Submission of Documents to Department Of Veterans Affairs

Board Of Veterans Appeals
Litigation & Support Division
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Please index this submission as one .pdf

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Type of Document Submitted:

☐	Request for Board Hearing at VA Central Office in D.C.(Rule 703)
☐	Request for Advancement of the Docket (Rule 902)
☐	Request for Copy of Hearing Transcript (Rule 712)
☐	Submission of New and Relevant Evidence associated with the Instant Appeal
☐	VAF 10182 NOTICE OF DISAGREEMENT (BVA Review)
☐	Motion for Reconsideration (Rule1002)
☒	Other 26-page Legal Brief for BVA Docket No. 190909-55963 with three Exhibits

Number of Pages Submitted (NOT including this cover sheet): Thirty three (33) Pages.

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Dept. Of Veterans Affairs
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July 19, 2023

Re: Graham, Gordon A. CSS [redacted]
Docket No. 190909-55963

Extra Pages for VAF 10182

Appellant, appearing *pro se*, now files his appeals brief in answer to the undated Statement of the Case uploaded into VBMS on September 11, 2019. Because he is *pro se*, he is entitled to both a sympathetic reading of his informal brief and a liberal construction of his arguments. See ***Calma v. Brown***, 9 Vet.App. 11,15 (1996); ***De Perez v. Derwinski,*** 2 Vet.App. 85, 86 (1992).

The only remaining matter pending before the Board on appeal is the matter of the physical size of the greenhouse and the promised accessories. Appellant will discuss the rationale and the need for an all-weather heated structure with hydroponic accessories and a padded concrete slab floor which comprehends the severity of all his disabilities- both service and nonservice connected.

In order to clarify the historical chronology for the Trier of fact, Appellant summarizes the history of the claim as briefly as possible. All dates refer to receipt date in VBMS. However, not all CER documents appear to be uploaded into VBMS in the evidence of record. After an extensive review, numerous references to documents in VRE VACO and VR&E Seattle emails are nowhere to be found.

History

On March 21, 2011, Appellant filed his original VR&E claim for ILP benefits.

BVA decision (Docket No. 13-09 654A) issued on September 4, 2015, granted entitlement to a heated, ADA greenhouse absent any size determination.

On April 12, 2016, the VRC met with the Veteran, presented a blank Performance Work Statement and requested a signature agreeing to acceptance of an undisclosed size of greenhouse. The Veteran declined to sign as there was no identified size or any associated accoutrements.

On July 13, 2016, the Veteran met with the Seattle VR&E Officer, his VRC and a VA-appointed construction supervisor and was summarily presented with a VA Form 28-8872 requiring the acceptance of a 15' X 20' greenhouse with few, if any, amenities outside of an overhead light bulb, an electrical outlet, a gravel floor and several work tables. The VR&E Officer announced that failure to accept the greenhouse as- is, that very day would result in delay and possible denial of the entire ILP grant.

On July 14, 2016, under the authority of §21.98(a)(2),(b)(2)(2011) the Veteran expressed disagreement with the proposed greenhouse size and invoked his entitlement to his promised 90-day administrative review.

On July 27, 2016, the Seattle VA Regional Director, at the behest of the VR&E Officer, requested an advisory opinion as to whether the 15'X20' greenhouse even complied with VR&E policy and procedures.

On August 11, 2016, the VA VBAWAS/CO/VRE/PA answered the VA Regional Director's query stating they were returning the Veteran's CER folder because **"an advisory opinion is not required as the local VR&E management**

staff has the authority to exercise professional judgement in reviewing decisions relating to development of a rehabilitation plan and adverse action." (emphasis added to original).

On October 12, 2016, the VRC obtained a detailed quote for a 20'X28' heated ADA greenhouse with hydroponics and lighting.

On October 14, 2016, the VRC, now styling himself as the Veteran's Counseling Psychologist, sent the Veteran a letter dated October 12, 2016, proposing they **will** provide a **"20' X 28' X 12'** high heated greenhouse with louvers [sic] and temperature control system" with stated accoutrements listed including, *inter alia*, a hydroponic system.

On October 14, 2016, the Seattle VR&E Officer rather than the Veteran's counseling psychologist, and the Veteran mutually concurred on a specific 20'X28' Greenhouse.

On October 25, 2016, the Seattle Regional Office Director, Pritz Navaratnasingam, contacted the Veteran's Congressman personally and assured him that the Seattle VR&E Officer, the Vocational Rehabilitation Counselor and the Veteran had finally reached a tentative, mutual agreement with the Veteran to construct a **24' x 24'** greenhouse.

On April 10, 2017, the Veteran completed the requirements for his IL Program with the completion of a VA Form 28-1905m mutually agreeing with the VRC/Counseling Psychologist to the agreed terms of the proposed IL Program for a **20' X 28'** greenhouse with heat, lighting and hydroponic accessories. Case Manager/VRC/Counseling psychologist Kris Holloway concurred and consummated the mutual agreement based on the plenary powers granted him on April 10, 2017, on behalf of the Secretary.

On August 7, 2017, (VBMS@ 8/14/2017), however, the Seattle VR&E Officer, undersigned by the Seattle VA Regional Director, caused to be submitted a request for financial approval *only* of IL Construction- **not** for a 20'X 28' greenhouse- but for a **15' X 20'** greenhouse based solely on the construction costs exceeding $15,000 to Director, VR&E Services. There is no discussion nor mention of any other proposed greenhouse size in the document.

