

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

In the Matter of the Appeal of the
Discharge of Vernon Lofton from the
Minnesota Veterans Home – Silver Bay

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Bruce H. Johnson conducted a telephonic hearing in this administrative contested case proceeding beginning at 11:00 a.m. on Friday, February 21, 2001.

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. Vernon Lofton lives at the Veterans Home and attended the hearing. He was not represented by counsel. The record closed on February 21, 2003, 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,^[1] 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 Stephen Musser, 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.

The record of this proceeding closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for

doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes. If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision.^[2]

STATEMENT OF THE ISSUES

Whether the Veterans Home should discharge Mr. Lofton 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. Vernon Lofton is a veteran of the armed forces of the United States. His son, Vernon Lofton, Jr., has been serving as his attorney-in-fact.^[3]

2. In May 2002 Mr. Lofton was seeking admission to the Veterans Home. And in that connection, the Veterans Home provided him with a financial questionnaire to enable the Veterans Home to determine what his monthly maintenance charges would be. Neither Mr. Lofton nor his son has ever completed that financial questionnaire or provided the Veterans Home with other specific information concerning Mr. Lofton's income and assets.^[4]

3. On June 10, 2002, Mr. Lofton was admitted to the Veterans Home. At that time, both he and his son signed an Admission Agreement under which the Veterans Home agreed to provide Mr. Lofton 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. Lofton's monthly maintenance charge in the way that is specified by the Veterans Home Board Rules. Specifically, paragraphs 5 and 7 of Mr. Lofton's Admission Agreement provide that:^[5]

"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 the full cost of care until determined otherwise by financial w[_____] ^[6]. 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.”^[7]

4. The cost of care for Mr. Lofton for the partial month of June 2002 was \$1,055.88 per month.^[8]

5. Based on a Veterans Homes Board rule that requires a resident to pay the full cost of care until the value of the resident’s assets are less than \$3,000,^[9] the Veterans Home charged Mr. Lofton a maintenance charge of \$1,055.88 for the month of June 2002.^[10]

6. The full cost of care for Mr. Lofton for the full month of July 2002 was \$1,529.31 per month.^[11]

7. Effective August 1, 2002, the Veterans Home adjusted its full cost of care monthly maintenance charge for Mr. Lofton up to \$2,591.41 per month.^[12]

8. On August 6, 2002, Mr. Lofton’s son made a payment of \$1,529.31 toward Mr. Lofton’s accumulating monthly maintenance charges, leaving an unpaid balance in his account of \$3,647.29.^[13]

9. On August 20, 2002, the Veterans Home began receiving a monthly aid and attendance pension in the amount of \$891.61 for Mr. Lofton’s account from the Veterans Administration. And the Veterans Home began applying that amount toward Mr. Lofton’s unpaid monthly maintenance charges.^[14]

10. On October 9, 2002, the Veterans Administration made a one-time aid and assistance payment of \$1,118.00 toward Mr. Lofton’s account.^[15] After that payment was posted, the balance of monthly maintenance charges payable to the Veterans Home was \$5,928.89.^[16]

11. On October 29, 2002, Mr. Lofton’s son made a payment of \$2,301.97 toward Mr. Lofton’s account.^[17] After that payment was posted, the balance of monthly maintenance charges payable to the Veterans Home was \$3,626.92.^[18] That was the last payment that either Mr. Lofton or his son made toward payment of his accumulating monthly maintenance charges prior to the hearing in this matter.^[19]

12. From November 1, 2002, through February 1, 2003, Mr. Lofton’s monthly maintenance charges continued to accumulate at the rate of \$2,591.41 per month, offset by periodic payments by the Veterans Administration of his \$89.61 per month aid and attendance pension.^[20]

13. As of February 1, 2003, the balance due for the accumulating monthly maintenance charges payable to the home by Mr. Lofton was \$12,209.34.^[21]

14. On October 22, 2002, Jeffrey Brown, the Veterans Home's Administrator, sent to Vernon Lofton and Vernon Lofton, Jr., as Mr. Lofton's attorney-in-fact, a notice that the Veterans Home was going to involuntarily discharge Mr. Lofton because he had failed to comply with his payment obligations.^[22] Among other things, the notice advised Mr. Lofton and his son that if they did not request reconsideration within ten (10) days, the Veterans Home would issue an order discharging Mr. Lofton. The notice also contained advice of Mr. Lofton's other appeal rights.^[23]

15. Mr. Lofton subsequently requested a reconsideration of the initial discharge notice. The administrator issued a decision on November 22, 2000 upholding the discharge order.^[24] Mr. Lofton requested an administrative appeal of the decision to discharge him from the Veterans Home,^[25] and on January 17, 2003, the Veterans Home issued the Notice of and Order for Hearing that began this administrative appeal.

16. Mr. Lofton has continued to live at the Veterans Home pending the outcome of this contested case proceeding, and the Veterans Home has continued to charge Mr. Lofton monthly maintenance fees prescribed by law and rule.

