

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF VETERANS AFFAIRS

In the Matter of the Appeal of the  
Discharge of G.B. from the Minnesota  
Veterans Home-Minneapolis

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on May 25, 2011, in Room 102, Building 2, of the Minnesota Veterans Home, 5101 Minnehaha Avenue South, Minneapolis, Minnesota. The OAH record closed at the conclusion of the hearing.

Angela Behrens, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, MN 55101-2127, appeared for the Minnesota Veterans Home-Minneapolis. Robert Adams, P.O. Box 489, Fall Creek, WI 54742, appeared as guardian of the estate of G.B. (Resident). Also attending the hearing were Robert Bilderback, guardian of the Resident's person; Jim Dostal and Sean O'Neal, Office of Ombudsman for Long-Term Care; Dennis Devereaux, Legal Analyst, Department of Veterans Affairs; and Tracy Allen, Hennepin County Adult Protection.

**STATEMENT OF ISSUE**

Is the Minnesota Veterans Home-Minneapolis entitled to discharge the Resident because the guardian of his estate has failed to pay maintenance charges?

The Administrative Law Judge concludes that the Veterans Home-Minneapolis is entitled to discharge the Resident because the guardian of his estate has failed to pay maintenance charges.

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

**FINDINGS OF FACT**

1. The Resident is a 73-year-old veteran who was admitted to the Minnesota Veterans Home in Minneapolis on May 8, 1996.<sup>1</sup> The Resident is legally blind and requires skilled nursing care as a result of a traumatic brain injury that occurred shortly before his admission. He is described by others as a gentle, caring soul who enjoys living at the Veterans Home. Within the facility, he is fairly independent because he is

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<sup>1</sup> Ex. 1.

familiar with his surroundings, but he would not be able to live independently outside the facility.<sup>2</sup>

2. The Resident has been married to Frances Bilderback for 52 years. Frances Bilderback lives in Eau Claire, Wisconsin, and the two see each other rarely. Robert Adams, age 71, is the younger brother of Frances Bilderback. Mr. Adams lives in Fall Creek, Wisconsin, on a farm that he inherited from their parents. Robert Bilderback, who lives in the Twin Cities, is the Resident's younger brother.<sup>3</sup>

3. In a 1995 guardianship proceeding in Eau Claire County Circuit Court, the Resident was adjudicated incompetent as a result of his injuries. Robert Adams was appointed as guardian of the Resident's estate. It was unclear at the time where the Resident would live after discharge from the hospital. Consequently, Mr. Adams and Mr. Robert Bilderback were jointly appointed as guardians of the Resident's person, with Mr. Adams to act as guardian of the person if the Resident were to live in Wisconsin and Mr. Robert Bilderback to act as guardian of the person if the Resident were to live in Minnesota. The two were required to cooperate on any decisions involving transfer or placement or other major change in connection with the guardianship of the Resident's person. The court noted that in the event of a divorce filing between the Resident and his wife, the personal guardianship would be reviewed.<sup>4</sup>

4. When the Resident was admitted to the Minnesota Veterans Home in 1996, his brother signed an admission agreement on his behalf, in which he agreed to provide accurate financial information to the home so that the Resident's financial contribution toward the cost of his care could be correctly determined. The agreement provides that financial information would be reviewed annually and that the Resident could be discharged for failing to pay the maintenance charge by the due date.<sup>5</sup>

5. The amount of the monthly charge varied over the years from about \$500 per month to \$1,100 per month, depending on the cost of care and the financial circumstances described in the annual filing. In 2009, the monthly maintenance charge was \$971.<sup>6</sup> The Minnesota Veterans Home sent the invoices for the Resident's maintenance charge to Mr. Adams, who paid the charges through June 2009.<sup>7</sup>

6. According to the financial information Mr. Adams provided in 2009, the Resident had a life estate but no ownership interest in the homestead where his wife lives. He had approximately \$1,000 in cash in a checking account. He received Social Security and a retirement pension from Northwest Airlines, cumulatively amounting to

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<sup>2</sup> Testimony of Pamela Barrows.

