (VCAA), Pub. L. No. 106-475, 114 Stat. 2096, to claims relating to the construction, recognition, and payment of per diem to State homes. Your request describes two situations where states (Utah and Missouri) have appealed VA's determination that per diem payments will not be made for care provided for certain periods prior to recognition of the State homes by VA. In both situations, the states appeal the manner in which VA made the decisions on recognition, alleging, among other things, that VA's decisions were arbitrary, capricious, an abuse of discretion and/or not supported by the evidence. The states seek retroactive per diem payments commencing with the time when they contend recognition should have been granted to the State homes. You ask whether the VCAA applies to the type of claim at issue here, and if so, the extent to which it applies. For the reasons discussed below, we conclude that the VCAA does not apply to this type of claim.

**Background Facts**

**VA State home program**

2. VA assists states in constructing medical facilities for the care of veterans under a grant program authorized by 38 U.S.C. §§ 8131-8137. To receive a grant, a state must meet certain grant requirements. *Id.*; see also 38 C.F.R. Part 59. Under this program, VA pays up to 65 percent of the cost of construction of State homes. *Id.* § 8135(a)(1).

3. VA also assists states in operating State homes by making grants to states for each day that a state furnishes care to an eligible veteran. 38 U.S.C. §§ 101(19), 1741(a)(1) and (2). For each day a recognized State home provides care to an eligible veteran, VA pays per diem at a rate that VA sets each year. The per diem rate cannot be more than one-half the cost of the veterans' care in the State home. *Id.* § 1741(b).

4. VA cannot pay per diem to a State home unless the home meets the standards prescribed by the Secretary. 38 U.S.C. § 1742. Pursuant to section 1741(d), VA can commence payment of per diem on the date of the completion of the inspection for recognition, provided VA determines that the State home has met the Secretary's standards on that date. Prior to February 7, 2000, VA standards for nursing home care in State homes were set forth in regulations then codified at 38 C.F.R. § 17.190(a)-(d)(1999) and set forth in Veterans Health Administration Manual M-5, Part VIII, Chapter 2. VA standards for nursing home care after February 7, 2000, are in 38 C.F.R. §§ 51.1 – 51.210. VA determines whether a State home meets VA standards by conducting inspections. 38 U.S.C. § 1742(a). Prior to February 7, 2000, only the Secretary of Veterans Affairs had authority to recognize new State homes. 38 C.F.R. § 17.190 (1999). On February 7, 2000, the Secretary delegated the authority to recognize new State homes to the Under Secretary for Health. 38 C.F.R. § 51.30.

### **Veterans Claims Assistance Act**

5. The purpose of the VCAA is "to amend title 38, United States Code, to reaffirm and clarify the duty of the Secretary of Veterans Affairs to assist claimants for benefits under the laws administered by the Secretary, and for other purposes." VCAA, 114 Stat. 2096; *see Mason v. Principi*, 16 Vet. App. 129, 132 (2002) ("The VCAA, among other things, eliminated the well-grounded-claim requirement and amended VA's duty to notify claimants and their representatives of any information or evidence necessary to substantiate their claims."). The provisions of the VCAA applicable to your question are codified in 38 U.S.C. §§ 5103(a) and 5103A. Section 5103(a) states:

Upon receipt of a complete or substantially complete application, the Secretary shall notify the claimant and the claimant's representative, if any, of any information, and any medical or lay evidence, not previously provided to the Secretary that is necessary to substantiate the claim. As part of that notice, the Secretary shall indicate which portion of that information and evidence, if any, is to be provided by the claimant and which portion, if any, the Secretary, in accordance with section 5103A of this title and any other applicable provisions of law, will attempt to obtain on behalf of the claimant.

6. Section 5103A of title 38, United States Code, titled, "Duty to assist claimants," details the type and manner of assistance VA must provide to claimants. See 38 U.S.C. § 5103A(a)(1), (b), (c), and (d). The applicability of the duty to assist is addressed in subsection (a), which states in pertinent part:

(a) Duty to assist. (1) The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary. (2) The Secretary is not required to assist a claimant under this section if no reasonable possibility exists that such assistance would aid in substantiating the claim.

38 U.S.C. § 5103A(a); see also 38 C.F.R. § 3.159(b)(c).<sup>1</sup> The VCAA defines "claimant" as "any individual applying for, or submitting a claim for, any benefit under the laws administered by the Secretary." 38 U.S.C. § 5100.

### Legal Analysis

#### **States are not "claimants" for purposes of the VCAA**

7. The VCAA requires VA to assist claimants seeking benefits from VA. The United States Court of Appeals for Veterans Claims (CAVC) has determined that the VCAA notice requirements require VA to inform the claimant of the information and evidence not in the record that is necessary to substantiate the claim for benefits. 38 U.S.C. § 5103(a); *Quartuccio v. Principi*, 16 Vet. App. 183 (2002). VA must identify the information and evidence that VA will obtain, and that which the claimant is expected to provide. *Id.* You ask whether the VCAA requires that VA provide this same type of assistance to a state seeking recognition of a State home and the payment of per diem.