On November 21, 2017, the Director, VR&E Services issued a letter approving the Veteran's IL Program **not** for the mutually agreed-upon 18'X24' or 20'X 28'greenhouse- but for the original, truncated **15' X 20'** greenhouse which was the bone of contention in the July 2016 §21.98 request for administrative review.

On February 16, 2018, having heard nothing, the Veteran queried his new VRC as to the status of the authorization. The VRC, implying he was no longer the Case Manager, stated he did not have the authority to release the decision document and said the Veteran would have to obtain the information directly from the VR&E Officer.

On February 16, 2018, the Veteran submitted a VA Form 21-4138 requesting a copy of the letter. He was informed he had to obtain the letter in person at the Seattle Regional Office. Shortly thereafter, the Veteran had to file a request to be issued a SOC from which to appeal.

On April 29, 2019, fourteen months later, the VR&E Officer issued the SOC confirming and continuing the denial of a greenhouse larger than **15' X 20'.**

This Appeal ensues under the new Appeals Management Improvement Act (AMA).

The Legal Landscape

In ***Smith (Reginald) v. Wilkie*** 32 Vet App. 332, 338 (2020) the Court held that it violates the principles of fair process for VA to reverse a prior characterization without giving an appellant notice and a second chance to respond.

In ***Hodge v. West***, 155 F.3d 1356, 1363 (Fed. Cir. 1998) the Fed. Circuit held "Furthermore, in the context of veterans' benefits where the system of awarding compensation is so uniquely pro-claimant, the importance of systemic fairness and the appearance of fairness carries great weight."

In ***Gonzales v. United States***, 348 U.S. 407 (1955), the Supreme Court held that despite the silence of the applicable statute and regulations as to a particular procedural requirement, such requirement was implicit in the statute and regulations when "viewed against our underlying concepts of procedural regularity and basic fair play." See also ***Withrow v. Larkin***, 421 U.S. 35, 47, 54 (1975) (although the combination of investigative and adjudicative functions does not necessarily create an unconstitutional "bias or the risk of bias or prejudgment" in the administrative adjudication, the Supreme Court cautioned that "we should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice"). See also ***Austin v. Brown***, 6 Vet.App. 547, 552 (1994).

"Therefore, when conducting evidentiary development concurrently, fair process requires that VA not give claimants, who are, after all, lay persons unskilled in the nuances of the law, the impression that it has made factual determinations upon which they can rely". See ***Hodge***, 155 F.3d at 1363; ***Austin***, 6 Vet.App. at 551- 52;

In ***Military Order of the Purple Heart v. Sec'y of Veterans Affairs***, 580 F.3d 1293 (Fed. Cir. 2009) the Federal Circuit invalidated VA procedures where Compensation and Pension Service reviewed large awards and made the final decision on the claim without the knowledge and participation by the claimant).

In ***Karnas v. Derwinski***, 1 Vet. App. 308, 317(1991), the Court held that "where the law or regulation changes after a claim has been filed or reopened but before the administrative or judicial appeal process has been concluded, the version most favorable to appellant should, and we so hold, will apply unless Congress provided otherwise or permitted the Secretary of Veterans Affairs (Secretary) to do otherwise and the Secretary did so. (overruled on other grounds ***by Kuzma v. Principi,*** 341 F.3d 1327 (Fed. Cir. 2003).

VA Office of General Counsel Precedent 34-97 held:

"VA has the authority, and responsibility, to provide all services and assistance deemed necessary on the facts of the particular case to enable an eligible veteran participating in such a program to live and function independently in his or her family and community without, or with a reduced level of, the services of others. This includes the authority to approve, when appropriate, services and assistance that are in whole or part recreational in character when the services are found to be needed to enable or enhance the veteran's ability to engage in family and community activities integral to the veteran's achieving his or her independent living program goals."

38 CFR §3.103 states:

It is the obligation of VA to assist a claimant in developing the facts pertinent to the claim and to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.

In ***Clemons v. Shinseki***, 23 Vet. App. 1, 5 (2009) the Court held a claimant "[does] not file a claim to receive benefits only for a particular diagnosis, but for the affliction his . . . condition, whatever that is, causes him." Consequently, VA "should construe a claim based on the reasonable expectations of the non-expert, self-represented claimant and the evidence developed in processing that claim," taking into consideration "the claimant's description of the claim; the symptoms the claimant describes; and the information the claimant submits or that the Secretary obtains in support of the claim." Id. VA commits error "when it fail[s] to weigh and assess the nature of the current condition the appellant suffer[s] when determining the breadth of the claim before it." Id. at 6.

§21.92(a) is not permissive, The regulation states:

(a) *General.* The plan **will** be **jointly developed** by Department of Veterans Affairs staff **and the veteran**. (emphasis added to original).

§21.94 Changing the plan states:

(a) *General.* The veteran, the Counseling Psychologist (CP) or Vocational Rehabilitation Counselor (VRC) or the vocational rehabilitation specialist may request a change in the plan at any time.

Further, subsection (b)(2) states:

(b) *Long-range goals.* A change in the statement of a long-range goal may only be made following a reevaluation of the veteran's rehabilitation program by the CP or VRC. A change may be made when:

(2) The veteran's circumstances have changed or new information has been developed which makes rehabilitation more likely if a different long-range goal is established; and

(3) The veteran fully participates and concurs in the change. (emphasis added to original).

(c) Intermediate objectives or services. A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals. **The veteran must concur in the change.** (emphasis added to original).

