

THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

TIMOTHY DAVIS,
Appellant,

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,
Appellee.

VET. APP. NO. 19-7214

**APPELLANT'S RESPONSE TO COURT ORDER
DATED JANUARY 5, 2023**

Attorney for Appellant submits this response to the Court's January 5, 2023, Order, which directed Counsel for appellant to provide the status of the motion to substitute relevant to this appeal.

As previously informed, Lynnlee Giannirakis submitted a VA Form 21P-087, *Request for Substitution of Claimant upon Death of Claimant*, on January 7, 2022. We are still awaiting a decision from the Regional Office on substitution. On January 24, 2023, the VA requested additional evidence from Ms. Giannirakis. See Exhibit A

Therefore, Attorney for Appellant, respectfully responds to the Court's January 5, 2023, Order and submits this information for the Court's review and any action deemed appropriate.

Respectfully submitted,

/s/ Kenneth H. Dojaquez
Kenneth H. Dojaquez, Esq.
Attorney for Appellant
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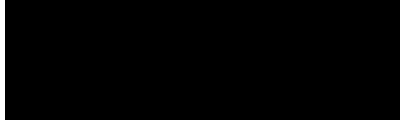
EXHIBIT A



DEPARTMENT OF VETERANS AFFAIRS

January 24, 2023

LYNNLEE GIANNIRAKIS



In reply, refer to:

346DROC/SDD

File Number:



TIMOTHY DAVIS

IMPORTANT -- reply needed within 30 days

Dear Mrs. LYNNLEE GIANNIRAKIS:

We are working on your claim.

What Do We Still Need From You?

We need additional evidence from you. *Please put your VA file number on the first page of every document you send us.*

- Accrued benefits may be used to reimburse a person or person(s) who paid the expenses of the last illness and burial of the deceased beneficiary. The amount of accrued payable as reimbursement is restricted to the actual amount of expenses paid.
- Please note, when determining your entitlement to Accrued benefits we cannot consider any expenses that were already considered as a medical expense when determining your mother's pension benefits amount.
- Provide a statement from the funeral home showing the cost of services. The receipt or statement should include an itemized list of the charges, who the services were for, the amounts paid, and who paid the charges.
- If expenses were paid from funds of the estate, we can pay the executor of the estate. If there are co-executors of the estate, the award must be payable to all parties. Please send a certified copy of letters of administration or letters testamentary bearing the signature and seal of the appointing court.
- If the estate has not been legally administered, distribution of any amount due may be made to the person or persons entitled under the intestacy laws of the State of the decedent's domicile with due regard to exemptions and allowances and the order of payment of debts and heirs. Each person must complete a VA Form 21-601. Payment may also be made to one heir or creditor after receiving the unconditional written consent of all other heirs and



creditors. o If your personal funds were used to pay the burial expenses, you are the proper claimant entitled to the accrued payable as reimbursement.

- Please complete the enclosed VA Form 21-601, Application of Accrued Amounts Due a Deceased Beneficiary.

How Should You Submit What We Need?

Please note that the quickest, easiest, and most secure way to submit any documents to us is via the VA.gov website. Just visit www.VA.gov to register. Please also refer to the 'What is VA.gov?' section of this letter for more information.

Please mail all written responses to the Veterans Pension and Survivors Benefits address located on the attached *Where to Send Your Correspondence* chart. You may also submit your claim through your Veterans Service Organization, or your accredited representative(s).

How Soon Should You Send What We Need?

We strongly encourage you to send any information or evidence as soon as you can. **If we do not hear from you, we may make a decision on your claim after 30 days.**

What is VA.gov?

VA.gov provides electronic resources in a self-service environment to Servicemembers, Veterans, and their families. Use of these resources often helps us serve you faster! Through the VA.gov website you can:

- Submit claims for benefits and/or upload documents directly to the VA
- Request to add or change your dependents
- Update your contact and direct deposit information and view payment history
- Track the status of your claim or appeal
- Obtain verification of military service, civil service preference, or VA benefits
- And much more!

Enrolling in VA.gov is easy. Just visit www.va.gov for more information. If you submit a claim in the future, consider filing through VA.gov. Filing electronically, especially if you participate in our fully developed claim program, may result in a faster decision than if you submit your claim through the mail.

