

June 6, 2022

For the Panel

Joseph L. Toth
Judge**IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS****JEREMY BEAUDETTE AND
MAYA BEAUDETTE,**
individually and on behalf of others
similarly situated,**Petitioners,**

v.

DENIS MCDONOUGH,
in his capacity as
Secretary of Veterans Affairs,**Respondent.**

Vet. App. No. 20-4961

**JOINT MOTION TO ADD ADDITIONAL PETITIONER AND CLASS
REPRESENTATIVE**

Petitioners Jeremy and Maya Beaudette (Petitioners) and Respondent Secretary of Veterans Affairs (Secretary) (collectively, the Parties) jointly move the Court for an order adding Jerry Barbee as an additional petitioner to represent the certified class along with Petitioners and with representation through class counsel.

On April 19, 2021, the Court granted Petitioners' petition, holding that claimants under the Program of Comprehensive Assistance for Family Caregivers (PCAFC) may seek review of PCAFC decisions at the Board of Veterans' Appeals (Board). *Beaudette v. McDonough*, 34 Vet. App. 95, 105 (2021). The Court also ordered the Secretary to allow Petitioners to appeal their PCAFC claim to the Board, enjoined the Secretary from denying Board review of future benefits decisions under the PCAFC, certified a class of "claimants who received an adverse benefits decision under the [PCAFC], exhausted the

administrative review process within the VHA, and have not been afforded the right to appeal to the [Board],” and ordered the parties to “jointly prepare and submit to the Court for approval a plan to provide notice to members of the proposed class of (1) their right to appeal [PCAFC] benefits decisions to the Board and (2) the procedure for obtaining Board review of the decision.” *Id.* at 108.

The Court also appointed Andy LeGolván of Paul Hastings LLP and Amanda Pertusati of Public Counsel to serve as class counsel pursuant to Rule 23(f), and subsequently, on June 4, 2021, approved Bart Stichman of National Veterans Legal Services Program as an additional class counsel under Rule 23(f)(2).

On August 19, 2021, the Court approved the parties’ joint notice plan. On November 17, 2021, VA began sending out notices pursuant to the parties’ joint notice plan. On October 6, 2021, the Court entered judgment, and on December 3, 2021, the Secretary filed a notice of appeal in the U.S. Court of Appeals for the Federal Circuit. The parties continue to implement the joint notice plan approved by the Court.

Following the Court’s April 19, 2021, panel decision, the parties met and conferred on whether, and if so when, the Secretary would process Petitioners’ individual legacy Board appeal, as the Court ordered. *See* 34 Vet. App. at 108 (“Upon consideration of the foregoing, it is . . . ORDERED that the Secretary allow Board review of petitioners’ claim[.]”). The Secretary agreed to move forward to process Petitioners’ Board appeal. The Secretary also requested that the parties jointly move the Court to add another named petitioner to represent the class in addition to Petitioners.

While Petitioners do not deem it necessary to add an additional named petitioner,

to avoid unnecessary motion practice and to reach a compromise on this issue, Petitioners and class counsel have agreed jointly with the Secretary to file the instant motion to add an additional named petitioner to represent the class interests on appeal, along with Petitioners and with representation through class counsel.

To that end, Petitioners and the Secretary jointly move the Court to add Jerry Barbee as an additional named class representative. The parties have become familiar with Mr. Barbee's PCAFC claim and believe he is a member of the class, and that his claim is typical of the class—*i.e.*, he has received an adverse benefits decision, exhausted the VHA appeals process, and was not afforded the right to appeal to the Board—and that he will fairly and adequately protect the interests of the class. *See* U.S. Vet. App. R. 23(a). Moreover, counsel for Petitioners—specifically, Public Counsel—has entered into retainer agreements with Mr. Barbee, which, upon approval by the Court, Petitioners will file pursuant to U.S. Vet. App. R. 46(b)(1)(A).

To that end, the parties jointly stipulate as to the following facts relating to Mr. Barbee:

Mr. Barbee is a 100 percent disabled veteran. He currently has 100% service connected disability ratings for Rheumatoid Polyarthritis and Meniere's Disease, 30% ratings for residuals of right shoulder injury and multiple fibrolipomas, and 10% ratings for each of the following: Mood Disorder, residuals of fractured right ankle, bilateral pes planus, hypertension, bilateral mastectomy for gynecomastia, and bilateral hearing loss.

On October 1, 2020, Mr. Barbee submitted a VA Form 10-10CG application for the Program of Comprehensive Assistance for Family Caregivers (PCAFC). On October

21, 2020, his application was denied on the basis that Mr. Barbee was determined to not be in need of personal care services for a minimum of six continuous months due to an inability to perform an activity of daily living or a need for supervision, protection or instruction. It was also determined that participation in PCAFC was not determined to be in Mr. Barbee's best interest. On October 24, 2020, a Level 1 VHA clinical appeal was filed. On November 13, 2020, VISN 6 upheld the original denial. Subsequently, a second level VHA clinical appeal was filed. On April 22, 2021, VISN 7 upheld the original decision resulting in the application denial. Thus, Mr. Barbee exhausted the VHA clinical appeals process. The VHA decisions provided to Mr. Barbee as part of this process did not afford him of his right to appeal to the Board.

Based on the foregoing, Petitioners and the Secretary jointly request that the Court issue an order (1) approving the addition of Mr. Barbee as named petitioner and class representatives and (2) directing the Clerk of the Court to change the caption of this case to reflect the addition of Mr. Barbee as a named petitioner along with the Beaudettes.

Respectfully submitted,

Date: June 3, 2022

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