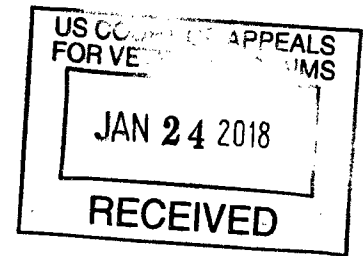


(^{In} Reference to)



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

Address of Estate
Kristen Childers Kellner
18 Oakwood Glen Dr.
Clinton, TN 39056
(901) 859-4134

Kristen C. Kellner

(In Reference to)

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 16-2832

JAMES C. CHILDERS,

APPELLANT,

v.

DAVID J. SHULKIN, M.D.,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

On August 5, 2016, the appellant appealed an April 5, 2016, Board of Veterans' Appeals (Board) decision. On October 2, 2017, this matter was submitted to panel for a decision. On November 1, 2017, the Secretary notified the Court that the appellant died on September 22, 2017.

When an appellant dies during the pendency of an appeal for disability compensation under chapter 11 of title 38, U.S. Code, the appropriate remedy is to vacate¹ the appealed Board decision and dismiss the appeal unless there has been an appropriate substitution by a qualified accrued-benefits claimant. *See Breedlove v. Shinseki*, 24 Vet.App. 7, 21 (2010) (per curiam order); *see also Padgett v. Nicholson*, 473 F.3d 1364, 1366 (Fed. Cir. 2007). Accordingly, upon the death of a veteran-appellant, an individual who asserts he or she meets the eligibility requirements of an accrued-benefits claimant, 38 U.S.C. § 5121(a), may file with the Court a motion to be substituted in the appeal. *See Breedlove*, 24 Vet.App. at 20-21.

The Court observes that the *VA Adjudication Procedures Manual (M21-1)* directs VA to advise individuals who are potentially eligible for benefits of that eligibility following notification of the death of a claimant. *See* M21-1, pt. III, sbpt. ii, ch. 8, sec. A.1.e ("When a VA employee processes [the notice of a veteran's death] NOD, the Hines Information Technology Center (ITC) automatically issues a letter to the [v]eteran's estate containing information about survivor benefits to which the [v]eteran's survivors and others may be entitled . . . The letter from the Hines ITC does not discuss accrued benefits.").

Upon consideration of the foregoing, it is

¹ Because the timeliness of the appellant's appeal is at issue, vacating the April 5, 2016, Board decision may not be the appropriate remedy here. Nonetheless, the Court must first determine whether an eligible accrued beneficiary intends to seek substitution in this matter.

(In Reference to)

ORDERED that the appellant's estate, within 60 days after the date of this order, provide a copy of the death certificate and show cause why the appeal should not be dismissed and it is further

ORDERED that within 60 days from the date of this order, the Secretary respond to the Court with the following information. The Secretary shall 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. It is further

ORDERED that proceedings on this appeal are stayed until further order of the Court.

DATED: November 16, 2017

PER CURIAM.

Copies to:

The estate of James C. Childers

VA General Counsel (027)

