

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE VETERANS HOMES BOARD**

In the Matter of the Appeal of the  
Discharge of Leonard Butala from the  
Minnesota Veterans Home – Silver Bay

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 11:00 a.m. on Friday, March 3, 2000, in the conference room of the Minnesota Veterans Home at Silver Bay, Minnesota.

Donald E. Notvik, Assistant Attorney General, Suite 500, 525 Park Street, St. Paul, Minnesota 55103-2106, represented the Minnesota Veterans Home – Silver Bay (the Veterans Home), which is located at 45 Banks Boulevard, Silver Bay, Minnesota 55614. Leonard Butala lives at the Veterans Home and attended the hearing. He has been representing himself in this proceeding. The record closed on March 3, 2000, when the hearing ended.

**NOTICE**

This Report is only a recommendation to the Minnesota Veterans Homes Board (the Board) and not a final decision. The Board will make its final decision after reviewing this report and the hearing record. In making that decision the Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation that appear in this report. Under Minnesota Law,<sup>[1]</sup> the Board may not make its final decision until after the parties have had access to this Report for at least ten days. During that time the Board must give any party adversely affected by this Report an opportunity to file objections to the Report and to present argument supporting its position. Parties should contact Richard Zierdt, Executive Director, Minnesota Veterans Homes Board, Veterans Service Building, Room 122, 20 West 12th Street, St. Paul, Minnesota 55155, telephone (651) 296-2076, to find out how to file objections or present argument.

## STATEMENT OF THE ISSUES

Whether the Veterans Home should discharge Mr. Butala for failure to make full payment of the maintenance charges that were established in his Admission Agreement.

Based upon the record in this matter, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Leonard Butala is a veteran of the armed forces of the United States. On May 5, 1999, he was admitted to the Veterans Home. At that time he signed an Admission Agreement under which the Veterans Home agreed to provide him with residential care and nursing services. He, in turn, agreed to pay the Veterans Home a monthly maintenance charge. The Admission Agreement stated that the Veterans Home would have to calculate Mr. Butala's monthly maintenance charge in the way that is specified by the Veterans Home Board Rules.<sup>[2]</sup> Specifically, paragraphs 5 and 7 of Mr. Butala's Admission Agreement provide that:<sup>[3]</sup>

"5. CALCULATION OF MAINTENANCE CHARGE. Your maintenance charge is calculated according to Minnesota Rules, parts 9050.0500 to 9050.0900, and is based upon your financial ability to contribute to payment of your cost of care. You must provide accurate financial information to the Home so that your maintenance charge can be correctly determined. Based upon the Home's calculation of your income, assets, and other sources of benefits that are available to pay for your cost of care, your maintenance charge is \_\_\_\_\_. A detailed calculation of the determination of your maintenance charge has been provided to you by the Home."

"7. RESIDENT'S OBLIGATION TO PAY MAINTENANCE. You must pay your maintenance charge by the due date. Payment is due by the last day of the month. If you do not pay your maintenance charge by the due date, the Home will notify you that your account is delinquent. In accordance with Minnesota Statute 334.01, simple interest may be charged by the Home on delinquent accounts. We may discharge you from the Home for not paying your maintenance charge by the due date."

2. The full cost of caring for a veteran at the Veterans Home when Mr. Butala first became a resident was \$3,339.14 per month.<sup>[4]</sup>

3. When Mr. Butala was admitted to the Veterans Home, he had cash assets of substantially more than \$3,000 in two bank accounts.<sup>[5]</sup>

4. Because the Veterans Homes Board rules require Mr. Butala to pay the full cost of his care until the value of his assets is less than \$3,000,<sup>[6]</sup> the Veterans Home began charging Mr. Butala a maintenance charge at the rate of \$3,339.14 per month beginning in May of 1999.<sup>[7]</sup>

5. Although the Veterans Home submitted bills to Mr. Butala for his May and June 1999 monthly maintenance charges, he did not make any payments to the Veterans Home for those charges, and by July 1, 1999, his account with the Veterans Home was delinquent with a balance of \$6,303.20 due.<sup>[8]</sup>

6. Veterans Home Board rules require the Veterans Home to recalculate the cost of caring for its veterans every year on July 1st.<sup>[9]</sup> The Veterans Home did recalculate its cost of Mr. Butala's care as of July 1, 1999. And as a result of that recalculation, that cost of care increased to \$3,720.87 beginning in the month of July 1999.<sup>[10]</sup>

