

Veterans Compensation & Rehabilitation Inquiry

Productivity Commission

GPO Box 1428

CANBERRA ACT 2604

Dear Sir / Madam

I refer to attached documentation in regard to my sons' claim for PTSD and my Submission to Parliament shortly after his passing. Also attached is the letter of decision made by DVA. I struggle to understand the decision made by DVA, as in no part of the decision letter is PTSD mentioned. My son struggled to continue his fight for compensation until it killed him and it feels DVA are now attempting to take me down the same path. I fail to understand why it has taken 19 months to come to this decision and all the extra turmoil, stress and heartache it has caused.

This decision, hiding behind Legislation and gobbledegook is both unjust and unfair. Added to this is the decision by DOHAS to not honour the payment towards Jason's mortgage after his death as I am not his "Partner" and only a "Partner" is entitled to the continuing payments ... a saving to the Government of approximately \$200,000 in my estimation. I shared this residence with my son from purchase and now continue to live at the property, as it is where I spent the last years of my son's life. Even though Jason left me as his sole beneficiary as stated in his Will this seems to count for little. His service and sacrifice have been disrespected whilst he was alive and unfortunately this continues after his death, something which causes even more stress and heartbreak to this family.

Not only have I lost my youngest son, after he served his country valiantly, returned home a shattered man, abandoned by the organisation who had the responsibility to take care of him, coming home to find him deceased and performing CPR unable to believe it was too late, then I am forced to spend the next 19 months fighting for what should have been an automatic and easy transition.

Unfortunately it seems to be a common belief that DVA's modus operandi is to deny, delay until they die. As a grieving mother that is my experience and I truly wish no other family has to endure this pain and anguish.

Yours sincerely

Lisha Taylor

Dear Ms Taylor

You have asked for an explanation in writing as to why your son Jason's incapacity payments at the level determined by the VRB are only payable up until the date of his passing. I apologise for the delay in responding.

I understand that you have received a payment for \$8990.23 which represents the difference between the weekly amount calculated in accordance with the November 2014 decision and the weekly amount calculated in accordance with the VRB decision, up until the date of Jason's passing. I hope that the following is of some assistance in explaining why the payment is only until that date.

Chronology

- On 20/3/14 Jason received a lump sum interim compensation payment for under section 75(2) of the *Military Rehabilitation and Compensation Act 2004* (the Act).
- 19/11/14 – the impairment level was increased to 48 points and additional compensation became payable. This decision appears to also have been made under section 75(2) as a second interim payment as Jason's lumbar spine injury had still not stabilised (and thus payment on the basis that his conditions were permanent and stable was not appropriate).
- As required by section 76 of the Act Jason was asked if he wished to take the payment as a lump sum and he elected to do so. He was paid \$117,461.42 on 21 December 2015.
- Jason also exercised his right to seek review by the Veterans' Review Board of that 19/11/14 determination.
- Jason passed away on 12 July 2017 before the VRB decision was made on 12 July 2018.
- The decision of the VRB was to set aside the original decision and substitute a new decision which provided for a higher level of impairment.

It is clear under the Act that your sons claim continued after the date he passed away and you as his person representative are entitled to any compensation now payable. I note that an amount has been paid to you representing the difference between what Jason was entitled to receive as a periodical payment based on the initial determination and what he was entitled to receive after the VRB determination for the period up until the date of his death.

Unfortunately the provision in the Act in this area are very prescriptive and the obligation to make a lump sum payment is triggered by the provision of a notice under section 76 and the recipient making an election to receive a lump sum under section 78. Jason did this in respect of the original 19/11/14 decision.

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The VRB set aside that original decision (meaning it no longer exists) and substituted a new fresh decision. While the Act is not entirely clear on what should happen in relation to an election and payment made in these circumstances we think that the better view is that the election in relation to the original decision and the lump sum payment still stand. However, the new VRB decision requires a fresh election to be made. You are unable to make that election to take a lump sum as section 78(7) provides that a legal personal representative cannot elect to take an amount payable to an estate as a lump sum.

