

IN THE UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

Gordon Alexander Graham)
Petitioner, *Pro Se*)
v.)
David J. Shulkin, M.D.)
Secretary of Veterans Affairs)
Mary Ann Flynn)
Chief Counsel)
US Dept. Of Veterans Affairs)
JACK KAMMERER)
Director of VR&E)
US Dept. Of Veterans Affairs)
PRITZ NAVARATNASINGAM)
Director, Seattle, WA Regional Office)
US Dept. Of Veterans Affairs)
) Docket No. 18-_____

Respondents

PETITION FOR EXTRAORDINARY RELIEF
IN THE NATURE OF A WRIT OF MANDAMUS

Certificate of Service

Appendix

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Certificate of Service

1. I, Gordon A. Graham certify that I have:
2. Mailed a copy of this *Petition For Writ of Mandamus* with Appendix and Certificate of Service to the clerk of this Court by first class US mail.
3. Prior to doing so, I have served a copy of the document upon the named respondents and Counsel for the respondents by mailing them, postage prepaid, addressed as follows.

The Honorable David J. Shulkin, M.D.

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Appendix

1. Exhibit A- Eight emails between Petitioner and Seattle VR&E personnel dated from July 7th, 2016 to July 17th, 2017.
2. Exhibit B- FOIA Request filed December 23, 2017 for copy of award of greenhouse.
3. Exhibit C- November 21st, 2017 letter from Director, VR&E Services to Director VARO 346 (Seattle, WA) obtained February 16th, 2018.
4. Exhibit D- VA Form 28-8872 (unsigned) dated July 7th 2016
5. Exhibit E- VA eBenefits statement of disabilities as of February 18th, 2018.

Petition for Extraordinary Relief

Now comes petitioner Gordon Alexander Graham, pursuant to 38 USC § 7261(a)(2), US Vet. App. 21 and 32 and respectfully submits to the U.S. Court of Veterans Appeals (CAVC) his *pro se* petition in the nature of a Writ of Mandamus. In support of this petition, petitioner relies on the following: Board of Veterans Appeals (BVA) favorable decision Docket No. 13-09 654A, dated September 4th, 2015. Petitioner further relies on Extraordinary Writ of Mandamus Orders dated August 25th, 2016 (CAVC # 16-2098, Bartley presiding) and June 26, 2017 (CAVC # 17-1450, Bartley Presiding) and lastly, 38 CFR §3.104; §21.92(b).

Statement of Relief sought

The petitioner requests relief from this Court in the form of an Extraordinary Writ of Mandamus for the following unresolved Vocational Education and Rehabilitation Award-to wit:

Independent Living Program (ILP) entitlement to 20'X 28'heated, ADA-compliant greenhouse with agreed-to accoutrements as stipulated in the BVA Decision Docket # 13-09 654A dated September 4, 2015 and the mutually agreed-to document authored by petitioner's Vocational Rehabilitation Counselor (VRC) emailed on or about 10/14/2016 by the Seattle Regional VR&E Officer to petitioner. See Exhibit A.

Facts Relevant to the Petition for Greenhouse

1. On July 16th, 2016 petitioner refused to accept a 15'X20' non-ADA compliant greenhouse as it was not a mutually agreed-to decision of all parties in violation of 38 CFR §21.92(a)(b) nor did it reflect all of petitioner's many disabilities. (See Exhibit D).
2. Following the issuance of the August 25th, 2016 order (CAVC # 16-2098), and subsequent compliance with 38 CFR §21.98(b), petitioner was able to conduct a meaningful colloquy with Vocational Education and Rehabilitation Services (VR&E) Services regarding requirements for the BVA approved greenhouse beginning on the 90th day of the suspense period.

3. On or about the ninetieth day (October 14th, 2016), all parties mutually agreed to an arrangement to resolve the size of the greenhouse VR&E was prepared to provide to petitioner. Petitioner's Vocational Rehabilitation Counselor, Kris Holloway, and the VR&E Officer, Mr. David Boyd, all mutually agreed with petitioner that the earlier proposed VAF 28-8872 Individualized Independent Living Program (IILP) dated July 7th, 2016 offering a 15'X20' greenhouse no longer met petitioner's current disability picture.
4. A new plan was mutually arrived at, as mentioned, on or about October 14th, 2016 at 3:44 PM granting a 20'X28' ADA-compliant heated and fall-protected greenhouse with concrete floor with rubber "fall" mat based on petitioner's acknowledged subset of disabilities. The offer included a waterless composting toilet due to petitioner's incontinence issues and distance from the house. The new offer also offered a two-year subscription to the LEXIS NEXIS Veterans Benefits Manual. The offer also included a three month supply of propane and hydroponic chemicals. Petitioner agreed to supply all water and electricity in a mutual effort to equitably share the expenses. (See Exhibit A).
5. On or about July 10th, 2017, an allegedly completed "plan" which was never seen by petitioner, was signed around at the Seattle VA Regional Office (RO) by the RO director Pritz Navarathnasingham, the RO VR&E Officer David Boyd and the petitioner's Vocational Rehabilitation Counselor (VRC) Kris Holloway-but notably not by the petitioner. Said document was allegedly transmitted to Director, VR&E Services as described via July 17th, 2017 email by petitioner's VRC (Holloway). (See Exhibit A).
6. Following the issuance of the June 26th, 2017 CAVC order, petitioner patiently marked time and honestly believed the Director, VR&E Services would comply with the BVA decision within the 90-day suspense period and affirm the mutually agreed upon 20'X28' greenhouse and accessories in a timely manner.

7. On December 22nd, 2017, VR&E Officer Danial Crosby contacted petitioner and asked to set a date to review and implement the VR&E Director's final offer -a revised 15'X20' greenhouse plan that was rejected on July 13th, 2016 -fully 18 months before- as inadequate. Petitioner asks the Court to take judicial notice that the letter is dated November 21st, 2017- fully a month before VA's VR&E Officer deigned to notify petitioner.

8. On December 23rd, 2017 petitioner presented in person to the Bremerton VA VR&E Offices and submitted a Freedom of Information Act (FOIA) request for said document regarding the 'revised' ILP entitlement. (See Exhibit B).

9. On January 25th 2017, sans the FOIA document, petitioner met with the assistant Regional Office Director (initiated by petitioner) to impress upon upper management the violation of due process in the ILP program and an attempt to obtain the document mailed by the Director, VR&E Services. Petitioner also discussed in the alternative, an impending filing of an Extraordinary Writ of Mandamus and every desire to avoid same. VARO personnel made no effort to provide petitioner with the document. No opinion was expressed pro or con on the subject of the Extraordinary Writ filing.

