HEROES OR HOPELESS? HOMELESS VETERANS
CAUGHT IN A DYSFUNCTIONAL SYSTEM

MARGARET A. COSTELLO

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1. Margaret ("Peggy") Costello is Clinical Assistant Professor at the University of Detroit Mercy School of Law, where she was instrumental in establishing the Veterans Law Clinic and Project Salute. Before joining the faculty of UD Mercy Law, she was a member of the litigation department of Dykema Gossett PLLC for more than twenty years, and chaired the Pro Bono and Diversity Committees. An advocate of pro bono activities, she is co-chair of the State Bar’s Pro Bono Initiative, and was awarded the 2002 State Bar of Michigan Cummiskey Award for pro bono service. Past-President of the Women Lawyers Association of Michigan and the Detroit Metropolitan Bar Association, Peggy currently serves as a Commissioner of the State Bar of Michigan, where she is a member of the Executive and Finance Committees, and on the Board of the Detroit Bar Foundation. A Phi Beta Kappa and honors graduate of Pennsylvania State University and the Detroit College of Law, Ms. Costello is a licensed psychologist who worked in that capacity before practicing law. She repeatedly has been named a Michigan Super Lawyer, and has been listed as a DBusiness Top Lawyer.
I. INTRODUCTION AND SCOPE OF THE PROBLEM

It has been recognized for some time that veterans are overrepresented in the homeless population. Various reasons have been proffered for the overrepresentation. This article will summarize the current state of homelessness among veterans, and discuss the relationship between homelessness and ability to obtain monetary veterans’ benefits. It is suggested that a dysfunctional system for obtaining veterans’ benefits contributes to veterans becoming, and remaining, homeless. Some proposed reforms will be presented.

A. National Demographics

The 2011 “point-in-time” estimate of homelessness among veterans is that 67,495 veterans were homeless in the United States. That figure represents approximately fourteen percent of all homeless adults. The good news is that this figure reflects a decline of nearly twelve percent in homelessness among veterans since January 2010. An estimated fifty-nine percent of these veterans were sheltered, while forty-one percent were unsheltered, in 2011.

According to a joint study conducted by the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, “in 2010, homeless veterans accounted for 1 in 150 veterans and

4. Id.
5. Id.
6. Id. at 6.
1 in 9 veterans living in poverty.” Veterans are overrepresented among the homeless,” as they account for less than ten percent of the total adult population in the U.S. The typical profile of a veteran living in a homeless shelter is a male (ninety-two percent of homeless veterans), between the ages of fifty-one and sixty-one (forty-one percent), who has some type of disability (fifty-one percent). Veterans who currently are most at risk of being homeless are those who served during the Vietnam era. Reasons given for this include a higher incidence of substance abuse in this group and selection of more “potentially ineligible” recruits for service.

The 100,000 Homes Campaign found that veterans were homeless approximately two years longer than their non-veteran counterparts. That survey also disclosed that, among veterans who had been homeless for more than two years, more than sixty-one percent reported a serious physical health condition, fifty-five percent reported a mental health problem, seventy-six percent reported substance abuse, and thirty-two percent reported all three. Homeless veterans are older than non-veterans; 21.3% were over the age of sixty, compared to 9.4% of homeless non-veterans.

Women comprise only a small segment (approximately eight percent) of homeless veterans, and “only 7% of the total veteran population.” However, female veterans are more than twice as likely as female non-veterans to be homeless. Additionally, compared to female

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8. Id. at 4.
9. Id. at 7.
11. Id. at 5-6; see also Latrena Davidson, Healthcare for U.S. Veterans: Is the System Sufficient? 7 INTERNET J. HEALTHCARE ADMIN., Jan. 2010.
12. “The 100,000 Homes Campaign is a national movement of communities working together to find permanent homes for 100,000 homeless Americans by July 2013.” 1,000 HOMES CAMPAIGN, DATA REPORT: NATIONAL SURVEY OF HOMELESS VETERANS IN 100,000 HOMES CAMPAIGN COMMUNITIES 5 (2011). The Campaign is led by the nonprofit Community Solutions and supported by other national and local partners in 102 communities. Id.
13. Id. at 3.
14. Id.
15. Id.
16. VETERAN HOMELESSNESS, supra note 7, at 7.
17. Id. at 13.
non-veterans in the poverty population, female veterans in the poverty population are more than three times as likely as to be homeless.  

B. Michigan’s Homeless Veterans

Michigan currently is ranked eleventh in the nation in number of veterans; approximately 704,000 veterans or 7.1% of the veteran population reside there. That number is expected to progressively decline, as over half of those veterans are between the ages of fifty and seventy. Over thirty percent of Michigan’s veterans (approximately 220,000) are located in southeastern Michigan in Wayne, Oakland, and Macomb Counties.

The majority of Michigan’s veterans who have served in combat are veterans of the Vietnam War, followed closely by veterans who have served in the Gulf War conflict. Approximately seven percent (45,000) of Michigan’s veterans are women, at par with the national average.

Michigan’s homeless veterans make up approximately 7.4% of the state’s homeless population. That number reflects 2.1% of total homeless veterans in the United States, compared to 1.3% counted in the earlier 2010 PIT count.