7. On July 16, 1999, Jeffrey Brown, the Veterans Home's Administrator, sent Mr. Butala a notice that the Veterans Home was going to involuntarily discharge him because he had been failing to pay his monthly maintenance charges.<sup>[11]</sup> Among other things, the notice advised Mr. Butala that if he did not request reconsideration within ten (10) days, the Veterans Home would issue an order discharging him. The notice also advised Mr. Butala of his other appeal rights.<sup>[12]</sup>

8. Mr. Butala has continued to live at the Veterans Home as proceedings to discharge him have continued. Because he was continuing to live there, the Veterans Home submitted bills to Mr. Butala for his monthly maintenance charges for July, August, and September 1999 totaling \$11,162.61. On September 3, 1999, Mr. Butala made a \$4,000.00 payment on his account, but after making that payment his account was still delinquent with a balance of \$13,465.81 due.<sup>[13]</sup>

9. As of October 1, 1999, the U. S. Department of Veterans Affairs increased its per diem payment to veterans at the Veterans Home to \$50.55 per day. Because of that increased payment, Mr. Butala's cost of care dropped to \$3,519.21 beginning in October 1999.<sup>[14]</sup>

10. Mr. Butala continues to live at the Veterans Home. So it has continued to bill him for the monthly maintenance charges for October, November, and December 1999 and for January and February 2000. These all total \$17,596.05. On January 12, 2000, Mr. Butala made another \$4,000.00 payment on his account but as of February 1, 2000, his account was still delinquent with a balance of \$27,061.86 due.<sup>[15]</sup>

11. On September 21, 1999, Mr. Butala's daughter, Caroline Soyring, requested an administrative appeal of the decision to discharge Mr. Butala from the Veterans Home,<sup>[16]</sup> and on January 19, 2000, the Veterans Home issued the Notice of and Order for Hearing that began this administrative appeal.

12. The Veterans Home has not received any further payments toward Mr. Butala's accumulating maintenance fees since January 12, 2000.

13. Mr. Butala stated that family members had tricked him into living at the Veterans Home. He said that he did not wish to present any evidence in this matter, nor did he offer any explanation for declining to pay his monthly maintenance charges.<sup>[17]</sup>

14. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. Minnesota law<sup>[18]</sup> gives the Administrative Law Judge and the Board authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. Mr. Butala received proper notice of his proposed discharge and of the time and place of the hearing in this administrative appeal.

3. The Veterans Home and the Board have complied with all of the legal requirements for conducting this proceeding.

4. The Veterans Homes Board's rules requires veterans homes to institute proceedings to discharge a resident "when an account is delinquent . . ."<sup>[19]</sup> That rule goes on to define an account as delinquent "if a resident willfully refuses or willfully fails to pay the bill by the due date." Finally, the rule provides that:

For purposes of this subpart, "willful refusal or willful failure to pay" means a situation in which:

A. the decision of whether to pay is completely within the control of the resident or the resident's legal representative; or

B. a resident or the resident's legal representative has the ability or resources to pay the maintenance charge and fails to pay.

5. The Board's rules require a veterans home to institute proceedings to discharge a resident who "fails or refuses to comply with payment obligations in the admission agreement . . ."<sup>[20]</sup>

6. Under Minnesota law,<sup>[21]</sup> the Veterans Home has the burden of proving that Mr. Burton is delinquent in the payment of his maintenance charges or that he has refused or failed to pay those charges.

7. Veterans Homes Board rules provide that "[I]f the applicant or resident owns property in excess of \$3,000 that is not excluded . . . [from consideration under the rules], the applicant or resident must be determined to pay the full cost of care according to part 9050.0755."<sup>[22]</sup> That same rule goes on to provide that "[t]he person shall pay the full cost of care until the property is reduced to the limits . . . [specified by the rules]."<sup>[23]</sup>

8. From May 5, 1999, through March 3, 2000, Mr. Butala owned property in excess of \$3,000. So the Veterans Home was required by law to base his monthly maintenance charge on the full cost of his care.

