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New York State Permanent Commission on Access to Justice
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Chief Judge's Civil Legal Services Hearing
September 13, 2021

Statement from New York Veterans Law Working Group

Dear Commission Members,

We, members of the New York Veterans Law Working Group (“Working Group”), are writing to highlight some of the many legal issues that older veterans confronted during the COVID-19 pandemic face and will continue to face as we emerge from the crisis. Many of these legal issues are the same confronted by other older New Yorkers, but some are unique.

In this statement we will highlight both the common legal needs of older veterans and the special benefits that veterans may qualify for based on their military service. These benefits include financial support, specialized nursing home care, veteran-focused housing subsidies, and burial benefits, to name a few. Many of these legal services needs have been described by the Legal Services Corporation in its influential report, *2021 Report of the Veterans Task Force*.¹ These specialized benefits highlight the need for veteran-focused legal services programs where veterans can receive assistance from attorneys trained and informed about these benefits and who are able to deliver legal services through a lens of military and veteran cultural competency.

The Working Group's members include legal services advocates from various civil legal organizations with practices focused on serving veterans, military service members, and their families. The members provide civil legal services in a broad array of practice areas, including

¹ Legal Services Corporation, 2021 Report of the Veterans Task Force 27-28 (2021), <https://lsc-live.app.box.com/s/aauwmfk149j9ztj4dyu1g40x6hdkv3t1>; see also id. at 28 (“Aging [v]eterans may also benefit from assistance accessing nursing homes, estate planning, drafting medical directives, obtaining in-home assistance, and applying for non-VA government benefits such as Social Security and Medicare.”).

discharge upgrades, elder law, family law, health law, landlord/tenant issues, public benefits, and VA benefits. Some advocates specialize in serving particular veteran populations, such as women, seniors, LGBTQ, or those incarcerated. Among other objectives, the Working Group aims to advocate for increased civil legal services to represent these critically important and vulnerable populations and to improve policy and practice as it relates to these clients. The Working Group is co-chaired by Peter Kempner, the Legal Director of Volunteers of Legal Services (VOLS) and Adjunct Clinical Professor of the Veterans Justice Field Placement and Seminar at New York Law School, and Samantha Kubek, Visiting Assistant Clinical Professor and Director of the Robert W. Entenmann Veterans Law Clinic at the Maurice A. Deane School of Law at Hofstra University. Fordham Law School's Feerick Center for Social Justice and its Veterans Rights Project convenes the Working Group and provides coordination support.

END OF LIFE AND INCAPACITY PLANNING

As of 2019, New York State was home to 718,000 veterans, more than half of whom were over the age of 55.² The majority of New York's veterans served in either World War II or Vietnam.³ In New York City the proportion of older veterans may be even higher: in 2019, 138,000 veterans resided in NYC and 71% of them were age 55 or older.⁴ Nationally, the veteran population is aging as well.⁵

The pandemic has devastated seniors, who comprise 75% of all deaths from COVID-19 in New York City.⁶ By September 2021, nationwide, more veterans had died of COVID-19 than those who served in Operation Iraqi Freedom (2003 - 2010) and Operation Enduring Freedom (2001 - 2015) combined (U.S. Department of Veterans Affairs)⁷. In our minds, this crisis has only reinforced the urgency and importance of planning for disability and the end of life. Sadly, too

² NYS Dep't Veterans Servs., *2019 Annual Report NYS Dep't Veterans Services* 4, 8 (2019), <https://veterans.ny.gov/sites/default/files/annual-report-2019.pdf> (over 504,000 of NY's veterans are 55 years of age and over).

³ Id. at 6.

⁴ See City Limits, *A Statistical Snapshot of NYC's Veterans* (Nov. 11, 2020), <https://citylimits.org/2020/11/11/a-statistical-snapshot-of-nycs-veterans/>.

⁵ Vespa, Jonathan E., "Those Who Served: America's Veterans From World War II to the War on Terror," ACS-43, American Community Survey Reports, U.S. Census Bureau, Washington, DC, June 2020, <https://www.census.gov/content/dam/Census/library/publications/2020/demo/acs-43.pdf>. The report states that "the median age among all veterans was 65 years, reflecting the influence of veterans from older service periods on the age structure of the veteran population." Id. at 1.

⁶ NYCHHealth Coronavirus-Data, <https://github.com/nychealth/coronavirus-data/blob/master/totals/by-age.csv> (accessed on Sept. 3, 2021) (as of Sept. 2, 2021, according to NYC Dep't of Health data, 8,120 seniors ages 65 to 74 and 17,230 seniors ages 75 and over have died in NYC from COVID).