II. CAUSES AND CONTRIBUTING FACTORS TO VETERANS’ HOMELESSNESS

Most studies of homelessness that compare homeless veterans to non-homeless veterans were conducted in the 1980s and 1990s; therefore, they do not include most veterans who served in the Gulf War conflict. Most of the data was generated by The National Vietnam Veterans Readjustment Study (NVVRS), which was conducted from

18. Id.
20. Id. at 5.
21. Id. at 8.
23. Id. at 11.
24. VETERAN HOMELESSNESS, supra note 7, at 18.
26. VETERAN HOMELESSNESS, supra note 7, at 17.
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1984 to 1988. Studies from the 1980s found that homeless male veterans were older and better educated than homeless male non-veterans. However, homeless veteran men experienced more health problems, mental illness, and alcohol abuse than homeless non-veterans. Both male and female veterans had a history of more stable family backgrounds and fewer incidents of conduct disorder or acting-out behavior as children.

Researchers have sought to explain why veterans represent a disproportionate number of the homeless. This is particularly true with respect to Vietnam era veterans. There are some consistent findings. For example, stress that occurs as a result of deployment and exposure to combat is linked to a higher incident of homelessness. Vietnam veterans who experienced “war zone” stress reported difficulty readjusting to civilian life, including problems such as social isolation and violent behavior. They were also more likely to become homeless.

An extensive study of Vietnam era veterans conducted in 1994 evaluated eighteen variables potentially associated with homelessness. The four post-military variables found to have a direct relationship to homelessness were: (1) lack of social support upon returning home from the military; (2) psychiatric disorders (not including posttraumatic stress disorder); (3) substance abuse disorders; and (4) being single, separated, divorced or widowed. Two military factors – combat exposure and participation in atrocities- contributed to these four variables. However, the military factors themselves were not directly correlated with homelessness.

27. The NVVRS was conducted at the direction of Congress as part of the Veterans Health Care Amendments of 1983, and included 1,600 veterans who had served in the Vietnam theatre, and 730 Vietnam era veterans who did not serve in the theater.


29. Id.; see also Richard Tessler, Robert Rosenheck & Gail Gamache, Comparison of Homeless Veterans with Other Homeless Men in a Large Clinical Outreach Program, 73 PSYCHIATRIC Q. 109, 113-14 (2002).


32. Id.


34. Id. at 423-24.

35. Id. at 424.
Characteristics associated with homelessness among female veterans vary somewhat from the variables directly affecting homelessness in male veterans. In female veterans, the characteristics most commonly associated with homelessness were sexual assault during military service (military sexual trauma or MST), unemployment, disability, poor overall health, and screening positive for an anxiety disorder or posttraumatic stress disorder.\textsuperscript{36}

It should come as no surprise that lack of income or other financial resources strongly contributes to homelessness. Of all veterans living below the poverty level, thirteen percent are homeless. This figure reflects more than twice the number of homeless non-veterans living below the poverty level.\textsuperscript{37} The disparity is likely a result of the greater lack of social support experienced by homeless veterans, which is in itself a result of fewer opportunities for friends or relatives to offer them a place to live or otherwise assist them financially. Young veterans living in poverty are even more likely (3.7 times) to be homeless than young non-veterans living below the poverty level.\textsuperscript{38}

### III. Current VA Statutes, Regulations, and Procedures That Contribute to the Problem of Homelessness

#### A. Benefits Available to Veterans

As was noted above, poverty is highly correlated with veterans’ homelessness, and to a much greater extent than in the general homeless population. Consequently, while not the only form of assistance needed, a source of income often can prevent homelessness or allow homeless veterans to obtain a home. Contrary to what many believe, not all veterans are entitled to obtain benefits from the U.S. Department of Veterans Affairs (VA). There are two types of monetary benefits, which may be available to veterans – pension benefits and compensation for service-connected disabilities.\textsuperscript{39}


\textsuperscript{37} \textit{Veteran Homelessness}, supra note 7, at 13.

\textsuperscript{38} \textit{Id.} at 15.

\textsuperscript{39} This does not include military retirement, severance, or other special forms of compensation not available to the general veteran population.
1. Pension Benefits

The rationale behind pension benefits is to provide a source of income for disabled veterans who had to give up career opportunities while they served their country during a time of war, and therefore were not able to advance their careers or accumulate sufficient resources to support themselves after they became disabled.40 The pension benefit is not a retirement benefit. Pension benefits may be available to veterans who are totally and permanently disabled or age sixty-five and older, and who served during wartime.41 The disability does not have to be connected to the veteran’s military service. Such benefits are based on financial need, and are not available to veterans who have an annual income of more than $11,830 (single veteran with no dependents).42 Similarly, free medical treatment at a VA facility is not available to a veteran who does not have a service-connected disability unless he or she demonstrates financial need.43

A determination of income eligibility for pension is based on the family income (e.g., the income of the veteran’s spouse is considered). Monthly pension benefits are offset by income of any kind, including Social Security income.44 However, medical expenses that are not reimbursed will be deducted from the veteran’s income when determining whether he or she is income-eligible to receive a pension.45

