

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

VET APPEAL 19-2795
MOTION FOR RECONSIDERATION

PETER VAN DERMARK

APPELLANT

v.

DENIS McDONOUGH

APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
---------------------------	----

ARGUMENT.....	2
---------------	---

1. THE STATUE: CONGRESS CLEARLY INTENDED THAT THE VA REIMBURSE ANY VETERANS RATED 100% P&T FOR EMERGENCY CARE REGARDLESS OF LOCATION. CONGRESS DID NOT GIVE THE SECRETARY THE RIGHT OR POWER TO LIMIT THAT TO ONLY WITHIN THE STATES.
2. THE RULING OF THE JUDGES IGNORES THE INTENT OF CONGRESS AND THE INTERPRETING THE AMBIGUITY AGAINST THE FAVOR OF THE VETERAN. AS JUSTICE ALITO ALSO RECOGNIZED THAT INTERPRETIVE DOUBT IS TO BE RESOLVED IN THE VETERANS'S FAVOR.
3. IN SYLVER P. VERNA v. EDWARD J. DERWINSKI, NO. 90-1310, DECIDED DEC. 12, 1991 THE SECRETARY FILED A BRIEF CLEARLY STATING THAT REIMBURSEMENT IS AVAILABLE ONLY IN TIMES OF EMERGENCY. SEE 38 U.S.C. 1728 (formerly 628)

III. CONCLUSION

Accordingly, the Court AFFIRMS the April 17, 2019, Board decision.

GREENBERG, *Judge*, dissenting: The line between a plain language analysis and interpreting ambiguity in a statute has never been more blurred. What the majority calls historical context to support a plain language finding could very easily be described as reviewing legislative history to uncover the meaning of an ambiguous term. With the utmost respect for my esteemed colleagues, I have no alternative but to dissent.

It is well established that Congress created a scheme where veterans are a highly regarded class of citizens. *See Henderson v. Shinseki*, 562 U.S. 428, 440 (2011) (stating that longstanding Congressional "solicitude [for veterans] is plainly reflected in the [Veterans Judicial Review Act of 1988], as well as in subsequent laws that place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions" (internal quotes omitted)). This principle has been considered and enforced since the earliest days of the Republic. *See Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 n. (1792).

As Justice Alito recognized, "We have long applied 'the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.'" *Henderson*, 562 U.S. at 441 (quoting *King v. St. Vincent's Hospital*, 502 U.S. 215, 220-21 n. 9 (1991)); *Brown v. Gardner*, 513 U.S. 115, 117-18 (1994) (noting "the rule that interpretive doubt is to be resolved in the veteran's favor" cited in *King*). Not to be viewed merely as an afterthought,

the pro-veteran canon is a traditional tool of construction. It requires that we discern the purpose of a veterans' benefit provision in the context of the veterans' benefit scheme as a whole and ensure that the construction effectuates, rather than frustrates, that remedial purpose: that benefits that by law belong to the veteran go to the veteran.

Kisor v. McDonough, 995 F.3d 1316, 1327 (Fed. Cir. 2021) (Reyna, J., dissenting).

The Court should be interpreting statutes in a way that helps veterans, otherwise we diminish and minimize the purpose and role of the entire statutory scheme created by Congress specifically to favor veterans; in fact, the pro-veteran canon requires us to interpret statutes in this context. Today's decision sets a dangerous precedent for interpretation of future veterans benefits statutes. For the foregoing reasons, I dissent.

1 Vet.App. 615
United States Court of Veterans Appeals.

Sylver P. VERNA, Appellant,

v.

Edward J. DERWINSKI, Secretary
of Veterans Affairs, Appellee.

No. 90-1310.

Submitted Sept. 19, 1991.

Decided Dec. 12, 1991.

Synopsis

Board of Veterans' Appeal (BVA) upheld denial of veteran's claim for reimbursement by the Department of Veterans Affairs of the cost of hearing aids. The Court of Veterans Appeals held that veteran was not entitled to reimbursement where he failed to obtain previous authorization.

Affirmed.

West Headnotes (2)

[1] Armed Services

⇒ Hospitalization and medical care

Veteran was not entitled to reimbursement from the Department of Veterans Affairs (VA) for costs of prosthetic appliances which he had purchased without obtaining previous VA authorization.

Cases that cite this headnote

[2] Armed Services

⇒ Summary disposition

Summary disposition of appeal from decision of the Board of Veterans Appeals (BVA) is appropriate when issue is of relative simplicity and outcome is not reasonably debatable.

Cases that cite this headnote

Attorneys and Law Firms

*615 Ronald L. Smith, Washington, D.C., was on the brief for appellant.

Robert E. Coy, Acting Gen. Counsel, Barry M. Tapp, Asst. Gen. Counsel, Pamela L. Wood, Deputy Asst. Gen. Counsel, and John D. McNamee, Washington, D.C., were on the brief, for appellee.