10. On February 14th, 2018, Mr. Crosby contacted petitioner by telephone and presented the VA VR&E Officer's ultimatum that he (petitioner) accept the 15'X20' greenhouse offer prior to March 14th, 2018 or have the greenhouse file closed permanently.

11. On February 16th, 2018 petitioner drove 50 miles (one way) to the Seattle RO to obtain the FOIA-requested document as the Regional Office stated FOIA-requested documents could not be mailed out. See Exhibit C.

**Petitioner's Argument for the Right to Extraordinary
Relief in the Form of a Writ of Mandamus**

**A. The Petitioner Lacks Alternative
Means to Attain the Desired Relief.**

The first rule for Extraordinary Writs is that the petitioner must be without alternate means to obtain the desired relief thus ensuring the Writ is not used as a substitute for the appeals process. Petitioner submits that, after a four-year appeal, he was awarded an Independent Living Program successfully on September 4th, 2015. Petitioner still seeks to induce the VA Secretary or his assigns to timely comply with the BVA decision. Per the Court's instructions on August 25th, 2016, petitioner and VA VR&E personnel engaged in the mutual development of a VR&E Individualized Independent Living Program (IILP) under 38 CFR §21.98(b). That decision was legitimately and legally promulgated both by email and telephone pretty much all day from 9:00 AM to 3:44 PM between the Seattle VR&E Officer in situ and petitioner at petitioner's home on 10/14/2016 for a 20'X28' (560 square feet) ADA heated Greenhouse and other valuable considerations. See Exhibit A.

Development of the plan proceeded apace and was allegedly forwarded to Director, VR&E Services for "approval" on or about July 10th, 2017. A revised IILP arrived approximately 5 1/2 months later on or about December 22nd, 2017 at the Bremerton, Washington VR&E Offices (Exhibit A). VR&E Officer Daniel Crosby contacted petitioner informing him VA was "awarding" **not** a 20'X28' greenhouse, but a **15'X20' (300 square feet) greenhouse**. No details were forthcoming about any extras. Petitioner filed a FOIA request for the document on December 23rd, 2017 to ascertain the thrust and reasoning for the modified decision. See Exhibit B.

As a matter of discussion, petitioner is unsure of what has occurred. Given the scant information available, it appears two possible scenarios occurred. The first, albeit pure conjecture, would be that the Seattle VR&E Officer ignored the mutually arrived-at decision and forwarded the original proposal for a 15'X20' greenhouse to Director, VR&E Services with a request for increased costs above the original proposed \$15,000 outlay to incorporate the cost of hydroponic equipment. The second theory is more onerous. From the document obtained via petitioner's request (See Exhibit C), it would also appear equally possible the

Director, VR&E Services “reviewed” the plan and subsequently reduced the agreed-upon size and accoutrements-substituting his own plan in its stead.

In petitioner’s prior Extraordinary Writ of Mandamus (CAVC case # 17-1450), petitioner failed to cite to any authority for the proposition that his VA Form 28-8872 must be completed prior to commencing a plan of rehabilitation. The Court held:

“Last, Mr. Graham complains that VA has yet to promulgate a completed VA Form 28-8872 memorializing his rehabilitation plan. VA regulations require that a rehabilitation plan “be developed for each veteran eligible for rehabilitation services under (c)hapter 31” of title 38 of the U.S. Code, 38 C.F.R. § 21.80(a) (2016). This obligation includes formulation of an IILP plan, 38 C.F.R. § 21.80(c); see 38 C.F.R. § 21.90 (2016). Mr. Graham has not cited—and the Court is not able to find—explicit authority for finalization of VA Form 22-8872.

Petitioner begs the Court’s indulgence to correct that error. 38 CFR §21.92 reads thusly: (a)General. The plan will be jointly developed by Department of Veterans Affairs staff and the veteran.

(b)Approval of the plan. The terms and conditions of the plan must be approved and agreed to by the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor(VRC), the vocational rehabilitation specialist, and the veteran.

(c)Implementation of the plan. The vocational rehabilitation specialist or CP or VRC designated as case manager has the primary role in carrying out Department of Veterans Affairs responsibility for implementation of the plan.
(emphasis petitioner’s)

Here, the regulation (38 CFR §21.92) clearly and unmistakably lays out the order in which the plan will first be “jointly developed” followed by “approval of the plan”. Lastly, authority to “implement the plan” is delegated to the case manager or VRC. Had the Secretary intended the implementation of an IILP proceed prior to consummation of same, it is presumed he would surely have constructed the regulation to reflect that. What is clear, however, is that VR&E is

attempting to implement a plan which has not been mutually signed around- indeed a plan not even yet memorialized by the selfsame parties to it. It stands to reason that in order to *implement* a plan-any plan- there would, by necessity, need to be a *plan* in the first instance. And while the petitioner would like to believe all parties are above reproach morally, most legally binding entitlements of this magnitude must be consummated on paper rather than via a handshake or on an email basis. A careful reading of any VAF 28-8872 reveals certain codicils and other medical prerequisites usually precede any formulation of a plan and must be considered in creating it to prevent inadvertent injury to the participant. A VAF 28-8872 is thus far more than a simple post hoc implementation order “summarizing” the plan. Petitioner submits the Director, VR&E Services’s “approval” presumes a VAF 28-8872 has been consummated.

On February 14th, 2018, Mr. Crosby informed petitioner that, absent immediate acquiescence and compliance with the IILP plan and willingness to accept the VR&E Director’s truncated offer, he would be forced to permanently close Petitioner’s file in 30 days (March 14th, 2018) for failure to accept the proffered IILP plan “as is”.

Petitioner appears now to be precluded from obtaining that which was lawfully granted by a duly constituted adjudicatory body (The Board of Veterans Appeals as well as a duly constituted rating agency of original jurisdiction below) without due process. See Cushman v Shinseki, 576 F.3d 1290 (Fed. Cir. 2009). Petitioner is unaware of any legal mechanism to toll or abate the inevitability of the VR&E suspense action and now turns to the Court for relief.

B. Petitioner demonstrates a clear and indisputable right to the Writ.

The second requirement of Extraordinary Writs of Mandamus posits the petitioner must demonstrate a clear and indisputable right to the Writ. Petitioner certainly relies here on the clear and unmistakable grant of the BVA Judge on September 4th, 2015 contained in BVA decision Docket # 13-09 654A. Petitioner equally relies on the mutually arrived-at decision between all parties per 38 CFR §21.92(b) on or about October 14th, 2016. See Exhibit A. Petitioner has been led to believe that a normal legal progression of events culminating in a 20’X28’ greenhouse with agreed extras was a mere formality that required the appropriate signatures due to the extraordinary costs above and beyond those normally associated with ILPs. Petitioner’s greenhouse is the first awarded in over 10 years.

