

RICHARD B. TROUSDALE,)
Petitioner,)
)
v.) Vet. App. No. 20-1584
)
ROBERT L. WILKIE,)
Secretary of Veterans Affairs,)
Respondent.)

Pursuant to U.S. Vet. App. R. 21(d) and the Court's March 18, 2020, order directing the Secretary to respond to the petition, the Secretary hereby responds that the petition should be dismissed as moot.

On March 3, 2020, Petitioner filed this petition for extraordinary relief in the nature of a writ of mandamus requesting that the Court issue an order compelling the Secretary to reissue his August 2019 disability benefits payment in the amount of \$140.05 after this check was mistakenly returned to the agency by the Department of Corrections in September 2019. (Writ Petition, p. 2, 3, 6). Petitioner acknowledged receipt of a retroactive payment in the amount of \$700.25 in September 2019, but alleged that his August 2019 disability benefits payment remained outstanding. (Writ Petition, p. 3). Petitioner advised that he made inquiries about the outstanding benefits payment, but has yet to receive a response. (Writ Petition, p. 2).

Prior to filing his current petition, the Secretary notes that Petitioner last sought a writ in June 2019 after his disability benefit payments from April 2019 through June 2019 had not been received. *Trousdale v. Wilkie*, U.S. Vet.App. 19-4102. That petition was later dismissed as moot after the Secretary advised the Court that Petitioner's address had been updated in VA's system on September 3, 2019, and that a retroactive payment in the amount of \$700.25 had been sent to

Petitioner's updated address on September 6, 2019. *Trousdale v. Wilkie*, U.S. Vet.App. 19-4102, Secretary's Response filed on September 30, 2019, Court order dated October 29, 2019. On March 18, 2020, the Court issued an order directing Respondent to respond to Petitioner's current petition in 45 days and referenced the earlier petition in *Trousdale v. Wilkie*, U.S. Vet.App. 19-4102. On March 12, 2020, the outstanding \$140.05 for Petitioner's August 2019 disability benefits, which was initially issued on August 30, 2019, was traced and acknowledged as being credited back to the agency. (Attachment); (Writ Petition at Exhibit A (.pdf page 10)). A payment in the amount of \$140.05 was reissued to Petitioner for his August 2019 disability benefits payment on March 12, 2020, and sent to Petitioner's updated address. (Attachment).

RESPONSE TO COURT ORDER

VA has paid Petitioner his outstanding August 2019 disability benefit payment in the amount of \$140.05, and, as such, the petition is moot. The Court has the authority to issue extraordinary writs in aid of its jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a). *Vargas-Gonzalez v. Principi*, 15 Vet.App. 222, 224-25 (2001) (per curiam). However, the Court has made clear, "The remedy of mandamus is a drastic one, to be invoked only in extraordinary situations." *Vargas-Gonzalez*, 15 Vet.App. at 224-25 (quoting *Kerr v. United States District Court*, 426 U.S. 394, 402 (1976)); see also *Lane v. West*, 12 Vet.App. 220, 221 (1999). Three conditions must be met before the Court may issue a writ: (1) The petitioner must demonstrate the lack of adequate alternative means to obtain the desired relief, thus ensuring that the writ is not used as a substitute for the appeals process; (2) the petitioner must demonstrate a clear and indisputable right to the writ; and (3) the Court must be convinced, given the circumstances, that issuance of the writ is warranted. *Cheney v. United States Dist. Ct. for D.C.*, 542 U.S. 367, 380-81 (2004).

When the basis of a petition is an allegation of unreasonable agency delay in processing an appeal, the U.S. Court of Appeals for the Federal Circuit (Federal

Circuit) has provided new guidance as to the criteria that the Court must consider in determining whether to issue a writ based on that alleged delay. The factors are six:

(1) the time agencies take to make decisions must be governed by a “rule of reason”; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find “any impropriety lurking behind agency lassitude” in order to hold that agency action is unreasonably delayed.