Where to Send Written Records

Please mail all written responses to the **Pension & Survivors Benefits** address listed on the attached *Where to Send Your Correspondence* chart.

If You Have Questions or Need Assistance

If you have any questions or need assistance with this claim, you may contact us by telephone,



c-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the Federal number is 711.
Use the Internet	Send electronic inquiries through the Internet at https://www.va.gov/contact-us/ .
Write	VA now uses a centralized mail system. For all written communications, put your full name and VA file number on the letter. Please mail all written correspondence to the appropriate Veterans Pension and Survivors Benefits claim address listed on the attached <i>Where to Send Your Correspondence chart</i> .

In all cases, be sure to refer to your VA file number [REDACTED].

We sent a copy of this letter to JAMES J. PERCIAVALLE, who you have appointed as your representative(s). If you have questions or need assistance, you can also contact your representative.

We look forward to resolving your claim in a fair and timely manner.

Respectfully,

Regional Office Director

Enclosure(s): Where to Send Correspondence
VA Form 21P-601

cc: JAMES J. PERCIAVALLE
POA Agent
JAMES J PERCIAVALLE
VETERANS ADVOCATES GROUP
P.O. BOX 78
WALBURG, TX 78673



Where to Send Your Correspondence

Documents may be submitted by mail, in person at a VA regional office or electronically. However, VA recommends submitting correspondence electronically as this is the fastest method of receipt.

VA provides several tools to assist in electronic submission. To learn more about how to submit documents and claims electronically, visit www.va.gov/disability/upload-supporting-evidence. You can also go directly to access.va.gov to digitally upload any correspondence using QuickSubmit.

By visiting www.va.gov you can also check your claim status and learn about other VA benefits.

If you need assistance, you can find a local, accredited representative at <https://www.benefits.va.gov/vso/>

If you prefer to mail your correspondence, please use the related mailing address below:

Compensation Benefits Department of Veterans Affairs Compensation Intake Center P.O. Box 4444 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (844) 531-7818	Pension & Survivors Benefits Department of Veterans Affairs Pension Intake Center P.O. Box 5365 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (844) 655-1604
Board of Veterans' Appeals Department of Veterans Affairs Board of Veterans' Appeals P.O. Box 27063 Washington, DC 20038 Toll Free Fax: (844) 678-8979	Fiduciary Department of Veterans Affairs Fiduciary Intake Center P.O. Box 5211 Janesville, WI 53547 Toll Free Phone: 1-800-827-1000 Toll Free Fax: (888) 581-6826

These addresses serve **all United States and foreign locations**.



You can also send a text message to 838255 to receive confidential support 24 hours a day, 7 days a week, 365 days a year. For more information, visit www.veteranscrisisline.net

**INSTRUCTIONS FOR VA FORM 21P-601
APPLICATION FOR ACCRUED AMOUNTS DUE A DECEASED BENEFICIARY**

Note: Do not complete this form if you have applied for death benefits by using VA Form 21P-534 or 21P-535. Read very carefully, detach, and keep these instructions for your reference.

A. How can I contact VA if I have questions?

If you have questions about this form, how to fill it out, or about benefits, contact your nearest VA regional office. You can locate the address of the nearest regional office online at <https://www.va.gov/find-locations/>, in your telephone book blue pages under "United States Government, Veterans" or call 1-800-827-1000 (Hearing Impaired TDD line 711.) You may also contact VA by Internet at <https://iris.custhelp.com>.

B. What do I use VA Form 21P-601 for?

Use VA Form 21P-601 to apply for accrued benefits due the beneficiary but not paid prior to death. Each person claiming a share of accrued benefits must complete a separate VA Form 21P-601.

Note: If you are a deceased veteran's surviving spouse, child, or dependent parent, you may apply for death benefits, including accrued benefits, using VA Form 21P-534EZ, Application for DIC, Death Pension and/or Accrued Benefits.

C. What are accrued benefits and how does VA decide what I will or will not receive?

Accrued benefits are benefits that were due the beneficiary at the time of death but not paid prior to death. Entitlement to accrued benefits is determined according to the line of succession established by law.