Petitioner reads the Department of Veterans Administration Tables of Organization to reflect that the Regional VR&E Officer is under the nominal supervision of the Regional Director of the Agency of Original Jurisdiction (AOJ). Unarguably, the Tables of Organization places VR&E within the Veterans Benefits Administration. This establishes the requirement that VR&E Services must abide by the regulations on finality of decisions enumerated in Chapter 38, Code of Federal Regulations (38 CFR) Part 3.

Petitioner similarly relies on the 2009 Federal Circuit decision in Military Order of the Purple Heart of the USA versus Secretary of Veterans Affairs, 580 F.3d 1293, 1294, 1296 (Fed. Cir. 2009) ("We conclude that such entitlement to benefits is a property interest protected by the Due Process Clause of the Fifth Amendment to the United States Constitution.") The Court held that this procedure was prohibited by law as it violated due process and the tenets of 38 CFR §3.103(c)(2).

Petitioner additionally relies on 38 CFR §3.104 Finality of Decisions. §3.104(a) states: A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all field offices of the Department of Veterans Affairs as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. §5104. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §3.105 and § 3.2600 of this part. (emphasis petitioner's).

Petitioner submits two matters of first impression for the Court to review. First, the matter of the Independent Living Program (ILP) under 38 USC §3120 has never borne the brunt of higher judicial review. As there is no case law to instruct the Court as to the separation of powers between a duly constituted rating agency and the Director, VR&E Services, the question posited is who, exactly, constitutes a "duly constituted appellate authority" as defined in 38 CFR §3.104? Petitioner submits he is being subjected to a *sotto voce* *de novo* review in clear violation of 38 CFRs § 3.103(c)(2), §3.104(a) and 38 CFR §3.2600(d). The *de novo* reviewer (Director, VR&E Services) does not appear to qualify semantically as a duly constituted "appellate authority". Petitioner submits the Director, VR&E Services is an **executive** position with nothing more than the power to decide, up or down, the mutually agreed-to ILP plan created below between the duly

constituted rating agency and the petitioner. Nowhere in the four corners of 38 CFR §21.98 does it confer authority on the Director, VR&E Services to not only "review" but to **revise** an IILP- in the instant case here, drastically downward - and implement a medically dangerous alternative in its stead.

As a second matter of first impression, petitioner points to the dichotomy of crafting an IILP plan while leaving the participant in an information vacuum. Memorialization of any proposed IILP plan in the form of "approval" as described in 38 CFR §21.92(b) is a necessary predicate prior to implementation of same as described in §21.92(c). Merely presenting an approved plan on a VA-approved form (VAF 28-8872) as an afterthought immediately before implementation is fraught with potential pitfalls-as petitioner is now witness to twice over.

In *Sambonis v. Brown*, 6 Vet. App. 426 (1994), the Court noted that "only where a statute's plain meaning leads to an absurd result that Congress clearly could never have intended is the "plain meaning" rule abandoned for a review of the application of the applicable legislative history and statutory construction." Here, in a nutshell, petitioner perceives a case of an executive officer, dawdling overly long- and finally revising and reducing an award absent any statutory authority. In addition, the officer baldly substitutes his own medical knowledge and learned agrarian practices to the possible medical detriment of the recipient. If the Director feels there was clear and unmistakable error in the rating decision, he has the authority to deny it and remand to the AOJ to revise it as necessary (assuming, arguendo, that there was indeed CUE).

38 CFR §21.98(c) states:

Review by Director, Vocational Rehabilitation and Employment Service. The veteran's request shall be **reviewed** by the Director, VR&E in any case in which the VR&E Officer is the case manager. **The veteran will be informed of the decision within 90 days** (emphasis petitioner's). Petitioner would point to the inexplicable 5 ½ month delay in returning the truncated and revised IILP.

The Merriam Webster Dictionary is accepted in most cases by the Veterans Administration to define terms used in 38 CFR. The dictionary defines 'review', as used in the legal context of §21.98(c), thusly: "*judicial reexamination (as of the proceedings of a lower tribunal by a higher)*".

Petitioner submits the “higher tribunal” enumerated above would unarguably be construed as the trier of fact –i.e. the Board of Veterans Appeals.

The Secretary would have the Court believe 38 CFR §21.98(c) operates here to grant Director, VR&E Services plenary executive authority to revise a decision consummated legally and mutually below by a duly constituted rating authority in the absence of any clear and unmistakable error. As 38 CFR §3.104(a) confirms finality absent any error of commission or omission contemplated in 38 CFR §3.105(a), it would appear the Secretary, sub silentio, grants Director, VR&E Services appellate adjudicatory powers to review as well as to modify AOJ agreements. Petitioner maintains the Director’s authority is far more limited to a review of the findings of fact by the duly constituted rating agency below with authority to reject them outright based *solely* on error. As the Director’s November 21st, 2017 letter is silent for error, the revised “grant” of an inferior greenhouse can only be seen as being void *ab initio*.

Additionally, the Director is being granted a license to opine medically on what is, and what is not, necessary to petitioner’s successful Individualized Independent Living Program (IILP) in clear violation of Colvin v Derwinski, 1 Vet.App. 171,175 (1991). Petitioner fashioned his needs for the greenhouse specifically around both his extensive service connected injuries as well as numerous other medical conditions which are nonservice connected. 38 CFR §21.160(a) unequivocally grants this consideration. In fact, part of the reason for the original disagreement was debate over the severity as well as number of disabilities. Petitioner includes a current list of disabilities downloaded from the VA eBenefits site on February 17th, 2018. (See Exhibit E) In addition, petitioner suffers gait ataxia due to low ferritin levels from numerous phlebotomies. The ferritin deficit recently culminated in congestive heart failure and implantation of a defibrillator/pacemaker on February 8th, 2017. The October 14th, 2016 greenhouse agreement comprehended *all* these disabilities.

In 2009, the Federal Circuit Court of Appeals (CAFC) rescinded the Extraordinary Awards Procedure (EAP) encompassed in VA FAST letters 7-17 and 8-24. The Court held any *de novo* review *in camera* with the Veteran or counsel unaware of this review being undertaken violated due process and left the Veteran subject to a “review” by a secret tribunal unbeknownst to him. The Court clearly pointed out the illegitimacy of such a review and forbid it henceforth.