2. Disability Compensation for Service-Connected Injuries or Illnesses

Veterans who have a current disability (physical or mental), which is the result of a disease or injury that was incurred or aggravated during active military duty, will be eligible for service-connected disability compensation.46 Unlike pension, such compensation is not income dependent. A veteran with a serious service-connected disability

42. 38 U.S.C. § 1521(b). This is the amount payable in 2012; the amount increases to $15,493 for a married veteran and increases by $2,020 for each additional dependent. 38 U.S.C. § 1521(c). If the veteran is in need of regular aid and attendance, he or she is entitled to a higher rate of payment. 38 U.S.C. § 1521(d). See also Improved Disability Benefits Pension Rate Table, U.S. DEP’T OF VETERANS AFFAIRS, http://www.vba.va.gov/bln/21/rates/pen01.htm (last visited Aug. 18, 2012) (effective Dec. 1, 2011).
44. See 38 U.S.C. § 1521.
45. See 38 C.F.R. § 3.272(g) (2011).
generally will receive much higher monthly payments than he or she would receive if entitled to pension benefits for a non-service-connected disability.\textsuperscript{47}

Once a veteran is determined to have a service-connected disability or disabilities, the VA will issue a rating (in the form of a percentage from zero percent to 100%) for each disability. The VA, under the authority of Congress, developed a schedule to be used in rating disabilities. The ratings are based upon the statistically average impairment of earning capacity resulting from the respective injuries or illnesses.\textsuperscript{48} Each rating (ten percent, twenty percent, etc.) reflects a specific monthly payment. A veteran’s total rating is not computed simply by adding the ratings attributed to each disability. Rather, the overall percentage of disability is calculated by using the formula contained in the “Combined Ratings Table” to combine the individual ratings.\textsuperscript{49}

The highest rating of 100% means that the veteran is totally disabled. A total disability rating may be assigned to a person who fails to meet the criteria for a 100% rating, but nevertheless is unable to secure or maintain substantially gainful employment as a result of service-connected disabilities.\textsuperscript{50}

A veteran cannot receive both pension and service-connected disability compensation. If eligible for both, he or she will receive the one that provides the greatest monetary benefit.\textsuperscript{51}

\textbf{B. Difficulties in Obtaining Benefits}

\textit{1. Who Is Eligible?}

Only veterans are eligible for benefits or services administered by the VA. The VA defines a veteran as “a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.”\textsuperscript{52} Thus, anyone discharged with an “other than honorable” or “dishonorable” discharge is not considered a veteran, regardless of the nature or overall quality of his or her military service.

\begin{thebibliography}{99}
\bibitem{50} 38 C.F.R. § 4.16 (2011).
\bibitem{51} 38 U.S.C. § 1521(i).
\bibitem{52} 38 U.S.C. § 101(2) (2011); 38 C.F.R. § 3.1(d) (2011).
\end{thebibliography}
With respect to pension benefits, only veterans with minimal or no income are eligible. As noted above, annual income for a single veteran must be less than $11,830. Additionally, those veterans under age sixty-five, who are the majority of veterans applying for pension benefits, generally must provide an expert opinion that they are unable to work. This is an obstacle for many veterans because they do not have the financial resources to obtain such an opinion if a VA doctor is not willing to provide it.

The greatest obstacle for many veterans seeking to obtain VA pension is that they did not serve any time during a “period of war.” A period of war is defined as a time period, which Congress has designated as a period of war. The time periods that Congress has designated as “periods of war” include the Vietnam era (August 5, 1964, through May 7, 1975) and the Persian Gulf War (August 2, 1990 continuing to the present). Therefore, veterans whose active duty service occurred only between May 7, 1975, and August 2, 1990, are not eligible for pension regardless of whether they satisfy the other criteria. That is significant because a large segment of homeless veterans are veterans of that time period. Such veterans are over three times as likely to be homeless as


54. Most veterans over age sixty-five are eligible for some type of social security or social security disability benefit, although the VA pension benefit may be used to supplement that benefit if income remains below the required threshold.

55. The VA is permitted to assist veterans with claims for disability compensation by conducting a medical examination or by obtaining a medical opinion when an examination or opinion is necessary for the VA to make a decision on the claim. 38 U.S.C. § 5103A(d)(1) (2011); 38 C.F.R. § 3.159(c)(4) (2009). A VA conducted medical examination is only adequate when it is based on the consideration of a claimant veteran’s “whole recorded [medical] history” and examinations. 38 C.F.R. 4.2 (2009). Because the VA cannot refute medical evidence submitted by the claimant, and the claimant’s medical evidence carries at least as much weight as the VA’s, it is best practice for veteran claimants to procure the independent medical opinion of their own private physicians whether or not the VA agrees to assist them with their claims by conducting its own medical examinations.

56. See 38 U.S.C. §§ 1521(a), 1521(j) (requiring service members to be veterans of a period of war to receive pension benefits).


59. 38 U.S.C. §§ 101(33), 1501(4); 38 C.F.R. § 3.2(i) (2011).