Before FARLEY, MANKIN and HOLDAWAY, Associate Judges.

Opinion

PER CURIAM:

The sole question before this Court is whether a veteran is entitled to reimbursement from the Department of Veterans Affairs (VA) for the costs of prosthetic appliances which he had purchased without obtaining previous VA authorization. In its decision of July 23, 1990, the Board of Veterans' Appeals (Board) upheld the December 8, 1988, denial of appellant's claim by the VA Medical Center in Washington, D.C., for reimbursement of the cost of hearing aids. A timely appeal to this Court followed.

[1] In a brief filed on May 29, 1991, appellant, who resides in France (R. at 31), contends that the VA regulations do not require prior authorization for the purchase of hearing aids. He correctly notes that 38 U.S.C. § 1724 (formerly § 624) authorizes the Secretary of Veterans Affairs (Secretary) to provide medical services, including prosthetic appliances such as hearing aids, to a veteran "outside a State". See 38 C.F.R. § 17.115 (1991). Appellant maintains that § 17.115 does not preclude the VA from reimbursing veterans for their unauthorized purchase of hearing aids, and he argues that "the Board erred by misinterpreting the law and ... (VA) regulations as requiring VA authorization before purchase of his hearing aids as a precondition to reimbursement from the VA." Appellant's Abandonment of Issue *616 on Appeal, at 1 (filed October 7, 1991). Appellant originally also took issue with the Board's determination that he did not, in fact, obtain prior authorization for the purchase of the hearing aids. This argument has been abandoned on appeal. *Id.*

On July 22, 1991, the Secretary filed a brief requesting that the Court uphold the Board's decision. In it, the Secretary contends that § 17.115 provides only for the purchase of prosthetic aids upon VA approval and does not provide for reimbursement. Reimbursement is available only in times of emergency. See 38 U.S.C. § 1728 (formerly § 628); 38 C.F.R. §§ 17.80, 17.80a and 17.81 (1991). Section 17.80, which defines the conditions under which reimbursement can be made, expressly precludes reimbursement for "prosthetic appliances". However, § 17.81 permits reimbursement for repairs to prosthetic devices, only if:

(a) Obtaining repairs locally was necessary, expedient, and not a matter of preference to using authorized sources, and

(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed \$125.

Id. The Secretary contends that none of these situations applies to the facts in the present case, and he urges the Court to affirm the Board's conclusion that appellant is not entitled to reimbursement for the cost of hearing aids.

In his reply brief of October 7, 1991, appellant argues that the statutory authority of the Secretary to *furnish* medical services to veterans outside of a state is not limited to medical emergencies. Yet he still provides no statutory authority for his contention that the VA is obliged to *reimburse* him for prosthetic appliances which he purchased without obtaining prior VA authorization and not under emergency circumstances.

[2] Upon consideration of the record and the briefs of appellant and appellee, it is the holding of the Court that appellant has not demonstrated that the Board committed either factual or legal error which would warrant reversal. *See Gilbert v. Derwinski*, 1 Vet.App. 49 (1990); *see also Anderson v. City of Bessemer City*, 470 U.S. 564, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985); *Danville Plywood Corp. v. United States*, 899 F.2d 3 (Fed.Cir.1990). Summary disposition is appropriate when, as here, the issue is of relative simplicity and the outcome is not reasonably debatable. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). Accordingly, the decision of the Board of Veterans' Appeals is affirmed.

It is so Ordered.

All Citations

1 Vet.App. 615

TABLE OF AUTHORITIES

PAGES

CASES

SYLVER P. VERNA v. EDWARD J. DERWINSKI

VET.APP. 615 DOCKET NO. 90-1310 DECIDED DEC. 12, 1991.....1

No. 19-2795 Decided June 1, 2021

Judge GREENBURG dissenting opinion citing numerous rulings that

Place a thumb on the scale in the Veteran’s favor.....2

STATUTES

Title 38 CFR 17.1002.....3

Title 38 USC 1728.....4

Public Law 110-387—Oct. 10, 2008.....5

U.S. Code Title 38 PART II Chapter 17 SUBCHAPTER III 1724.....6

ARGUMENT

- 1. THE STATUE: CONGRESS INTENDED THAT VA REIMBURSE VETERAN'S FOR EMERGENCY MEDICAL CARE FURNISHED AT ANY NON-VA FACILITY, REGARDLESS OF LOCATION. CONGRESS DID NOT GIVE THE SECRETARY ANY AUTHORIZATION OR POWER TO AMEND THE 38 U.S.C. 1728.**

The Secretary further exceed his authority to authorize treatment of any type to Veterans in Canada and or the Philippines while taking away benefits for treatment clearly authorized by Congress in 39 USC 1728(a)(3) for any condition. The intent of Congress leaves nothing open to interpretation as it is clear and to the point on their intent and cannot be read any other way. Since neither Canada nor the Philippines are part of the United States, as defined by the U.S. Board on Geographic Names which states, The 50 States and the District of Columbia.