Petitioner now come before the Court to argue he is likewise being subjected to an identical adjudicative “review”- and indeed, a substantial reduction- by an executive officer -in the instant case the Director, VR&E Services. The object of the review is clearly and unmistakably aimed at reducing the award (size of greenhouse and associated accoutrements) financially with no legal representation and no judicial or medical oversight. Likewise, this ‘review’ is couched as a finding of fact held below where no such conclusion of law was held. Petitioner concludes this action is void ab initio for the above enumerated reasons.

38 USC §3120(d) states:

(d) A program of independent living services and assistance for a veteran shall consist of such services described in section 3104(a) of this title as the Secretary determines necessary to enable such veteran to achieve **maximum independence in daily living**. Such veteran shall have the same rights with respect to an individualized written plan of services and assistance as are afforded veterans under section 3107 of this title. (emphasis petitioner’s)

38 USC §3120(e)(1) states: Programs of independent living services and assistance shall be initiated for no more than **2,700 veterans** in each fiscal year, and **the first priority in the provision of such programs shall be afforded to veterans for whom the reasonable feasibility of achieving a vocational goal is precluded solely as a result of a service-connected disability**. (emphasis petitioner’s).

Petitioner attaches the most recent VR&E ILP Case Statistics to the Writ in order to show the Court how such a valuable program created by Congress has fared over the years. As demonstrated, the VA VR&E statistics reveal they are unable to fill all the scarce allotted slots for this much sought after program. Can it be there is a dearth of eligible Veterans so severely disabled as to be unable to fill the minuscule quota of 2,700 individuals?

Petitioner additionally points to the tenets of 38 CFR §21.98(c) inasmuch as the Director, VR&E Services was in constructive possession of the finished request for services on or about July 10th, 2017 but nevertheless failed to “review” the IILP within the allotted ninety days as stated in the regulation. After the passage of almost five and one half months, the “review” impermissibly reduced the mutually arrived at decision and a new finding of fact was substituted in its stead.

**C. Under the circumstances of this petition,
the Court must conclude that a Writ is warranted.**

The third codicil states the Court must be convinced, given the petitioner’s unique circumstances, that the issuance of the Writ is warranted. Petitioner need point no further than the two and one half year-old BVA decision and the continued parade of delays, promises and illegitimate revisions encountered to date. VA has been in constructive possession of the BVA decision since September 4th, 2015. Petitioner submits he has bargained in good faith and the defect discovered in CAVC # 16-2098 (i.e. 38 CFR §21.98(c)(1)) was rectified as of October 14th, 2016. In spite of overcoming this deficit, the Director, VR&E Services appears to have usurped the authority of a duly constituted adjudicatory body and substituted his own opinion in its stead. This clearly violates the case law and precedence of *Henderson v. Shinseki*, 562 US 428 (2011) (A veteran who loses before the Board may obtain review in the Veterans Court, but a Board decision in the veteran’s favor is final).

D. Obstruction of the Administration of Justice

In *Ebert v. Brown*, 4 Vet. App. 434 (1993), the Court defined the parameters of misbehavior. Quoted here is a pertinent passage in light of the Court’s parting pronouncement on August 25th, 2016 in CAVC # 16-2098.

“This Court has express statutory authority to punish contempt of its authority pursuant to 38 U.S.C.A. § 7265 (West 1991) under the following circumstances:

(1) misbehavior of any person in . . . (the Court's) presence or so near thereto as to obstruct the administration of justice;

(2) misbehavior of any of its officers in their official transactions; or

(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command. 38 U.S.C.A. § 7265(a). **In addition, the Court has the power to sanction those who abuse the judicial process** under the "inherent power of the federal courts." See Jones v. Derwinski, 1 Vet.App. 596, 606 (1991) (citing Chambers v. NASCO, Inc., 111 S.Ct. 2123, 2132 (1991)). In each case, the Court "must take care to determine that the conduct at issue actually abused the judicial process." See Jones, 1 Vet.App. at 607 (citing Roadway Express, Inc. v. Piper, 447 U.S. 752, 766 (1980)). **Moreover, a finding that the conduct at issue constituted or was tantamount to bad faith is a precondition to imposing sanctions under the Court's inherent power.** See Chambers, 111 S.Ct. at 2135 (citing Roadway Express, 447 U.S. at 767); United States v. Wallace, 964 F.2d 1214, 1219 (D.C. Cir. 1992); United States v. Int'l Bhd. of Teamsters, 948 F.2d 1338, 1345 (2nd Cir. 1991). Ebert v. Brown 4 Vet. App. 434 (1993). (emphasis petitioner's).

On January 25th, 2018, by prior appointment, petitioner attempted to engage in a meaningful colloquy with Seattle Regional Office Assistant Director Cesar Romero. Petitioner politely pointed out the illegality of the Director, VR&E Service's actions in revising the IILP. Mr. Romero pointedly ignored the salient argument by persistently reminding petitioner that the offer of a 15'X20' greenhouse was now squarely in petitioner's court. Discussion on the legality of the action was squelched from the outset and Mr. Romero would brook no further discussion on that facet of the IILP plan.

Petitioner feels the import of the Federal Circuit's 2009 decision in MOPH *supra* put the Secretary on notice that impromptu secret adjudications in camera, unbeknownst to the parties directly impacted, would no longer be tolerated. Nevertheless, history now repeats itself nine years later in an eerily identical set of circumstances after a rather strong admonition by the Court to put this to right in a timely manner in CAVC # 16-2098.

Conclusion

While petitioner certainly regrets once again squandering scarce judicial resources and pestering the Court over such mundane matters as the above contretemps, he remains committed to ensuring his entitlement is properly and fairly administered. Elsewise, why even bother to construct a plan and approve it if the VR&E will not pay it so much as lip service?

Regrettably, there is scant case law to illuminate and guide the Court in this regard. The boundary between the VBA, the agency of original jurisdiction and the Director, VR&E Services is nebulous and appears to permit executive office holders powers normally reserved for duly appointed adjudicatory tribunals.

Petitioner has fallen into an abyss wherein legally constituted decisions can not only be abrogated but entirely new decisions can be crafted out of whole cloth and substituted arbitrarily in their stead. Petitioner submits Congress did not intend such absurd results.

Petitioner's local VR&E officer and his employees continue to characterize the grant of petitioner's greenhouse and others' ILP awards as "awards" synonymous with "gifts". Petitioner would point out that, in addition to what Congress posited in 38 USC §3120, anything requiring appeal to the Board of Appeals for a decision indisputably confers the term 'entitlement' on it and a legitimate financial interest covered by due process consideration. See *Cushman v. Shinseki* *supra*. Arbitrarily characterizing it (the ILP program) as a gift from VR&E, as has been contended, is semantically incorrect. The continued decimation and death of this valuable program by a thousand cuts in a subtle attempt to eviscerate it is not in keeping with the Department of Veterans Affairs declared values and goals.