§21.98(a)(1),(2);(b)(1),(2) (2011) states:

(a) *General.* The veteran may request a review of a proposed, original, or amended plan when Department of Veterans Affairs staff and the veteran do not reach agreement on the terms and conditions of the plan. A veteran who requests a review of the plan must submit a written statement to the case manager which:

(1) Requests a review of the proposed, original, or amended plan; and

(2)Details his or her objections to the terms and conditions if the proposed original or amended plan.

(b) Review by Vocational Rehabilitation and Employment Officer. Upon receipt of the veteran's request for review of the plan, the counseling psychologist 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.

38 U.S. Code §3104(a)(16) - Scope of services and assistance states:

(a) Services and assistance which the Secretary may provide under this chapter, pursuant to regulations which the Secretary shall prescribe, include the following:

(16)
Other incidental goods and services determined by the Secretary to be necessary to accomplish the purposes of a rehabilitation program in an individual case.

38 U.S.C. §3120 states, in pertinent part:

(a)
The Secretary may, under contracts with entities described in subsection (f) of this section, or through facilities of the Veterans Health Administration, which possess a demonstrated capability to conduct programs of independent living services for severely handicapped persons, provide, under regulations which the Secretary shall prescribe, programs of independent living services and assistance under this chapter, in various geographic regions of the United States, to veterans described in subsection (b) of this section.

(b)
A program of independent living services and assistance may be made available under this section only to a veteran who has a serious employment handicap resulting in substantial part from a service-connected disability described in section 3102(1)(A)(i) of this title and with respect to whom it is determined under section 3106(d) or (e) of this title that the achievement of a vocational goal currently is not reasonably feasible.

(c)
The Secretary shall, to the maximum extent feasible, include among those veterans who are provided with programs of independent living services and assistance under this section substantial numbers of veterans described in subsection (b) of this section who are receiving long-term care in Department of Veterans Affairs hospitals and nursing homes and in nursing homes with which the Secretary contracts for the provision of care to veterans.

(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.

(e)(1) 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.

In ***Macklem v Shinseki,*** 24 Vet. App. 63, 76 (2010), aff'd ***Macklem v. Shinseki,*** 446 Fed. Appx. 310 (Fed. Cir. Jan 11, 2012) (unpublished), the Court held "In the absence of any lawful action by VA to internally review the June 2007 decision of the RO adjudicator that was favorable to the appellant, that decision must stand."

§3.103(f) stipulates that written notification must include in the notice letter or enclosures or a combination thereof, all of the following elements:

(1) Identification of the issues adjudicated;

(2) A summary of the evidence considered;

(3) A summary of the laws and regulations applicable to the claim;

(4) A listing of any findings made by the adjudicator that are favorable to the claimant under § 3.104(c);

(5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;

(6) If applicable, identification of the criteria required to grant service connection or the next higher-level of compensation;

(7) An explanation of how to obtain or access evidence used in making the decision; and

(8) A summary of the applicable review options under § 3.2500 available for the claimant to seek further review of the decision.

In ***Smith v.Wilkie,*** 32 Vet.App.332,337 (2020) The Court held "[the]fair process doctrine" is an obligation placed on VA to provide claimants fair process in the adjudication of their claims. This may include processes not required by statute or regulation if the principle of fair process requires an additional process because "it is implicitly required when viewed against [the] underlying concepts of procedural regularity and basic fair play of the VA benefits adjudicatory system."

In ***Fugere v. Derwinski,*** 1 Vet.App. 103, 108 (1990) The Court held "'Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.'" (quoting ***Morton v. Ruiz***, 415 U.S. 199, 235 (1974)).

§3.104(c) Favorable findings states: "(c) Favorable findings. Any finding favorable to the claimant made by either a VA adjudicator, as described in §3.103(f)(4), or by the Board of Veterans' Appeals, as described in §20.801(a) of this chapter, is binding on all subsequent agency of original jurisdiction and Board of Veterans' Appeals adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding."

In ***Browder v. Brown***, 5 Vet. App. 268, 270 (1993) the court held "Under the doctrine of 'law of the case,' questions settled on a former appeal of the same case are no longer open for review.").

Discussion

The Secretary has found the Veteran to be severely handicapped and admitted him to the ILP program for rehabilitation. This was confirmed initially by the 2012 grant of entitlement to a computer. The 2015 BVA decision granting

entitlement to a greenhouse further confirmed this entitlement. ***Browder*** *supra*. This is a favorable finding of fact and protected as a matter of law.§20.801(a). See ***Medrano v. Nicholson***, 21 Vet. App. 165, 170 (2007) (The Court is not permitted to reverse findings of fact favorable to a claimant made by the Board.)

One of the prime tenets of preparing an Independent Living Program (ILP) is mutual stakeholder involvement in the plan. 38 CFR §21.92(a) addresses this facet and assigns joint development to several entities- to wit: the Department of Veterans Affairs **and** the Veteran. Compliance with §21.92(a) is mandatory-not permissive. Please note the use of the Secretary's choice of the word "will". Likewise, §21.92(b) states: "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**.(emphasis added to original).

The Appellant wishes to point out to the Trier of fact that the prior Veterans Law Judge held, *in haec verba*, " As to integration into the community, the record suggests that the Veteran's gardening is in effect a small farming operation for his own use as well as benefiting others." The current denial of a larger heated structure essentially deprives him of this ability to benefit other Veterans in his community with free food-most especially in winter." This is a positive finding of fact and, as such, is binding on the present Board under §§3.104(c); 20.801(a).

Veterans Law judge Vito Clementi notably was not permitted by law to decide on what *size* of greenhouse was sufficient to accomplish independence in daily living. This appeal attempts to rectify the problem by definitively granting entitlement to an agreed upon, promised specific size which was determined by the VRC to suffice to accomplish the stated rehabilitation goals. §§21.98(b)(2); 21.160. See also VR&E Officer confirmation of concurrence dated October 14, 2016.