In doing so the Secretary has invalidate his CFR by exceeding the Authority of Congress and attempting to overwrite Congresses intent.

In the case of Verna v. Derwinski case 1 page 1 while the Court denied the Veteran's claim the Secretary clearly filed a brief to the Court that clearly stated reimbursement is available only in time of emergency. See 38 U.S.C. 1728 (formerly 628), before AFRLEY, MANKIN and HOLDAWAY (Case #1). This case is of a Veteran in France which is clearly outside the States and a 3 Judge Panel decision binding the VA.

In this case of Peter Van Dermark v. Denis McDonough Judge GREENBERG has clearly cited numerous cases where the plain language of a statue has been ignored. He clearly cites many case and also Justice Alito where benefits are to be construed in the beneficiaries favor along with case citations.(Case #2).


Title 38 CFR 17.1002 Lists the substantive conditions for payment or reimbursement under 38 U.S.C.1725. Conditions (a), (b), (c), (d), (e), (f), (g), (h) have all been met. Under condition (h) when the Veteran is entitled for reimbursement under 38 U.S.C. 1728 then 38 U.S.C. no longer applies and is superseded by 38 U.S.C. 1728(a)(3) which clearly stated for 'ANY' Condition. (Statue page 3)

38 U.S.C. 1728. Reimbursement of Certain Medical Expenses is clear and to the Point that Congress never gave the Secretary any power or authorization to state only within the States. The Secretary took this upon himself to do this without any authority issued to him by Congress. Congresses intent is clear, precise and to the point and therefore cannot be read any other way or by reading something in it that Congress did not state.. To further substantiate my contentions the Secretary took away Travel Reimbursement under 38 U.S.C. 111 again clearly stating it applies only within the States contrary to the intent of Congress. 38 C.F.R. 70.1 allows only reimbursement incurred in the States without any authority given to him by Congress. Clearly this shows in my opinion his intent to take away Benefits afforded by Congress to Veterans outside the States. Furthermore Congress clearly spelled out under PUBLIC LAW 110-387- OCT. 10, 2008 (a) that the Secretary shall reimburse by striking out may reimburse therefore removing any rights of the Secretary to determine otherwise. Also under (b) (1) (a)(3) Congress clearly showed their intent to cover any condition of a Veteran with a total disability permanent in nature from a service connected disability. (Statue/Law pages 4 & 5)

U.S.C. Title 38 Part II Chapter 17 Subchapter III 1724. Section (c) clearly further authorizes the Secretary that he may furnish necessary hospital care to a Veterans for any non-service-connected disability if such veterans is unable to defray the expenses of necessary hospital care. Through communication with FMP which I have included in my File and Claim there are many messages also over 20 that FMP withheld from my appeal to the BVA that I submitted directly to the BVA, raising this point with FMP claims adjudicator. I was clearly told in neither circumstance I could not go to the Philippines for this via email. I could not afford the cost of that surgery either time and that put me in severe debt. (Statue page 6)

Additional evidence misstated to the Court on my Second Surgery. I had a 3 vein blockage of my heart and flew to Guam where I was directed to go to the GUAM MC not the VA nor the USN Hospital. The VA ordered an ambulance to take me to

the USN Hospital who had no Heart Surgeon when the Guam MC did. In time I was sent to Tripper escorted all the way by a Navy Nurse with medications which she had to administer many times. I was admitted Tripper and went through much testing confirming the Life Threatening Condition of my Heart. An intern told me I was being discharged to a hotel which was located approximately 9 minutes from the hospital by a shuttle that ran every hour. I had no one caring for me. I did not leave the Hospital on my own and yes I was upset and scared. My Doctor the Heart surgeon clearly stated to me, my Wife and my Daughter I would remain in the Hospital until I had my surgery. (Confidential Report Attached), but Tripler wanted my bed for an Army Veteran.

 You are viewing the current version of the eCFR. The eCFR is up to date as of 6/09/2021.

Title 38

3

* § 17.1002 Substantive conditions for payment or reimbursement.