60. Like Vietnam veterans, veterans of the post-Vietnam era have been found to be overrepresented in the homeless population. LIBBY PERL, CONG. RESEARCH SERV., RL34024, VETERANS AND HOMELESSNESS 13 (2011).
non-veterans. Veterans who enlisted after the military transitioned to an all-volunteer military in 1973 were found to be at highest risk for homelessness. Many of those veterans will not have served any time during a designated period of war, and therefore will not be eligible even for the meager VA pension benefit.

Recipients of service-connected disability benefits are limited to those individuals who have diseases or disabilities that began during, or were caused or aggravated by, their military service. The veteran must be able to prove, to the satisfaction of the VA, that his or her current disabilities are related to the military service. Again, this most often triggers the need for an expert medical opinion, which generally is beyond the scope of what homeless veterans can afford. The veterans then must depend on VA medical personnel for such an opinion, and the opinion often is not forthcoming.

2. Delays in Determination of Eligibility

When a veteran applies for either pension or service-connected disability compensation, he or she can expect to wait a considerable amount of time for a decision. The VA receives over 830,000 new claims per year. My experience at the University of Detroit Mercy Veterans Law Clinic during the past five years has been that veterans who apply at the Detroit VA Regional Office wait an average of eighteen months for an initial determination on a new claim.

The VA also must address the high number of claims remanded because of errors or for further development. If a claim is denied and appealed to the Board of Veterans’ Appeals, it takes an average of 3.9 years from the date of the appeal for the Board to issue a decision. This delay obviously harms veterans, particularly homeless veterans or those on the verge of homelessness because, although many ultimately will be

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61. Id. at 14.
62. Id. at 13; see also Robert Rosenheck et al., The Proportion of Veterans Among Homeless Men, 84 AM. J. PUB. HEALTH 466, 466-69 (1994).
64. See, e.g., Veterans for Common Sense v. Shinseki, 44 F.3d 845, 859 (9th Cir. 2011).
65. Id. It has been my experience in the Veterans Law Clinic that many veterans who appeal the denial of their benefits, and whose claim is remanded by the Board of Veterans’ Appeals, wait for more than two years for the VA Regional Office to comply with the remand order. Moreover, even if the denial is appealed at the Regional Office, veterans are waiting nearly two years for a hearing.
granted benefits, they do not have the use of those benefits in a time of
desperate need.\textsuperscript{66}

The rate of reversal of initial VA decisions is high. A 2010 report of
the Office of the Inspector General reported that a review of decisions
issued by six regional offices during a six-month period revealed that
twenty-seven percent of them were in error.\textsuperscript{67} In 2010, the Board of
Veterans Appeals allowed approximately twenty-seven percent of claims
that had been denied by the Regional Offices, and remanded 42.4% of
denied claims.\textsuperscript{68} Thus, the odds of a veteran’s claim being granted after
an initial denial are reasonably good. However, the delay may cause
severe and irreversible hardship.

A homeless veteran can request to have his or her initial claim
expedited. The effectiveness of this procedure varies between VA
Regional Offices, and it has been my experience that claims are more
likely to be expedited if the veteran is housed in a VA program or
otherwise receiving VA services.

3. Common Bars to Benefits

In addition to the criteria for eligibility, discussed above, which
restrict some homeless veterans from receiving benefits, there are
additional bars to benefits that may have a disparate impact on the
homeless.

\textit{a. Length of Service}

Veterans who entered military service after September 1980\textsuperscript{69} must
have completed a minimum of twenty-four months of continuous active
duty or the “full period for which [the veteran] was called or ordered to
active duty”\textsuperscript{70} in order to be eligible for pension benefits.\textsuperscript{71} This
requirement excludes from pension veterans who may have been
discharged early for their inability to adapt to military life (it is likely

\begin{itemize}
\item \textsuperscript{66} The author could find no studies or data on the number of homeless veterans who
receive monetary VA benefits, or the amount of benefits received.
\item \textsuperscript{67} \textit{Veterans Benefits Manual, supra} note 40, at 8-9 (citing U.S. Dep’t of
Veterans Affairs, Office of the Inspector General, Semiannual Report to
Congress 16 (Mar. 2010)).
\item \textsuperscript{68} Id. at 1005-06 (citing U.S. Dep’t of Veterans Affairs, Board of Veterans’
\item \textsuperscript{69} Length of service requirements are not applicable to veterans with any active
\item \textsuperscript{70} 38 U.S.C.S. § 5303A (2011); 38 C.F.R. § 3.12a (2011).
\item \textsuperscript{71} The requirement does not apply to service-connected disability compensation.
\end{itemize}
that a number of veterans who now are struggling with homelessness fall into that category), and veterans who receive an involuntary early discharge due to reduction of forces.

b. Character of Discharge

As previously noted, a person who receives a dishonorable, or other than honorable, discharge does not meet the definition of a “veteran,” and therefore generally is ineligible for any veterans’ benefits. The VA specifies several categories of conduct that constitute a discharge under dishonorable conditions, including offenses involving “moral turpitude,” willful and persistent misconduct (often including possession or use of drugs), and homosexual acts involving aggravating circumstances or affecting the performance of duty. Mental health problems or other hardships sometimes contribute to the conduct that led to the discharge. However, unless the discharge is upgraded or re-characterized by the VA – a result that is difficult to obtain – pension, service-connected disability compensation, and even health care benefits likely will be unavailable.