Once again, petitioner humbly begs the Court to enforce the award of a 20'X28' greenhouse with the aforementioned accoutrements. Petitioner has survived an airplane crash (N199X, April 21, 1971), a gunshot wound (9/17/1970, Plaine des Jarres) as well as cured of a terminal Hepatitis C infection of 45 years

(12/07/2014). Petitioner has patiently litigated for his compensation benefits all the way up to the Court four times now over 28 years as well. Having finally been granted entitlement to a greenhouse to enjoy in his few remaining years, it seems incongruous for the Secretary and his assigns to pursue behavior clearly and unequivocally forbidden by the holdings in Ebert and MOPH et al *supra* of yet even more scarce judicial resources defending the indefensible. Reasonable minds can agree that the Secretary must staunchly husband the frivolous expenditure of funds entrusted to him. Nevertheless, at what point do the legal expenditures defending the present indefensible, abusive judicial foray cross the line and demand sanctions for misfeasance and/or malfeasance as envisioned in Ebert *supra*?

Either the Director, VR&E Services and his minions are engaged in something nefarious and illegitimate or else petitioner is misguided, misinformed and unnecessarily perturbed by the Secretary's findings. If the latter is the case, petitioner will fold up his tent and go home. However, it would appear there is misfeasance afoot and a concerted quasi-judicial effort has been employed thwarting petitioner's IILP plan for almost two and one half years to his detriment.

Petitioner would draw the Court's attention to the testimony by VR&E Officer David Boyd to his Declaration under penalty of perjury in the Exhibit appended to CAVC # 16-2098 (Respondent's Response dated July 13th, 2016) wherein he tacitly and freely acknowledged VR&E personnel squandered three months (September 15th, 2015 –December 16th, 2015) in an unsuccessful attempt to contravene or abrogate petitioner's BVA decision. This behavior set the tone for the ensuing two and one half years to the detriment of the petitioner.

Wherefore petitioner pleads for relief from the Court as enumerated above in the Statement of Relief Sought. Petitioner would not presume to characterize the Secretary's actions as deserving of sanctions. He would prefer to let the facts speak for themselves.



Veterans' Creed

Exhibit A

**Eight emails between petitioner
and VR&E Officer from 10/13/2016
and completed (agreed to) new IILP plan**

BOYD, DAVID W, VBASEAT <david.boyd1@va.gov>
To :gaegraham@yahoo.com
CC :BOYD, DAVID W, VBASEAT

© 10/14/16 at 1:08 PM

Mr. Graham,
I have included items we discussed today, 10/14/2016, in this final proposal. Please review and respond if you agree to move forward with your IL Plan. I will be awaiting your decision today. If there are questions or concerns, you will have to try to reach me at (253) 582-2927, as I am not in the office today.

David Boyd
Acting Assistant Director
Seattle Regional Office
(206) 341-8530/david.boyd1@va.gov



"Life is ten percent what happens to you and ninety percent how you respond to it." Lou Holtz

VR&E Video: <http://youtu.be/ykc6Q3PHfDw>
VR&E Web link: <http://www.vba.va.gov/bln/vre/>



Graham ...docx

◀ Reply ▶ Reply to All ➔ Forward ⏪ More

Mr. Boyd,

I do believe we have a workable solution. My one last concern after reviewing this is the choice of a portable water closet. While I submitted a cheaper chemical alternative after Mr. Holloway expressed dismay at the cost of the first two options, I find further reason to go the incinerator or composting toilet route.

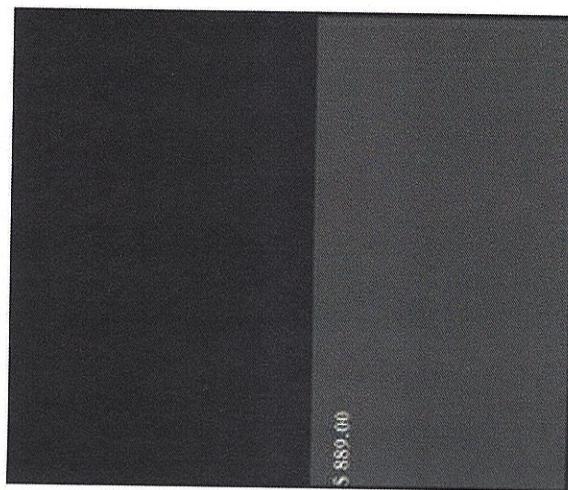
After reading user's reviews, I am leery of using the Laveo model from Home Depot I suggested earlier. However, if VA can spend \$20 million on artwork and solar energy panels, an eco-friendly toilet is a bargain in its own right. An incinerating or composting toilet is a far better alternative for the ecosystem versus having to handle, and manually dispose of, human waste. After reading the reviews, I discovered the pouches of waste are very heavy if used to the normal 15-17 "applications". Each use adds chemicals (and weight) to neutralize the odor. The final weight of a used bag exceeds my weight lifting limits of 15 lbs. and makes this alternative impractical. In addition, a package of three disposable "cartridges" costs \$54 dollars or \$18 each. That's about a dollar per use. However, disposal of human waste is not permitted with household waste by Pierce County Health Department regulations for obvious reasons. Connecting to the existing septic field would be prohibitive. I propose one of my earlier choices which could easily be installed in a fixed spot within the 20 X 28 structure. While it does seem expensive, the investment is one-time and requires no pouches or handling of waste. Disposal will be sanitary and on site in the outside gardening area.

Outside of that, we have a deal. If you can agree to that, we can shake hands and put this behind us. I look forward to your concurrence.

Gordon A. Graham
253-549-6111

Mr. Boyd,

I would accept this as a preferred alternative. No parts, no chemicals and nothing to dispose of other than compost to my own existing compost piles on site.
Separett Weekender Portable Composting Toilet Waterless



**Separett Weekender Portable Composting
Toilet Waterless**

Details Special Offers Why Buy From Us? Shipping - 48h Delivered!
Ships to Your Door in 5-12 Days or ~~Next~~ 24h Shipping

Gordon A. Graham
253-549-6111

On Friday, October 14, 2016 3:44 PM, "BOYD, DAVID W, VBASEAT" <david.boyd1@va.gov> wrote:

Thank you Mr. Graham,

I will have Mr. Hollaway move forward putting and plan together, we will forward for your review prior to submitting to VR&E Services for their approval. Thank you for your understanding and cooperation. Now let's get this done.