Payment or reimbursement under 38 U.S.C. 1725 for emergency treatment (including medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged)) will be made only if all of the following conditions are met:

- (a) The emergency services were provided in a hospital emergency department or a similar facility held out as providing emergency care to the public;
- (b) The claim for payment or reimbursement for the initial evaluation and treatment is for a condition of such a nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health (this standard would be met if there were an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part);
- (c) A VA or other Federal facility/provider that VA has an agreement with to furnish health care services for veterans was not feasibly available and an attempt to use them beforehand would not have been considered reasonable by a prudent layperson (as an example, these conditions would be met by evidence establishing that a veteran was brought to a hospital in an ambulance and the ambulance personnel determined the nearest available appropriate level of care was at a non-VA medical center);
- (d) At the time the emergency treatment was furnished, the veteran was enrolled in the VA health care system and had received medical services under

- (e) The veteran is financially liable to the provider of emergency treatment for that treatment;
- (f) The veteran does not have coverage under a health-plan contract that would fully extinguish the medical liability for the emergency treatment (this condition cannot be met if the veteran has coverage under a health-plan contract but payment is barred because of a failure by the veteran or the provider to comply with the provisions of that health-plan contract, e.g., failure to submit a bill or medical records within specified time limits, or failure to exhaust appeals of the denial of payment);
- (g) If the condition for which the emergency treatment was furnished was caused by an accident or work-related injury, the claimant has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment; and the veteran has no contractual or legal recourse against a third party that could reasonably be pursued for the purpose of extinguishing, in whole, the veteran's liability to the provider; and
- * (h) The veteran is not eligible for reimbursement under 38 U.S.C. 1728 for the emergency treatment provided (38 U.S.C. 1728 authorizes VA payment or reimbursement for emergency treatment to a limited group of veterans, primarily those who receive emergency treatment for a service-connected disability).

(Authority: 38 U.S.C. 1725)

[66 FR 36470, July 12, 2001, as amended at 68 FR 3404, Jan. 24, 2003; 76 FR 79071, Dec. 21, 2011; 77 FR 23617, Apr. 20, 2012; 80 FR 79484, Dec. 22, 2015; 83 FR 979, Jan. 9, 2018]