8. Your question is one of statutory interpretation. The starting point for analyzing such issues is the statutory language used by Congress. *Good*

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<sup>1</sup> Implementing regulations for the VCAA are set forth in 38 C.F.R. § 3.159(b), (c). The information published with this final rule describes the scope and applicability as follows:

As indicated by the proposal that these regulations be contained in 38 C.F.R. Part 3, this final rule applies only to claims for benefits that are governed by part 3. These benefits include compensation, pension, dependency and indemnity compensation, burial benefits, monetary benefits ancillary to those benefits, and special benefits.

*Department of Veterans Affairs Assistance in Developing Claims*, 66 Fed. Reg. 45,620, 45,629 (Aug. 29, 2001) (codified at 38 C.F.R. § 3.159).

*Samaritan Hosp. v. Shalala*, 508 U.S. 402, 409 (1993); *American Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982), citing *Reiter v. Sonotone Corp. et al.*, 442 U.S. 330, 337 (1979) (“As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress.”). In analyzing the language, we start with the assumption “that the legislative purpose is expressed by the ordinary meaning of the words used.” *American Tobacco Co.*, *id.* at 68, citing *Richards v. United States*, 369 U.S. 1, 9 (1962); see also *In Re: Oliver L. North*, 12 F.3d 252, 254 (D.C. Cir. 1994) (“Congress is normally presumed to afford an undefined term its ordinary meaning (*sic*).”).

9. In this case, the statutory language states that the notice and duty-to-assist requirements apply to claimants. The word “claimants” is defined as “any *individual* applying for, or submitting a claim for, any benefit under the laws administered by the Secretary.” 38 U.S.C. § 5100. The word “individual” is not defined in the statute. With regard to the ordinary meaning of the word “individual,” however, a Federal court has stated:

In common usage, “individual” describes a natural person. See Webster’s Third new International Dictionary 1152 (1981) (defining “individual” as “a single human being as contrasted with a social group or institution”). According to *Black’s Law Dictionary*, the legal definition of the term “individual,” while not excluding corporations in all cases, “very commonly” connotes a natural person as opposed to a corporate entity. Black’s law Dictionary 773 (6<sup>th</sup> ed. 1990) (“very commonly a private or natural person as distinguished from a partnership, corporation, or association”).

*In Re: Oliver L. North*, *id.* at 254-255 (1994).

10. Under the standard set forth in paragraph 8, it is appropriate to afford the term “individual” its ordinary meaning. Using the ordinary meaning of the word “individual” described above, we conclude that a state government clearly does not meet this definition. Therefore, based on the ordinary meaning of the word “individual,” the VCAA does not apply to a claim by a state government. See *United States v. Goldberger & Dubin, P.C.*, 935 F.2d 501, 506 (2d Cir. 1991) (“The words of a statute should be given their normal meaning and effect in absence of showing that some other meaning was intended.”); *United States v. Stokley*, 881 F.2d 114, 116 (4<sup>th</sup> Cir. 1989) (“In the absence of a contrary indication, the court must assume the drafters of a statute intended to convey the ordinary meaning attached to the language.”).

11. In the absence of contrary legislative intention, the language used by Congress “must ordinarily be regarded as conclusive.” *American Tobacco Co.*, *id.* at 68, citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447

U.S. 102, 108 (1980). In this case, the legislative history<sup>2</sup> supports the conclusion that the VCAA was intended to assist natural persons who are trying to establish claims for veterans' benefits. The legislative history states:

[VA's] system for deciding benefits claims "is unlike any other adjudicative process. It is specifically designed to be claimant friendly. It is non-adversarial; therefore, the VA must provide a substantial amount of assistance to a veteran seeking benefits." (citation omitted). This assistance includes requesting service records, medical records, and other pertinent documents from sources identified by the claimant. VA also provides medical examinations, when appropriate, to diagnose or evaluate physical and mental conditions.

H.R. Rep. No. 106-781, at 5 (2000), *reprinted in* 2000 U.S.C.C.A.N. 2006, 2007-08.

12. With regard to the intent of Congress in defining the term "claimant," the legislative history states:

As questions abound over the proper role of veterans and the VA in claims development, the Committee finds it necessary to clarify claimants' and the VA's duties with respect to obtaining evidence in support of claims for veterans benefits.

*Id.* at 9, *reprinted in* 2000 U.S.C.C.A.N. at 2011. The House Report goes on to state:

The purpose of defining [the word 'claimant'] is to ensure that the Secretary will provide applications and assistance to persons whose status as a veteran is not yet determined. Similarly, the Secretary would be obligated to respond to applications by persons who claim eligibility for or entitlement to a VA benefit by reason of their relationship to a veteran.

