

agency provide information to VA upon request for the purpose of determining benefit eligibility.

2. Under 38 U.S.C. 5107(a), which establishes the Secretary of Veterans Affairs' duty to assist claimants in developing the facts pertinent to their claims, the Secretary may require claimants to assume responsibility for payment of any fees associated with obtaining copies of records maintained by Federal, state, or local agencies or private sources.

Effective date: March 6, 1995.

#### **VAOPGCPREC 8-95**

##### *Questions Presented*

1. Must a veteran affirmatively seek a change of program of education?

2. If the answer to that question is yes, does affirmatively seeking a change of program of education require that the veteran submit an application for the change in the form prescribed by the Secretary?

3. If the answer to the first question is yes, must VA withhold payments pending receipt of a request for a change of program?

4. If the answer to the first question is yes, does the Secretary have statutory authority to eliminate this requirement by regulation?

##### *Held*

1. An individual must affirmatively seek a determination of his or her eligibility to make any change of his or her approved program of education.

2. The request for a determination of eligibility for a change of program must be made by the individual and, under the applicable regulations, may be in any form prescribed by VA. The form of the communication to VA may include the individual's telephonic confirmation of third-party information and even a third-party document bearing the individual's signature from which a

reasonable inference of his or her intent to change programs may be discerned.

3. VA may not pay benefits to an individual for pursuit of a program other than the one currently approved until a request from the individual for a determination of his or her entitlement to pursue a particular new program has been received and approved by VA.

4. The Department may not legally implement, by regulation, procedures to administer determinations of eligibility to pursue a change of program that do not require the individual seeking approval of such a change to communicate to VA his or her intent to do so.

Effective date: March 24, 1995.

By Direction of the Secretary.

**Mary Lou Keener,**

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