David Boyd
Acting Assistant Director
Seattle Regional Office
(206) 341-8530/david.boyd1@va.gov



"Life is ten percent what happens to you and ninety percent how you respond to it." Lou Holtz
VR&E Video: <http://youtu.be/yKc6Q3PHDw>
VR&E Web link: <http://www.vba.va.gov/bnl/vre/>

Dear Mr. Holloway,

It has now been 60 days since the oral agreement arrived at between myself and Mr. Boyd October 14th, 2016. I still have no confirmation of this other than a verbal agreement on the phone. I did contact you regarding a minor change on the lighting as you may recall. Accordingly, I am informing you per 38 CFR §21.98(b)(2) that the VR&E has thirty (30 days) to respond in writing to my requested change on the lighting. It would be unfortunate if we came this far only to begin litigation anew which we both know will merely prolong the inevitable.

(b) Review by Vocational Rehabilitation and Employment Officer, the Counseling Psychologist, (CP), the Vocational Rehabilitation Counselor (VRC), or the case manager will forward the request together with relevant comment to the VR&E Officer who will:

- (1) Review relevant information; and
- (2) Inform the veteran of his or her decision within 90 days.

In order to use best practices in energy consumption, I asked you to revise the proposed lighting for the greenhouse from energy-expensive halide or sodium pressure fixtures to the newer LED lighting. The LED fixtures use up to 70% less electricity and are the wave of the future. Indeed, VA is switching over to this technology at their facilities nationwide to conserve energy. As the VR&E has asked me to pay for the electricity, it is imperative to keep them affordable. You have acknowledged my request but I have heard nothing further on this. My experience on this from past encounters with you leads me to believe it will never be implemented or simply ignored as were substantive discussions on formulating the ILLP together in the fall of 2015.

In addition, VA has failed to present an agreement (VA Form 21-8872) incorporating these agreed upon items. I need the new LexisNexis Veterans Benefits Manual for 2016-2017 as soon as possible which Mr. my Individualized Independent Living Plan (ILLP), I will be forced to ask the Judge to recall mandate on Extraordinary Writ # 2016-2098 before the end of the year at the Court of Appeals for Veterans Claims. Order on August 25th, 2016. If Seattle's VR&E is unfamiliar with the findings, I reprint them here to clear up any misconceptions or ambiguity:

"It is incomprehensible to the Court that a veteran would be questioned in that environment about his or her need for an ADA-compliant structure, or that a VA employee would put a veteran in the position of having to appeal at every step for items or services to which he or she has been already deemed entitled. (emphasis mine)

And the Court reminds VA employees involved in implementation that, according to the VA General Counsel, VA has the "responsibility[] to provide all services and assistance deemed necessary on the facts of the particular case to enable an eligible veteran participating in an ILLP] to live and function independently in his or her family and community," including those services or benefits "found to be needed to enable or enhance the veteran's ability to engage in family and community activities." VA Gen. Coun. Prec. Op. 34-97. **The Court expects that those involved in implementation will provide reasonable accommodations and work to complete this ILLP, which has been approved for this severely disabled veteran, without further discord so that further costly and time-consuming appeals are not necessary.**" Bartley, M. (Judge) re #16-2098. (emphasis mine)

I would hope by now that VR&E would see the value of keeping the lines of communication open to eliminate any more misunderstandings on what we are doing here. Spring will be upon us soon and that means the delay in providing services granted on September 4th, 2015 will be over fifteen months with no firm schedule for completion.

I look forward to hearing from you within the next thirty days on what plans you have regarding the immediate signing of the VAF 21-8872 and implementation of the ILLP. Further delay will only provoke more time-consuming appeals and costly wasted judicial resources. I think I speak for all of us in hoping that we can avoid this disastrous scenario. However, I do wish to impress on you that my resolve to see this through is undiminished. The VA Secretary's legal counsel who contacted me in July 2016 asked me to keep him informed of any future delays. I have waited patiently for some progress but am unable to say that I can report any substantial progress to date.

Respectfully,

/s/
 Gordon A. Graham, VA Accreditation #390929
 253-549-6111

On Thursday, December 15, 2016 3:20 PM, "HOLLAWAY, KRIS, VBASEAT" <kris.hollaway@va.gov> wrote:

Because the funding threshold is above local authority, VR&E needs to identify a contractor, (which is where we are now. VR&E is not actually identifying a contractor but we are going through GSA contracting and they are identifying the contractor). Based upon your/Mr. Boyd's agreement, the PWS was rewritten and sent to the Contracting Officer. VR&E has done all we can at this point by getting the specs to contracting to now select a contractor to do the work. Once the contractor identifies their ability to fulfill the agreement and provide VR&E the project analysis(timelines and cost), at that time VR&E would write the I.L.P. The I.L.P (not yet signed by you or I), construction package I.L.P going up for signature. Then to CO. When Seattle, VR&E gets the package back from CO and there are no amendments, then you and I can sign the I.L.P. and go forth. The Manual I is included in the I.L.P going up for signature. It's one package.

From: G. Alexander Graham [mailto:gashraham@yahoo.com]
Sent: Wednesday, December 14, 2016 1:13 PM
To: HOLLAWAY, KRIS, VBASEAT; Nicholas Carr
Subject: Re: [EXTERNAL] I.L.P

Thank you for your prompt reply. This still doesn't address the matter of the signing of the VAF 21-8872 nor timely supplying the LexisNexis VBM manual. Correct me if I am wrong but do you need a PWS to issue the 8872 or supply the \$350 VBM manual and accompanying CD?

Respectfully,
G. A. Graham
253-549-6111

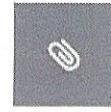
On Wednesday, December 14, 2016 11:13 AM, "HOLLAWAY, KRIS, VBASEAT" <kris.hollaway@va.gov> wrote:

The Performance Work Statement was modified to reflect the new agreement. Case Management Services was provided time to complete the new PWS. The changes have been changed and contract modifications forwarded to Contracting. Contracting will be contacting me when they complete their review of the project.

HOLLAWAY, KRIS, VBASEAT <kris.hollaway@va.gov>
To: gaegraham@yahoo.com

The Performance Work Statement was modified to reflect the new agreement. Case Management Services was provided time to complete the new PWS. The changes have been changed and contract modifications forwarded to Contracting. Contracting will be contacting me when they complete their review of the project.