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<sup>2</sup> See 2A N. Singer, *Sutherland on Statutes and Statutory Construction* § 46.05, (6<sup>th</sup> ed. 2000) (The rules of statutory construction suggest that if the meaning or application of a statute is uncertain, the act should be analyzed in its entirety and harmonized "in accordance with legislative intent and purpose."); see also *Bonham v. District of Columbia Library Administration*, 989 F.2d 1242, 1244-45 (D.C. Cir. 1993) (citing *Edwards v. Aguillard*, 482 U.S. 578, 594-95 (1987)) (Where a statute is susceptible to more than one interpretation, its meaning may be clarified by looking at the text of the statute and other interpretive tools, including the legislative history, administrative interpretations, testimony of parties who participated in enactment of the law, and the sequence of events leading to passage of the law).

H.R. Rep. No. 106-781 at 9, *reprinted in* 2000 U.S.C.C.A.N at 2012. The context of this discussion makes it clear that in passing the VCAA, the intent of Congress was to require VA to provide claims assistance to natural persons including veterans, those seeking to establish their status as veterans, and those seeking VA benefits based on their relationship to a veteran.

13. The VCAA, as codified in section 5103(a), also focuses on the type of information, medical evidence, or lay evidence that is necessary to assist a claimant in substantiating a claim for benefits. The legislative history describes the type of evidence Congress expected an individual claimant to provide, as well as the type of evidence or information VA would furnish. The legislative history states:

[T]he Committee expects that information and evidence under the claimants control such as birth and marriage evidence, school attendance and income information should ordinarily be provided by the claimant. Information and evidence in the control of governmental entities and medical providers should ordinarily be provided directly by the Secretary.

*Id.* at 9, *reprinted in* 2000 U.S.C.C.A.N. at 2012; *see also* *Quartuccio v. Principi*, *id.* (VA must identify the information and evidence that VA will obtain, and that which claimant is expected to provide). The information and evidence contemplated by section 5103(a) is relevant to an individual's claim for VA benefits. It is distinct from the type of evidence at issue when a state seeks recognition of a State home or the payment of per diem. Section 5103(a) is not relevant to the type of evidence at issue in such a State home claim.

14. In conclusion, although per diem payments to states constitute "benefits" within the meaning of 38 U.S.C. § 511, *see* VAOPGCPREC 10-2000 (12-4-00), the language of the statute indicates that the VCAA requirements are intended to apply to a natural person's claim for VA benefits. The legislative history supports this conclusion. The legislative history discusses the confusion resulting from court decisions addressing the "well-grounded" claim requirement. H.R. Rep. No. 106-781, at 6-9 (2000), *reprinted in* 2000 U.S.C.C.A.N. 2006, 2008-2011. The intent of Congress in passing the VCAA was to clarify this issue and delineate both VA's duties and claimants' duties in obtaining evidence. *Id.* at 9, *reprinted in* 2000 U.S.C.C.A.N. at 2011. Nothing in the legislative history suggests Congress intended these provisions to apply to a state seeking State home recognition. Further, the type of medical and other evidence relevant to the VCAA is unique to a natural person's claim for benefits, and is distinct from the type of evidence at issue when a state seeks recognition of a State home. Therefore, we conclude that these provisions of the VCAA are not applicable to a state seeking recognition of a State home and the payment of per diem.

15. The United States Court of Appeals for Veterans Claims (CAVC) has remanded many claims on the basis that VA failed to comply with the notice or duty-to-assist provisions of the VCAA; however, the court has recognized that the notice and duty-to-assist provisions in the VCAA do not apply to every type of claim. See *Lueras v. Principi*, 18 Vet. App. 435, 438 (2004) (VA's denial of a request for waiver of overpayment "is not a claim for benefits under chapter 51, but, rather, an application for a waiver of overcompensation under chapter 53."); see also *Livesay v. Principi*, 15 Vet. App. 165, 178-89 ("A litigant alleging [clear and unmistakable error] is not pursuing a claim for benefits pursuant to part II or III, but rather is collaterally attacking a final decision . . ."); *Barger v. Principi*, 16 Vet. App. 132 (2002) (The VCAA provisions are relevant to a different chapter in title 38 and do not apply to a request for waiver of recovery of overpayment of improved death benefits under Chapter 53); *Smith v. Gober*, 14 Vet. App. 227, 231-32 (2000) (VCAA "does not affect the issue decided in this case concerning whether a federal statute allows the payment of interest on past due benefits."), *aff'd*, 281 F.3d 1384 (Fed. Cir.), *cert. denied*, 537 U.S. 821 (2002). Given the ordinary meaning of this statutory language and the clear intent of Congress in passing the VCAA, as expressed in the legislative history noted above, we conclude that the VCAA does not apply to a claim by a state regarding State home construction, recognition, and per diem payments.

**HELD:**

The provisions of the VCAA requiring VA to provide notice of any information or any medical or lay evidence necessary to substantiate the claim, and the duty to assist a claimant in obtaining evidence necessary to substantiate a claim, are not applicable to a claim by a state regarding State home construction, recognition, and payment of per diem.

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