(Added Pub. L. 93–82, title I, §106(a), Aug. 2, 1973, 87 Stat. 183, §628; amended Pub. L. 94–581, title II, §§202(n), 210(a)(13), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 96–151, title II, §201(d), Dec. 20, 1979, 93 Stat. 1093; Pub. L. 101–237, title II, §202(a), Dec. 18, 1989, 103 Stat. 2066; Pub. L. 102–54, §14(b)(14), June 13, 1991, 105 Stat. 284; renumbered §1728 and amended Pub. L. 102–321, §2(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), (o)(1), (p)(1), (q)(1), (r)(1), (s)(1), (t)(1), (u)(1), (v)(1), (w)(1), (x)(1), (y)(1), (z)(1), (aa)(1), (ab)(1), (ac)(1), (ad)(1), (ae)(1), (af)(1), (ag)(1), (ah)(1), (ai)(1), (aj)(1), (ak)(1), (al)(1), (am)(1), (an)(1), (ao)(1), (ap)(1), (aq)(1), (ar)(1), (as)(1), (at)(1), (au)(1), (av)(1), (aw)(1), (ax)(1), (ay)(1), (az)(1), (ba)(1), (bb)(1), (bc)(1), (bd)(1), (be)(1), (bf)(1), (bg)(1), (bh)(1), (bi)(1), (bj)(1), (bk)(1), (bl)(1), (bm)(1), (bn)(1), (bo)(1), (bp)(1), (bq)(1), (br)(1), (bs)(1), (bt)(1), (bu)(1), (bv)(1), (bw)(1), (bx)(1), (by)(1), (bz)(1), (ca)(1), (cb)(1), (cc)(1), (cd)(1), (ce)(1), (cf)(1), (cg)(1), (ch)(1), (ci)(1), (cj)(1), (ck)(1), (cl)(1), (cm)(1), (cn)(1), (co)(1), (cp)(1), (cq)(1), (cr)(1), (cs)(1), (ct)(1), (cu)(1), (cv)(1), (cw)(1), (cx)(1), (cy)(1), (cz)(1), (da)(1), (db)(1), (dc)(1), (dd)(1), (de)(1), (df)(1), (dg)(1), (dh)(1), (di)(1), (dj)(1), (dk)(1), (dl)(1), (dm)(1), (dn)(1), (do)(1), (dp)(1), (dq)(1), (dr)(1), (ds)(1), (dt)(1), (du)(1), (dv)(1), (dw)(1), (dx)(1), (dy)(1), (dz)(1), (ea)(1), (eb)(1), (ec)(1), (ed)(1), (ee)(1), (ef)(1), (eg)(1), (eh)(1), (ei)(1), (ej)(1), (ek)(1), (el)(1), (em)(1), (en)(1), (eo)(1), (ep)(1), (eq)(1), (er)(1), (es)(1), (et)(1), (eu)(1), (ev)(1), (ew)(1), (ex)(1), (ey)(1), (ez)(1), (fa)(1), (fb)(1), (fc)(1), (fd)(1), (fe)(1), (ff)(1), (fg)(1), (fh)(1), (fi)(1), (fj)(1), (fk)(1), (fl)(1), (fm)(1), (fn)(1), (fo)(1), (fp)(1), (fq)(1), (fr)(1), (fs)(1), (ft)(1), (fu)(1), (fv)(1), (fw)(1), (fx)(1), (fy)(1), (fz)(1), (ga)(1), (gb)(1), (gc)(1), (gd)(1), (ge)(1), (gf)(1), (gg)(1), (gh)(1), (gi)(1), (gj)(1), (gk)(1), (gl)(1), (gm)(1), (gn)(1), (go)(1), (gp)(1), (gq)(1), (gr)(1), (gs)(1), (gt)(1), (gu)(1), (gv)(1), (gw)(1), (gx)(1), (gy)(1), (gz)(1), (ha)(1), (hb)(1), (hc)(1), (hd)(1), (he)(1), (hf)(1), (hg)(1), (hh)(1), (hi)(1), (hj)(1), (hk)(1), (hl)(1), (hm)(1), (hn)(1), (ho)(1), (hp)(1), (hq)(1), (hr)(1), (hs)(1), (ht)(1), (hu)(1), (hv)(1), (hw)(1), (hx)(1), (hy)(1), (hz)(1), (ia)(1), (ib)(1), (ic)(1), (id)(1), (ie)(1), (if)(1), (ig)(1), (ih)(1), (ii)(1), (ij)(1), (ik)(1), (il)(1), (im)(1), (in)(1), (io)(1), (ip)(1), (iq)(1), (ir)(1), (is)(1), (it)(1), (iu)(1), (iv)(1), (iw)(1), (ix)(1), (iy)(1), (iz)(1), (ja)(1), (jb)(1), (jc)(1), (jd)(1), (je)(1), (jf)(1), (jg)(1), (jh)(1), (ji)(1), (jj)(1), (jk)(1), (jl)(1), (jm)(1), (jn)(1), (jo)(1), (jp)(1), (jq)(1), (jr)(1), (js)(1), (jt)(1), (ju)(1), (jv)(1), (jw)(1), (jx)(1), (jy)(1), (jz)(1), (ka)(1), (kb)(1), (kc)(1), (kd)(1), (ke)(1), (kf)(1), (kg)(1), (kh)(1), (ki)(1), (kj)(1), (kk)(1), (kl)(1), (km)(1), (kn)(1), (ko)(1), (kp)(1), (kq)(1), (kr)(1), (ks)(1), (kt)(1), (ku)(1), (kv)(1), (kw)(1), (kx)(1), (ky)(1), (kz)(1), (la)(1), (lb)(1), (lc)(1), (ld)(1), (le)(1), (lf)(1), (lg)(1), (lh)(1), (li)(1), (lj)(1), (lk)(1), (ll)(1), (lm)(1), (ln)(1), (lo)(1), (lp)(1), (lq)(1), (lr)(1), (ls)(1), (lt)(1