Martin v. O’Rourke, 891 F.3d 1338, 1344 (Fed. Cir. 2018) (quoting *Telecomms. Research & Action Ctr. v. FCC* (“TRAC”), 750 F.2d 70, 80 (D.C. Cir. 1984)). However, where the particular relief sought by a petitioner has been afforded, the petition is moot. See *Chandler v. Brown*, 10 Vet.App. 175, 177 (1997) (citing *Mokal v. Derwinski*, 1 Vet.App. 12 (1990) (adopting the Article III case-or-controversy requirement for exercising jurisdiction)).

Here, on March 12, 2020, the agency reissued the August 2019 disability benefit payment owed to Petitioner in the amount of \$140.05 after noting that this payment had been traced and that it was credited back to the agency. (Attachment). Unfortunately, this payment was originally issued on August 30, 2019, which was before Petitioner’s payment address was updated in VA’s system. See *Trousdale v. Wilkie*, U.S. Vet.App. 19-4102, Secretary’s Response filed on September 30, 2019; see also (Attachment); (Writ Petition at Exhibit A (.pdf page 10)). Petitioner indicated that this check had been mistakenly returned by the Department of Corrections in September 2019. (Writ Petition, p. 2). Given the timing of this payment, it was also not included in his retroactive payment issued in September 2019. See *Trousdale v. Wilkie*, U.S. Vet.App. 19-4102, Secretary’s Response filed on September 30, 2019; see also (Writ Petition, p. 3). After tracing

the payment, on March 12, 2020, VA reissued Petitioner's August 2019 disability benefits to the updated address for Petitioner, which was also the one he provided in his current petition. (Attachment); (Writ Petition at Exhibit A (.pdf at p. 9)). Because the VA has now paid Petitioner for the outstanding amount of \$140.05 for his August 2019 disability benefit payment, the Court should dismiss the petition as moot. *Chandler*, 10 Vet.App. at 177 (per curiam order); *Mokal*, 1 Vet.App. at 15.

CONCLUSION

For the foregoing reasons, the petition is moot, and the Court should dismiss the petition.

Respectfully submitted,

WILLIAM A. HUDSON

Principal Deputy General Counsel

MARY ANN FLYNN

Chief Counsel

/s/ Richard A. Daley

RICHARD A. DALEY

Deputy Chief Counsel

/s/ Amy M. Roth-Pixton

AMY M. ROTH-PIXTON

Appellate Attorney

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U.S. Dept. of Veterans Affairs

810 Vermont Avenue, N.W.

Washington, D.C. 20420

202-632-6985

CERTIFICATE OF SERVICE

On the 4th day of May, 2020, a copy of the foregoing was mailed, postage prepaid, to:

Richard B. Trousdale
DC#039275 Loc: G2-106
Union Correctional Institution
PO Box 1000
Raiford, FL 32038

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

/s/ Amy M. Roth-Pixton
AMY M. ROTH-PIXTON
Counsel for Respondent

Department of Veterans Affairs	
File Number:	[REDACTED]
Beneficiary:	TROUSDALE, RICHARD B
Finance Processing Station:	San Diego(377)
Station of Jurisdiction:	St. Petersburg(317)
Amount:	\$140.05
Program Type:	Compensation

Fiscal Transaction under file number [REDACTED] for:	
RICHARD B. TROUSDALE INMATE TRUST FUND PO BOX 12100 DC# 039275 TALLAHASSEE, FL 32317 (Mailing Address)	SSN: [REDACTED] Date of Birth: 06/22/1951 Gender: Male
Award Relationships: [REDACTED]: Compensation/Pension Live Primary Beneficiary	
Daytime Phone: 866-209-7250	

Payment Address Information

Beneficiary Current C&P Payment Address	Beneficiary Special Payment Address
RICHARD TROUSDALE inmate trust fund PO BOX 12100 DC# 039275 tallahassee, FL 32317	

Payment of Proceeds (75A)

Account Number	Accountable Balance Amount	Payment Amount	Begin Date	End Date	Payment Recipient	Recipient's Payment Address	Amount Remaining

2354031 1	\$140.05	\$140.05	08/01/2019	08/31/2019	RICHARD B. TROUSDALE	RICHARD B TROUSDALE INMATE TRUST FUND PO BOX 12100 DC# 039275 TALLAHASSEE FL 32317	\$0.00
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Transaction Notes

The 083019 payment was traced and the agency received the credit. Reissue payment.

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