A person eligible for accrued benefits may request to substitute for a deceased claimant who had a pending claim or appeal at the time of his or her death. Substitution allows a person to submit evidence in support of the pending claim or appeal for potential accrued benefits.

The right to substitute may be waived by marking "yes" in the designated box on this form. If the right to substitute is waived, VA may still consider the accrued claim; however, VA will do so based only on the evidence contained in the claims folder at the time of death.

Any available accrued benefits are payable to the first living person listed below. The fact that a preferred beneficiary fails to file or prosecute a claim does not permit payment of his/her share of accrued benefits to a person or persons having an equal or lower preference. A waiver of right also does not permit such payment. If there are no living persons who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement for last illness and burial expenses (see Paragraph D.)

When the deceased beneficiary is a veteran, accrued is payable	When the deceased beneficiary is a surviving spouse, accrued is payable	When the deceased beneficiary is a child, accrued is payable
<ul style="list-style-type: none"> in full to the surviving spouse, or in equal shares to the veteran's children (see definition of "child" below), or in equal shares to the veteran's parents, if they are dependent upon the veteran at the date of the veteran's death, or in full to the sole surviving parent, if he/she is dependent upon the veteran at the date of the veteran's death. 	<ul style="list-style-type: none"> in equal shares to the veteran's children (see definition of "child" below). 	<ul style="list-style-type: none"> in equal shares to the veteran's children who are entitled to death compensation, dependency and indemnity compensation, or death pension (see definition of "child" below).

Definitions:

Child means an unmarried child of the veteran who is under 18 years of age, or at least 18 but under 23 years of age and pursuing an approved course of education, or became incapable of self-support prior to reaching age 18. However, benefits may be payable to the veteran's children, regardless of age or marital status, if lump sum accrued benefits are payable.

Lump sum accrued benefits are amounts withheld from a competent veteran's Old Law Pension benefits (fixed rate since 1960) during hospital treatment, or institutional or domiciliary care.

D. Who may file a claim for reimbursement for last illness and burial expenses?

If there are no living persons who are entitled on the basis of relationship, accrued benefits may be used to reimburse the person or persons who paid for or are responsible to pay the expenses of last illness and burial of a beneficiary. The claim should be filed by the person or persons whose funds were or will be used to pay such expenses. If the expenses were paid from funds of the deceased beneficiary's estate, the claim should be filed by the executor or administrator of the estate. If the expenses have not been paid, the claim may be filed by the person who is responsible for the payment of these expenses. However, all unpaid creditors must sign Section IV, Waiver of Reimbursement From All Unpaid Creditors.

E. What are the time limits to apply for accrued benefits?

A claim for accrued benefits must be filed within one year from the date of death of the deceased beneficiary.

Exception: A claim for lump sum accrued benefits (benefits that were withheld from a competent veteran during hospital treatment, institutional, or domiciliary care) must be filed within five years from the veteran's date of death. However, if the person who is entitled to the lump sum accrued benefits has been declared incompetent by a court of law or Federal or State government agency at the time of the veteran's death, the five-year period begins from the date of termination or removal of the finding of incompetency.

F. What evidence should I submit?

1. Furnish a copy of the death certificate unless the beneficiary died in a VA medical facility.
2. If an executor or administrator of the beneficiary's estate has been assigned, submit a certified copy of the letters of administration or letters testamentary bearing the signature and seal of the appointing court.
3. If you are claiming reimbursement for last illness and burial expenses of a beneficiary, submit all bills and statements of account covering the services and supplies that were provided in connection with these expenses. The bill or statement of account should be submitted on the regular billhead of the creditor and show:
 - the dates, nature, and costs of services or supplies provided,
 - the name of the deceased for whom the expenses were incurred, and
 - whether the expense has been paid, and, if so, by whom.

G. How do I complete my application?

Print all answers clearly. If an answer is "none" or "0," write that. Your answer to every question is important to help us complete your claim. If you do not know the answer, write "unknown." For additional space, use Item 26, "Remarks," or attach a separate sheet, indicating the item number to which the answers apply. Write the veteran's name and VA file number on all attachments. Make sure you sign and date this application (Items 23a and 23b.)