c. Alcohol and Drug Use

If the disability which the veteran is experiencing is due to alcohol or drug abuse, the veteran generally is not able to receive either pension or service-connected disability compensation. That is because the VA considers alcohol and drug abuse “willful misconduct,” and the law specifically exempts injuries or diseases due to such abuse from payment of compensation. Regardless of whether the veteran’s exposure to, and use of, alcohol or drugs began during his military service, he will be barred from receiving benefits for any injury or illness resulting from that use. This is particularly significant to the homeless veteran population where the majority report substance abuse (fifty-eight percent of those homeless less than two years; seventy-six percent of those homeless two years or more).

However, the United States Court of Appeals for the Federal Circuit has held that veterans are not precluded “from receiving compensation for alcohol or drug-related disabilities arising secondarily from a service-
connected disability, or from using alcohol or drug-related disabilities as evidence of the increased severity of a service-connected disability. As 31.3% of veterans who were homeless for less than two years and forty-six percent of veterans homeless two years or more experience both mental illness and substance abuse, they may not be barred from receiving benefits if the disabling substance abuse can be shown to be secondary to another service-connected condition.

4. Development of Evidence and Need for Corroboration

In order to obtain benefits for a service-connected disability, a veteran must present evidence that the condition began during his military service, or was caused or aggravated by that service. Although the VA has a duty to assist the veteran in developing his or her claim, unless the claim is very straightforward, the veteran will need to develop and provide evidence to support the claim.

For example, in the case of a disability resulting from an injury, or posttraumatic stress disorder, that is not related to a combat situation, the veteran will have to provide evidence that the in-service event occurred. That can be difficult, particularly if the event occurred many years ago. The VA is not required to accept a veteran’s statement about what happened in a non-combat setting as true. The VA may reject a veteran’s statement regarding non-combat events where there are no records that corroborate the statement, and the available records either contradict or do not corroborate the statement.

Sometimes the veteran’s service records cannot be located. The service medical records of some veterans of World War II and the Korean Conflict were destroyed in a 1973 fire at the National Personnel Records Center. Even if records are lost or presumed destroyed, the standard for proving that the in-service event occurred does not change. Arguments that there should be a presumption of service connection in

favor of the veteran where records are presumed lost or destroyed have been rejected.\textsuperscript{81}

Therefore, the veteran must attempt to corroborate his statement about what occurred. Evidence that can be submitted in support of the in-service incident or the veteran’s condition while in service include buddy statements (lay statements from military personnel or others who observed, or otherwise have knowledge of, the incident or the veteran’s condition), newspaper articles, letters written by the veteran or others contemporaneous with the incident, and photographs. It may be difficult or impossible to obtain such evidence, especially with the passage of time.

\textbf{5. Rating System}

Once it has been determined that a veteran has a service-connected disability, that disability must be rated. The rating will determine the amount of monthly compensation the veteran will be awarded.

A schedule of ratings applies, and is based, “as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations.”\textsuperscript{82} The statute also provides for ten percent increments of disability.\textsuperscript{83} This results in the VA assigning each service connected disability a rating of 0% (non-compensable), 10%, 20%, 30%, 40%, 50%, 60%, 70%, 80%, 90% or 100%. The rating system used by the VA can be found in Part Four of 38 C.F.R. Part Four, Subpart B, is divided into a series of sections correlating to various body systems (e.g., musculoskeletal, skin, neurological) and diseases or injuries that affect those systems. The rating for the disability increases with the severity of symptoms.

When a veteran has two or more service-connected disabilities, the overall percentage of disability is calculated by combining the individual ratings, but not simply by adding them together. The Combined Rating Table, contained in the VA regulations, reflects how a veteran’s overall rating is calculated.\textsuperscript{84} If a veteran believes the rating he is awarded does not accurately reflect his or her condition, he or she can appeal.

Additionally, if a service-connected disability worsens, the veteran may apply for an increase in his or her rating. Therefore, not only is the rating system complex (e.g., Subpart B or the Ratings section of the

\textsuperscript{82} 38 U.S.C. § 1155.
\textsuperscript{83} Id.
\textsuperscript{84} 38 U.S.C.S. § 1155; 38 C.F.R. § 4.25.
Code of Federal Regulations consists of ninety-four pages)\(^85\) with opportunity for error, but veterans are able to repeatedly seek an increased rating for one or more rated conditions. These additional claims further strain an already over-burdened claims system.

6. Limitation on Attorney Representation

Until 1988, the VA operated with no judicial oversight. In 1988, Congress passed the Veterans’ Judicial Review Act (VJRA).\(^86\) That Act established a new Article I Court, now called the U.S. Court of Appeals for Veterans Claims.

