

**Department of
Veterans Affairs**

Memorandum

Date: June 2, 2008

VAOPGCPREC 1-2008

From: General Counsel (021)

Subj: Advisory Opinion on Reimbursing Veterans under the SAH Program

To: Director, Loan Guaranty Service (26)

Question Presented:

May VA reimburse a veteran who submitted an initial application for Specially Adapted Housing assistance but who, before filing a supplemental application, paid in full the costs of acquiring the adapted home?

Held:

The Secretary is authorized to provide Specially Adapted Housing assistance to a veteran if: (i) the veteran submitted a VA Form 26-4555 prior to paying in full the costs of the adapted home; (ii) the veteran was not seeking reimbursement for adaptations made prior to the date of application or for unspecified future adaptations; (iii) the veteran later submitted VA Form 26-4555c; and (iv) the Secretary determines that the veteran and the veteran's adapted home meet all other statutory and regulatory requirements.

Discussion:

1. On September 21, 2004, a veteran deposited \$10,000 with an escrow agent for the purpose of reserving a yet-to-be-built condominium. On January 15, 2007, while the condominium was under construction, the veteran completed and submitted a VA Form 26-4555, Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant.
2. As construction continued on the condominium, VA advised the veteran that he also was required to file a VA form 26-4555c, Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing. This form differs from the 26-4555 in that the latter is used for determining whether the veteran meets medical eligibility for Specially Adapted Housing assistance pursuant to 38 U.S.C. § 2101(a). The 26-4555c is project-specific, and is the form for determining whether the veteran's planned adaptations will satisfy the suitability and feasibility requirements of 38 U.S.C. § 2101(a).
3. The veteran did not file the 26-4555c until after he had acquired the condominium and had paid in full the costs of acquisition. VA then reviewed the supplemental application and determined that, pursuant to 38 U.S.C. § 2102(a)(4), the veteran was not eligible for assistance. Section 2102(a)(4) requires that, where a veteran has

already acquired an adapted home, the Secretary is to pay the lesser of either the outstanding principal balance of a mortgage or 50 percent of the costs of acquiring the adapted home, up to the maximum allowable grant amount. With no outstanding mortgage on the subject property, the lesser of these two amounts was \$0. As a result, VA determined that the veteran was not entitled to assistance on this project.

4. Informing VA's decision was an opinion from this office, dated March 30, 1949. The question presented there was:

If an eligible veteran has acquired a suitable housing unit and has paid the cost thereof in full, would any amount be payable to him under the provisions of Paragraph 2(d), Part II, Regulation No. 1(a), as amended by Public Law 702?"

In response, the Solicitor held that "an eligible veteran who has acquired a suitable housing unit and paid for it in full prior to application is not entitled to any amount..." [Solicitor's Opinion 142-49]

5. Although our opinion from 1949 interpreted Veterans Regulation No. 1(a), not 38 U.S.C. § 2102(a)(4), we see no reason today to stray from the opinion's holding. As a principle of statutory construction, we must presume that Congress does not legislate in a vacuum. Since Congress inserted into the Code the exact text of Regulation No. 1(a), it is our opinion that Congress has implicitly adopted the holding of Solicitor's Opinion 142-49. Indeed, VA has consistently applied this opinion for almost sixty years now, meaning that even if Congress was at one time unaware of the Solicitor's Opinion, Congress has had ample opportunity to override this decision since then. In our view, Congress's unwillingness to change the statutory language only reaffirms the 1949 decision. Therefore, if the veteran here had acquired an adapted home and then applied for a Specially Adapted Housing grant, we would hold that the veteran was not entitled to reimbursement.

6. Affirmation of the 1949 opinion does not mean it is on point in the instant case. The opinion addresses cases where a veteran has not applied for assistance prior to paying the costs of acquiring an adapted home. The facts here are different in that the veteran had submitted a VA Form 26-4555, the initial application for assistance, before he paid in full for his condominium. As the difference seems to hinge on when the veteran applied for assistance, we must consider whether VA Form 26-4555 can suffice as the veteran's completed application.