STATE OF TENNESSEE

Office of Vital Records

TENNESSEE DEPARTMENT OF HEALTH CERTIFICATE OF DEATH

STATE FILE NUMBER **2017 105121**

DECEDENT	1. DECEDENT'S LEGAL NAME JAMES CLARENCE CHILDERS						2. SEX MALE		3. DATE OF DEATH 09/22/2017		
	4. TIME OF DEATH (Approx.) 11:55 PM		5a. AGE 75		5b. UNDER 1 YEAR Months Days		5c. UNDER 1 DAY Hours Minutes		6. DATE OF BIRTH 04/27/1942		
	7. BIRTHPLACE FAULKNER, TENNESSEE										
	8a. PLACE OF DEATH INPATIENT										
PARENTS	9. FACILITY NAME ST FRANCIS HOSPITAL						10a. CITY OR TOWN MEMPHIS		10b. COUNTY OF DEATH SHELBY		
	11. MARITAL STATUS DIVORCED		12. SURVIVING SPOUSE (name prior to first marriage)				13. DECEDENT'S USUAL OCCUPATION CAR DEALER		14. KIND OF BUSINESS/INDUSTRY CAR		
	15. SOCIAL SECURITY NUMBER [REDACTED]		16. RESIDENCE-STATE OR FOREIGN COUNTRY TENNESSEE				17. COUNTY SHELBY		18. CITY OR TOWN COLLIERVILLE		
	19. STREET AND NUMBER 2030 IRON GATE DRIVE 103						20. INSIDE CITY LIMITS? YES		21. ZIP CODE 38017		
DISPOSITION	22. DECEDENT'S EDUCATION HIGH SCHOOL GRADUATE OR GED COMPLETED						23. DECEDENT OF HISPANIC ORIGIN? NO, NOT SPANISH/HISPANIC/LATINO		24. DECEDENT'S RACE WHITE		
	25. FATHER'S NAME JAMES CHILDERS						26. MOTHER'S NAME PRIOR TO FIRST MARRIAGE FRANCES BARKLEY HOPPER				
	27. INFORMANT'S NAME KRISTEN KELLNER						28. RELATIONSHIP TO DECEDENT DAUGHTER		29. MAILING ADDRESS 746 N ERICSON ROAD, CORDOVA, TENNESSEE 38018		
	30. METHOD OF DISPOSITION BURIAL						31. PLACE OF DISPOSITION WEST TENNESSEE VETERANS' CEMETERY		32. LOCATION GERMANTOWN, TENNESSEE		
REGISTRAR	33. SIGNATURE OF FUNERAL DIRECTOR /s/ ANDRE MONROE						34. LICENSE NUMBER 16223		35. SIGNATURE OF EMBALMER /s/ Gionette Lopez-Ortiz		
	36. NAME AND ADDRESS OF FUNERAL HOME SERENITY FUNERAL HOME AND CREMATION SOCIETY, 1632 SYCAMORE VIEW ROAD, MEMPHIS, TENNESSEE 38134						37. LICENSE NUMBER 5064		38. LICENSE NUMBER 1299		
	39. REGISTRAR'S SIGNATURE /s/ LORI FERRANTI						40. DATE FILED 10/23/2017				
	41. CERTIFIER PHYSICIAN						42. CERTIFIER PHYSICIAN - TO THE BEST OF MY KNOWLEDGE, DEATH OCCURRED AT THE DATE, TIME AND PLACE, AND DUE TO THE CAUSE(S) AND MANNER STATED.				
CERTIFIER	43. PHYSICIAN - ON THE BASIS OF EXAMINATION, AND/OR INVESTIGATION, IN MY OPINION, DEATH OCCURRED AT THE DATE, TIME AND PLACE, AND DUE TO THE CAUSE(S) AND MANNER STATED.						44. MEDICAL EXAMINER - ON THE BASIS OF EXAMINATION, AND/OR INVESTIGATION, IN MY OPINION, DEATH OCCURRED AT THE DATE, TIME AND PLACE, AND DUE TO THE CAUSE(S) AND MANNER STATED.				
	45. CERTIFIER /s/ LOUIS V EBERLE						46. LICENSE NUMBER 018040		47. DATE SIGNED 10/17/2017		
	48. NAME AND ADDRESS LOUIS V EBERLE, III 6263 POPLAR AVENUE SUITE 1052, MEMPHIS, TENNESSEE 38119										
	49. PART I: ENTER THE CHAIN OF EVENTS (DISEASES, INJURIES, OR COMPLICATIONS) THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. ENTER ONLY ONE CAUSE ON A LINE.						APPROXIMATE INTERVAL ONSET TO DEATH				
MEDICAL CERTIFICATION	IMMEDIATE CAUSE (Final disease or condition resulting in death) Sequentially list conditions, if any, leading to the cause listed on line 49. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST										
	a. CARDIAC ARREST DUE TO (OR A CONSEQUENCE OF)										
	b. RESPIRATORY FAILURE DUE TO (OR A CONSEQUENCE OF)										
	c. LUNG CANCER DUE TO (OR A CONSEQUENCE OF)										
PART II: OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I COPD						50. WAS AN AUTOPSY PERFORMED? NO					
51. MANNER OF DEATH NATURAL						52. DID TOBACCO USE CONTRIBUTE TO DEATH? UNKNOWN		53. IF FEMALE: N/A		54. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH?	
55. IF TRANSPORTATION INJURY, SPECIFY:						56a. DATE OF INJURY		56b. TIME OF INJURY		56c. INJURY AT WORK?	
57. DESCRIBE HOW INJURY OCCURRED						58. LOCATION OF INJURY					

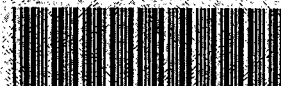
PH-1050 (Rev. 3/2015)

DOA 10112

09563396

I hereby certify the above to be a true and correct representation of the record or document on file in this department. This certified copy is valid only when printed on security paper showing the red embossed seal of the Tennessee Department of Health. Alteration or erasure voids this certification. Reproduction of this document is prohibited.

Tennessee Code Annotated 68-3-101 et seq., Vital Records Act of 1977.



09563396

Lori B. Ferranti
Lori B. Ferranti, PhD, MSN, MBA, RN
State Registrar/Asst. Commissioner

M. J. Dreyzehner
John J. Dreyzehner, MD, MPH, FACOEM
COMMISSIONER

Date Issued



CERTIFICATION OF VITAL RECORD

**LAST WILL AND TESTAMENT
OF
JAMES CLARENCE CHILDERS**

PREPARED BY

THE BRADLEY LAW FIRM, PLLC

ESTATE PLANNING AND ADMINISTRATION

3107 EAST CORPORATE EDGE DRIVE

GERMANTOWN, TENNESSEE 38138

Telephone: (901) 682-2030

Fax: (901) 624-2684

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Last Will and Testament of James Clarence Childers

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Last Will and Testament of James Clarence Childers

I, James Clarence Childers, a resident of Shelby County, Tennessee, revoke any prior wills and codicils made by me and declare this to be my Last Will and Testament.

Article One Family Information

I am unmarried.

I have two children. They are:

Kristen Childers and

Megan Hood.

All references to my children in my Will are to these children.

References to my descendants are to my children and their descendants, including descendants of any deceased child.

Article Two Specific and General Gifts

Section 2.01 Distribution of Tangible Personal Property

I give all my tangible personal property, together with any insurance policies covering the property and any claims under those policies to my children but not to their descendants, in shares of substantially equal value, to be divided among my children as my children agree. If my Executor determines that a child is incapable of acting in his or her own best interest, my Executor will appoint a person to represent the child in the division of the property. If my children are unable to agree upon the division of the property within six months after my death, my Executor will make the division according to the Executor's discretion. My Executor may use a lottery, rotation system, or any other method of

allocation to determine the order of selection and distribution of the property. As an alternative, my Executor may sell all or any portion of the property and distribute the net proceeds equally among my then-living children.

