

*Not published*

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

No. 22-4698

KAREN R. SHORETTE,

PETITIONER,

v.

DENIS McDONOUGH,  
SECRETARY OF VETERANS AFFAIRS,

RESPONDENT.

Before BARTLEY, *Chief Judge*, and MEREDITH and LAURER, *Judges*.

**ORDER**

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

In a separate docket, #22-2268, the Court liberally construed the then-pro se petitioner's assertions as a request for extraordinary relief in the form of a writ of mandamus compelling VA to render a decision regarding her entitlement to be reinstated as the representative payee for her husband, veteran Charles R. Shorette, and directed the Clerk of the Court (Clerk) to open this petition under a new docket number. *Shorette v. McDonough*, No. 22-2268, 2022 WL 3152354, at \*1 (Vet. App. Aug. 8, 2022). Pursuant to Court order, the Secretary responded to the petition and, in that response, challenged the petitioner's standing to bring this action.

The Court subsequently received additional responses from both parties addressing the petitioner's standing to bring this petition in her capacity as the legal guardian of the veteran and addressing the merits of the petition. The case was submitted to this panel for decision on November 17, 2022, and proceedings were stayed for 30 days to afford the petitioner an opportunity to secure counsel. Counsel for the petitioner entered his appearance on December 16, 2022, and the petitioner filed a motion for clarification of the issues that warrant a precedential decision.

Of note, the Secretary argued in his response to the Court's September 20, 2022, order that (1) the agency notified the veteran and his representative of the November 2018 decision appointing a successor fiduciary, Secretary's Oct. 18, 2022, Response at 4, (2) the petitioner has not asserted "any notice problems with [VA's] determination to replace her with another fiduciary," *id.*, (3) "[a]lthough [the] [p]etitioner on behalf of the [v]eteran, may have had standing to appeal the November 2018[] decision to appoint a new fiduciary under [38 C.F.R.] § 13.100 or remove a fiduciary under [38 C.F.R.] § 13.500, no appeal was taken from [that] decision[]," *id.* at 4-5, (4) "[a]lthough the [v]eteran, or the [p]etitioner acting on his behalf, can make a 'reasonable request for appointment of a successor fiduciary,' no such request was specifically made in this case," *id.* at 3 (quoting 38 C.F.R. § 13.30(b)(9)), and (5) in any event, "the agency's determination on a

reasonable request would not be appealable to the Board [of Veterans' Appeals], and therefore would not aid in this Court's jurisdiction," *id.* at 3-4 (citing 28 U.S.C. § 1651(a); 38 C.F.R. § 13.600). Conversely, the petitioner, who was then unrepresented, asserted in her response to the Court's October 27, 2022, order that, from November 2018, she actively pursued reinstatement as the veteran's payee and that VA never advised her (in her capacity as the veteran's legal guardian) of appellate rights following VA's decision to appoint a new fiduciary, despite her diligent attempts to obtain information from VA personnel. Petitioner's November 4, 2022, Response at 3-4.

The Court has determined that additional responses from the parties would assist the Court in resolving whether a writ is warranted, including whether a writ would be in aid of the Court's jurisdiction. Accordingly, the Court seeks briefing from the parties on the following issues:

1. Is the matter at issue better characterized as an attempt by the petitioner, as the veteran's legal guardian, to appeal VA's November 2018 decision to appoint a new fiduciary, or VA's refusal to appoint the petitioner as a successor fiduciary?
2. If this petition relates to an attempt to appeal VA's November 2018 fiduciary appointment decision, does an incompetent veteran's legal guardian have standing to initiate an appeal of such actions?
  - a. If so, is the legal guardian entitled to the same notice or other due process requirements as the veteran? If not, how does VA protect an incompetent veteran's appellate rights as outlined in 38 C.F.R. §§ 13.30(b), 13.600(a), (b)(2)? Does this answer change when the legal guardian is accused of misusing VA funds?
  - b. Has VA's action or inaction frustrated this Court's future jurisdiction? Or, does the petitioner have adequate alternative remedies to pursue an appeal of the 2018 decision?
3. If this petition relates to an appeal of VA's refusal to appoint the petitioner as a successor fiduciary, are such actions subject to judicial review?

The parties shall attach to their responses any exhibits necessary to support their arguments and their responses may not exceed 15 pages, not counting any exhibits; "the table of contents; the table of authorities; any appendix containing superseded statutes, rules, and regulations, and unpublished authorities; and the certificate of service." U.S. VET. APP. R. 32(e); *see* U.S. VET. APP. R. 2, 21(b). Finally, the Court will deny the petitioner's motion for clarification as moot and the Court will order the Clerk to schedule this matter for oral argument as the business of the Court permits.

Upon consideration of the foregoing, it is

ORDERED that the petitioner, within 21 days after the date of this order, file and serve a response as indicated above. It is further

ORDERED that the Secretary, with 21 days after receipt of the petitioner's response, file and serve his response. It is further

ORDERED that the petitioner's December 16, 2022, motion is denied as moot. It is further

ORDERED that the Clerk schedule oral argument as the business of the Court permits.

DATED: January 18, 2023

PER CURIAM.

Copies to:

Douglas J. Rosinski, Esq.

VA General Counsel (027)