As mentioned in the History section *supra*, on October 4, 2016, the Veteran and his Vocational Rehabilitation Counselor (VRC) met to jointly concur on a proper size for a heated greenhouse pursuant to §21.92(b). A VA Form 28-1902n Counseling Record-Narrative Report (Supplemental Sheet) was completed memorializing a preliminary mutual agreement between VA and the Veteran for a 24' X 24' heated greenhouse with hydroponics for avocational use. See VBMS entry dated 10/04/2016. **Smith (Reginald)** *supra*. ***MacKlem*** *supra*.

On October 10, 2016, the VRC, pursuant to the meeting with the Veteran, obtained a proposal for a 20' X 28' heated greenhouse from Grower's Supply, a division of the FarmTek Corporation.

On October 12, 2016, the VRC, now assuming the mantle of "counseling psychologist", stated in a proposal that it will provide a "20'X 28' heated greenhouse with louvers [sic] and temperature control system. To include ADA height tables, ADA access-2 ea. Doors, ADA aisle way access, lights and growing lights/each, as necessary, 8 mil. UV poly-carbonate material." Please note the use of the mandatory "will". See VBMS entry dated 10/12/2016 five-page specifications for greenhouse.

On October 14, 2016, [redacted] VR&E officer Seattle, pursuant to §§21.94(b)(3),(c); 21.98(b)(2) (90-day suspense period for answering the Administrative Review), emailed the Veteran and asked him to review and to confirm mutual agreement with the 20'X 28' greenhouse document mutually arrived at. See 10/14/2016 email dated 10/14/2016 at 1:08 PM PST.

On October 14, 2016, the above-described VRE Correspondence confirmatory document was uploaded summarizing the 10/04/2016 mutual agreement of the Seattle VR&E, and the Veteran, based on the language of the BVA decision, to provide a 20'X28' greenhouse with associated equipment.

As will be pointed out, the VR&E evidence of record in VBMS diverges from actual evidence in the CER folder presented here. The absence of the documents frustrates judicial review.

In a response to the Veteran's Congressional inquiry on October 25, 2016, Seattle Regional Office Director [redacted] confirmed to the Congressman *in haec verba* that "we have reached a tentative agreement with the Veteran to construct a **24' X 24'** ADA compliant greenhouse We are currently working to complete an ILP plan of services for his signature so we can move forward with his plan." See VBMS Congressional Response dated 10/25/2016 in VBMS. ***Hodge*** *supra.*

On December 5, 2016, an additional unsigned VA Form 28-1905n was completed noting the modification of a larger space for greenhouse accommodations. See VBMS entry of 12/05/2016.

In a seven-page email chain from the VRE VACO coordinator [redacted], various parties discuss the increased scope of work for the Veteran's proposed greenhouse based on the increased size mutually arrived at on 10/14/2016. See VBMS entry dated 2/22/2017. The presumption of regularity posits VA VR&E employees would have no reason to squander scarce judicial resources on developing that which they had no intention of providing. ***Butler*** *supra.*

On March 22, 2017, VRE VACO [redacted] emailed the VRC to inform him he had to submit an IL construction package. In a handwritten note on the email, an unknown employee has noted the FarmTek package price for the **24'x28'** greenhouse of $49,909.00. The total noted $54,344.00 which essentially confirms a **20'x 28'** greenhouse proposal was being prepared rather than the eventual VR&E Officer's August 2017 request for funding of $22,578 for a smaller greenhouse and $1,792.00 for the hydroponics package.

On March 14, 2017, VRC Holloway signed a VA Form 2237 authorizing purchase of a **20'X 28'** greenhouse valued at $54,344.00. See VBMS entry of 4/08/2017.

On April 10, 2017, the mutually agreed upon **20'x28'** greenhouse size was memorialized and signed by the VRC and the Veteran on VA Form 28-1905m. (See VBMS entry dated 4/10/2017.§ 21.92(a).

Nevertheless, on August 7, 2017, VR&E Seattle Regional Officer [redacted] usurping the authority of the VRC/counseling psychologist, requested funding for a **15'X20'** greenhouse at $24,370 in spite of the mutual agreement of the **20'X28'** greenhouse priced at $56,144.00 in clear violation of §§21.92(b); §§21.94(b)(3); 21.98(b)(2). The VR&E Officer intimated in his letter to Director, VR&E Services Jack Kammerer that on August 3, 2017, he had unilaterally decided, in violation of both §21.92(a) and (b), to revoke the prior mutual agreement between the Veteran and his VRC agreeing to the **20'X 28'** greenhouse. The original proposed **15'X20'** greenhouse was not, and never has been, mutually accepted or agreed to by all parties at any time. In point of fact, the VR&E Officer has never been a party to the §21.92(a) IILP proposal or agreement. (See VBMS entry of August 14, 2017).

The decisions are void ab initio by virtue of the Secretary's very own regulations. In addition, the reliance on the VA's M 28R to guide the development and implementation is flawed at its outset. The VR&E date of claim for rehabilitation began on the filing date on March 20, 2011. At that time, the M 28 -1 Manual was in effect. In any event, the Court has held numerous times in these instances that adjudication under the most favorable regulation is for application. See ***Karnas*** *supra.*

VA OGC precedent 34-1997 is also for application. Point #11 on page three of the holding states:

"the plain congressional directive of the current law is that the Secretary **must** afford the services and assistance deemed necessary to accomplish the broad statutory program objective of enabling eligible veterans to achieve maximum independence in daily living." (emphasis added to original).