<sup>3</sup> Testimony of Robert Adams.

<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 1.

<sup>6</sup> Ex. 3.

<sup>7</sup> Ex. 3.

\$2,622 per month.<sup>8</sup> His expenses included \$394 per month for health insurance and \$100 per month paid to his guardian.<sup>9</sup>

7. Beginning in July 2009, Mr. Adams refused to make further monthly payments to the Minnesota Veterans Home. The basis for his refusal was that the Resident had incurred medical expenses in the amount of approximately \$1,084 at the federal VA Medical Center while living at the Veterans Home in Minneapolis, and Mr. Adams believed he should be entitled to deduct these expenses from the amount of the monthly maintenance charge or have these expenses otherwise accounted for in determining the amount of the Resident's monthly maintenance fee. At some point, the VA Medical Center caused the Social Security Administration to deduct sums from the Resident's monthly Social Security payments to recoup unpaid medical expenses.<sup>10</sup>

8. On or about August 11, 2009, the Minnesota Veterans Home issued an Initial Notice of Involuntary Discharge of the Resident on the basis of the failure to comply with payment obligations. At that time, the balance due was \$1,943.18.<sup>11</sup> Although Mr. Adams did not seek reconsideration of the discharge, the Veterans Home took no further action to discharge the Resident at that time.

9. Another notice of Involuntary Discharge was issued on or about October 19, 2009, in order to provide Mr. Adams with another opportunity to seek reconsideration of the decision.<sup>12</sup> He requested administrative reconsideration, and a reconsideration hearing was held. Mr. Adams agreed to provide copies of the medical bills and insurance claims to the Minnesota Veterans Home so that staff there could assist in determining whether these expenses were properly charged to the Resident.<sup>13</sup> He also provided a release of information to allow the staff to discuss the medical expenses with the VA Medical Center.<sup>14</sup>

10. The Minnesota Veterans Home also explained to Mr. Adams, in writing, that under Minn. R. 9050.0720, subp. 2, only medical expenses that were incurred prior to admission to a Minnesota Veterans Home may be deducted in calculating the maintenance charge.<sup>15</sup>

11. In a meeting with the Veterans Home administrator on February 5, 2010, the administrator asked Mr. Adams to pay whatever amount he thought he owed. The balance due at that time was \$7,833. Mr. Adams then made a payment of \$6,630.49, which was credited to the Resident's account.<sup>16</sup> The remaining balance of \$1,202 was

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<sup>8</sup> Ex. 4.

<sup>9</sup> Ex. 4.

<sup>10</sup> Test. of R. Adams; Ex. 12.

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 6; Test. of P. Barrows.

<sup>13</sup> Ex. 7.

<sup>14</sup> Test. of P. Barrows.

<sup>15</sup> Exs. 12-14.

<sup>16</sup> Ex. 15.

approximately the amount that the VA Medical Center had caused to be deducted from the Resident's Social Security check, including some finance charges.<sup>17</sup>

12. The VA Medical Center subsequently agreed that it had improperly charged the Resident for expenses that were covered by his insurance. A refund check in the amount of approximately \$1,300 was sent to Mr. Adams to cover the amounts deducted from the Resident's Social Security payments, with interest.<sup>18</sup> Mr. Adams did not forward the payment to the Veterans Home, nor did he make any further payments to the Veterans Home. He maintains that he did not forward this sum to the Veterans Home because he personally was owed more than this amount for other medical expenses, including the Resident's oxygen expenses.<sup>19</sup>

13. Mr. Adams also refused to provide the 2010 and 2011 annual financial disclosures for the Resident.<sup>20</sup> When he had failed to provide the required annual financial information by March 1, 2010, the Veterans Home began charging the Resident for the full cost of care, amounting to approximately \$7,870 per month. In 2011, the full cost of care increased to \$8,141.<sup>21</sup>

