Forgotten Warriors Project, Inc.

" Leave No One Behind"

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Equal Justice Action Committee

Department of Veterans Affairs
810 Vermont Ave. NW
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Acting General Counsel William A. Hudson, Jr.:

For years state civil courts have indiscriminately abused their limited authority over federal veterans' disability compensation benefits, even though they were prohibited from treating disability compensation as money subject to process (42 U.S. Code § 659). The most disturbing challenge has been VA Regional Offices/VBA allowing state civil courts to treat disability compensation as money subject to process by ignoring the VA Secretary's subject matter jurisdiction over compensation benefits pursuant to 38 U.S.C. § 511.

Divorce is a social tragedy for many families married to disabled veterans. Even though additional dependency compensation can be awarded, all eligibilities requirements must be met. This modest additional amount 8.8% (@100% rated) is hardly enough to support a family with two dependents. In a divorce as modest as it might be, the VA worsens the veterans' financial hardships by reducing the child dependency amount from 3.7% to 3.6% and terminating the former spouse additional dependency compensation benefits or a loss 5.2% for the maintenance of the family.

When the civil courts ignore the federal laws, a disabled veteran is unable to balance his disability compensation with his financial obligations incurred from his marriage. What happens next is obvious, however the catchall is more nefarious in practice when a VA apportionment claim is filed by the custodial parent. What was equitable (3.6%) in the eyes of the VA, suddenly becomes unreasonable in practice. As it reads (38 CFR sections 3.451); ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would **not provide a reasonable amount** for any apportionee. So 3.6% was reasonable after the divorce to provide for the child, now an apportionment of 20% **would not provide a reasonable amount** for any apportionee and 50% would constitute a hardship on the veteran. In apportionment dollars and cents the amount reassigned would represent **$644.37** (20%) compared to **$115.81** (3.6%) for one child.

No doubt there is a great disparity between how "reasonable" is defined by the VA as described above. The Rule of Law clearly defines veterans' disability compensation as a means not subject to monetary process pursuant to 42 U.S.C. § 659. Instead of the VA convincing state civil courts that they are prohibited from allowing disability compensation as money subject to process, they encourage state civil courts from even going as far, claiming that disabled combat veterans are employees of the VA, in order to circumvent veterans' exemption of "money subject to process" by using 5 CFR 5 part 581, no doubt with intent to defraud the disabled veteran under the color of law.

It seems clear that the Department of Veterans Affairs in part have become enablers for JUDGES ACTING AS TRESPASSERS OF THE LAW while authorizing garnishment under the false pretense of law that clearly defines veterans as not being employees of the VA. Under the color of law the VA violates federal laws by indiscriminately apportioning disability compensation inconsistent with CFR 3.450 (c) where no

apportionment will be made where the veteran, the veteran's **SPOUSE** (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, **SPOUSE**, surviving spouse, or fiduciary. This section alludes to **SPOUSE** not former spouses, thus the language is clear, as long as the veteran is providing for dependents no apportionment can be undertaken. This does not imply or infer the transfer of any payment other than providing for the child's needs or even consider that the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support. In plain English this part of the language implies a state function in determining spousal or child support, a function not belonging to the VA.

Another disparity in practice, state courts use net resources for support determinations, the VA uses a financial statement and no matter what is claimed, it uses the gross amount to determine apportionments. This process clearly shows a gross disparity in the manner in which resources are determined. Since state courts are prohibited from using disability compensation as money subject to process, neither should the VA in determining apportionments, similarly adhering to 42 USC § 659 and under any legal or equitable process whatever, either before or after receipt by the beneficiary (38 USC § 5301).

The rule of law implies that every person is subject to the law, including people who are lawmakers, law enforcement officials, and judges. State civil courts and judges are subject to the same rule of law, even if they do not agree. This disobedience on the Rule of Law has led many disabled veterans into homelessness, incarcerations and an unknown number of suicides. It is important to note that every hour that goes by, at least one veteran commits suicide, although we believe this number to be even higher.

With that being said, we would like an opportunity to meet again with the VA General Counsel to discuss this gross violation of laws that protect disabled veterans from "money subject to process" and the disparity in apportionments. These are problems with application and enforcement of statutory authorities that needs some changes and clarity.

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