Historically, attorney representation of VA claimants has been discouraged due to the philosophy that the VA is a non-adversarial system that assists veterans, and resulted in limitations on attorney’s fees. In 1862, Congress passed an Act limiting the fee that an attorney or agent could charge a person applying for a pension, reenlistment bounty, or other military allowance to $5.00.\(^87\) The limitation later was raised to $10.00.\(^88\) Individuals who exceeded the statutory limit on fees could be fined up to $300, imprisoned for hard labor for up to two years, or both.\(^89\)

With the passage of the VJRA, attorneys and others were authorized to practice before the newly established court, and to charge a reasonable fee for that representation. However, attorneys still could not charge any more than the $10.00 authorized in 1864 for representation of clients at most stages of the VA administrative process. The VJRA allowed attorneys and agents who were retained within one year of a final BVA decision to charge a reasonable fee for representation of a claimant only with respect to a reopened claim filed at a VA Regional Office for the same benefit denied by the Board, a motion for reconsideration or for revision based on clear and unmistakable error filed with the Board, or an appeal to the Court.\(^90\) However, in 2006, the law was revised to eliminate the 1864 restriction and allow recognized agents and attorneys to charge a reasonable fee for representation both at the VA Regional Office and the Board of Veterans’ Appeals after a Notice of

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85. 38 C.F.R. §§ 4.40-4.150.
Disagreement had been filed, so long as the Notice of Disagreement was filed on or after June 20, 2007.\textsuperscript{91}

Although attorneys and authorized representatives are now able to receive reasonable compensation for the representation of veterans who appeal the denial of a claim, no payment is authorized for initial filing of the claim or assistance at the VA prior to a denial.\textsuperscript{92} Therefore, many veterans struggle through filing initial claims with minimal, or no, assistance unless they are able to obtain free assistance from an attorney or from a service officer, many of whom are burdened with hundreds of pending claims. It is likely that, if many of these veterans were able to obtain quality assistance in the initial stages of the claims process, the denial rate would decline and the VA system would be less burdened with appeals. Moreover, because until less than five years ago, attorneys were barred from practicing before the VA for compensation, except in the very limited situations described above, most attorneys are not familiar with veterans’ benefits law, or have yet to develop significant experience in representing clients before the VA.

IV. PROGRAMS THAT ASSIST HOMELESS VETERANS

Programs designed to assist homeless veterans, like programs designed to assist other homeless individuals, began to proliferate in the late 1980s. Among the programs that were implemented to assist veterans are Health Care for Homeless Veterans, Domiciliary Care for Homeless Veterans, and Homeless Veterans Reintegration programs.\textsuperscript{93}

A. VA Programs

The U.S. Department of Housing and Urban Development (HUD) and the VA began a collaborative effort in 1992 where HUD provided housing to homeless veterans through a specific set aside of Section 8 vouchers; the VA provided supportive services. That program targeted veterans with severe psychiatric or substance abuse disorders and distributed approximately 1,753 Section 8 vouchers to veterans in three

\textsuperscript{91} Id.
\textsuperscript{92} Attorneys may be able to charge clients for a “pre-filing consultation” pursuant to a VA General Counsel’s opinion. VETERANS BENEFITS MANUAL, supra note 40, at 1556. A copy of the General Counsel’s letter can be found at www.nvlsp.org/Information/ArticleLibrary/images/attorney-fees-LaneEvansdoc.pdf. However, the VA has stated that the General Counsel’s opinion may be limited to the specific facts before the General Counsel at the time of the opinion, and has declined to formalize the opinion in regulations promulgated in 2008. See 73 Fed. Reg. 29852-01, 29866 (2008).
\textsuperscript{93} LIBBY PERL, supra note 60, at 18.
However, no new vouchers were made available for approximately fifteen years until, in 2008, Congress revived HUD-VASH. Half of HUD-VASH vouchers are allowed to be project based (i.e., attached to a specific unit of housing). A total of approximately 500 such vouchers are available.\footnote{94. Id. at 30.}

On November 3, 2009, the VA announced a plan to end homelessness among veterans within five years. Six areas of focus were outlined: (1) prevention; (2) outreach and education; (3) treatment; (4) housing and supportive services; (5) employment and benefits; and (6) community partnerships.\footnote{95. U.S. DEP’T OF HOUSING & URBAN DEV., PUB. & INDIAN HOUSING, NOTICE PIH 2010-40 (HA), SET-ASIDE FUNDING AVAILABILITY FOR PROJECT-BASING HUD-VETERANS AFFAIRS SUPPORTIVE HOUSING VOUCHERS (2010), http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/centers/fmc/notices (scroll down and select “PIH 2010-40 (HA)” hyperlink to download).}

In 2010, the Federal Strategic Plan to End Homelessness was promulgated.\footnote{96. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS 4 (2010).}

One of the four key goals of this plan is to prevent and end homelessness among veterans in five years from when the plan was written, i.e., by 2015.\footnote{97. Id. Homelessness among veterans has declined during the past two years. See Part I.A. supra.}

The Veterans Signature Initiative was designed to increase collaboration at the federal and local level for government and community providers.\footnote{98. Id. at 31-32.}

To support this effort, VA has announced it will make over $100 million in grants available to community agencies to prevent veterans and their families from becoming homeless or to quickly return them to stable housing. The funds are offered for fiscal year 2012 through VA’s Supportive Services for Veteran Families (SSVF) program, a homeless prevention and rapid re-housing program.\footnote{99. OPENING DOORS FEDERAL STRATEGIC PLAN, supra note 97, at 31-32.}