⁷ Department of Veterans Affairs, *COVID-19 National Summary*, <https://www.accesstocare.va.gov/Healthcare/COVID19NationalSummary> (accessed Sept. 3, 2021); Department of Defense, Defense Casualty Analysis System, *U.S. Military Casualties - Operation Enduring Freedom (OEF) Military Deaths* (last updated Sept. 2, 2021); Department of Defense, Defense Casualty Analysis System, *U.S. Military Casualties - Operation Iraqi Freedom (OIF) Military Deaths - All* (last updated Sept. 2, 2021).

few seniors have properly planned for the future, and we know that the New York City veteran community is a greying one.

By engaging in effective end-of-life and incapacity planning, elderly and disabled veterans are more likely to stay in their homes where they can age in place and live with dignity. For example, a veteran who has executed a Power of Attorney empowers their agent to seek government benefits to pay for housing costs, to sign leases, apply for and recertify housing subsidies, and deal with any issue that may arise with their landlord or housing provider. Landlords and market forces are increasingly pushing long-term tenants from their homes, so taking action to stabilize housing for veterans is more urgent than ever. Health Care Proxies allow caregivers to make critical medical decisions and seek appropriate care for the veteran who entrusted them with this agency. Without these tools in place, older veterans may find themselves in a nursing home, which in New York City costs an average of \$148,000 per year per person. Veterans on Medicaid or Medicare who live in their homes will save taxpayers approximately \$1,600 per month. Effective life planning can also keep disabled and elderly veterans from falling into guardianship and other government involvement. Veterans should be afforded the opportunity to choose someone they trust to handle their affairs. Guardianship can also be costly to public coffers due to legal fees, court examiners, and the involvement of Adult Protective Services.

VA BENEFITS

There are also many benefits available to veterans from the U.S. Department of Veterans Affairs (VA). These benefits, which can be life-changing, are woefully underutilized by the general veteran population, and even more significantly so in New York. It is estimated that 30 to 50% of veterans nationwide are entitled to VA benefits, yet only 15.5% of New York City veterans receive such benefits.

Veterans who were injured in service or who experience illness related to their service may be eligible to receive Service-Connected Disability benefits--monthly, tax-free payments in recognition of the impact of their illness or injury. These benefits are more often than not greater than those offered by state governments and can even surpass those offered by the Social Security Administration. Veterans receiving the highest levels of compensation through service-connected benefits receive over \$3,000 per month.

Agent Orange was a tactical herbicide the U.S. military used to clear leaves and vegetation for military operations, mainly during the Vietnam War. Unfortunately, many veterans who served during Vietnam were exposed to this herbicide, resulting in a myriad of illnesses, including certain cancers. Many of these medical conditions are so prevalent among the aging veteran population that the VA has deemed them presumptively linked to the veteran's time in service,

enabling veterans to more easily access benefits. On January 1, 2020, the Blue Water Navy Veterans Act of 2019 took effect, extending the presumption of herbicide exposure to Blue Water Navy Veterans who served in the Republic of Vietnam and the offshore waters. Under the law, certain veterans, who served in the offshore waters of the Republic of Vietnam and Cambodia, or in the Korean Demilitarized Zone (DMZ), may be entitled to disability compensation for conditions related to herbicide exposure. Many of these veterans were previously denied service connection compensation and must now re-apply for benefits. Legal services organizations are often the first to inform these individuals of these expanded rights.

Additionally, the VA's Program of Comprehensive Assistance for Family Caregivers is available to veterans who served prior to May 7, 1975 and need at least 6 months of continuous, in-person personal care services. Eligible family caregivers can receive caregiver education and training, mental health counseling, travel, lodging, and financial assistance when traveling with the veteran to receive care, in addition to a monthly stipend, access to health care benefits through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), and at least 30 days per year of respite care for the veteran.

VA PENSION/AID & ATTENDANCE

In addition to service-connected payments, the VA Pension program provides a monthly income to low-income, disabled or elderly wartime veterans. Many aging veterans served in the Korean or Vietnam conflicts, rendering them potentially eligible for this benefit. VA Pension requires the individual to be totally and permanently disabled and fall below certain income limitations, much like the Social Security Administration's Supplemental Security Income (SSI). However, whereas SSI tends to max out around \$850 per month for a single individual, the VA pension is roughly \$1,160 per month. Many veterans are unaware this benefit is available, and it is often legal services attorneys who are the first to inform them of their eligibility.

Of additional importance to New York's elderly veterans is the VA's Aid & Attendance or Housebound benefit allowances. VA Aid and Attendance or Housebound benefits provide monthly payments added to the amount of a monthly VA pension for qualified veterans and survivors. Veterans who require the care of another person to perform activities of daily living, are confined to their homes or their beds due to their disabilities, or who are patients in a nursing home due to their disabilities, are eligible to apply for this add-on.