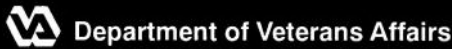
H. What do I do when I have completed my application?

When you have completed this application mail it or take it to a VA regional office. Be sure to attach any materials that support and explain your claim. Also, make a photocopy of your application and everything that you submit to VA before you mail it.

IMPORTANT: If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage, or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits.) (38 U.S.C. § 103(c)). Additional guidance on when VA recognizes marriages is available at <http://www.va.gov/opa/marriage/>.

PRIVACY ACT NOTICE: VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 5, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education and Vocational Rehabilitation and Employment Records - VA, and published in the Federal Register. You are required to respond to obtain or retain benefits per 38 U.S.C. § 501. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies. You are required to provide the Social Security number requested under 38 U.S.C. 5101(c)(1). VA may disclose Social Security numbers as authorized under the Privacy Act, and, specifically may disclose them for purposes stated above.

RESPONDENT BURDEN: We need this information to determine eligibility for payment of accrued benefits under 38 U.S.C. 5121. Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 30 minutes to review the instructions, find the information and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at <http://www.reginfo.gov/public/do/PRAMain>. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.



VA DATE STAMP
(DO NOT WRITE IN THIS SPACE)

APPLICATION FOR ACCRUED AMOUNTS DUE A DECEASED BENEFICIARY

NOTE: Please read the attached "Instructions" before you fill out this form.

SECTION I: CLAIMANT AND DECEASED BENEFICIARY INFORMATION

1. VETERAN'S NAME (First, Middle Initial, Last)			
2. VETERAN'S SOCIAL SECURITY NUMBER		3. VETERAN'S FILE NUMBER	
4. NAME OF DECEASED BENEFICIARY (If other than veteran - First, Middle Initial, Last)			
5. BENEFICIARY DATE OF DEATH (MM/DD/YYYY)			
Month	Day	Year	
6. CLAIMANT'S NAME (First, Middle Initial, Last)			
7. CLAIMANT'S SOCIAL SECURITY NUMBER		8. CLAIMANT'S DATE OF BIRTH (MM/DD/YYYY)	
		Month Day Year	
9. CLAIMANT'S CURRENT MAILING ADDRESS (Number and street or rural route, P.O. Box, City, State, ZIP Code and Country)			
No. & Street			
Apt./Unit Number	City		
State/Province	Country	ZIP Code/Postal Code	
10. CLAIMANT'S TELEPHONE NUMBER (Include Area Code)		11. PREFERRED E-MAIL ADDRESS (If applicable)	
12. CLAIMANT'S RELATIONSHIP TO DECEASED BENEFICIARY			

SECTION II: DECEASED BENEFICIARY'S SURVIVING RELATIVES

13. WHO ARE THE DECEASED BENEFICIARY'S SURVIVING RELATIVES? (Check all that apply. List each person separately in Items 13A through 13D)

☐ SPOUSE
 ☐ CHILD OR CHILDREN (See instructions for definition of a child.)
 ☐ PARENT
 ☐ NONE (If "NONE," Skip to Question 14)

14. RELATIVES SURVIVING BENEFICIARY AT TIME OF DEATH			
13A. NAME (First, Middle Initial, Last)	13B. RELATIONSHIP TO BENEFICIARY	13C. DATE OF BIRTH (MM/DD/YYYY)	13D. COMPLETE MAILING ADDRESS

14. WOULD YOU LIKE TO WAIVE SUBSTITUTION?

☐ YES
 ☐ NO
 (If "YES," see Paragraph C of the Instructions)

SECTION III: INFORMATION ABOUT DEBTS, EXPENSES AND BURIAL OF DECEASED BENEFICIARY

NOTE: Read Paragraphs C and D of the Instructions before completing Section III. Complete this section only if you are claiming accrued benefits for reimbursement of expenses for last illness or burial. Skip to Section V if you are claiming accrued benefits based on your relationship to the deceased beneficiary.

