

Department of Veterans Affairs
Regional Office
915 Second Avenue
Seattle, WA 98174

C#: XXX-XX-3747

SUPPLEMENTAL STATEMENT OF THE CASE

IN THE APPEAL
OF
Gordon Graham

**FROM THE DECISION OF THE
DEPARTMENT OF VETERANS AFFAIRS**

NOTICE TO APPELLANT:

This is not a decision of the appeal you have initiated. It is a "Supplemental Statement of the Case" which the law requires us to furnish to help you in completing your appeal.

Please read the forwarding letter carefully as well as the instruction on the enclosed appeals form. These explain your appeal rights and tell you what you must do to complete your appeal.

A copy of the "Supplemental Statement of the Case" has been furnished to your representative.

ISSUE:

Mr. Graham is appealing the decision by Vocational Rehabilitation and Employment (VR&E), denying the provision of a greenhouse under Chapter 31, Title 38 United States Code, VR&E Independent Living Program.

Mr. Graham remains vigilant in his desire for VR&E to provide funding and support for this endeavor, however we do not identify this as a requirement to assist the veteran to function more independently in the family and community without the assistance of others or a reduced level of assistance of others, as per CFR 21.160.

SUMMARY OF EVIDENCE AND VOCATIONAL REHABILITATION AND COUNSELING ACTIONS:

Mr. Graham currently has an existing enclosed greenhouse claimed to be borrowed, and also possesses two enclosed glass structures over existing raised planters. He uses the greenhouses to grow a variety plants and vegetables. Vocational Rehabilitation and Employment is not able to provide an additional greenhouse structure under the Independent Living Program because we do not find that this meets the criteria of an independent living need.

Services would not achieve the goal of measurable and sustainable improvement as they relate to activities of daily living.

Mr. Graham was previously provided Independent Living services under Chapter 31.

PERTINENT LAWS AND REGULATIONS

As previously stated in the Statement of the Case

DECISION:

It was determined that Mr. Graham currently does not qualify for independent living services because he has reached a maximum level of independence given his physical and mental conditions per CFR 21.160.

REASONS FOR DECISION:

The term "Independence in Daily Living" means the ability of a veteran, without the services of others or with a reduced level of the services of others, to live and function within the veteran's family and community.

VR&E services may be provided in support of an avocational activity however, they are limited. It must be determined that the individual can no longer perform this avocational activity due to the effects of a disability(ies).

The following criteria must be met before providing services designed to support the pursuit of an avocational interest:

1. The disability condition(s) limits or prevents participation in the avocational interest.
2. The activity must have been previously performed for a significant amount of time, defined as over a twelve-month period.

3. A medical and/or mental health provider must provide documentation that continued support of the activity is not contraindicated.
4. An expert consultation to identify accommodations required to enable continued support of the activity must be completed by a qualified person, such as an occupational therapist.
5. The pursuit of the avocational interest must improve the individual's independence in daily living in a measurable and verifiable manner.
6. The individual must have the ability and resources to sustain the activity or pursuit after the period of rehabilitation services are completed.

Through our comprehensive Independent living assessment, we determined that although the Veteran desires to grow his own vegetables to ensure they are pesticide free, there are venues in his locality that give him the ability to purchase organic vegetables if he desires. Furthermore, M28R. Part IV, Section C, Ch 9, States that VR&E should not update or replace existing equipment that enables participation in an avocational activity.

SUBMITTED BY: Kim. M. Ihlo DATE: 5/7/2014

APPROVED BY: J. E. S. DATE: 5/07/2014