), (lu)(1), (lv)(1), (lw)(1), (lx)(1), (ly)(1), (lz)(1), (ma)(1), (mb)(1), (mc)(1), (md)(1), (me)(1), (mf)(1), (mg)(1), (mh)(1), (mi)(1), (mj)(1), (mk)(1), (ml)(1), (mn)(1), (mo)(1), (mp)(1), (mq)(1), (mr)(1), (ms)(1), (mt)(1), (mu)(1), (mv)(1), (mw)(1), (mx)(1), (my)(1), (mz)(1), (na)(1), (nb)(1), (nc)(1), (nd)(1), (ne)(1), (nf)(1), (ng)(1), (nh)(1), (ni)(1), (nj)(1), (nk)(1), (nl)(1), (nm)(1), (nn)(1), (no)(1), (np)(1), (nq)(1), (nr)(1), (ns)(1), (nt)(1), (nu)(1), (nv)(1), (nw)(1), (nx)(1), (ny)(1), (nz)(1), (oa)(1), (ob)(1), (oc)(1), (od)(1), (oe)(1), (of)(1), (og)(1), (oh)(1), (oi)(1), (oj)(1), (ok)(1), (ol)(1), (om)(1), (on)(1), (oo)(1), (op)(1), (oq)(1), (or)(1), (os)(1), (ot)(1), (ou)(1), (ov)(1), (ow)(1), (ox)(1), (oy)(1), (oz)(1), (pa)(1), (pb)(1), (pc)(1), (pd)(1), (pe)(1), (pf)(1), (pg)(1), (ph)(1), (pi)(1), (pj)(1), (pk)(1), (pl)(1), (pm)(1), (pn)(1), (po)(1), (pp)(1), (pq)(1), (pr)(1), (ps)(1), (pt)(1), (pu)(1), (pv)(1), (pw)(1), (px)(1), (py)(1), (pz)(1), (qa)(1), (qb)(1), (qc)(1), (qd)(1), (qe)(1), (qf)(1), (qg)(1), (qh)(1), (qi)(1), (qj)(1), (qk)(1), (ql)(1), (qm)(1), (qn)(1), (qo)(1), (qp)(1), (qq)(1), (qr)(1), (qs)(1), (qt)(1), (qu)(1), (qv)(1), (qw)(1), (qx)(1), (qy)(1), (qz)(1), (ra)(1), (rb)(1), (rc)(1), (rd)(1), (re)(1), (rf)(1), (rg)(1), (rh)(1), (ri)(1), (rj)(1), (rk)(1), (rl)(1), (rm)(1), (rn)(1), (ro)(1), (rp)(1), (rq)(1), (rr)(1), (rs)(1), (rt)(1), (ru)(1), (rv)(1), (rw)(1), (rx)(1), (ry)(1), (rz)(1), (sa)(1), (sb)(1), (sc)(1), (sd)(1), (se)(1), (sf)(1), (sg)(1), (sh)(1), (si)(1), (sj)(1), (sk)(1), (sl)(1), (sm)(1), (sn)(1), (so)(1), (sp)(1), (sq)(1), (sr)(1), (ss)(1), (st)(1), (su)(1), (sv)(1), (sw)(1), (sx)(1), (sy)(1), (sz)(1), (ta)(1), (tb)(1), (tc)(1), (td)(1), (te)(1), (tf)(1), (tg)(1), (th)(1), (ti)(1), (tj)(1), (tk)(1), (tl)(1), (tm)(1), (tn)(1), (to)(1), (tp)(1), (tq)(1), (tr)(1), (ts)(1), (tu)(1), (tv)(1), (tw)(1), (tx)(1), (ty)(1), (tz)(1), (ua)(1), (ub)(1), (uc)(1), (ud)(1), (ue)(1), (uf)(1), (ug)(1), (uh)(1), (ui)(1), (uj)(1), (uk)(1), (ul)(1), (um)(1), (un)(1), (uo)(1), (up)(1), (uq)(1), (ur)(1), (us)(1), (ut)(1), (uu)(1), (uv)(1), (uw)(1), (ux)(1), (uy)(1), (uz)(1), (va)(1), (vb)(1), (vc)(1), (vd)(1), (ve)(1), (vf)(1), (vg)(1), (vh)(1), (vi)(1), (vj)(1), (vk)(1), (vl)(1), (vm)(1), (vn)(1), (vo)(1), (vp)(1), (vq)(1), (vr)(1), (vs)(1), (vt)(1), (vu)(1), (vv)(1), (vw)(1), (vx)(1), (vy)(1), (vz)(1), (wa)(1), (wb)(1), (wc)(1), (wd)(1), (we)(1), (wf)(1), (wg)(1), (wh)(1), (wi)(1), (wj)(1), (wk)(1), (wl)(1), (wm)(1), (wn)(1), (wo)(1), (wp)(1), (wq)(1), (wr)(1), (ws)(1), (wt)(1), (wu)(1), (wv)(1), (ww)(1), (wx)(1), (wy)(1), (wz)(1), (xa)(1), (xb)(1), (xc)(1), (xd)(1), (xe)(1), (xf)(1), (xg)(1), (xh)(1), (xi)(1), (xj)(1), (xk)(1), (xl)(1), (xm)(1), (xn)(1), (xo)(1), (xp)(1), (xq)(1), (xr)(1), (xs)(1), (xt)(1), (xu)(1), (xv)(1), (xw)(1), (xx)(1), (xy)(1), (xz)(1), (ya)(1), (yb)(1), (yc)(1), (yd)(1), (ye)(1), (yf)(1), (yg)(1), (yh)(1), (yi)(1), (yj)(1), (yk)(1), (yl)(1), (ym)(1), (yn)(1), (yo)(1), (yp)(1), (yq)(1), (yr)(1), (ys)(1), (yt)(1), (yu)(1), (yv)(1), (yw)(1), (yx)(1), (yy)(1), (yz)(1), (za)(1), (zb)(1), (zc)(1), (zd)(1), (ze)(1), (zf)(1), (zg)(1), (zh)(1), (zi)(1), (zj)(1), (zk)(1), (zl)(1), (zm)(1), (zn)(1), (zo)(1), (zp)(1), (zq)(1), (zr)(1), (zs)(1), (zt)(1), (zu)(1), (zv)(1), (zw)(1), (zx)(1), (zy)(1), (zz)(1)).