15. LIST THE EXPENSES OF LAST SICKNESS AND BURIAL IN ITEMS 15A THROUGH 15E.

15A. NAME OF PERSON OR FIRM	15B. NATURE OF EXPENSE (For example, physician, hospital, burial expenses, etc.)	15C. AMOUNT	15D. CHECK ONE		15E. IF PAID, NAME OF PERSON OR ESTATE WHOSE FUNDS WERE USED
			PAID	UNPAID	
		\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	<input type="checkbox"/>	<input type="checkbox"/>	
		\$	<input type="checkbox"/>	<input type="checkbox"/>	

16. HAVE YOU BEEN REIMBURSED FROM ANY SOURCE FOR ANY OF THE EXPENSES PAID FROM YOUR PERSONAL FUNDS?

☐ YES ☐ NO (If "YES," specify the amount and source) \$

17. DID THE BENEFICIARY LEAVE ANY OTHER DEBTS?

☐ YES ☐ NO (If "YES," go to Item 18)
(If "NO," skip to Item 19)

18. LIST THE OTHER DEBTS IN ITEMS 18A AND 18B.

18A. NATURE OF DEBT	18B. AMOUNT
	\$
	\$
	\$
	\$

19. HAS OR WILL THE BENEFICIARY'S ESTATE BE LEGALLY ADMINISTERED?

☐ YES ☐ NO (If "YES," attach a copy of the letters of administration or letters
testamentary bearing the signature and seal of the appointing court)

SECTION IV: WAIVER OF REIMBURSEMENT FROM ALL UNPAID CREDITORS

NOTE: If any of the expenses listed in Item 15D are unpaid, Section IV must be completed and signed by all unpaid creditors. If you are a creditor who is claiming accrued benefits as reimbursement, Section IV must be completed by all other creditors and persons who provided services to the deceased beneficiary related to last illness or burial and hold the creditor responsible for payment of their claims. If you need additional space, please attach a separate sheet of paper providing the certification and information requested below.

I CERTIFY THAT the expense listed in Section III, Item 15D which was incurred by the claimant named in Item 6 in connection with the last sickness and burial of the beneficiary, is due and unpaid. I further certify that I hold the claimant responsible for the payment of any portion of the accrued benefit to which I may be entitled in the case of the beneficiary named in Item 1 or 4 and waive my right to any such benefit. This statement is true and correct to the best of my belief.

20A. NAME OF UNPAID CREDITOR OR FIRM NO. 1

20B. ADDRESS OF CREDITOR OR FIRM

20C. SIGNATURE OF CREDITOR OR PERSON SIGNING FOR FIRM (Sign in ink)

20D. TITLE

20E. DATE SIGNED (MM/DD/YYYY)

SECTION IV: WAIVER OF REIMBURSEMENT FROM ALL UNPAID CREDITORS (Continued)

21A. NAME OF UNPAID CREDITOR OR FIRM NO. 2

21B. ADDRESS OF CREDITOR OR FIRM

21C. SIGNATURE OF CREDITOR OR PERSON SIGNING FOR FIRM *(Sign in ink)*

21D. TITLE

21E. DATE SIGNED *(MM/DD/YYYY)*

22A. NAME OF UNPAID CREDITOR OR FIRM NO. 3

22B. ADDRESS OF CREDITOR OR FIRM

22C. SIGNATURE OF CREDITOR OR PERSON SIGNING FOR FIRM *(Sign in ink)*

22D. TITLE

22E. DATE SIGNED *(MM/DD/YYYY)***SECTION V: SIGNATURE**

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief. *(If you sign with an "X," then you must have two people witness you as you sign. They must sign the form and print their names and addresses.)*

23A. SIGNATURE OF CLAIMANT *(Sign in ink)*23B. TODAY'S DATE *(MM/DD/YYYY)*24A. SIGNATURE OF WITNESS *(If claimant signed above using an "X" - Sign in ink)*

24B. PRINTED NAME AND ADDRESS OF WITNESS

25A. SIGNATURE OF WITNESS *(If claimant signed above using an "X" - Sign in ink)*

25B. PRINTED NAME AND ADDRESS OF WITNESS

SECTION VI: REMARKS

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or for the fraudulent acceptance of any payment which you are not entitled to. (18 U.S.C. §§ 1001-1002)

26. REMARKS