VETERANS HOMES AND HOME CARE

When New York's senior veterans grapple with the cost of long-term care, VA's monetary benefits provide key resources, and the fight to obtain these benefits is critical. But the VA

Healthcare System also provides long-term care directly, and facilitating access to these benefits is essential for New York's aging veterans.

The VA healthcare system is required to cover nursing home care for veterans who need it due to a service-connected disability and for those in need whose service-connected disabilities are rated at least 70% disabling. The VA may provide this care at Community Living Centers (CLC) based on-site at VA Medical Centers, or may cover or subsidize veterans' care at non-VA facilities such as New York State Veterans Homes. While the VA may pay for care for additional veterans, to the extent space and resources allow, this care is limited, and availability is a major issue for veterans seeking nursing home care. Legal services attorneys regularly advise veterans on eligibility for nursing home benefits and on coping with the capacity shortages that are a barrier to access.

In addition, VA healthcare facilities provide in-home health services, such as Homemaker/Home Health Aide Services, Skilled Home Health Care, Home Based Primary Care, Respite Care for family caregivers, and Hospice and Palliative Care at home. Promoting and expanding the reach of VA home health benefits is crucial for aging veterans in light of the low capacity at VA nursing homes. Legal services attorneys regularly advise aging veterans on the availability and access to these benefits and have advocated for more transparency from New York's local VA Medical Centers on internal policies concerning the provision of care.

BURIAL BENEFITS

When a New Yorker from a family with limited resources passes away, the cost of a funeral and burial can be crippling. While elder law attorneys counsel their clients to set up pre-need burial accounts and make other plans to defer end-of-life-related costs for their families, this is often impossible when a veteran and their family is very low income. For veterans and their families, there are numerous programs that can help eliminate or defer these end-of-life expenses. These include the ability to be buried in a national VA cemetery, qualification for a VA death benefit and/or burial allowance, and the New York State Supplemental Burial Allowance.

Qualifying veterans can apply for a Pre-Need (before death) Eligibility Determination stating that they are eligible for burial in a VA national cemetery. If eligible, the VA will pay for the opening and closing of the grave, burial liner, headstone/other marker provided by the government, and ongoing care of the gravesite. Whether or not a veteran is buried in VA national cemetery, survivors of veterans may qualify for a burial allowance from the VA, so long as they are not already being reimbursed by another agency and so long as the alleged costs have not already been covered by the VA. The VA may also reimburse part/all of the cost of transportation of remains for survivors of veterans who were hospitalized or in a VA-contracted nursing home when they died, or who died while traveling to VA-authorized care. The state of New York also

offers a Supplemental Burial Allowance of up to \$6,000 to eligible individuals. This subsidy will not cover costs already covered by the federal government (including FEMA and the VA).

FAMILY LAW

Many older veterans struggle with child support arrears that are garnished from their military retirement or their VA disability benefits or pension. Sometimes these amounts of unpaid child support can be incorrect, withheld improperly, or beyond the statute of limitations for collection. A veteran may not realize this, which results in the veteran not receiving the right amount of their benefits and often places them in financial hardship. Further, veterans may also experience enforcement actions against them through the Family Court or the Office of Child Support Services, which compounds their difficulties.

During the Covid-19 pandemic, veterans, along with others, have not been able to truly access and use the Family Courts to address child support issues until more recently. Now, the Family Courts are only operating virtually, but many older veterans do not have the capacity to access this new virtual system or sufficient financial resources to pay an attorney to handle it for them. Legal services attorneys work with veterans to navigate this challenging process and get documents submitted to the court on their behalf. They also help veterans prevent or resolve enforcement actions and secure a child support modification if appropriate, and in some cases, assist veterans take advantage of debt relief programs for child support arrears. These services can be critical as there are generally no free court-appointed attorneys in child support cases."

CONCLUSION

It is a significant challenge to make sure we have the necessary programs and resources in place to provide security and stability for our aging veterans. However, unless they have the support of advocates who understand these different complex programs and can help them successfully obtain their earned benefits, our aging veterans will continue to miss out on needed relief. Dedicated veteran legal service providers are the crucial link, providing expertise on these specialized benefit programs, which may otherwise be overlooked.

On behalf of the following members of the New York Veterans Law Working Group, we encourage the funders and policymakers in New York State, including the members of the New York State Permanent Commission on Access to Justice, to ensure appropriate resources are dedicated to legal service providers focused on assisting New York's older veteran community. Individuals who sacrificed on behalf of our country deserve the benefits, resources, and help they need as they age, and comprehensive, culturally competent legal services are essential to that mission.

Respectfully,



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