

April 10, 1991

APR 24 1991

PRECEDENT AND LAW FILES

General Counsel (022)

Reimbursement of Costs Incurred by a Veteran's Wife in the
Prepurchase of a Veteran's Headstone Under 38 U.S.C.
§ 906(d) - [REDACTED]
Chairman, Board of Veterans Appeals (012)

8-26

Headstones

QUESTIONS PRESENTED:

- A. Does 38 U.S.C. § 906(d) preclude reimbursement of costs incurred in the purchase of a veteran's headstone when the actual purchase was made by a veteran's spouse prior to the veteran's death?
- B. Do regulations implementing the provisions of section 906(d) preclude reimbursement for a headstone purchased prior to a veteran's death?
- C. If the answer to either of the above is affirmative, is such a limitation consistent with the provisions of 38 U.S.C. § 906(d) that were in effect prior to the enactment of Public Law 101-237?

COMMENTS:

1. The questions present issues concerning the monetary allowance payable in certain cases in lieu of a Government furnished headstone or marker. Here, the veteran's spouse purchased a headstone as part of a prepaid burial package after being informed that the veteran's death was imminent.^{1/} The veteran died two days after the purchase of the burial plan. The widow applied for reimbursement under 38 U.S.C. § 906(d) for the expense she incurred in purchasing the headstone. She was denied reimbursement because the headstone was purchased prior to the death of the veteran. The widow appealed the denial of the headstone allowance to the Board of Veterans Appeals (BVA) on January 5, 1990.

2. The issue distilled to its simplest form is: whether the purchase of the headstone by the spouse prior to death precludes payment of the headstone allowance? Resolution of

^{1/} The veteran was hospitalized with terminal leukemia at the time the burial plan was purchased.

x 1-5 38 U.S.C. § 906
x VET



2.

Chairman, Board of Veterans Appeals (012)

this issue is governed by 38 U.S.C. § 906(d) as it appeared between December 18, 1989 (when the Veterans' Benefits Amendments of 1989, Pub. L. No. 101-237, 103 Stat. 2062, § 501, was enacted) and November 1, 1990, the effective date of the repeal of the headstone allowance by section 8041 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1222.2/ Since the appeal to BVA occurred after the enactment of Pub. L. No. 101-237, and the veteran's death occurred prior to November 1, 1990, the repeal of the headstone allowance does not effect the decision in this case. The factors for determining when reimbursement for a headstone was appropriate during this period of time were prescribed in section 906(d) which, in pertinent part, provided:

[T]he Secretary, in the Secretary's discretion, having due regard for the circumstances in each case, may reimburse the person entitled to request such headstone or marker for the cost of acquiring a non-Government headstone or marker for placement in any cemetery other than a national cemetery in connection with the burial or memorialization of the deceased individual. The cost referred to in the preceding sentence is the cost actually incurred by or on behalf of such person or the cost prepaid by the deceased individual, as the case may be.

(Emphasis added) (repealed November 1, 1990).

The above referenced section incorporated an amendment that was initially introduced in the Senate as S. 1147, 101st Cong., 1st Sess. (ultimately enacted as section 501 of Pub. L. No. 101-237) (December 18, 1989). S. 1147 was titled the "Headstone Allowance and Amendment Act of 1989" and was introduced in the Senate at the request of the Department of Veterans Affairs (VA) as part of the VA legislative program for the 101st Congress. The transmittal letter from the Secretary on the draft bill included the following language:

The [gravemarker] allowance is intended to reimburse an individual, in part, for the actual cost of acquiring a suitable memorial and is not payable prior to the death of the veteran

2/ Section 8041 of the Omnibus Budget Reconciliation Act of 1990 struck out subsection (d) of section 906 and redesignated subsection (e) as section (d).

3.

Chairman, Board of Veterans Appeals (012)

Prepaid funeral arrangements are gaining in popularity, and serve as a thoughtful means of sparing survivors the need to make difficult decisions during times of emotional distress. See 135 Cong. Rec. S6405 (daily ed. June 8, 1989).

The above language highlights VA's goal of liberalizing the section governing the headstone allowance benefit to avoid a loss in benefits due to a veteran's decision to prepurchase a gravestone. Id.

3. Neither the statute nor the legislative history of section 906(d) expressly addresses a situation where a spouse purchases a gravestone on behalf of a terminally ill veteran.^{3/} In our view, however, a restrictive reading of section 906(d) interpreting it to preclude reimbursement if the headstone was prepurchased by anyone other than the veteran is not warranted. A close look at the statute reveals that the qualifying language, "having due regard for the circumstances in each case", and "cost incurred on behalf of such a person or prepaid by the deceased individual, as the case may be", is included within the subsection (d). The indefinite terminology used in section 906(d) provides some assistance in analyzing the intended purpose of section 906. The ultimate purpose of the statute is significant as, "[a] statute is passed as whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part so as to produce a harmonious whole." See 2A N. Singer, Sutherland Statutory Construction § 46.05 (4th ed. 1984) (the "whole statute" interpretation). Here, the "whole statute" interpretation favors reliance on those portions of subsection (d) which enable the Secretary to exercise discretion based on the circumstances of each veteran's situation.

4. To interpret the phrase "prepaid by the deceased individual" to preclude reimbursement in all situations where someone other than the veteran handled the prepaid-burial arrangements would conflict with this general purpose of section 906(d) and, perhaps, lead to inequitable results such as requiring a

^{3/} The person entitled to request the headstone allowance includes the executor, administrator or a person representing the deceased's estate. See 38 C.F.R. § 3.1612(c).

4.

Chairman, Board of Veterans Appeals (012)

veteran nearing death to personally purchase a gravestone (rather than directing a family member to make the purchase). Such an outcome would be contradictory to VA's stated intent of removing disincentives to the prepurchase of gravemarkers. See 135 Cong. Rec. S6405 (daily ed. June 8, 1989). Moreover, a surviving spouse is a "person entitled to request a [Government] headstone or marker," and the fact that such a spouse incurred the expense of purchasing a non-Government marker while the veteran was still living does not preclude reimbursement under a literal reading of the statute.

5. A review of the applicable regulatory provisions related to 38 U.S.C. § 906(d) provides little assistance in arriving at a decision involving prepayment of burial expenses. Section 3.1612 of title 38, Code of Federal Regulations, has not been modified since 38 U.S.C. § 906(d) was amended pursuant to Pub. L. No. 101-237 ^{4/} and does not even mention prepayment of burial expenses. Since regulations have not been issued which interpret the amendments made to former section 906(d), nothing contained in 38 C.F.R. § 3.1612 can be interpreted to preclude reimbursement of headstone expenses in this case.

HELD:

A. The provisions of what was formerly codified as 38 U.S.C. § 906(d) do not prohibit reimbursement of costs incurred in the purchase of a veteran's headstone by a veteran's spouse prior to the veteran's death.

B. Since 38 C.F.R. § 3.1612 currently provides no interpretive guidance in the area of prepaid burial plans, the applicable provisions of the former 38 U.S.C. § 906(d), relating to the reimbursement of cost paid prior to the veteran's death, control benefit decisions arising out of claims for headstone allowances occurring prior to the repeal of the allowance as part of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1222 (effective November 1, 1990).

Raoul L. Carroll

4/ Draft regulations interpreting the amendments made to 38 U.S.C. § 906 as a result of Public Law 101-237 are currently under consideration. The proposed rule has not yet been published for comment in the Federal Register.