My Executor will not incur any liability to any party for decisions made by my Executor with respect to the division or sale of my tangible personal property. Any decision made by my Executor will be final and binding on all of my beneficiaries.

Section 2.02 Definition of Tangible Personal Property

For purposes of this Article, the term "tangible personal property" includes but is not limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. The term does not include any tangible property that my Executor, in its sole and absolute discretion, determines to be part of any business or business interest that I own at my death.

Section 2.03 Ademption

If property to be distributed under this Article becomes part of my probate estate in any manner after my death, then the gift will not adeem simply because it was not a part of my probate estate at my death. My Executor will distribute the property as a specific gift in accordance with this Article. But if property to be distributed under this Article is not part of my probate estate at my death and does not subsequently become part of my probate estate, then the specific gift made in this Article is null and void, without any legal or binding effect.

Section 2.04 Incidental Expenses and Encumbrances

Until property distributed in accordance with this Article is delivered to the appropriate beneficiary or to the beneficiary's legal representative, my Executor will pay the reasonable expenses of securing, storing, insuring, packing, transporting, and otherwise caring for the property as an administration expense. Except as otherwise provided in my Will, my Executor will distribute property under this Article subject to all liens, security interests, and other encumbrances on the property.

Article Three

My Residuary Estate

Section 3.01 Definition of My Residuary Estate

All the remainder of my estate, including property referred to above that is not effectively disposed of, will be referred to in my Will as my "residuary estate."

Section 3.02 Disposition of My Residuary Estate

My Executor shall divide my residuary estate into an Exempt Share and a Nonexempt Share.

(a) Division of Residuary Estate

My Executor shall allocate to the Exempt Share a fraction (the "Exempt Fraction" as defined in subsection (b)) of my residuary estate. The balance of my residuary estate will be allocated to the Nonexempt Share.

The Exempt Share will be administered as provided in Article Four entitled "My Exempt Property." The Nonexempt Share will be administered as provided in Article Five entitled "My Nonexempt Property."

(b) Computation of the Exempt Fraction

The numerator of the Exempt Fraction will be equal to the amount, if any, of my Available GST Exemption (as defined in Section 11.01(b)) and the denominator will be the aggregate value, for federal estate tax purposes, of my residuary estate. If there is no federal generation-skipping transfer tax in effect, my Executor shall allocate all of my residuary estate to the Exempt Share.

(c) Satisfaction of the Exempt Fraction

My Executor has complete authority and discretion to allocate property to the Exempt Share in satisfaction of the Exempt Fraction in cash or in kind, or partly in cash and partly in kind, or in undivided interests in property.

In making the computations necessary to determine the Exempt Fraction, my Executor shall use those values as finally determined for federal estate tax purposes. Once determined the Exempt Fraction will be fixed and may not vary with changes in the value of my residuary estate subsequent to the valuation date used for federal estate tax purposes. But since the Exempt Fraction is not intended to be a gift of a specified dollar amount or

pecuniary in nature, the fraction must be applied to the assets at their actual value on the effective date or dates of distribution so that the actual value of the fractional share resulting from the application of the Exempt Fraction will include fluctuations in the value of my residuary estate.

If the numerator of such fraction is zero, no property will be distributed under this Article to the Exempt Share. If the numerator of the fraction is equal to or greater than the denominator, all of my residuary estate will be distributed to the Exempt Share.

(d) Allocation of GST Exemption

I request, but do not require, that my Executor allocate my Available GST Exemption to the Exempt Share.

Article Four My Exempt Property

My exempt property will be administered as provided in this Article.

Section 4.01 Division of My Exempt Property

My Executor shall divide my exempt property into separate exempt shares for my living descendants, *per stirpes*.

My Executor shall administer the exempt share for each of my living children as a separate share for the benefit of the child as provided in the Sections that follow. My Executor shall administer the exempt share for each descendant of a deceased child as provided in Section 4.04.

Section 4.02 Distribution of the Exempt Share for Kristen Childers

My Executor shall distribute the exempt share set aside for Kristen Childers to her outright, free of trust.

Section 4.03 Distribution of the Exempt Share for Megan Hood

My Executor shall distribute the exempt share set aside for Megan Hood to her outright, free of trust.

Section 4.04 Distribution of Trust Shares for Descendants of a Deceased Child

My Executor shall distribute the exempt share set aside for a descendant of a deceased child to the descendant outright, free of trust.

**Article Five
My Nonexempt Property**

Upon my death, my remaining nonexempt property will be administered as provided in this Article.

Section 5.01 Division of My Nonexempt property

My Executor shall divide my nonexempt property into separate nonexempt shares for my living descendants, *per stirpes*.

My Executor shall administer the nonexempt share for each of my living children as a separate share for the benefit of the child as provided in the Sections that follow. My Executor shall administer the nonexempt share for each descendant of a deceased child as provided in Section 5.04.

Section 5.02 Distribution of the Share for Kristen Childers

My Executor shall distribute the nonexempt share set aside for Kristen Childers to Kristen Childers outright.

Section 5.03 Distribution of the Share for Megan Hood

My Executor shall distribute the nonexempt share set aside for Megan Hood to Megan Hood outright.

Section 5.04 Distribution of Trust Shares for Descendants of a Deceased Child

My Executor shall distribute the nonexempt share set aside for a descendant of a deceased child to the descendant outright, free of trust.

Article Six

Remote Contingent Distribution

If, at any time, there is no person or entity qualified to receive final distribution of my estate or any part of it, then the portion of my estate with respect to which the failure of qualified recipients has occurred shall be distributed to those persons who would inherit it had I then died intestate owning the property, as determined and in the proportions provided by the laws of Tennessee then in effect.