Further, in the OGC 'Held' discussion, point #2 is for application. To wit:

"2.**VA has the authority, and responsibility, to provide all services and assistance deemed necessary on the facts of the particular case to enable an eligible veteran participating in such a program to live and function independently in his or her family and community without, or with a reduced level of, the services of others.** This includes the authority to approve, when appropriate, services and assistance that are in whole or part recreational in character when the services are found to be needed to enable or enhance the veteran's ability to engage in family and community activities integral to the veteran's achieving his or her independent living program goals." (emphasis added to original).

On the subject of sustainability, the factual predicates used to determine the Veteran's financial ability to continue his rehabilitation upon completion of the program are in error. On approximately April 1, 2017, the VRC asked for financial income information from both the Veteran as well as his wife to determine this Veteran's ability to sustain the greenhouse operation post-rehabilitation. However, a year earlier, on May 17, 2016, in reply to letter to the Veteran's Congressman, the Seattle congressional Interests officer, on page two of three, recited the very same information regarding income.

On page six of seven of the August 7, 2017, letter to the Director, VR&E Services, the VR&E Officer baldly alleged the Veteran spent $2,000.00 per month to feed two horses absent any documented confirmation. Appellant disagrees with this assessment. The Veteran freely volunteered assessments of his VA and SSA monthly amounts which are a matter of record. The Veteran lives on five acres- over four of which are grassy pastureland. The correct figure for feed is

closer to about $80 per month. As for income, the estimate failed to comprehend the Veteran's wife owns and operates a real estate agency with over twelve agents. Her income from this varies but is invariably in excess of six figures per year before taxes. The Veteran owns his property free and clear with the exception of modest utility costs and annual property taxes. The property is supplied by a private well on Appellant's own land. ***See Evans v. West***,12 Vet.App.22,31 (1998)(Court will give no consideration to a "vague assertion" or an "unsupported contention"). See also ***Miller v. West***, 11 Vet. App. 345,348(1998) Holding "a bare conclusion, even one reached by a health care professional, is not probative without a factual predicate in the record". . See ***Fountain v. McDonald***, 27 Vet.App. 258, 272 (2015) (holding that the Board "must first establish the proper foundation for drawing inferences against a claimant from an absence of documentation").

VA has a duty to fully and sympathetically develop the Veteran's claim to its optimum, which includes determining all potential claims raised by the evidence and applying all relevant laws and regulations. See ***Harris v. Shinseki***, 704 F.3d 946, 948-49 (Fed. Cir. 2013); ***Szemraj v. Principi,*** 357 F.3d 1370, 1373 (Fed. Cir. 2004); ***Moody v. Principi***, 360 F.3d 1306, 1310 (Fed. Cir. 2004); ***Roberson v. Principi,*** 251 F.3d 1378 (Fed. Cir. 2001).

As for the Appellant's current health, he suffers permanent, chronic porphyria cutanea tarda. Porphyria cutanea tarda (PCT) is one of three forms of porphyria that primarily affects the skin. People afflicted by this condition generally experience "photosensitivity," which causes painful, blistering lesions (bullous pemphigoids)to develop on sun-exposed areas of the skin (i.e. the ears, hands, neck and face). Skin in these areas may also be particularly fragile with blistering and/or peeling after minor trauma. See https://rarediseases.info.nih.gov/diseases/7433/porphyria-cutanea-tarda (last visited 7/31/2023). In addition, due to NSC Crohn's disease, the Veteran has undergone 5 VA abdominal surgeries and has no functional abdominal muscle structure remaining with 6 ventral hernias. (VA CAPRI 4/2010). This limits lifting to no more than 15 pounds. He also suffers NSC degenerative disc disease at the L5-S1 juncture and severe back pain. Likewise, Appellant's service connected cryoglobulinemia causes documented immunoglobulin coagulation below 40 °F. (See VHA CAPRI records 2009-2010).

Conclusion

Appellant has never asked for a **50' X 100'** greenhouse nor has he ever knowingly requested a **24'X48'** greenhouse. Several suggestions were proposed but only after a working session with the Veteran and his VRC's participation. The arbitrary and capricious, unilateral decision on August 7, 2017, announcing that VA was proposing to award a **15'X20'** structure occurred unbeknownst to the Veteran and subsequent to all prior agreements and commitments to build either a **20'X28'** or a **24'X24'** greenhouse. ***Fugere, Smith, MOPH, Hodge, Gonzales*** *supra.*

During the pendency of the award phase, in 2016, Appellant suffered NSC congestive heart failure and had a pacemaker with a defibrillator implanted in his chest. However, at no time was he out of touch with the VRC/counseling psychologist or the Seattle VR&E Officer. He continues to work and garden at a more sedate pace but still wishes to be rehabilitated re independence in the activities of daily living. He is still entitled to the greenhouse award per ***Medrano, Browder*** *supra.*

Historically, following enactment of the Independent Living Program in 1981, extremely disabled Veterans were awarded all manner of recreational aids such as photography studios, fishing gear, boats, riding lawnmowers, farm tractors, snowplow attachments for same, metal detectors, and a plethora of other items to help them integrate back into society following the Vietnam war. The program was a rousing success and has never had any financial cost limits attached to it. In point of fact, given the threshold limit of 2,700 participants per year, the mere fact that only 597 individuals could be identified as most severely disabled in the 2018 Veterans' population shows the financial constraints the greenhouse might impose on other Veterans in the IL program, if any, are inconsequential.