> Show original message



smhne.p/s

◀ Reply ▶ Reply to All ▶ Forward ⋮ More

✉ 12/4/16 at 11:13 AM

HOLLOWAY, KRIS, VBASEAT <kris.holloway@yahoo.com>

To: gaegraham@yahoo.com

07/17/17 at 2:42 PM

David Boyd, VR&E Officer has sent the packet to the Director of VR&E Service last week. He is not in this week to confirm exactly what the status of the packet is. I hope to hear from him next week.

v Hide original message

From: GAlexander Graham [mailto:gaegraham@yahoo.com]
Sent: Monday, June 26, 2017 1:57 AM
To: HOLLOWAY, KRIS, VBASEAT
Subject: [EXTERNAL] IILP

Dear Mr. Holloway,

Please clarify the present posture and or progress of the IILP grant for the greenhouse. It has been several months since I last heard from you
(April 26th, 2017).

Sincerely,
Gordon A. Graham



smime.p7s

◀ Reply ▶ Reply to All ▶ Forward ⋮ More

GAlexander Graham <gaegraham@yahoo.com>
To: HOLLOWAY, KRIS, VBASEAT
07/28/17 at 8:48 AM

Thank you for the update.

October 14, 2016

Mr. Graham,

Based on our telephonic discussion with Seattle VR&E, BVA Orders and consideration of your SC/NSC functional limitations as it relates to your impact on your ability to perform avocational gardening pursuits, we are proposing I.L. Services that would include the following items to increase your ability to perform activities of daily living and to live and function independently in your home and community:

The following are I.L. services that VR&E will provide:

- 20' x 28' x 12' Heated Greenhouse with Louvers and Temperature control system. To include ADA height tables, ADA access- 2 ea. doors, ADA aisle way access, lights and growing lights as necessary, thicker UV poly-carbonate material.
- Hydroponics system
- Orientation training on Hydroponic system, short term.
- Concrete slab for inside greenhouse, 20' x 28'
- Rubber mats to cover concrete for falls in greenhouse.
- Port-a-potty – as reasonable and realistic
- Concrete access from front greenhouse to existing walkway
- Start-up Supply of Chemicals for Hydroponic system, (90-day supply)
- Start-up Supply of Propane (90 Day Supply)
- Water bibs as necessary, per contractor
- Electrical outlets 110V/240V as necessary by contractor
- 2 Yr. Subscription to Nexus Lexus

Justification for I.L. services:

I.L. services would allow you to pursue your greenhouse avocational activities that you are currently limited in performing. A greenhouse 20' x 28'x 12" would allow you exponentially produce crops year round. You currently have limited access to current greenhouse egress, and W/C access. Due to your sun sensitivity, VR&E will provide thicker UV Poly-carbonate material. Also due to your lifting limitations, VR&E will provide a Hydroponic system. A Licensed contractor will oversee all work to determine Code requirements provided by GSA.

The following incidentals will be provided by Mr. Graham:

- Reoccurring Payment for Propane bills after 90 Day Supply
- Reoccurring Insurance Expenses
- Reoccurring Electrical Expenses
- Reoccurring Water Expenses
- Seeds

Justification:

Based upon M28R. Pt IV, Sec. C, Ch 9.05, (b) (6). The individual must have the ability and resources to sustain the activity or pursue after the period of rehabilitation services are completed". The Veteran must be able to incur the cost of sustaining services or it is not reasonably feasible in achieving his I.L. goal.

Kris Hollaway
Counseling Psychologist

Exhibit B

FOIA Request Dated 12/22/2017

submitted to VA VR&E on 12/23/2018

Department of Veteran Affairs
Vocational Rehabilitation and Employment (28)
500 Pacific Ave; Suite 602A
Bremerton, WA 98337

Attention: Danial Crosby
Re: FOIA Request

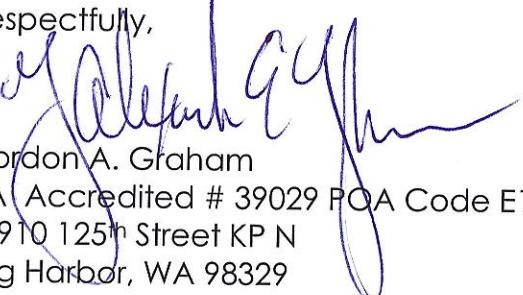
December 22, 2017

Dear Danial,

Per our 12/21/2017 email conversation re your recent receipt of greenhouse authorization letter from Director, VR&E Services, I hereby request a copy of same for my records on this matter.

Have a very happiest of Holidays.

Respectfully,


Gordon A. Graham
VA Accredited # 39029 PQA Code E1P
14910 125th Street KP N
Gig Harbor, WA 98329

cc: Hand delivered.



Department of Veterans Affairs

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The VA will not disclose information collected on this form to any source other than what has been authorized under the Privacy Act of 1974 or Title 38, Code of Federal Regulations 1.576 for routine uses (i.e., civil or criminal law enforcement, congressional communications, epidemiological or research studies, the collection of money owed to the United States, litigation in which the United States is a party or has an interest, the administration of VA Programs and delivery of VA benefits, verification of identity and status, and personnel administration) as identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records - VA, published in the Federal Register. Your obligation to respond is required to obtain or retain benefits. VA uses your SSN to identify your claim file. Providing your SSN will help ensure that your records are properly associated with your claim file. Giving us your SSN account information is voluntary. Refusal to provide your SSN by itself will not result in the denial of benefits. The VA will not deny an individual benefits for refusing to provide his or her SSN unless the disclosure of the SSN is required by Federal Statute of law in effect prior to January 1, 1975, and still in effect. The requested information is considered relevant and necessary to determine maximum benefits under the law. The responses you submit are considered confidential (38 U.S.C. 5701). Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: We need this information to obtain evidence in support of your claim for benefits (38 U.S.C. 501(a) and (b)). Title 38, United States Code, allows us to ask for this information. We estimate that you will need an average of 15 minutes to review the instructions, find the information, and complete this form. VA cannot conduct or sponsor a collection of information unless a valid OMB control number is displayed. You are not required to respond to a collection of information if this number is not displayed. Valid OMB control numbers can be located on the OMB Internet Page at www.reginfo.gov/public/do/PRAMain. If desired, you can call 1-800-827-1000 to get information on where to send comments or suggestions about this form.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)

Gordon A. Graham

SOCIAL SECURITY NO.

VA FILE NO.

C/CSS -

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

Request document from Mr. URE E Services
re: Approval of Greenhouse.

VA FORM 10-1080-1
VETERAN'S BENEFITS
VOCATIONAL REHABILITATION
16

RECEIVED
DEAILED

2018 FEB 16 AM 05:51

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

SIGNATURE

DATE SIGNED

2/16/16

ADDRESS

1401 125th ST ZIP N
Gig Harbor, Wa. 98329

TELEPHONE NUMBERS (Include Area Code)

DAYTIME

EVENING

253 313-5377

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.