Article Seven

Designation of Executor

Section 7.01 Executor

I name Kristen Childers and Megan Hood, jointly, then the survivor of them as my Executor.

Article Eight

General Administrative Provisions

The provisions of this Article apply to my probate estate.

Section 8.01 No Bond

No Fiduciary is required to furnish any bond for the faithful performance of the Fiduciary's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the beneficiaries. No surety is required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

Section 8.02 Informal Proceedings

I authorize my personal representative to exercise all powers without court supervision under the Independent Administration of Estates Act of Tennessee.

Section 8.03 Distributions to Incapacitated Persons and Persons Under Twenty-One Years of Age

If my Executor is directed to distribute any share of my probate estate to any beneficiary who is under the age of 21 years or is in the opinion of my Executor, under any form of incapacity that renders such beneficiary unable to administer distributions properly when the distribution is to be made, my Executor may, as Trustee, in my Executor's discretion, continue to hold such beneficiary's share as a separate trust until the beneficiary reaches the age of 21 or overcomes the incapacity. My Executor shall then distribute such beneficiary's trust to him or her.

While any trust is being held under this Section, my Independent Trustee may pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the Trustee determines to be necessary or advisable for any purpose. If there is no Independent Trustee, my Trustee shall pay to the beneficiary for whom the trust is held such amounts of the net income and principal as the fiduciary determines to be necessary or advisable for the beneficiary's health, education, maintenance or support.

Upon the death of the beneficiary, my Trustee shall distribute any remaining property in the trust, including any accrued and undistributed income, to such persons as such beneficiary appoints by his or her Will. This general power may be exercised in favor of the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate. To the extent this general power of appointment is not exercised, on the death of the beneficiary, the trust property is to be distributed to the beneficiary's then living descendants, *per stirpes*, or, if none, *per stirpes* to the living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine, or if no such descendant is then living, to my then living descendants, *per stirpes*. If I have no then living descendants the property is to be distributed under the provisions of Article Six entitled "Remote Contingent Distribution."

Notwithstanding any other provision of my Will if any part of trust property becomes distributable outright, or if a distribution is required to be made, to a person when that person is receiving or applying for needs-based government benefits, my Trustee shall distribute or retain the trust property as described in Section 8.04.

Section 8.04 Supplemental Needs Trust

If under any provision of this Will my Executor is directed to distribute to or for the benefit of any beneficiary when that person is receiving or applying for needs-based government benefits, my Executor shall retain and administer the trust property as follows:

(a) Distributions for Supplemental Needs

In its sole, absolute, and unreviewable discretion, my Trustee may distribute discretionary amounts of net income and principal for supplemental needs of the beneficiary not otherwise provided by

governmental financial assistance and benefits, or by the providers of services.

Supplemental needs refers to the basic requirements for maintaining the good health, safety, and welfare when, in the discretion of my Trustee, these basic requirements are not being provided by any public agency, office, or department of any state or of the United States.

Supplemental needs will also include medical and dental expenses; annual independent checkups; clothing and equipment; programs of training, education, treatment, and rehabilitation; private residential care; transportation, including vehicle purchases; maintenance; insurance; and essential dietary needs. *Supplemental needs* may include spending money; additional food; clothing; electronic equipment such as radio, recording and playback, television and computer equipment; camping; vacations; athletic contests; movies; trips; and money to purchase appropriate gifts for relatives and friends.

My Trustee will have no obligation to expend trust assets for these needs. But if my Trustee, in its sole, absolute and unreviewable discretion, decides to expend trust assets, under no circumstances should any amounts be paid to or reimbursed to the federal government, any state, or any governmental agency for any purpose, including for the care, support, and maintenance of the beneficiary.

(b) Objective to Promote Independence of the Beneficiary

While actions are in my Trustee's sole, absolute, and unreviewable discretion, all parties to this trust should be mindful that my wish is that the beneficiary live as independently, productively, and happily as possible.

(c) Trust Assets Not to be Considered Available Resource to the Beneficiary

The purpose of the provisions of this Section 8.04 is to supplement any benefits received, or for which the beneficiary may be eligible, from various governmental assistance programs, and not to supplant any benefits of this kind. All actions of my Trustee shall be directed toward carrying out this intent, and my Trustee's discretion granted under this instrument to carry out this intent is sole, absolute, and unreviewable.

For purposes of determining the beneficiary's eligibility for any of these benefits, no part of the trust estate's principal or undistributed income will be considered available to the beneficiary for public benefit purposes. The beneficiary must not be considered to have access to the trust's principal

or income, or to have ownership, right, authority, or power to convert any asset into cash for his or her own use.

My Trustee shall hold, administer, and distribute all property allocated to this trust for the exclusive benefit of the beneficiary during his or her lifetime. All distributions from this trust share are in the sole, absolute, and unreviewable discretion of my Trustee, and the beneficiary is legally restricted from demanding trust assets for his or her support and maintenance.

In the event my Trustee is requested to release principal or income of the trust to or on behalf of the beneficiary to pay for equipment, medication, or services that any government agency is authorized to provide, or to petition a court or any other administrative agency for the release of trust principal or income for this purpose, my Trustee is authorized to deny this request and to take whatever administrative or judicial steps are necessary to continue the beneficiary's eligibility for benefits. This includes obtaining legal advice about the beneficiary's specific entitlement to public benefits and obtaining instructions from a court of competent jurisdiction ruling that neither the trust corpus nor the trust income is available to the beneficiary for eligibility purposes. Any expenses incurred by my Trustee in this regard, including reasonable attorney fees, will be a proper charge to the trust estate.