Unfortunately, the program has been gradually reduced to a former shadow of itself. In spite of Congress' meager allowance for 2,700 extremely

disabled Veterans to partake in this largesse per year, the program now provides little more than grab bars in showers, sock puller-uppers, grabbing devices to reach items on the top shelves in kitchens and the like. These are normally supplied under the Specially Adapted Housing (SAH) entitlement or the Home Improvement and Structural Alterations (HISA) programs and not what the IL Program was designed or intended for.

Up until 2018, upon request, the VA VR&E folks freely supplied this Veteran with a Microsoft Excel Worksheet showing IL participation. In 2004, there were 2,689 cases of IL rehabilitation. By 2015, the number of approved Veterans for IL programs had shrunk to 1,426 individuals. That was eight years ago. When this Veteran was awarded entitlement to a greenhouse in the BVA decision, no one at the Seattle VR&E knew how to implement it and baldly went so far as to query the Director, VR&E Services VACO as to whether they were even obligated to obey the BVA's decision. This speaks volumes to the present instant appeal and the future of the IL Program. See Exhibit A ILP Spreadsheet.

When formulating a request for a greenhouse to enjoy the outdoors safely, Appellant based it on the sum of his most extreme disabilities-i.e., photosensitivity, weight-lifting restrictions, and cold intolerance

An email from the Veteran's counseling psychologist to the VR&E VACO Independent Living Coordinator on February 1, 2016, during the initial phase of creating a mutually agreed upon ILP for this Veteran is extremely telling. The psychologist lamented to the VACO ILP coordinator:

" I am coming up with $3,000 for a greenhouse not to mention utilities and construction. He will not buy off on this size. So this will be a ping-pong match. I don't want to get into a ping-pong match and have this veteran appeal, write his congressman and keep calling VR&E CO. I am working with SAH and understand that I will need to get a statement of work etc…but the veteran and VR&E need to have a reasonable starting point, which is to agree on size."

The parallels between this Veteran's travails in the VR&E system mirror the machinations of the Secretary's implementation of the Excessive Awards Program (EAP) in 2007. The Seattle VR&E Officer, undertook an illegitimate, *in camera*, secret review of the award of a **20'X 28'** greenhouse and summarily reduced it in size to a **15' x 20'** structure in violation of the previous April 10, 2017, mutually agreed upon size. ***MOPH*** *supra.* ***MacKlem*** *supra.* §§21.92(a); 21.94(b)(c). He then caused this new version to be transmitted for financial approval.

Even more confusing is the VR&E Officer's constructive knowledge of the Director's earlier instructions in his August 11, 2016, email reply to the Seattle VRE Officer:

"VR&E Service is returning Mr. Gordan [sic] Graham's Counseling/Evaluation /Rehabilitation (CER) folder **because an advisory opinion is not required**. In accordance with 21.98 and M28R, Part III, Section C, Chapter 3**, the local VR&E management staff has the authority to exercise professional judgement in reviewing decisions related to development of a rehabilitation plan and adverse action.** The Director of VR&E Service reviews decisions related to eligibility and entitlement to VR&E benefits and the development of a rehabilitation plan in cases where the local VR&E management staff is the case manager. This is not the case with Mr. Graham."

As the Director, VR&E Service pointed out above, the CER record clearly and unmistakably shows [redacted] VRC and counseling psychologist as the case manager- not VR&E officer [redacted] *Ergo*, the authority to grant or review decisions related to development of a rehabilitation plan and adverse action lies with the VRC, the CP and/or his management staff- not the Director, VR&E Services. The VA's Organizational Chart clearly and unmistakably reflects this chain of command authority is purely local. As the Seattle VR&E Officer pointed out many times, the VRC *cum* counseling psychologist *was* the case officer- not him (the VR&E Officer).

In the legal system, the use of the word "will" or "shall" denotes a mandatory rather than a permissive action. The October 12, 2016, agreement, styled as a proposal, states *in haec verba*: "Based upon the discussion VR&E has had with you, BVA orders and consideration of your SC/NSC functional limitations as it relates to your impact on your ability to perform greenhouse avocational pursuits, VA is proposing I.L. services that would allow you to overcome your dependency issues as it relates to your activity of daily living... **The following are I.L. services that the VR&E <u>will</u> provide...**" (emphasis in original).

The above is a finding of fact favorable to the Appellant. ***Smith, Hodge*** *supra*. Logic dictates that with the concession that an IL plan granting a 20'X28' greenhouse, the very act of substituting a smaller greenhouse at a later date conversely would **not** allow him to overcome his dependency issues as it relates to his activities of daily living. The Secretary cannot have his 15'X20' greenhouse 'cake' and eat it too. VA OGC Prec. 34-97.

Importantly, no subsequent intercurrent assessment of the Veteran's functional limitations was ever promulgated following the October 2016 letter and the subsequent bait and switch to a smaller 15'X20' greenhouse in August 2017. Absent a "reassessment" finding the Veteran had somehow miraculously overcome numerous medical afflictions, the change from a 20'X28' (or 24'X24') to a 15'X20' greenhouse was nothing more than subjective conjecture devoid of medical support. ***Evans, Miller*** *all supra*. And, as most know, a nuanced, critical reading of Congress' 38 USC §3120 doesn't support an interpretation that there is any preset financial limit to a Veterans' ***<u>Individual</u>*** IL Program. The program is limited only by how many "seriously disabled Veterans" qualify and their inclusion among the chosen 2,700 souls in each calendar year.