Exhibit C

**11/21/2017 Letter from
Director, VR&E obtained**

2/16/2018



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

*Evidence Received
Date: 2/16/18*

November 21, 2017

Mr. Pritz Navarathnasingam, Director
Department of Veterans Affairs Regional Office
Henry M. Jackson Federal Building
915 Second Avenue
Seattle, WA 98174

SUBJ: Independent Living (IL) Cost Approval Request - Construction in excess of \$15,000 for Mr. Gordon A. Graham

1. The review of modification construction costs (\$24,370.00) to support an avocational activity and provide Mr. Graham with an accessible greenhouse is complete. The costs of modifications identified in the Individualized Independent Living Plan are approved.
2. The proposed construction costs include:
 - Construction of an accessible greenhouse that measures 15 feet by 20 feet
 - Installation of a basic hydroponic system
3. In May 2014, Mr. Graham appealed the decision by local Vocational Rehabilitation and Employment staff to not provide an accessible, climate controlled greenhouse. In September 2015, the Board of Veterans Appeals ruled in Mr. Graham's favor.
4. The provided greenhouse and hydroponic system will enable Mr. Graham to pursue his avocational interest in gardening, which improves his ability to engage in family and community activities integral to his independent living goals. The new greenhouse will facilitate gardening throughout the year and provide access for wheelchair use.
5. The local VR&E staff should inform Mr. Graham of the outcome of this review.

Sincerely,

/s/
Jack Kammerer,
Director, Vocational Rehabilitation
and Employment Service

Exhibit D

**VA Form 28-8872 presented to and
declined by Petitioner for signing**

July 13th, 2016.



Department of Veterans Affairs

REHABILITATION PLAN

1. DATE
07/07/2016

2. FIRST - MIDDLE - LAST NAME OF VETERAN
Gordon A. Graham

3. CLAIM NUMBER
3747 / 00

4. SOCIAL SECURITY NUMBER
-3747

5. PROGRAM PLAN

IILP

6A. TYPE OF PLAN
Original

DOT Code and Title
000 No DOT Code Required

6B. AMENDMENT NO. TO IWRP

6C. DATE OF IWRP

7. PROGRAM GOAL

To maintain activities of daily living through the participation in year round gardening activities

NOTE: INTERMEDIATE OBJECTIVES TO ACHIEVE PLANNED GOAL COVERED IN ITEMS 8 THRU 12.

8A. OBJECTIVE ONE (Description)

VBA Contracting Division will provide guidance and oversight on the construction of an ADA compliant greenhouse in accordance with requirement of FAR, VR&E guidelines, and per BVA decision.

8B. ANTICIPATED COMPLETION DATE

07/2018

8C. SERVICES PROVIDED

VBA appointed Construction Manager will conduct a work site assessment and oversee construction of a heated 15' x 20' ADA compliant greenhouse per specifications outlined in the Performance Work Statement

8D. DURATION OF SERVICES

| | |
|-----------------|---------------|
| FROM (Mo., Yr.) | TO (Mo., Yr.) |
| 07/2016 | 07/2018 |

8E. NAME & ADDRESS OF PERSON OR INSTITUTION PROVIDING SERVICES

JACKSON FEDERAL BUILDING
US Dept of Veterans Affairs
915 2nd Ave., Rm 1356
Seattle, WA 98174

8F. PERSON TO CONTACT (If institution)
Kris Hollaway

8G. TELEPHONE NO. (Include Area Code)
206 341 8541

8H. EVALUATION CRITERIA

Veteran will participate and cooperate with VBA Contractor in construction of greenhouse.

8I. EVALUATION PROCEDURE

VR&E will review VBA Construction Manager's assessment and authorize construction of ADA compliant greenhouse per regulation and ensure the structure is functional and accessible as not to aggravate disabilities.

8J. EVALUATION SCHEDULE

Review construction at least once per month.

8K. PROGRESS NOTES

9A. OBJECTIVE TWO (Description)

Veteran is to maintain year round gardening activities in pursuit to avocational activities to increase his independence in daily living activities.

9B. ANTICIPATED COMPLETION DATE

07/2018

9C. SERVICES PROVIDED

Provide case management services to assess veteran's ability to sustain independence in daily living activities.

9D. DURATION OF SERVICES

| | |
|-----------------|---------------|
| FROM (Mo., Yr.) | TO (Mo., Yr.) |
| 07/2016 | 07/2018 |

9E. NAME & ADDRESS OF PERSON OR INSTITUTION PROVIDING SERVICE

JACKSON FEDERAL BUILDING
US Dept. of Veterans Affairs
915 2nd Ave., rm 1356
Seattle, WA 98174

9F. PERSON TO CONTACT (If institution)
Kris Hollaway

9G. TELEPHONE NO. (Include Area Code)
206 341 8541

9H. EVALUATION CRITERIA

Veteran will demonstrate his ability to access indoor greenhouse activities, such as exhibiting new plantings, seasonal fruit and vegetables, flowers or any other activities where a greenhouse is needed for independence.

Exhibit E

**VA eBenefits Statement of
disabilities as of 2/19/2018**

Disabilities



Total Combined Disability

You have a 100% final degree of disability. This percentage determines the amount of benefit pay you will receive.

[How is this calculated](#)

Add Disabilities

Submit a claim to make any updates to the disabilities that you believe are related to your military service.

[Apply Now.](#)

Rated Disabilities

| Disability | Rating | Decision | Related To | Effective Date |
|---|--------|-----------------------|-------------|----------------|
| ischemic heart disease | | Not Service Connected | | |
| right hip disorder | | Not Service Connected | | |
| Hepatitis C | 100% | Service Connected | Hepatitis C | 03/31/1994 |
| ↳ porphyria cutanea tarda scarring <small>?</small> | 30% | Service Connected | | 08/14/2012 |
| ↳ fibromyalgia and cryoglobulinemia <small>?</small> | 40% | Service Connected | | 10/02/2012 |
| ↳ porphyria cutanea tarda (hemic) <small>?</small> | 60% | Service Connected | | 03/31/1994 |
| ↳ porphyria cutanea tarda with residuals related to treatment through phlebotomies <small>?</small> | 100% | Service Connected | | 03/31/1994 |
| lumbar disorder | | Not Service Connected | | |
| hearing loss, right ear | | Not Service Connected | | |
| hearing loss, left ear | 0% | Service Connected | | 07/12/1989 |
| tinnitus | 10% | Service Connected | | 03/31/1994 |
| left hip disorder | | Not Service Connected | | |