(d) Distribution Guidelines

My Trustee shall be responsible for determining what discretionary distributions will be made from this trust. My Trustee may distribute discretionary amounts of income and principal to or for the benefit of the beneficiary for those supplemental needs not otherwise provided by governmental financial assistance and benefits, or by the providers of services. Any undistributed income will be added to principal. In making distributions, my Trustee must:

- consider any other known income or resources of the beneficiary that are reasonably available;

- consider all entitlement benefits from any government agency, including Social Security disability payments, Medicare, Medicaid (or any state Medicaid program equivalent), Supplemental Security Income (SSI), In-Home Support Service (IHSS), and any other supplemental purpose benefits for which the beneficiary is eligible;

- consider resource and income limitations of any assistance program;

make expenditures so that the beneficiary's standard of living will be comfortable and enjoyable;

not be obligated or compelled to make specific payments;

not pay or reimburse any amounts to any governmental agency or department, unless proper demand is made by this governmental agency or reimbursement is required by the state; and

not be liable for any loss of benefits.

(e) No Seeking of Order to Distribute

For purposes of determining the beneficiary's state Medicaid program equivalent eligibility, no part of the trust estate's principal or undistributed income may be considered available to the beneficiary. My Trustee shall deny any request by the beneficiary to:

release trust principal or income to or on behalf of the beneficiary to pay for equipment, medication, or services that the state Medicaid program equivalent would provide if the trust did not exist; or

petition a court or any other administrative agency for the release of trust principal or income for this purpose.

In its sole, absolute, and unreviewable discretion, my Trustee may take necessary administrative or legal steps to protect the beneficiary's state Medicaid program equivalent eligibility. This includes obtaining a ruling from a court of competent jurisdiction that the trust principal is not available to the beneficiary for purposes of determining state Medicaid program equivalent eligibility. Expenses for this action, including reasonable attorney fees, will be a proper charge to the trust estate.

(f) Indemnification of Trustee When Acting in Good Faith

My Trustee will be indemnified from the trust property for any loss or reduction of public benefits sustained by the beneficiary as a result of my Trustee exercising the authority granted to my Trustee under this Section in good faith.

(g) Termination and Distribution of the Supplemental Needs Trust

If my Trustee, in its sole, absolute, and unreviewable discretion, determines that the beneficiary is no longer dependent on others and is able to independently support himself or herself, my Trustee shall

distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 8.04 had not been effective.

If the other provisions of this trust do not provide for the remaining property's distribution or retention, then my Trustee shall distribute the remaining property to the beneficiary outright and free of trust.

Independently support is satisfied when the beneficiary has been gainfully employed for 33 months of the 36-month period immediately preceding the decision to terminate the trust share.

The terms *gainful employment* and *gainfully employed* mean the full-time employment that produces sufficient net income to enable the beneficiary to contribute not less than 100% of the funds (exclusive of other revenue sources) that are necessary to provide for the beneficiary's independent care, support, maintenance, and education. In its sole, absolute, and unreviewable discretion, my Trustee shall determine whether or not the beneficiary has satisfied the condition of gainful employment.

(h) Distribution upon the Death of the Beneficiary

Upon the beneficiary's death, my Trustee shall distribute or retain the remaining property according to the other provisions of this trust as though the provisions of this Section 8.04 had not been effective. If the other provisions of this trust provide for the beneficiary's share to be held in trust, then those provisions will be interpreted as though the beneficiary died after the establishment of that trust.

If the other provisions of this trust do not provide for the distribution or retention of the remaining property, then the beneficiary will have the testamentary limited power to appoint all or any portion of the principal and undistributed income remaining in the beneficiary's trust at his or her death among one or more persons or entities. But the beneficiary may not exercise this limited power of appointment to appoint to himself or herself, his or her estate, his or her creditors or the creditors of his or her estate.

I intend to create a limited power of appointment and not a general power of appointment as defined in Internal Revenue Code Section 2041.

If any part of the beneficiary's trust is not effectively appointed, my Trustee shall distribute the remaining unappointed balance *per stirpes* to the beneficiary's descendants. If the beneficiary has no then-living descendants, my Trustee shall distribute the unappointed balance *per stirpes* to the then-living descendants of the beneficiary's nearest lineal ancestor who was a descendant of mine or, if there is no then-living descendant, *per stirpes* to my descendants.

If I have no then-living descendants, my Trustee shall distribute the balance of the trust property as provided in Article Six.

Section 8.05 Maximum Term for Trusts

Notwithstanding any other provision of my Will to the contrary, unless terminated earlier under other provisions of my Will, each trust created under my Will will terminate 21 years after the last to die of the descendants of my maternal and paternal grandparents who are living at the time of my death.

At that time, the remaining trust property will vest in and be distributed to the persons entitled to receive mandatory distributions of net income of the trust and in the same proportions. If no beneficiary is entitled to mandatory distributions of net income, the remaining trust property will vest in and be distributed to the beneficiaries entitled to receive discretionary distributions of net income of the trust, in equal shares *per stirpes*.

Section 8.06 Representative of a Beneficiary

The guardian of the person of a beneficiary may act for such beneficiary for all purposes under my Will or may receive information on behalf of such beneficiary.

