

**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

JAMES C. CHILDERS,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 16-2832
)	
DAVID J. SHULKIN, M.D.,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLEE'S RESPONSE TO COURT ORDER
DATED NOVEMBER 16, 2017**

On November 16, 2017, the Court ordered Appellee to “advise the Court whether the appellant has a survivor eligible to receive accrued benefits and, if so, provide the survivor's contact information. Second, advise the Court whether VA has yet received a request from such survivor for substitution on the appellant's pending claim. And third, advise the Court whether VA has yet undertaken any steps to identify and notify the survivor, if any, of the survivor's eligibility for substitution and, if not, whether and how VA intends to do so.” See November 16, 2017, Order.

On January 16, 2018, Appellee filed a preliminary response to the Court’s November 16, 2017, Order because Appellee was unable to finalize the official response from the RO in the form of a sworn declaration due to inclement weather at the RO’s location. The RO has since reopened and thus Appellee is now able to provide the Court with the

official response from the RO in the form of a sworn declaration addressing the Court's questions. See Declaration of Adrienne Becnel-Taylor, Assistant Veterans Service Center Manager, Tennessee Regional Office. (Attachment).

Pursuant to the Court's November 16, 2017, Order, Appellee hereby responds to the Court's Order as follows:

(1) The Secretary is unaware of any survivor eligible to receive accrued benefits, as the Veteran was divorced, and thus did not have a surviving spouse, and his two children are adults. See Declaration of Adrienne Becnel-Taylor. The RO has stated that the adult daughters are Megan Hood, residing at 9774 Misty Bay Cove, Arlington, TN 38002, and Kristen C. Kellner, residing at 746 N. Ericson Road, Cordova, TN 38018.

(2) The Assistant Veterans Service Center Manager has stated that no request for substitution has been received as of the filing of Appellee's response to the Court Order. See Declaration of Adrienne Becnel-Taylor. Further, Counsel for the Appellee has reviewed the Veteran's VBMS file and confirms that it does not contain any claim for substitution or other benefits from the Veteran's survivors.

(3) As attested to by the Assistant Veterans Service Center Manager, a First Notice of Death of the Veteran was processed on September

29, 2017, at 5:38pm, by the Hines Information Technology Center (Hines). See Declaration of Adrienne Becnel-Taylor. Such processing would include automatically issuing a letter to the Veteran's estate containing information about survivor benefits to which the Veteran's survivors and others may be entitled. *Id.* Based on the time the First Notice of Death was processed, the letter would have been sent the following business day. *Id.* This letter is generated by Hines and not the RO and as such is not promptly scanned into VBMS. *Id.* As of this date, the letter has not been filed in the Veteran's electronic claims folder. *Id.* Since the Veteran did not have a minor child or surviving spouse on his award and there is no evidence of entitlement to accrued benefits of record, the RO will not send a request for substitution. *Id.*

Accordingly, the Secretary respectfully provides the above information in response to the Court's Order.

Respectfully submitted,

JAMES M. BYRNE

General Counsel

MARY ANN FLYNN

Chief Counsel

/s/ Joan E. Moriarty

JOAN E. MORIARTY

Deputy Chief Counsel

/s/ Anita U. Ajenifuja

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Attorneys for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, via First Class Mail, this 18th day of January, 2018, to the following:

Estate of James C. Childers
2030 Irongate Drive, Apt. 101
Collierville, TN 38017

/s/ Anita U. Ajenifuja

Anita U. Ajenifuja

Attachment

DECLARATION OF ADRIENNE BECNEL-TAYLOR

I, Adrienne Becnel-Taylor, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury the following:

This declaration is in response to the U.S. Court of Appeals for Veterans Claims, November 16, 2017, Order instructing the Secretary to answer the following three questions:

1. Whether the appellant has a survivor eligible to receive accrued benefits and, if so, provide the survivor's contact information.

Answer: Evidence in the claims folder show the Veteran has two adult children who would be eligible for accrued benefits by reason of substitution only if they bore the expense of last sickness or burial or the Veteran is found to be entitled to service connection.

2. Whether VA has yet received a request from such survivor for substitution on the appellant's pending claim.

Answer: VA has not received a request from such survivor for substitution on the appellant's pending claim.

3. Whether VA has yet undertaken any steps to identify and notify the survivor, if any, of the survivor's eligibility for substitution and, if not, whether and how VA intends to do so.

Answer: A review of our system show the First Notice of Death was processed September 29, 2017 at 5:38PM by Hines. Such processing would include automatically issuing a letter to the Veteran's estate containing information about survivor benefits to which the Veteran's survivors and others may be entitled. Based on the time the First Notice of Death was processed, the letter would have been sent the following business day. This letter is generated by Hines and not the Regional Office and as such is not promptly scanned into VBMS. As of this date, the letter has not been filed in the Veteran's electronic claims folder. Since the Veteran did not have a minor child or surviving spouse on his award and there is no evidence of entitlement to accrued benefits of record, a request for substitution will not be sent. (M21-1 Part VIII.3.3b.)

I certify, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Adrienne Becnel-Taylor
Asst. Veterans Service Center Mgr
Department of Veterans Affairs
Tennessee Regional Office