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Emergency Medical Bill Claims Court Rules VA Policy Violated Law

A Minnesota veteran's precedent-setting legal case is forcing the Department of Veterans Affairs to change course after years of denying payment of veterans' emergency medical bills. A court ruled a VA policy violated federal law. As a result, the VA estimates it may be on the hook for billions of dollars in previously denied claims. The court ruling was based on what occurred in 2010, when 77-year-old Richard Staab suffered a heart attack and stroke. He was rushed to a nearby private hospital and had open-heart surgery. Medicare covered a portion of his treatment, but Staab was ultimately left with about \$48,000 in out-of-pocket expenses.

A U.S. Air Force veteran who served in Korea, Staab typically relied on the VA for care. He submitted a claim for the outstanding balance to the St. Cloud VA, expecting to be reimbursed. But his claim was denied. Jacqueline Schuh, a retired JAG attorney now in private practice with Engelmeier & Umanah, agreed to help Mr. Staab with his appeal. She took the case to the U.S. Court of Appeals for Veterans Claims, arguing that the VA regulation used to deny his claim violated the Emergency Care Fairness Act of 2009.

The denial was based upon the internal rule that the VA had been enforcing since 2010, but the internal rule was inconsistent with the law. When Congress passed the Emergency Care Fairness Act, it required the VA Secretary to cover qualified veteran's emergency medical bills for which the veterans were "personally liable." Schuh and NVLSP attorneys argued the law required VA to step in as a "secondary payer" when other health care insurers, such as Medicare, cover only a portion of the cost of a veteran's emergency treatment leaving the veteran "personally liable" for the rest.

In April 2016, the three-judge panel agreed. They ruled in Staab's favor, striking down the regulation the VA had been using to deny veterans emergency medical claims nationwide. The Court's decision rebuked the VA, emphasizing that VA's reimbursement regulation became "wholly inconsistent" with the governing statute when Congress amended it in 2009, but thereafter the VA unlawfully "declined to remedy this inconsistency." The VA appealed that decision and the matter was pending before the U.S. Court of Appeals for the Federal Circuit, when in June 2017, VA Secretary David Shulkin made a surprise announcement.

Shulkin said the VA would "voluntarily withdraw" its appeal of the Staab case. It was a huge victory – not just for Staab, but for veterans nationwide. And it has massive financial ramifications.

VA is now liable to pay 370,000 previously denied veteran's claims, which according to the government agency's own estimates totals more than \$2 billion. In June, Secretary Shulkin announced that the VA has drafted a regulation to authorize payment for Staab-related claims, and has sent the regulation to the Office of Management and Budget (OMB). The VA says the draft regulations must clear OMB and be published in the Federal Register before VA can begin reimbursements. VA estimates that this process could take between 9 and 24 months. The NVLSP offers the following advice for veterans who also had their claims inappropriately denied because of the VA's unlawful regulation:

- "While the regulation is going through its required review process at OMB, we suggest veterans with claims for reimbursement of emergency medical expenses that were previously and finally denied because they had additional insurance, should prepare a new claim," said NVLSP Executive Director Bart Stichman. "Veterans may find it helpful to talk with a veterans service officer or advocate in preparing their claim."
- "Veterans have one year to appeal a denial of reimbursement for emergency medical expenses they incurred outside the VA system. If the claim was denied because they had partial secondary insurance, they should keep their claim alive by appealing to the Board of Veterans' Appeals. Veterans in this situation should file VA Form 21-0958. Veterans who have not yet filed a claim for reimbursement should file a formal written claim with the VA's Veterans Health Administration."

Refer To <http://www.kare11.com/news/investigations/investigates-mn-veterans-legal-battle-wins-billions-for-other-vets/484050995> to read the whole story on what the KARE 11 investigation uncovered. [Source: KARE 11 Minneapolis-St. Paul | A.J. Lagoe & Steve Eckert | October 2017 ++]