

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

HERBERT N. HASKELL, II,)	
)	
Appellant,)	
)	
v.)	Vet. App. No. 22-1018
)	
DENIS MCDONOUGH,)	
Secretary of Veterans Affairs,)	
)	
Appellee.)	

**APPELLEE’S RESPONSE TO TO THE
COURT’S NOVEMBER 13, 2023, ORDER**

Appellee, Denis McDonough, Secretary of Veterans Affairs, hereby files this response to the Court’s November 13, 2023, Order to notify the Court whether the Agency of Original Jurisdiction (AOJ) has determined whether Appellant’s surviving spouse, Margaret Laska, is an eligible substitute.

On August 14, 2023, prior the scheduled oral argument, counsel for Appellant notified the Court that Appellant passed away that day, and Ms. Laska filed a motion to substitute as the appellant. In an August 14, 2023, Order, the Court ordered the Secretary to file a response to the motion to substitute. On October 13, 2023, the Secretary filed a response, indicating that the AOJ had not made a determination of whether Ms. Laska is an eligible substitute, and that Secretary would update the Court when the AOJ

makes that determination. The Court then issued the November 13, 2013, Order.

On November 16, 2023, the AOJ granted Ms. Laska's September 13, 2023, request for substitution and recognized Ms. Laska as a substitute claimant. See 38 U.S.C. §§ 5121(c)(1); 5121A(a)(2); *Nat'l Org. of Veterans Advocates, Inc. v. Sec'y of VA*, 809 F.3d 1359 (Fed. Cir. 2016) (holding that the AOJ are the appropriate forum to determine eligibility for substitution); *Breedlove v. Shinseki*, 24 Vet.App. 7, 20 (2010) ("This is a factual determination that, unless conceded by the Secretary on appeal, must be made by VA in the first instance.").

WHEREFORE, Appellee responds to Court's November 13, 2023, Order.

Respectfully submitted,

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