Section 8.07 Ancillary Administration

In the event ancillary administration is required or desired and my domiciliary Executor is unable or unwilling to act as an ancillary fiduciary, my domiciliary Executor will have the power to designate, compensate, and remove the ancillary fiduciary. The ancillary fiduciary may be either a natural person or a corporation. My domiciliary Executor may delegate to such ancillary fiduciary such powers granted to my original Executor as my Executor may deem proper, including the right to serve without bond or surety on bond. The net proceeds of the ancillary estate are to be paid over to the domiciliary Executor.

Section 8.08 Delegation of Authority; Power of Attorney

Any Fiduciary may, by an instrument in writing, delegate to any other Fiduciary the right to exercise any power, including a discretionary power, granted the Fiduciary in my Will. During the time a delegation under this Section is in effect, the Fiduciary to whom the delegation was made may exercise the power to the same extent as if the delegating Fiduciary had personally joined in the exercise of the power. The delegating Fiduciary may revoke the delegation at any time by giving written notice to the Fiduciary to whom the power was delegated.

The Fiduciary may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of the trust. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that the Fiduciary could have exercised.

Section 8.09 Merger of Corporate Fiduciary

If any corporate fiduciary acting as my Fiduciary under my Will is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the position of my Fiduciary as if originally named my Fiduciary. No document of acceptance of the position of my Fiduciary shall be required.

Article Nine Powers of My Fiduciaries

Section 9.01 Fiduciaries' Powers Act

My Fiduciaries may, without prior authority from any court, exercise all powers conferred by my Will or by common law or by any fiduciary powers act of Tennessee or other statute of the State of Tennessee or any other jurisdiction whose law applies to my Will. My Fiduciary has absolute discretion in exercising these powers. Except as specifically limited by my Will, these powers extend to all property held by my fiduciaries until the actual distribution of the property.

Section 9.02 Alternative Distribution Methods

My Fiduciary may make any payment provided for under my Will as follows:

Directly to the beneficiary;

In any form allowed by applicable state law for gifts or transfers to minors or persons under a disability;

To the beneficiary's guardian, conservator, agent under a durable power of attorney or caregiver for the benefit of the beneficiary; or

By direct payment of the beneficiary's expenses, made in a manner consistent with the proper exercise of the fiduciary's duties hereunder. A receipt by the recipient for any such distribution fully discharges my Fiduciary.

Article Ten

Provisions for Payment of Debts, Expenses and Taxes

Section 10.01 Payment of Debts and Expenses

I direct that all my legally enforceable debts, secured and unsecured, be paid as soon as practicable after my death unless I have specifically directed that a devisee of a bequest of specific property take the specific property subject to all liens and encumbrances. If I have directed that a devisee take property subject to all liens and encumbrances, the devisee is not entitled to have the liens and encumbrances paid out of my estate.

Section 10.02 No Apportionment

Except as otherwise provided in this Article or elsewhere in my will, my Executor shall provide for payment of all estate, inheritance and succession taxes payable by reason of my death ("death taxes") from my residuary estate as an administrative expense without apportionment and will not seek contribution toward or recovery of any death tax payments from any individual.

For the purposes of this Article, however, the term "death taxes" does not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable taxes imposed by any other taxing authority. Nor does the term include any generation-skipping transfer tax, other than a direct skip.

Section 10.03 Protection of Exempt Property

Death taxes are not to be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes. In addition, to the extent practicable, my Trustee should not pay any death taxes from assets that are exempt for generation-skipping transfer tax purposes.

Section 10.04 Protection of the Charitable Deduction

Death taxes are not to be allocated to or paid from any assets passing to any organization that qualifies for the federal estate tax charitable deduction, or from any assets passing to a split-interest charitable trust, unless my Executor has first used all other assets available to my Executor to pay the taxes.

Section 10.05 Property Passing Outside of My Will

Death taxes imposed with respect to property included in my gross estate for purposes of computing the tax and passing other than by my Will are to be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or

interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment are the values as finally determined under federal, state, or local law as the case may be.

Section 10.06 No Apportionment Between Current and Future Interests

No interest in income and no estate for years or for life or other temporary interest in any property or trust is to be subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder are chargeable against the corpus of the property or trust subject to the temporary interest and remainder.

Section 10.07 Tax Elections

In exercising any permitted elections regarding taxes, my fiduciaries may make any decisions that they deem to be appropriate in any circumstances, and my fiduciaries are not required to make any compensatory adjustment as a consequence of any election. My Executor may also pay taxes or interest and deal with any tax refunds, interest, or credits as my Executor deems to be necessary or advisable in the interest of my estate.

Article Eleven Definitions and General Provisions

Section 11.01 Definitions

For purposes of my Will and for the purposes of any trust established under my Will, the following definitions apply:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, will have the same rights and will be treated in the same manner under my Will as natural children of the adopting parent, provided the person is legally adopted before attaining the age of 18 years. A person will be deemed to be legally adopted if the adoption was legal in the jurisdiction in which it occurred at the time that it occurred.

A fetus *in utero* that is later born alive will be considered a person in being during the period of gestation.

(b) Available GST Exemption

"My Available GST Exemption" means the GST exemption provided in Section 2631 of the Internal Revenue Code in effect at the time of my death; reduced by the aggregate of (1) the amount, if any, of GST exemption allocated to my lifetime transfers, including those allocations made at the time of my death by my Personal Representative, by my Trustee, or by operation of law and (2) the amount, if any, allocated to direct skips as defined in Section 2612(c)(1) of the Internal Revenue Code that do not qualify for an exclusion from the generation-skipping transfer tax occurring at my death to or for the benefit of my descendants.