to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report containing an estimate of the additional costs incurred by the Department of Veterans Affairs because of this section, including—

(1) any costs resulting from increased utilization of healthcare services by veterans eligible for travel allowances or reimbursements under section 111 of title 38, United States Code; and

(2) the additional costs that would be incurred by the Department should the Secretary exercise the authority described in subsection (g)(3) of such section.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to travel expenses incurred after the expiration of the 90-day period that begins on the date of the enactment of this Act.

38 USC 111
note.

SEC. 402. MANDATORY REIMBURSEMENT OF VETERANS RECEIVING EMERGENCY TREATMENT IN NON-DEPARTMENT OF VETERANS AFFAIRS FACILITIES UNTIL TRANSFER TO DEPARTMENT FACILITIES.

(a) CERTAIN VETERANS WITHOUT SERVICE-CONNECTED DISABILITY.—Section 1725 is amended—

38 USC 1725.

(1) in subsection (a)(1), by striking “may reimburse” and inserting “shall reimburse”; and

(2) in subsection (f)(1), by striking subparagraph (C) and inserting the following new subparagraph (C):

“(C) until—

“(i) such time as the veteran can be transferred safely to a Department facility or other Federal facility and such facility is capable of accepting such transfer; or

“(ii) such time as a Department facility or other Federal facility accepts such transfer if—

“(I) at the time the veteran could have been transferred safely to a Department facility or other Federal facility, no Department facility or other Federal facility agreed to accept such transfer; and

“(II) the non-Department facility in which such medical care or services was furnished made and documented reasonable attempts to transfer the veteran to a Department facility or other Federal facility.”.

(b) CERTAIN VETERANS WITH SERVICE-CONNECTED DISABILITY.—Section 1728 is amended—

(1) by striking subsection (a) and inserting the following new subsection (a):

“(a) The Secretary shall, under such regulations as the Secretary prescribes, reimburse veterans eligible for hospital care or medical services under this chapter for the customary and usual charges of emergency treatment (including travel and incidental expenses under the terms and conditions set forth in section 111 of this title) for which such veterans have made payment, from sources other than the Department, where such emergency treatment was rendered to such veterans in need thereof for any of the following:

Regulations.

“(1) An adjudicated service-connected disability.

“(2) A non-service-connected disability associated with and held to be aggravating a service-connected disability.

“(3) Any disability of a veteran if the veteran has a total disability permanent in nature from a service-connected disability.

“(4) Any illness, injury, or dental condition of a veteran who—

“(A) is a participant in a vocational rehabilitation program (as defined in section 3101(9) of this title); and

“(B) is medically determined to have been in need of care or treatment to make possible the veteran's entrance into a course of training, or prevent interruption of a course of training, or hasten the return to a course of training which was interrupted because of such illness, injury, or dental condition.”;

(2) in subsection (b), by striking “care or services” both places it appears and inserting “emergency treatment”; and

(3) by adding at the end the following new subsection:

“(c) In this section, the term ‘emergency treatment’ has the meaning given such term in section 1725(f)(1) of this title.”.

38 USC 1703
note.

**SEC. 403. PILOT PROGRAM OF ENHANCED CONTRACT CARE
AUTHORITY FOR HEALTH CARE NEEDS OF VETERANS IN
HIGHLY RURAL AREAS.**

(a) PILOT PROGRAM REQUIRED.—

(1) **IN GENERAL.**—The Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary provides covered health services to covered veterans through qualifying non-Department of Veterans Affairs health care providers.

Deadline.

(2) **COMMENCEMENT.**—The Secretary shall commence the conduct of the pilot program on the date that is 120 days after the date of the enactment of this Act.

(3) **TERMINATION.**—A veteran may receive health services under the pilot program only during the three-year period beginning on the date of the commencement of the pilot program under paragraph (2).

(4) **PROGRAM LOCATIONS.**—The pilot program shall be carried out within areas selected by the Secretary for the purposes of the pilot program in at least five Veterans Integrated Service Networks (VISNs). Of the Veterans Integrated Service Networks so selected—

(A) not less than four such networks shall include at least three highly rural counties, as determined by the Secretary upon consideration of the most recent decennial census;

(B) not less than one such network, not including a network selected under subparagraph (A), shall include only one highly rural county, as determined by the Secretary upon consideration of the most recent decennial census;

(C) all such networks shall include area within the borders of at least four States; and

(D) no such networks shall be participants in the Healthcare Effectiveness through Resource Optimization pilot program of the Department of Veterans Affairs.

(b) COVERED VETERANS.—

6

LII > U.S. Code > Title 38 > PART II > CHAPTER 17 > SUBCHAPTER III
> § 1724

38 U.S. Code § 1724 - Hospital care, medical services, and nursing home care abroad

<u>U.S. Code</u>	<u>Notes</u>
------------------	--------------

(a) Except as provided in subsections (b) and (c), the Secretary shall not furnish hospital or domiciliary care or medical services outside any State.

(b)

(1) The Secretary may furnish hospital care and medical services outside a State to a veteran who is otherwise eligible to receive hospital care and medical services if the Secretary determines that such care and services are needed for the treatment of a service-connected disability of the veteran or as part of a rehabilitation program under chapter 31 of this title.

(2) Care and services for a service-connected disability of a veteran who is not a citizen of the United States may be furnished under this subsection only—

(A) if the veteran is in the Republic of the Philippines or in Canada; or

(B) if the Secretary determines, as a matter of discretion and pursuant to regulations which the Secretary shall prescribe, that it is appropriate and feasible to furnish such care and services.

