

**Department of
Veterans Affairs**

Memorandum

Date: August 11, 2006

From: General Counsel (022)

Subj: Withdrawal of VAOPGCPREC 6-93 in Part and VAOPGCPREC 12-94 in Full

To: Chairman, Board of Veterans' Appeals (01)
Director, Compensation and Pension Service (21)

1. This is to inform you that we are withdrawing our opinion in VAOPGCPREC 6-93 in part, and our opinion in VAOPGCPREC 12-94 in its entirety, due to a 2002 rulemaking action that amended 38 C.F.R. § 3.1000(d)(4) and a related manual provision. VAOPGCPREC 6-93 held in part that an award of accrued benefits under 38 U.S.C. § 5121(a) may be based on logical inferences from information in the file at the date of the beneficiary's death. VAOPGCPREC 12-94 clarified this holding of VAOPGCPREC 6-93 by stating that where a veteran had in the past supplied evidence of unreimbursed medical expenses that could be expected to be incurred in like manner in succeeding years, such evidence could form the basis for a determination that evidence in the file at the date of the veteran's death permitted prospective estimation of medical expenses for accrued benefits purposes, regardless of whether such expenses were deducted prospectively during the veteran's lifetime.

2. On March 4, 2002, the Department of Veterans Affairs (VA) proposed an amendment to its accrued benefits regulations at 38 C.F.R. § 3.1000(d)(4) to revise the definition of "evidence in the file at date of death" to make clear that accrued benefits may only be based on evidence in VA's possession on the date of the beneficiary's death. 67 Fed. Reg. 9638 (Mar. 4, 2002). In the same proposed-rule notice and the accrued benefits regulation was amended, effective November 27, 2002. 67 Fed. Reg. 65,707 (Oct. 28, 2002). VA accomplished revision of the manual through M21-1, Part IV, Change 155 (Jun. 24, 2002)."

3. In amending 38 C.F.R. § 3.1000(d)(4) and M21-1, Part IV, VA changed its interpretation as stated in VAOPGCPREC 6-93 and VAOPGCPREC 12-94 that an award of accrued benefits can be based on logical inferences or estimation from information in the file at the time of the beneficiary's death. To avoid possible confusion, we are withdrawing paragraphs 6, 7, and 8 and holding (b) of VAOPGCPREC 6-93 [FN#1] and all of VAOPGCPREC 12-94.

FN #1 – VAOPGCPREC 6-93 also held that information contained in an eligibility verification report submitted after a beneficiary's death may not be considered "evidence in the file at the date of death" for purposes of an award of accrued pension benefits under 38 U.S.C. § 5121(a). This holding is unaffected by the 2002 amendments and remains valid.