If, at the time of my death, I have made a lifetime transfer to a trust with an inclusion ratio of greater than zero but have not filed a gift tax return and the due date for the gift tax return has not yet passed, my Available GST Exemption will also be reduced to the extent necessary and possible to reduce the trust inclusion ratio to zero, thereby exempting the transfer from generation-skipping transfer tax.

(c) Descendants

The term "descendants" means any one or more person who follows in direct descent (as opposed to collateral descent) from a person, such as a person's children, grandchildren, or other descended individuals of any generation.

(d) Fiduciary

"Fiduciary" or "Fiduciaries" refer to my Executor. My "Executor" includes any executor, ancillary executor, administrator, or ancillary administrator, whether local or foreign, and whether of all or part of my estate, multiple Executors, and their successors.

Except as otherwise provided in this Last Will and Testament, a fiduciary has no liability to any party for action (or inaction) taken in good faith.

(e) Good Faith

For the purposes of this Last Will and Testament, a fiduciary has acted in good faith if (i) its action or inaction is not a result of intentional wrongdoing, (ii) the fiduciary did not make the decision with reckless indifference to the interests of the beneficiaries, and (iii) its action or inaction does not result in an improper personal pecuniary benefit to the fiduciary.

(f) Incapacity

Except as otherwise provided in my Will, a person is deemed to be incapacitated in any of the following circumstances.

(1) The Opinion of Two Licensed Physicians

An individual is deemed to be incapacitated whenever, in the opinion of two licensed physicians, the individual is unable to effectively manage his or her property or financial affairs, whether as a result of age, illness, use of prescription medications, drugs or other substances, or any other cause. If an individual whose capacity is in question refuses to provide necessary documentation or otherwise submit to examination by licensed physicians, that individual will be considered incapacitated.

An individual is deemed to be restored to capacity whenever the individual's personal or attending physician provides a written opinion that the individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual is deemed to be incapacitated if a court of competent jurisdiction has declared the individual to be disabled, incompetent or legally incapacitated.

(3) Detention, Disappearance or Absence

An individual is deemed to be incapacitated whenever he or she cannot effectively manage his or her property or financial affairs due to the individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance, absence or detention under duress may be established by an affidavit of any fiduciary. The affidavit must describe the circumstances of an individual's detention under duress, disappearance, or absence and may be relied upon by any third party dealing in good faith with my fiduciary in reliance upon the affidavit.

An individual's disappearance, absence, or detention under duress may be established by an affidavit of my Executor.

(g) Legal Representative

As used in my Will, the term "legal representative" means a person's guardian, conservator, personal representative, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(h) Per Stirpes

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children of that person and deceased children of that person who left then-living descendants. Each then-living child will receive one share and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.

(i) Permissible Distributee

"Permissible Distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(j) Primary Beneficiary

The Primary Beneficiary of a trust created under this Will is the oldest Income Beneficiary of that trust unless some other individual is specifically designated as the Primary Beneficiary of that separate trust.

(k) Qualified Beneficiary

"Qualified Beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (1) is a distributee or Permissible Distributee of trust income or principal;
- (2) would be a distributee or Permissible Distributee of trust income or principal if the interests of the distributees described in subparagraph (1) terminated on that date; or
- (3) would be a distributee or Permissible Distributee of trust income or principal if the trust terminated on that date.

(l) Shall and May

Unless otherwise specifically provided in my Will or by the context in which used, I use the word "shall" in my Will to command, direct or require, and the word "may" to allow or permit, but not require. In the context of my Trustee, when I use the word "may" I intend that my Trustee may act in its sole and absolute discretion unless otherwise stated in my Will.

(m) Other Definitions

Except as otherwise provided in my Will, terms shall be as defined in Tennessee Code Annotated Section 35-50-110 as amended after the date of my Will and after my death.

Section 11.02 Contest Provision

If any person directly or indirectly attempts to contest or oppose the validity of my Will, (including any codicil to my Will), or commences, continues or prosecutes any legal proceedings to set my Will aside, then that person will forfeit his or her share, cease to have any right or interest in my estate, and will, for purposes of my Will, be deemed to have predeceased me.

Section 11.03 Survivorship Presumption

If any beneficiary is living at my death, but dies within 30 days thereafter, then the beneficiary will be deemed to have predeceased me for all purposes of my Will.

Section 11.04 General Provisions

The following general provisions and rules of construction apply to my Will:

(a) Singular and Plural; Gender

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word "or" when used in a list of more than two items may function as both a conjunction and a disjunction as the context requires or permits.

(b) Headings of Articles, Sections, and Subsections

The headings of Articles, Sections, and subsections used within my Will are included solely for the convenience and reference of the reader. They have no significance in the interpretation or construction of my Will.

(c) Governing State Law

My Will shall be governed, construed and administered according to the laws of Tennessee as from time to time amended. Questions of administration of any trust established under my Will are to be determined by the laws of the situs of administration of that trust.

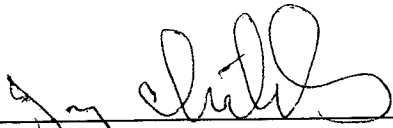
(d) Notices

Unless otherwise stated, whenever my Will calls for notice, the notice will be in writing and will be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice will be effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received via certified mail. If notice is required to be given to a minor or incapacitated individual, notice will be given to the parent or legal representative of the minor or incapacitated individual.