The program provides community organizations with funding for counseling, training, education assistance, direct time-limited financial assistance, transportation, child care, rent, utilities, and other services aimed at preventing homelessness or providing homes for participating veterans and family members.\footnote{100. Press release, U.S. Dep’t of Veterans Affairs, VA-HUD: Homelessness among Veterans Declines 12% in 2011 (Dec. 13, 2011), http://www.va.gov./opa/pressrel/pressrelease.cfm?id=2234. The $100 million in grants compares to $60 million, which the VA provided to SSVF in 2010. 101. Id.}
Most programs and services for homeless veterans are provided, or funded, by the VA. In addition to the SSVF program, the VA has initiated homelessness prevention services that include: a National Call Center for Homeless Veterans; the Health Care for Re-entry Veterans Program to address the community re-entry needs of incarcerated veterans; a Veteran Justice Outreach initiative which facilitates access to VA mental health and substance abuse services and other VA benefits for veterans involved in the criminal justice system; and the Veterans Homelessness Prevention Demonstration Program which focuses on veterans returning from Iraq and Afghanistan. The VA also provides treatment for: homeless veterans through Healthcare for Homeless Veterans; Veteran Stand Downs; a Homeless Veterans Dental Program; Domiciliary Care for Homeless Veterans; Drop-in Centers, and a compensated work therapy program.

B. Programs for Homeless Veterans in Southeastern Michigan

In Southeastern Michigan, there are a number of programs designed to assist homeless veterans. A brief description of a few programs which impact a substantial number of veterans follows.

1. VA Domiciliary Rehabilitation Treatment Program: Detroit VA Medical Center

This is a highly structured fifty-bed co-ed residential treatment program that is operated by the VA. The average length of stay is four to six months. One of the goals of the program is to assist the veteran in obtaining some type of regular income, either through working or by obtaining benefits. Veterans must be willing to remain drug and alcohol free during their stay in the program. They must be motivated to work toward an independent living situation. Veterans in this program generally have medical or mental health issues, and many of them have been incarcerated.

2. Michigan Veterans Foundation Detroit Veterans Center

The Michigan Veterans Foundation, a nonprofit agency, founded in 1989 and funded primarily by grants, operates a transitional housing facility and resource center in Detroit’s Cass Corridor. The Detroit Veterans Center houses 104 homeless male veterans in its transitional housing program. Over 900 veterans participate in this program annually, and the average length of stay is eighteen months. Veterans who are addicted to alcohol or drugs undergo a detoxification phase before entering the program. The Detroit Veterans Center accepts veterans and individuals who served in the military but were discharged other than honorably, and will attempt to assist the latter group in upgrading the discharges so that veterans can be eligible to apply for VA benefits. Almost all individuals who enter the program have little or no income upon entry. Participants in the program receive training, counseling, legal assistance and other supports; an individual service plan is prepared and implemented for each participant. When he leaves the program, the veteran is expected to have a means of support, either through employment or benefits. The Detroit Veterans Center also operates a Veterans Rescue, which provides temporary shelter for any homeless veteran.

Despite the reported decrease in the number of homeless veterans in Michigan and nationally, the executive director of the Michigan Veterans Foundation reported that there has been a progressive increase in the number of people seeking shelter at the Detroit Veterans Center. The individuals served experience the causes and contributing factors referenced in Part II (i.e., most are between the ages of fifty and seventy, are Vietnam era veterans, have little or no income, and are experiencing problems with substance abuse).

3. Piquette Square, a Project of Southwest Solutions

The Piquette Square Project is a permanent supported housing program for veterans that began operating in 2010. The apartment building contains 150 one-bedroom units. Many veterans use HUD or HUD-VASH vouchers to obtain housing at the project. While Piquette Square provides an independent living situation, supportive services are

107. Id.
available. Such services include case management, counseling, job training, and computer labs. 108

4. Southeastern Michigan Veterans Stand Down

Stand Down is a military term that refers to the removal of combat troops from the battlefield to a place of relative safety and security, so that they may rest and recover. Several organizations, often in collaboration with the National Coalition for Homeless Veterans, 109 hold Stand Downs for veterans. These events generally take place over a period of one to three days, and provide services that include food, shelter, clothing, health screenings, benefits counseling, legal assistance, picture ID services, and even haircuts. Southeastern Michigan Veterans Stand Down is one of the biggest Stand Downs in the state. The number of veterans participating in that Stand Down has risen from 242 in 2000 to 682 in 2011, and the number has increased each year since 2006. 110

5. Veterans’ Courts

A relatively new concept, the veterans’ court is designed to divert identified veterans who are charged with crimes to a program that is an alternative to jail or prison. Like drug courts, veterans’ courts mandate participation in appropriate programming such as mental health or substance abuse counseling, job counseling and placement, and programs that assist veterans in obtaining benefits. In Michigan, there currently are at least six such courts in operation in Detroit, Lansing, Redford, Novi, and Mount Clemens/Macomb; additional courts are expected to be added. 111 Legislation (House Bill 5162) was introduced in 2011 to create a standardized model and structure for veterans’ courts in Michigan.