14. Mr. Adams has made no payments to the Veterans Home on behalf of the Resident since February 5, 2010, and he has persisted in refusing to provide the required financial information. His position is that he will not make any further payments or provide any further financial information until the Veterans Home can answer to his satisfaction the question why medical expenses incurred after admission to the Veterans Home are not considered appropriate deductions in calculating the amount of the maintenance charge.<sup>22</sup> He does not accept the explanation that, under rules governing calculation of the maintenance charge, only medical expenses that were incurred prior to admission may be deducted.<sup>23</sup>

15. The Veterans Home staff assisted the Resident in applying for and obtaining "Aid and Attendance" benefits from the U.S. Department of Veterans Affairs. These benefits are a nonservice-related pension available to the Resident based on his obligation to pay the maintenance fee to the Veterans Home each month. Commencing in August 2010, monthly Aid and Attendance benefits in the amount of \$928 were made to Mr. Adams on behalf of the Resident.<sup>24</sup>

16. On September 17, 2010, the Veterans Home issued an Order for Involuntary Discharge on the basis of nonpayment.<sup>25</sup> Mr. Adams again asked for

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<sup>17</sup> Ex. 8.

<sup>18</sup> Ex. 8.

<sup>19</sup> Test. of R. Adams.

<sup>20</sup> Testimony of Karen Proffer; Test. of R. Adams.

<sup>21</sup> Ex. 3.

<sup>22</sup> Test. of R. Adams.

<sup>23</sup> *Id.*

<sup>24</sup> Test. of R. Adams; Testimony of Dennis Devereaux.

<sup>25</sup> Ex. 9.

reconsideration of the discharge, and a reconsideration hearing was held. At the hearing, Mr. Adams declined to make any payments or to enter into a payment plan.<sup>26</sup>

17. On November 10, 2010, after review of the record of the reconsideration hearing, the administrator of the Veterans Home affirmed the Order for Involuntary Discharge.<sup>27</sup>

18. By letter dated November 18, 2010, Mr. Adams requested an administrative appeal of the discharge order. He also requested that the hearing be scheduled to take place after December 2010 to allow him time to recuperate from surgery for cancer.<sup>28</sup>

19. In March 2011, the U.S. Department of Veterans Affairs learned that Mr. Adams was not using the Aid and Attendance benefits to pay the monthly maintenance fee at the Veterans Home. It consequently terminated these benefits and is seeking to have Mr. Adams pay restitution of the amounts paid since August 2010.<sup>29</sup>

20. On April 12, 2011, the Minnesota Department of Veterans Affairs issued a Notice and Order for Hearing in this matter.

21. At the time of the hearing, the balance owed to the Veterans Home for the Resident's care was \$125,735.65. If Mr. Adams were to provide the required financial disclosures for 2010 and 2011 so that an updated maintenance charge could be calculated, the Veterans Home would recalculate the balance due based on the amount of the resulting maintenance charge.<sup>30</sup>

22. The Minnesota Veterans Home has no desire to discharge the Resident and would like to see him stay at the facility; however, it has no choice but to seek a discharge at this point based on Mr. Adams' refusal to provide either payment of balances due or the financial disclosures required to calculate a new maintenance charge.<sup>31</sup>

23. The Veterans Home does not plan to discharge the Resident without performing appropriate discharge planning. If a discharge is ultimately necessary, it is likely that the Veterans Home would discharge the Resident to a nursing home if arrangements could be made to pay for his care.<sup>32</sup>

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

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<sup>26</sup> Test. of P. Barrows.

<sup>27</sup> Ex. 10.

<sup>28</sup> *Id.*

<sup>29</sup> Test. of D. Devereaux.

<sup>30</sup> Test. of K. Proffer.

<sup>31</sup> Test. of D. Devereaux.

