



## **BOARD OF VETERANS' APPEALS**

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

**RANDALL** [REDACTED]

Represented by

Gordon A. Graham, Agent

[REDACTED]  
Docket No. 17-17 137A

DATE: October 19, 2020

### **REMANDED**

Entitlement to the equipment purchase of a sleep number bed under the independent living plan through the Vocational Rehabilitation and Education (VR&E) program offered through the Department of Veterans Affairs (VA) is remanded.

Entitlement to the equipment purchase of a walk-in tub under the independent living plan through the Vocational Rehabilitation and Education (VR&E) program offered through the Department of Veterans Affairs (VA) is remanded.

### **REASONS FOR REMAND**

The Veteran had honorable active duty service with the United States Air Force from May 1974 to April 1977. The Veteran is a Vietnam Era Veteran who also served during Peacetime.

This matter is before the Board of Veterans' Appeals (Board) on appeal from May 2016 and July 2016 letters of determination issued by the Department of Veterans Affairs (VA). Specifically, in the letters of determination, the Agency of Original Jurisdiction (AOJ) reported that requested items, notably a sleep number bed or a walk-in tub.

The Veteran claims entitlement to equipment purchases under the independent living plan through VA's VR&E program. Specifically, the Veteran sought a sleep

number bed and a walk-in tub due to his pain as due to his lumbar spine degenerative disc disease, left lower extremity radiculopathy, and right lower extremity radiculopathy. *See* Statement in Support of Claim, dated April 2016.

**1. Entitlement to the equipment purchase of a sleep number bed under the independent living plan through the VR&E program offered through VA is remanded.**

The Veteran claims entitlement to a sleep number bed under the independent living plan through the VR&E program. Although the Board sincerely regrets any delay that this may cause, further development is necessary prior to adjudicating this claim.

The Agency of Original Jurisdiction (AOJ) denied the Veteran's claim for a sleep number bed stating that there was no authorization for the bed, it was not medically indicated, and that there was no proven efficacy of the bed for pain management. *See* Statement of the Case, dated March 2017.

The Veteran claims that he requires a sleep number bed for pain management. *See* Statement in Support of Claim, dated April 2016. As part of his independent living services, VR&E provided a referral for the Veteran to obtain pain management services and an occupational therapy assessment to determine his needs in performing activities of daily living. *See* Independent Living Closure Statement, dated July 2016.

While the Veteran saw an occupational therapist, who recommended various assistive devices to obtain greater independence with daily living, the occupational therapist did not specifically address the need of a specialized mattress for pain relief. *See* VA Treatment Records, dated December 2015. The occupational therapist, rather, stated that a hospital bed was not indicated, and that occupational therapy did not issue mattresses. *Id.* The occupational therapist found that the Veteran's bed mobility was less than fully independent. *Id.*

As outlined above, the Veteran claims that he requires this mattress due to his pain control needs. *See* Statement in Support of Claim, dated April 2016. VR&E recommended pain management as a part of his independent living plan. *See*

Independent Living Closure Statement, dated July 2016. While the Veteran has attended the pain management group, there is no evidence that there was an evaluation by pain management to determine whether this specific mattress, or any other specialized mattress, is necessary for pain management and greater independence of living. *See* 38 C.F.R. § 21.76(a)(2); *see also* VA Treatment Records, dated November 2015.

As pain, in and of itself, may be a disability limiting function in daily living skills and independence, upon remand, the AOJ should obtain an examination and opinion by pain management to determine whether the Veteran's pain as due to his lumbar spine and subsequent radiculopathy requires a specific mattress to afford the Veteran greater functional independence. 38 C.F.R. § 21.76(a)(2); *see generally, Saunders v. Wilkie*, 886 F.3d 1356 (Fed. Cir. 2018).

**2. Entitlement to the equipment purchase of a walk-in tub under the independent living plan through the VR&E program offered through VA is remanded.**

In a March 2016 letter of determination, the AOJ denied the Veteran's claim for a walk-in tub under the independent living plan through VR&E. In a September 2016 Notice of Disagreement, the Veteran contested the denial of the walk-in tub.

When a notice of disagreement has been filed, the AOJ must issue a statement of the case. *Manlincon v. West*, 12 Vet. App. 238, 240-41 (1999); *see also Godfrey v. Brown*, 7 Vet. App. 398, 408-10 (1995) (noting that the filing of a notice of disagreement initiates the appeal process and requires VA to issue a statement of the case). Although the Veteran filed a Notice of Disagreement in September 2016 with regard to the issue of entitlement to a walk-in tub, the AOJ has not yet issued a Statement of the Case with regard to this issue. Accordingly, remand of this issue is necessary.

The matters are REMANDED for the following action:

1. Issue a statement of the case and notification of the Veteran's appellate rights for the issue of entitlement to a walk-in tub under the independent living plan through the

Vocational Rehabilitation and Education (VR&E) program. 38 C.F.R. § 19.26. The Veteran and his representative are reminded that, to vest the Board with jurisdiction over these issues, a timely substantive appeal must be filed. If and only if the Veteran perfects an appeal, the same should be returned to the Board for appellate review.

2. The AOJ should request that the Veteran provide the names and addresses of any and all health care providers who have provided treatment for the Veteran's service-connected disabilities during the period on appeal. After acquiring this information and obtaining any necessary authorizations, the AOJ should obtain and associate these records with the claims file.

The AOJ should also obtain any outstanding VA treatment records.

3. Following completion of the above, arrange for the Veteran to be afforded an independent living evaluation concerning each modification and accommodation as requested by the Veteran. These accommodations include, but are not exclusive of: a walk-in bathtub and a sleep number, or other specified, mattress or mattress modification.

It is noted that the Veteran is service-connected for hepatitis C, rated as 100 percent disabling; cirrhosis of the liver, rated as 70 percent disabling; degenerative disc disease of the lumbar spine, rated as 40 percent disabling; left lower extremity sciatic nerve radiculopathy, rated as 40 percent disabling; right lower extremity sciatic nerve radiculopathy, rated as 40 percent disabling; hypothyroidism, rated as 30 percent disabling; type II diabetes mellitus, rated as 20 percent disabling; right

tarsal tunnel syndrome, rated as 10 percent disabling; bilateral orchidoplexy, rated as noncompensable; and hypertension, rated as noncompensable.

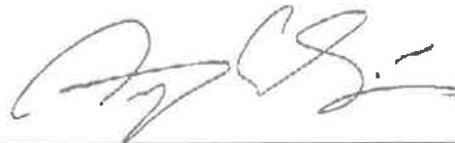
The evaluation should include:

- (a.) Any clinically indicated medical examinations and testing for service-connected disabilities, specifically an evaluation by a pain management specialist to determine whether a modified or specific mattress is indicated or medically appropriate and/or necessary for pain relief; and
- (b.) Evaluation by an appropriate Vocational Rehabilitation counselor to determine:
  1. List the specific living assistive devices and accommodations requested by the Veteran that he believes are needed to allow him independent living.

(Continued on the next page)

2. Address each specific request individually and opine as to their necessity for the Veteran's function and independent living in light of his service-connected disabilities. The opinions should address all relevant evidence including, but not limited to, the Veteran's medical records, subjective statements, and current observed function.

A thorough rationale for all opinions afforded, considering all of the evidence of record, would be of significant assistance to the Board.



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ANTHONY C. SCIRÉ, JR.  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

R. E. Trotter, Associate Counsel

*The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.*