V. CONCLUSION AND SUGGESTED REFORMS

It is well recognized that lack of income is very highly correlated with homelessness among veterans. It also is well recognized that many

108. Press Release, Southwest Housing Solutions, Piquette Square Project to House 150 Homeless Vets in Detroit (May 5, 2008).
110. SOUTHEASTERN MICHIGAN VETERANS STAND DOWN, INC. (Nov. 13, 2011) (on file with author); see also SOUTHEASTERN MICHIGAN VETERANS STAND DOWN, INC., www.4vets.org (last visited Jan. 19, 2012).
veterans, including homeless veterans, have a difficult time, and endure long delays, in obtaining monetary veterans benefits to which they ultimately are determined to be entitled.\textsuperscript{112} Others face bars to receiving any benefits, such as military discharges that are not honorable and substance abuse. Although programs that are being implemented to target homeless veterans are needed and welcome, they are costly (e.g., $100 million allocated in 2012 for SSVF programs alone), and have much less of a positive effect if those participating do not develop an income stream. The reality is that most homeless veterans are not employable, and will require benefits or other subsidies to overcome homelessness. While programs such as the University of Detroit Mercy’s Veterans Law Clinic and Project Salute\textsuperscript{113} assist low-income veterans in navigating the VA maze, the process remains arduous and time consuming. It is notable that the primary desk reference/practice manual for veterans’ advocates is comprised of a whopping 2,044 pages.\textsuperscript{114} Moreover, the cost of administering the dysfunctional Veterans Benefits Administration is high and rising. Therefore, rather than simply allocating more taxpayers’ money to the VA system to continue doing more of the same, efforts should be focused, at least to some extent, on reforms that will make it simpler, less time consuming and less costly for veterans to obtain the VA benefits to which they are entitled.

The following are just a few suggested reforms that, if adopted, would assist veterans in obtaining a quicker and more cost-effective resolution of their benefit claims. Because homeless veterans need an income stream to break the cycle of homelessness, such reforms likely would have a disproportionately positive impact on that population. It is recognized that these reforms would require statutory and/or rule changes.

Serious consideration should be give to a complete overhaul of the VA rating system, described in Part III.B.5. The current system of rating is complicated and difficult to apply. It also encourages veterans to frequently and repeatedly seek increases in their ratings, thereby clogging a system that should be focused on the adjudication of new claims and determination of service-connection. Examinations by VA medical personnel generally are required, and must be scheduled, each time a veteran seeks an increased rating. A more simplified rating system, such as overall ratings of “mild,” “moderate,” “severe,” and

\begin{thebibliography}{99}


\bibitem{113} University of Detroit Mercy School of Law, \textit{What is Project Salute? Who We Are}, www.law.udmercy.edu/index.php/what-is-project-salute (last visited Aug. 18, 2012).

\bibitem{114} \textit{Veterans Benefits Manual}, supra note 40.
\end{thebibliography}
“unemployable,” rather than ratings in ten percent increments for each disability, and a period of time during which a final rating would be required to be in place before an increase could be sought, would be a simpler, fairer and more cost-effective approach.

The Board of Veterans’ Appeals should take more responsibility for issuing final opinions, rather than remands. A remand to the Detroit Regional Office adds an average of two to three years to the adjudication of a claim. As it provides a de novo review, the Board can consider the evidence presented and reach a conclusion. Thus, the Board should be encouraged to make decisions on the evidence available to it, and remand cases only where there are severe deficiencies in evidence development by the VA.

Consideration might be given to elimination of the intermediate appeal to a Decision Review Officer (DRO) at the Regional Office. This stage is time intensive as it requires a de novo review, and adds approximately two years to the process. Requiring a direct appeal to the Board of Veterans Appeals would free up regional office resources to more carefully adjudicate initial claims and requests to reopen claims.

There are a number of procedural requirements at the Veterans Benefits Administration that can be simplified, or eliminated, to expedite claims processing, without prejudicing veterans’ claims. For example, the procedure that is to be followed when a record is unavailable, including the “waiting” periods, adds months, if not years, to claims adjudication. The use of technology, consistent with what is used in other governmental agencies, such as Social Security Administration, would facilitate quicker decisions and reduce the number of records and documents lost.

There should be no bar on advocates representing veterans (including for pay, if that is the agreement) at the initial stage of claims filing. Advocates often can assist veterans in properly developing their claims at this early stage, reducing the need for an appeal.

Finally, consideration should be given to providing all veterans who are suffering economic hardship with a modest monthly stipend (similar to the amount now awarded for pension benefits), regardless of age or proof he or she is unemployable. This modest amount of income (approximately $1,000 per month, offset by all other income) often is sufficient for the veteran to avoid homelessness, but not high enough to deter the veteran from working or seeking other means of income.

The suggested reforms above are not meant to imply that there is a simple answer to solving the problem of homelessness among veterans. However, such changes are rarely, if ever, addressed in proposed approaches to addressing homelessness, and should not be ignored.