<sup>32</sup> *Id.*

## CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Veterans Affairs have the legal authority to conduct this proceeding under Minn. Stat. §§ 198.03 and 14.50 (2010) and Minn. R. 9050.0220, subp. 6 (2009).<sup>33</sup>

2. The Resident received proper notice of the proposed discharge, of his rights to reconsideration and appeal, and of the time and place of the hearing in this matter.

3. The Minnesota Veterans Home has complied with all of the procedural requirements for conducting this proceeding.

4. The Veterans Home has the burden of proving that a resident is delinquent in the payment of maintenance charges.<sup>34</sup>

5. Veterans who have the means to support themselves may be admitted to a veterans home, if they comply with the terms of a contract providing for reasonable compensation to be paid for care, support, and maintenance in the home.<sup>35</sup> Residents who do not promptly pay maintenance charges may be discharged.<sup>36</sup>

6. A resident's ability to pay must be determined from insurance and other benefits, value of property owned, and income.<sup>37</sup> The resident's chargeable income is the income remaining after deductions from gross income have been made according to part 9050.0720 and after deductions from net income have been made according to part 9050.0755.<sup>38</sup>

7. Facility financial staff shall deduct the following expenses, in relevant part, from a resident's gross income to determine net income: payment of documented medical expenses not related to long-term care, incurred prior to the person's admission to the facility operated by the commissioner of veterans affairs, for which the person is legally responsible.<sup>39</sup>

8. In calculating the resident's maintenance charge, the Minnesota Veterans Home properly declined to deduct medical expenses incurred after the resident was admitted to the facility.

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<sup>33</sup> All references to Minnesota Statutes are to the 2010 edition, and all references to Minnesota Rules are to the 2009 edition.

<sup>34</sup> Minn. R. 1400.7300, subp. 5.

<sup>35</sup> Minn. Stat. § 198.03, subd. 1.

<sup>36</sup> *Id.*, subd. 3.

<sup>37</sup> Minn. R. 9050.0550, subp. 1.

<sup>38</sup> Minn. R. 9050.0550, subp. 4.

<sup>39</sup> Minn. R. 9050.0720, subp. 2, item O.

9. The rules governing the administration of veterans homes provide that discharge procedures “must” be instituted with regard to a resident who fails or refuses to comply with payment obligations or when an account is delinquent.<sup>40</sup>

10. The Resident’s legal guardian has refused to comply with payment obligations and as a consequence, the Resident’s account is delinquent.

Based upon these Conclusions, and for the reasons explained in the attached Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge hereby recommends that the Commissioner of Veterans Affairs AFFIRM the order of the Administrator discharging the Resident from the Minnesota Veterans Home-Minneapolis.

Dated: June 24, 2011

s/Kathleen D. Sheehy  
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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digitally recorded (No transcript prepared)

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Veterans Affairs will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner’s final decision shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Commissioner of Veterans Affairs, 20 W. 12<sup>th</sup> Street, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

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<sup>40</sup> Minn. R. 9050.0200, subp. 3, item A; Minn. R. 9050.0520, subp. 2.

## **MEMORANDUM**

The Resident receives monthly income in the amount of approximately \$2,622 in the form of Social Security benefits and pension benefits from his former employer, and in addition he received VA pension benefits of \$983 per month for approximately six months. Since February 2010, Mr. Adams has consequently collected approximately \$50,000 in income on behalf of the Resident, but he has refused to pay any of it toward the cost of his care at the Veterans Home.

Mr. Adams is a legal guardian and has fiduciary obligations to the Resident. Whatever amounts he has paid for the Resident's medical expenses, and those amounts are both unclear and unsupported in this record, the payment of these expenses would provide no legal basis for refusing to pay for the Resident's care, refusing to provide the required financial disclosures, and risking the disruption of the Resident's established life and happiness at the Veterans Home through a discharge.

**K.D.S.**