17. Mr. Lofton sought admission to the Veterans Home under a belief that residence and care at that facility would be at no cost to him.^[26]

18. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

19. The Memorandum that follows explains the reasons for these Findings, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Findings.

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

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

CONCLUSIONS

1. Minnesota law^[27] 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. Lofton 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. Veterans Homes Board rules require veterans homes to institute proceedings to discharge a resident “when an account is delinquent”^[28] The Board’s rules also require a veterans home to institute proceedings to discharge a resident who “fails or refuses to comply with payment obligations in the admission agreement”^[29]

5. Under Minnesota law,^[30] the Veterans Home has the burden of proving that Mr. Lofton is delinquent in the payment of his maintenance charges or that he has refused or failed to pay those charges.

6. 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.”^[31] 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].”^[32]

7. Board rules further provide that “[r]eal or personal property owned by or on behalf of an applicant is presumed legally available unless the applicant or resident documents that the property is not legally available to the applicant or resident.”^[33] The term “legal availability” is defined as “a person’s right under the law to secure, possess, dispose of, or control income or property.”^[34]

8. Since Mr. Lofton provided the Veterans Home with no information to the contrary, he is presumed to have owned property in excess of \$3,000 during the period from June 10, 2002 to the present. The Veterans Home has therefore been obliged 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.^[35] 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. Neither Mr. Lofton nor his son has made any payments on Mr. Lofton's account since October 29, 2002. The Veterans Home may therefore bring these proceedings to discharge him.^[36]

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

12. The Memorandum that follows explains the reasons for these Conclusions, and, to that extent, the Administrative Law Judge incorporates that Memorandum into these Conclusions.

13. The Administrative Law Judge adopts as Conclusions any Findings that 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 Vernon Lofton for failure to pay his monthly maintenance charges.

Dated this 12th day of March 2003.

s/Bruce H. Johnson

BRUCE H. JOHNSON
Administrative Law Judge

NOTICE

Under Minnesota law,^[37] the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

Mr. Lofton concedes that he has not been paying the monthly maintenance charges that the Veterans Home has been billing. He states that it was his understanding when he was admitted to the Veterans Home that his residence and care there would be without any cost to himself. That understanding does not comport with the terms of the admission agreement that he signed when he was admitted. It is also at odds with the monthly statements that he was receiving. And it is also inconsistent with the fact that his son has made two payments to the Veterans Home from Mr. Lofton's personal funds, totaling \$3,831.28. But most important, it is not what Minnesota law requires. Under the law, a veteran must pay any monthly maintenance charges while residing at a veterans home or be discharged. The law simply does not give the Veterans Homes Board the discretion to allow a veteran to remain in a home without paying the monthly maintenance charges. It is for these reasons that the Administrative Law Judge is recommending that the Board discharge Mr. Lofton from the Minnesota Veterans Home—Silver Bay.

B.H.J.

^[1] Minnesota Statutes, section 14.61. (Unless otherwise specified, all references to Minnesota Statutes are to the 2000 edition.)

^[2] See Minnesota Statutes, section 14.62, subdivision 2a.

^[3] Exhibit 1.

^[4] Exhibit 5; testimony of Michelle Redfield.

^[5] *Id.*

^[6] Unintelligible word.

^[7] Exhibit 1 at p. 3.

^[8] Exhibit 6.

^[9] Minnesota Rules, part 9050. 0560, subpart 2 A. (Unless otherwise specified, all references to Minnesota Rules are to the 1999 edition.)

^[10] Exhibits 6, 7, and 8.

^[11] Exhibit 6.

^[12] *Id.*

^[13] Exhibit 7.

^[14] Exhibits 7 and 8; testimony of Michelle Redfield.

^[15] Exhibits 7 and 8.

^[16] *Id.*

^[17] Exhibits 7 and 8.

^[18] *Id.*

^[19] Testimony of Michelle Redfield; Exhibit 8.

^[20] Exhibits 7 and 8; testimony of Michelle Redfield.

^[21] Exhibit 8.

^[22] Exhibit 4.

^[23] Exhibit 2.

^[24] Exhibit 3.

[25] Exhibit 4.

[26] Testimony of Vernon Lofton.

[27] Minnesota Statutes, sections 14.50 and 198.003 and Minnesota Rules, part 9050.0220.

[28] Minnesota Rules, part 9050.0520, subpart 2.

[29] Minnesota Rules, part 9050.0200, subpart 3A.

[30] Minnesota Rules, part 1400.7300, subpart 5.

[31] Minnesota Rules, part 9050.0550, subpart 3.

[32] *Id.*

[33] Minnesota Rules, part 9050.0600, subpart 1 B.

[34] Minnesota Rules, part 9050.0040, subpart 60.

[35] Minnesota Statutes, section 198.03, subdivision 3.

[36] Minnesota Rules, part 9050.0200, subpart 3 A.

[37] Minnesota Statutes, section 14.62, subdivision 1.