(e) Severability

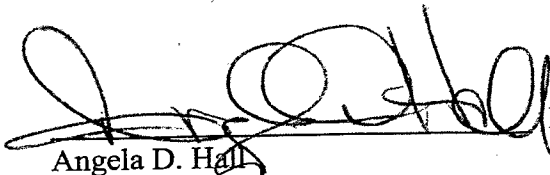
The invalidity or unenforceability of any provision of my Will does not affect the validity or enforceability of any other provision of my Will. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of my Will are to be interpreted and construed as if any invalid provision had never been included in my Will.

I signed this will on the 4th day of April, 2017.



James Clarence Childers

On the date last above written, we saw James Clarence Childers, in our presence, sign the foregoing instrument at its end. He then declared it to be his will and requested us to act as witnesses to it. We then, in his presence and in the presence of each other, signed our names as attesting witnesses, believing him at all times herein mentioned to be of sound mind and memory and not acting under constraint of any kind.



Angela D. Hall

Residing at: 1916 Wood Oak Dr.

Cordova, Tennessee 38016



Ashley M. Castle

Residing at: 7063 Oak Acres

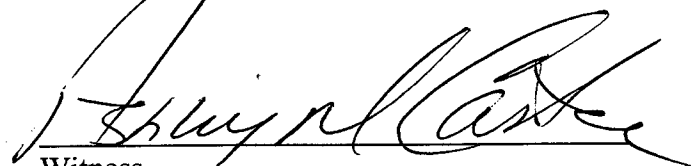
Bartlett, Tennessee 38135

AFFIDAVIT OF WITNESSES TO PROVE WILL

Personally appeared before me, the undersigned Notary Public, Angela D. Hall and Ashley M. Castle, who each being separately and duly sworn, each for himself/herself on his/her oath or affirmation disposes and says:

1. That I am the witness whose name is signed to the Last Will and Testament of James Clarence Childers;
2. That James Clarence Childers, the testator, in the presence of each us, signed the Will willingly after declaring it be his Last Will;
3. That we, as witnesses, signed and witnessed the Will in the presence of the testator and in the presence of each other;
4. That each of us believes that the testator was of sound mind and memory and under no constraint or undue influence whatsoever when he signed his Will; and
5. That we, as witnesses, and the testator are each at least eighteen (18) years of age.

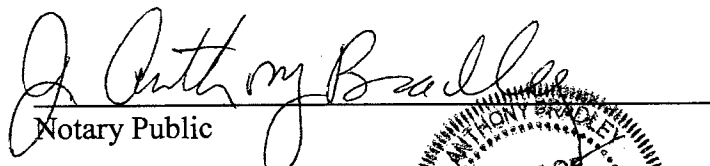

Witness


Witness

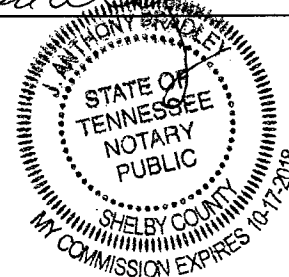
State of Tennessee

County of Shelby

Subscribed and sworn to before me this 3rd day of April, 2017.


Notary Public

My Commission Expires: October 17, 2018



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JAN 24 2018

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US Airbill

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Number

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Form
ID No. 0200

1 From

Date

Sender's
Name

Kristen Childers Kellner

Phone

901 459-4134

Company

NO. 16-2832 (James C. Childers)

Address

18 Oakwood Glen Dr.

Dept./Floor/Suite/Room

City

Clinton

State

MS

ZIP

39056

2 Your Internal Billing Reference

3 To

Recipient's
Name

U.S. Court of Appeals For Veterans Claims

Phone

202 501-5970

Company

Secretary of Veterans Affairs

Address

625 Indiana Avenue N.W. Suite 900

Dept./Floor/Suite/Room

Address

625 Indiana Avenue N.W. Suite 900

City

Washington

State

DC

ZIP

20004-2950

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For packages over 150 lbs., use the
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- ☒ **FedEx First Overnight**
Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☐ **FedEx Priority Overnight**
Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☐ **FedEx Standard Overnight**
Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- ☐ **FedEx 2Day A.M.**
Second business morning.* Saturday Delivery NOT available.
- ☐ **FedEx 2Day**
Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☐ **FedEx Express Saver**
Third business day.* Saturday Delivery NOT available.

5 Packaging

* Declared value limit \$500.

- ☒ **FedEx Envelope*** ☐ **FedEx Pak*** ☐ **FedEx Box** ☐ **FedEx Tube** ☐ **Other**

6 Special Handling and Delivery Signature Options

Fees may apply. See the FedEx Service Guide.

- ☐ **Saturday Delivery**
NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.
- ☐ **No Signature Required**
Package may be left without obtaining a signature for delivery.
- ☒ **Direct Signature**
Someone at recipient's address may sign for delivery.
- ☐ **Indirect Signature**
If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods?

- One box must be checked.
- ☐ **No** ☐ **Yes**
As per attached Shipper's Declaration.
- ☐ **Shipper's Declaration not required** ☐ **Dry Ice**
Dry ice, 9 UN 1845 x kg
- Restrictions apply for dangerous goods — see the current FedEx Service Guide. ☐ **Cargo Aircraft Only**

7 Payment Bill to:

Enter FedEx Acct. No. or Credit Card No. below.

Obtain recip.
Acct. No.

- ☐ **Sender**
Acct. No. in Section 1 will be billed.
- ☐ **Recipient**
- ☒ **Third Party**
- ☐ **Credit Card**
- ☐ **Cash/Check**

Total Packages

Total Weight

Credit Card Auth.

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