9. The legislature has enacted a statute pertaining to arrearages in maintenance charges.<sup>[24]</sup> It provides that:

[r]esidents are liable for paying all of their overdue maintenance charges. Overdue maintenance charges incurred after May 1, 1990, may be charged interest according to section 334.01. A resident owing overdue maintenance to the state of Minnesota for charges incurred prior to May 1, 1990, may continue to stay in the home if the resident enters into an agreement, including a payment schedule, with the administrator for the payment of arrearages and abides by the agreement. Residents who do not promptly pay maintenance or who do not abide by their agreements to pay overdue maintenance to the state of Minnesota may be discharged from the home. The payment schedule agreed to between the administrator and the resident must provide for the prompt payment of the overdue maintenance owed by the resident, but it must not reduce the resident's personal needs allowance below that which is provided for in the administrative rules of the facility.

10. From February 1, 2000, through March 3, 2000, Mr. Butala has been refusing to pay \$27,061.86 in monthly maintenance charges that he is required to pay under his Admission Agreement and under the law. And the Veterans Home has been unable to enter into an agreement with Mr. Butala for the payment of the arrearages. The Veterans Home may therefore bring these proceedings to discharge him.<sup>[25]</sup>

11. Since Mr. Butala has not promptly paid his monthly maintenance charges, the Board has the authority to discharge him from the Veterans Home.

12. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge HEREBY RECOMMENDS that the Board affirm the Administrator's order discharging Mr. Butala for failure to pay his monthly maintenance charges.

Dated this 14th day of March 2000.

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BRUCE H. JOHNSON  
Administrative Law Judge

**NOTICE**

Under Minnesota law,<sup>[26]</sup> the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

## MEMORANDUM

The Veterans Home presented evidence that Mr. Butala has continued to be delinquent in paying his monthly maintenance charges. On February 1, 2000, he owed the Veterans Home a balance of \$27,061.86. The evidence also established that Mr. Butala has the means to pay those charges. At the hearing he declined either to present any evidence of his own or to offer any explanation of why he has not been paying his monthly maintenance charges in full. Because of this, the Administrative Law Judge has no alternative but to conclude that Minnesota law allows the Veterans Home to go forward with proceedings to discharge him for nonpayment of the full amount of his monthly maintenance charges.<sup>[27]</sup> Unless Mr. Butala stops resisting the Administrator's efforts to find a less drastic solution to this problem and agrees to a payment schedule, the Administrative Law Judge recommends that the order discharging him be upheld.

B.H.J.

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<sup>[1]</sup> Minnesota Statutes, section 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 1998 edition.)

<sup>[2]</sup> Exhibit 1.

<sup>[3]</sup> Exhibit 1.

<sup>[4]</sup> Testimony of Jeffrey Brown.

<sup>[5]</sup> Exhibits 3 and 4.

<sup>[6]</sup> Minnesota Rules, part 9050.0550, subpart 3. (Unless otherwise specified, all references to Minnesota Rules are to the 1997 edition.)

<sup>[7]</sup> Exhibits 5 and 9.

<sup>[8]</sup> Exhibit 9.

<sup>[9]</sup> Minnesota Rules, part 9050.0500, subpart 1.

<sup>[10]</sup> Exhibit 6.

<sup>[11]</sup> Exhibit 10.

<sup>[12]</sup> Exhibit 10.

<sup>[13]</sup> Exhibit 9.

<sup>[14]</sup> Exhibit 6.

<sup>[15]</sup> Exhibit 9.

<sup>[16]</sup> Exhibit 11.

<sup>[17]</sup> Testimony of Leonard Butala.

<sup>[18]</sup> Minnesota Statutes, sections 14.50 and 198.03 and Minnesota Rules, part 9050.0230.

<sup>[19]</sup> Minnesota Rules, part 9050.0520, subpart 2.

<sup>[20]</sup> Minnesota Rules, part 9050.0200, subpart 3A.

<sup>[21]</sup> Minnesota Rules, part 1400.7300, subpart 5.

<sup>[22]</sup> Minnesota Rules, part 9050.0550, subpart 3.

<sup>[23]</sup> Minnesota Rules, parts 9050.0560 and 9050.0600.

<sup>[24]</sup> Minnesota Statutes, section 198.03, subdivision 3.

<sup>[25]</sup> Minnesota Rules, part 9050.0200, subpart 3A.

<sup>[26]</sup> Minnesota Statutes, section 14.62, subdivision 1.

<sup>[27]</sup> See Minnesota Rules, part 9050.0200, subpart 3 and part 9050.0520, subpart 2.