While this may seem unfair to you, the rationale for the provisions operating in this way, is that a payment for permanent impairment is a payment for non-economic loss (eg for loss of capacity and impact on lifestyle). In order to be able to convert the periodic payment into a lump sum a person's life expectancy is determined based on Government Actuarial tables. It would be incongruous to make a payment based on these life expectancy tables for non-economic loss (for the pain and loss of capacity the person is expected to experience) based over the person's expected lifespan, when the actual date of death is known.

I hope that this helps you to understand the provisions dictating the amount of incapacity payment that has been paid to you.

Once again I regret that the outcome could not have been more favourable for you.

Regards

Special Advisor
Department of Veterans' Affairs

My name is Lisha Taylor and I am the mother of Sapper Jason Ross Grant 8496258 who joined the ADF as a 20 year old in 2004 and deployed to Afghanistan twice and returned with PTSD. His official diagnosis of PTSD, major depression and anxiety was accepted by the Army and he was medically discharged on 30th May 2013. Then began his long battle for compensation with DVA, a case which is still pending and caused Jason much anxiety and frustration. He was told early this year that he could hope to finally receive his payout and he would then be able to move on with his life. Meaning he would not have to keep attending independent doctors review appointments, always with a different doctor and going through his story again and again. His case has as yet to be finalized. My wonderful, generous and very much loved son passed away on the 12th July 2017 with the cause yet to be determined by the Coroner. There is no doubt in my mind and heart that DVA have contributed in a major way to his heavy drinking and experimenting with prescribed medications and non prescription drugs to alleviate his nightmares, anxiety and depression. Constantly having to jump through DVA hoops to prove himself, just one example is on one of his many appointments for a Review, already anxious and stressed about the long drive into the City in heavy traffic and finding parking, he arrived half an hour early. The doctor who had never met Jason before thanked him for being early thus allowing him to catch an earlier flight home to Sydney – Jason just hung his head on relaying this story to me and said it proved the doctor had absolutely no interest in Jason's case and proceeded to ask him irrelevant questions not pertaining to his medical conditions. He already had low self esteem related to PTSD and this made it worse. Just one example of how disrespectfully he was treated. At one point he was told DVA had lost his file which sent him into a week long depression where he hardly ate or got out of bed.

To quote Jason's own words in his submission to DVA for compensation:

"During my second deployment my colleague was killed in action on 6th June, 2011, which I was greatly saddened and affected by. I was sent out on patrol 2 days later and our helicopter received fire from rocket propelled grenades, narrowly missing us.

A week later I was on a night patrol mission and encountered a man who I deemed suspicious as he was trying to escape. The man engaged me with 10-15 rounds from an AK47 at a distance of 5 meters – a fight to the death with automatic weapons.

I had intended on having a long career in the military, was in the process of applying for Commando selection when symptoms became worse, precluding me from a job that I used to love. It has also had an extremely detrimental effect on my daily life and relationships.”

Jason was very concerned about being placed on increasing doses of antidepressants and Seroquel (to help with nightmares but told me a possible side effect with long term use could be heart problems), and had been experimenting by self-medicating with alcohol and non-prescription drugs as nothing seemed to be helping.

I have lived with Jason for the last four and a half years since his discharge and have witnessed first-hand his increasing frustration at his treatment by the DVA. He served his country, risked and very nearly lost his life on several occasions and then dropped back into society and expected to continue his life as before. He told me before his first deployment the Army had spent a quarter of a million dollars training him to go to Afghanistan and he was looking forward to using that training. My problem with that scenario is that ADF did not spend one cent in training Jason to assimilate back into our society but left him to his own devices and told him to ‘man up’ when he first experienced symptoms of PTSD.

We, as a family are now grieving the loss of a very much loved son, brother, brother-in-law, grandson, nephew, uncle and cousin. As a family we are trying to be consoled by believing Jason is now at peace, something he so very much craved in life. A mother should not have to lose her child especially under these tragic circumstances. I believe if Jason had had his own Case Manager who had looked after his case from start to finish he would still be with us today.

I would like to ask each and every single parliamentary member how many more families are to suffer this heartbreak before something is done to change this broken system?