The evidence of record shows a bidding process for a 15'X20' greenhouse was completed on June 6, 2016, fully thirty seven days before the VRC met with the Veteran on July 13, 2016, in a bald attempt to avoid the strictures of §21.92(a). <u>See Exhibit B</u> VBMS entry of June 02, 2016, page 3 of 5, email from Len Wisneski, VBA VACO to Kris Holloway, VRC stating : "Here is the apparent winner for the Gig Harbor project. **Fugere** *supra*. See also ***Mitchell v. McDonald***, 27 Vet

App. 431,440 (2015) (Cases "must be decided on the law as we find it, not on the law as we would devise it").

Similar to the holding in ***Macklem*** *supra*, the Secretary issued a binding, mutually agreed upon proposal on October 14, 2016. It was then signed and consumated by both parties on April 10, 2017. This met the requirements of §21.92(a)(b). And, similar to the proposal in the MacKlem case, showing a "schedule of past-due payments to which the Appellant would be entitled"(Id. at 67), the Veteran's IL proposal went into exquisite detail as to all the accoutrements to be provided. The presumption of regularity attaches. See ***Butler v. Principi***, 244 F.3d 1337,1340 (Fed.Cir. 2001). All parties were in mutual agreement as to the particulars. The Veteran had a reasonable expectation that the documents which were drawn up and completed represented good faith bargaining. ***Hodge*** *supra*. As the Director, VR&E Services pointed out in the email of August 11, 2016, the local VR&E management staff :

"has the authority to exercise professional judgement in reviewing decisions related to development of a rehabilitation plan and adverse action." Given the local management staff had these plenary powers, the October 2016 proposal to provide a 20' X 28' (or 24'X24') greenhouse with accessories can only be seen as a legally binding commitment. The Secretary's later change of heart can only be likened to a *sub silentio* resurrection of the Excessive Awards Program which was declared illegal under the auspices of the Administrative Procedures Act.

Under ***Butler*** *supra*, the Presumption of regularity attaches to the October 14, 2016, "proposal" as the reasonable assurance this represented a mutual accord, barring an act of omission or commission on the Veteran's part. Appellant rebuts the Presumption of regularity by showing the VR&E Officer, or the VRC, without the concurrence required under §21.94(b),(c), did fraudulently submit a financial approval request dated August 7, 2017 fully well knowing it didn't represent the agreed-upon greenhouse under the auspices of §21.94(b)(3). ***In Miley v. Principi,*** 366 F.3d 1343, 1347 (Fed.Cir.2004), the Federal Circuit held "The presumption of regularity provides that, in the absence of clear evidence to the contrary, the court will presume that public officers have properly discharged their official duties." For the presumption to attach, the VRC would have had to meet with the Veteran and obtain written mutual consent to

forego the agreed-upon **20'X28'** greenhouse and acquiesce to the smaller **15'X20'** greenhouse previously declined in his July 13, 2016, Notice of Disagreement under §21.98(b). The Seattle VR&E Officer has failed to provide clear and convincing evidence otherwise to prove this mythical event occurred. ***Miley*** *supra*. Based on this perfidy, the award of a 15'X20' greenhouse, regardless of any accessories, can only be seen as *void ab initio*.

§21.98(b)(2011) states:

"(b) Review by Vocational Rehabilitation and Employment Officer. Upon receipt of the veteran's request for review of the plan, 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.

However, this did not transpire. Nowhere in the four corners of the CER file, or the Veterans VBMS efolder, can there be found a newly revised version of an IL Plan signed by the Veteran and his VRC under §21.94(a). In point of fact, the evidence unequivocally shows the VR&E Officer, in violation of the regulations, caused to be transmitted to the Director, VR&E Service, a fraudulent document purportedly representing a mutually agreed-upon 15'X 20' greenhouse which he knew to be factually untrue. See ***Smith v. Brown***, 35 F.3d 1516, 1522-23 (Fed.Cir.1994) ("Only by such full reference to the context of the whole can the court find the plain meaning of a part.").

As the Seattle VR&E Officer was not the case manager as previously noted in the August 11, 2016, letter from the Director, the decision to approve or deny the greenhouse proposal on any grounds lay solely with the Veteran's VRC or counseling psychologist and not the VR&E Officer- and most assuredly not Director, VR&E Service. §21.94(a),(b)(2)(3); 38 USC §3107(b). See ***Hodge*** *supra* at 1363 " Therefore, when conducting evidentiary development concurrently, fair process requires that VA not give claimants, who are, after all, lay persons

unskilled in the nuances of the law, the impression that it has made factual determinations upon which they can rely"... "In other words, when VA's actions reasonably—but mistakenly—lead a claimant to conclude that a factual matter has been resolved favorably, the claimant has not properly received notification concerning the information or evidence necessary to substantiate the claim, lacks a meaningful opportunity to respond, and is denied fair process." *Id.* ***Comer*** *supra.*

Last but not least, Appellant avers the VBMS efolder is missing numerous documents referred to in emails between participants discussing attachments, bids and other required documents of record as required by law. The exclusion of these documents frustrates judicial review and invites the specter of spoliation. See ***West v. Goodyear Tire Rubber Co.***, 167 F.3d 776, 779 (2d Cir. 1999) holding ""Spoliation is the destruction or significant alteration of evidence, or failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation."

Based on the entries in the VBMS, the Secretary would have the Board believe the VR&E documents in Appellant's efolder constitute the complete, aggregate total of the CER folder. As just one example of many, the [redacted] email of record at December 5, 2016, notes six attachments listed as "EstimateRev1.pdf; Rev1.xisx; Statement of Objective addendum.docx; Statement of Objective addendum.pdf; schedule Rev1.mpp; schedule rev1.pdf (not found in VBMS). See Exhibit C.