7. Before we address the issue of what constitutes an application, however, we must first address whether VA may pay directly to a veteran the proceeds of a Specially Adapted Housing grant. This is easily answered, as nothing in chapter 21 expressly prohibits such payment, and each of the grant options in chapter 21 refers to paying "the total cost to the veteran." See 38 U.S.C. 2102(a)(1)-(4). The regulation at 38 C.F.R. § 36.4406 clearly states that funds may be disbursed directly to a veteran, as long as the Secretary deems it appropriate and advisable in the interest of the veteran and the Government. Section 36.4410 does require that, generally, all third-party obligations are to be paid first, which leads us to believe that the payment directly to a veteran might be rare, but once those third-party obligations are paid, the Secretary may allocate funds to the veteran.

8. Returning to the question of the VA Form 26-4555, in our review of the relevant statutes, we found no formal designation as to what constitutes an application for assistance. We also found no such formal designation in the regulations, despite our past guidance that VA should promulgate regulatory guidelines for the SAH approval process.

9. Absent clear guidance from the statutes and regulations, we turned to the Specially Adapted Housing Manual, a VA-issued guide to the policies and procedures for administering the SAH program. The Manual states that the “26-4555 is the veteran’s application for grant eligibility. VA Form 26-4555c...is the veteran’s application for grant approval.” SAH Manual, M26-12, p.2-A-2. The Manual later states that the 26-4555c “serves as the official request for assistance toward a specially adapted home.” SAH Manual, M26-12, p.11-A-2.

10. Because the Manual refers to both the 26-4555 and the 26-4555c as “applications,” it is difficult to ascertain which form the Loan Guaranty Service considers as “the” application. Furthermore, the Manual’s treatment of the 26-4555c is inconsistent. At one point the Manual refers to the 26-4555c as an application, in another, as a “request for assistance.” The form itself does little to eliminate the confusion, for the simple fact that it is styled as a “Supplemental Application.” This implies that the 26-4555c is not the full application in and of itself, but given in addition to an already submitted application. As such, it is reasonable to infer that the 26-4555c is necessary, but that it does not stand independently.

11. One point that is clear is that the Manual consistently calls the 26-4555 an “Application.” The 26-4555 itself is styled as “Veteran’s Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant.” Given the title of the 26-4555 and the lack of definitive guidance on this issue, a veteran who files the 26-4555 in anticipation of a **particular** project could reasonably believe that he has submitted an application for the Specially Adapted Housing grant. In previous opinions, we have pointed out that the Specially Adapted Housing program is intended to be of the highest beneficial character and, within reasonable bounds, should be liberally construed.¹ Withholding a veteran’s assistance merely because he failed to discern the difference between the aforementioned forms does not seem consistent with this principle. Consequently, it is our view that the Secretary would be authorized to reimburse the veteran in the instant case, as long as the following criteria were met: (i) the veteran submitted a VA Form 26-4555 prior to paying in full the costs of the adapted home; (ii) the veteran was not seeking reimbursement for adaptations made prior to the date of application or for unspecified future adaptations; (iii) the veteran later submitted the VA Form 26-4555c; and (iv) the Secretary determines that the veteran and the veteran’s adapted home meet all other statutory and regulatory requirements.

12. In closing, we note that in paragraph 11, above, we emphasize the word “particular” to make clear that this opinion is not open-ended. Our conclusion is to be construed narrowly and should be limited by an overarching standard of reasonableness. For instance, this opinion should not be interpreted to mean that a veteran is approved for a

¹ See, e.g., VAOPGCPREC 13-95, VET. AFF. OP. GEN. COUNS. PREC. 13-95, 1995; VA Op. Sol. 510-50 (October 26, 1950).

grant simply because an application is on file. It does not mean that a 26-4555c is optional. This opinion does not mean that a veteran who incurs costs without final approval does so without risking a denial for reimbursement on other grounds, such as failure to meet VA's minimum property requirements. Should VA determine that a veteran or the veteran's home does not meet the program requirements, VA would not be authorized to provide SAH assistance. Furthermore, a veteran who filed a 26-4555 in 1978, for instance, with little or no idea of whether a specific adaption would be carried out, could hardly return thirty years later and expect to be reimbursed for various adaptations he may have made over those thirty years. Similarly, a veteran who filed an application in 1978, obtained a grant and used it to make the planned adaptations, but who then later became eligible for a subsequent use grant, is not entitled to reimbursements for adaptations made between the time the first grant was approved and a new application was submitted. Since we cannot explore every permutation here, we would advise that you promulgate regulations clearly setting forth the application and approval process. We also advise that you update and clarify the SAH Manual, M26-12.

Paul J. Hutter

Attachment