✱ (c) Within the limits of those facilities of the Veterans Memorial Medical Center at Manila, Republic of the Philippines, for which the Secretary may contract, the Secretary may furnish necessary hospital care to a veteran for any non-service-connected disability if such veteran is unable to defray the expenses of necessary hospital care. The Secretary may enter into contracts to carry out this section.

(d) The Secretary may furnish nursing home care, on the same terms and conditions set forth in section 1720(a) of this title, to any veteran who has been furnished hospital care in the Philippines pursuant to this section, but who requires a protracted period of nursing home care.

(e) Within the limits of an outpatient clinic in the Republic of the Philippines that is under the direct jurisdiction of the Secretary, the Secretary may furnish a veteran who has a service-connected disability with such medical services as the Secretary determines to be needed.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1144, § 624; Pub. L. 86-152, Aug. 11, 1959, 73 Stat. 332; Pub. L. 86-624, § 25(a), July 12, 1960, 74 Stat. 418; Pub. L. 87-815, § 4, Oct. 15, 1962, 76 Stat. 927; Pub. L. 93-82, title I, § 108, Aug. 2, 1973, 87 Stat. 186; Pub. L. 94-581, title II, §§ 202(l), 210(a)(11), Oct. 21, 1976, 90 Stat. 2856, 2863; Pub. L. 95-520, § 3(a), Oct. 26, 1978, 92 Stat. 1820; Pub. L. 97-72, title I, § 107(a), Nov. 3, 1981, 95 Stat. 1051; Pub. L. 97-295, § 4(20), Oct. 12, 1982, 96 Stat. 1306; Pub. L. 100-322, title I, § 105, May 20, 1988, 102 Stat. 493; renumbered § 1724 and amended Pub. L. 102-83 884(h)(1) (2)(F) 5(a) (c)(1) Aug 6

RN Care Coordinator

05/04/2018 15:05 /es/ Ramesh C Kilaru, MD
Physician

05/04/2018 13:46 /es/ Sarah E Kistler, MD
Primary Care Physician

05/06/2018 14:54 /es/ Bernadette Santos, MPA, BSN, RN
Guam CBOC Nurse Manager

05/13/2018 17:26 /es/ DEANNE WOLFORD
Medical Support Assistant Supervisor

05/07/2018 ADDENDUM STATUS: COMPLETED

Received email regarding notification of pt being an inpatient now and is awaiting the preliminaries for an inpatient to inpatient transfer/Medevac to TAMC. Pt has a bed reserved on 6C2 awaiting an accepting physician- ETA is Thursday, 10May18. Pt has already been accepted by Dr. Smith in Cardiology.

/es/ INGA U MCLAUGHLIN
Registered Nurse
Signed: 05/07/2018 08:28

05/11/2018 ADDENDUM STATUS: COMPLETED

Veteran arrived on TAMC 6B2 yesterday evening. Veteran had a cardiac cath this morning, 11May18, tolerating procedure with one episode of CP. Writer visited pt

on TAMC Unit 6C2 to introduce self. Veteran was sitting on the side of the bed in front of his laptop on the bedside table. Pt was calm and pleasant and in NAD. Pt remains on telemetry and can walk about the room and ward hallway without complaints of pain or SOB. Pt anxious to find out what will happen next.

Pt states one of the TAMC doctors told him he was going to be discharged to the hotel or Fisher House and will be brought back for surgery later on. Per Eccentris progress note doctor stated pt will have surgery in the "coming weeks". Paged Tripler doctor, Dr. Netzel, who stated pt will remain in the hospital until he has his CABG sometime next week depending on the OR schedule.

He stated the comment in the "coming weeks" was a typo. Pt stated if he didn't

hear something from the doctor soon he would consider finding himself a flight back to Thailand. Encouraged pt to be patient with the TAMC doctors and nurses. Pt verbalized he's not very patient. Writer was just informed

Call placed to Veteran's wife at 66810603321, informed wife Veteran was doing

well and waiting for his surgery. She stated she was worried and thanked writer for the call. Another call placed to Veteran's daughter Alexis at 352-277-2310.

Left a VM with writer's number as well as the numbers to Veteran's bedside phone and to the nurses station.

/es/ INGA U MCLAUGHLIN

In closing with all due respect to this Honorable Court in light of this denial the CAVC has created 2 separate groups of Veterans.

1. Entitled to Emergency Medical care, Treatment and reimbursement as ruled in Staab v. McDonald. Doc No. 14-0957 Apr. 8, 2016 a Precedential Ruling
2. Now 1 Group of Veteran's are not entitled, who reside outside the States. Because the Secretary on his own took this right away along with Travel Reimbursement.

Respectfully yours.



Peter Van Dermark

11042 Wood Owl Ave

Weeki Wachee, FL 34614

352-488-8328

peter_vandermark1@yahoo.com