Relief Sought

Appellant seeks that to which he mutually concluded an agreement for with the Secretary under §§21.92(b) 21.98(b)-to wit: a ***20'X28'*** ADA-compliant greenhouse with heat, lighting, a solid concrete floor with padding and hydroponic growing gear with chemicals. Or, in the alternative, a like **24'X24'** or similar greenhouse as promised in the reply to the Veteran's Congressman. Appellant avers the 15'X20' proposal is simply too small an area to work in with

his numerous disabilities. The VRC conceded as much throughout the mutual development of the plan from October 2016 to its inception in April 2017. Nowhere in the four corners of 38 USC 3120 nor 38 CFR 21.92; 21.94 can the Veteran discern language that allows local VR&e personnel to unilaterally reinvent the plan without the Veteran's concurrence. The Secretary reads more into his regulation than it authorizes.

In fact, in §21.94(c) Changing the Plan, the regulation is explicit in its language and states, unequivocally :

" **(c)** ***Intermediate objectives or services.*** A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals**. The veteran must concur in the change."** (emphasis added to original).

The Secretary is unable to point to any document showing mutual concurrence of the parties to alter or reduce the size of the agreed-upon greenhouse. The August 7, 2017 letter to Director, VR&E Services merely requests financial authorization for a 15'X 20' heated ADA greenhouse with a hydroponic system. The Seattle VR&E Officer avers neither he nor the VRC has the authority to authorize a larger greenhouse. This is clearly and unmistakably contradicted by the record. (see August 11, 2016 letter citing to §21.98; M28R, Part III, Section C, Chapter 3 authority).

As the Trier of fact pointed out at the July 12, 2023 Hearing, the Board is not bound by the tenets of the M 21 nor the M 28- and by extension, the M 28R (Karnas supra), but by Chapter 31 of 38 USC and Chapter 21 of 38 CFR. In any case, any reliance on the Secretary's Manual in the instant case is limited to the M 28 manual in effect at the inception of the request for VR&E ILP services. In that regard, any reliance on the M 28R is *void ab initio*.

Appellant contends he is entitled to the agreed-upon IL services outlined in the April 10, 2017, proposal because VA's subsequent review and revision

were based on an invalid procedure. ***MacKlem*** *supra* at 73; §21.94(b)(3),(c). Appellant agrees "VA should have a means to protect itself from fraud and thus protect the public fisc. As we have been told by the Federal Circuit, however, introducing what is, in effect, a secret adjudication to a non-adversarial system whose procedures are set out by Congress in great detail is not a means available to accomplish this end, no matter how worthy." **Id.** @ 75.

Appellant hereby withdraws any request for entitlement to a portable toilet within the greenhouse structure or any NVLSP Veterans Benefits manuals whatsoever. Appellant further will relinquish any entitlement to power, water or propane heating costs for the two-year duration of the IL Plan.

Appellant seeks no more than that to which he was promised but certainly no less. Appellant feels the appeal is in equipoise and asks for the time-honored pro-Veteran canon of statutory construction most recently espoused in ***Henderson v. Shinseki,*** 562 U.S. 428,441 (2011) ("We have long applied the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor."). See also ***Barrett v. Principi,*** 363 F.3d 1316, 1320 (Fed. Cir. 2004) ("[T]he veterans benefit system is designed to award entitlements to a special class of citizens, those who risked harm to serve and defend their country. This entire scheme is imbued with special beneficence from a grateful sovereign."

Respectfully submitted,

Gordon A. Graham
Appearing *pro se*

Attachments:

Exhibit A: (ref. pg. 18 of 26) VA ILP XCEL spreadsheet showing ILP statistics

Exhibit B: (ref. pg 20 of 26) 6/02/2016 VA internal email from [redacted] VBA VACO to [redacted], VRC Seattle announcing winning bid for 15'X20' greenhouse prior to mutual agreement. Attachment not found in VBMS.

Exhibit C: (ref. pg. 23 of 26) VA internal email from [redacted] VREVACO to VR&E VRC [redacted] ated 12/05/2016 with six (6) attachments not found in VBMS.

Exhibit

A

Graham, Gordon A. CSS [redacted]

VR&E ILP Case Record of

Rehabilitations from 2004 to 2018

VR&E IL Case Record, **FY2004-19**

RO #	REGIONAL OFC NAMES (Alpha)	IL Rehabs*														
		FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY 18
301	Boston Regional Office, MA	99	67	45	8	8	2	0	0	0	0	1	0	0	3	1
304	Providence Regional Office, RI	71	54	39	32	18	6	13	14	9	5	5	5	2	1	1
306	New York Regional Office, NY	140	114	130	188	157	138	139	148	198	128	135	147	126	81	15
307	Buffalo Regional Office, NY	1	2	0	3	12	5	19	21	43	50	49	42	54	23	31
308	Hartford Regional Office, CT	32	64	108	79	88	59	60	32	35	41	46	18	3	2	2
309	Newark Regional Office, NJ	7	25	36	47	50	65	62	49	25	69	37	68	43	54	72
310	Philadelphia Regional Office, PA	65	81	40	59	34	18	18	11	10	14	11	12	6	5	3
311	Pittsburgh Regional Office, PA	5	1	2	2	2	2	4	4	8	6	3	7	1	1	0
313	Baltimore Regional Office, MD	6	8	7	10	7	8	5	16	3	3	4	2	0	8	2
314	Roanoke Regional Office, VA	1	13	8	5	2	1	0	9	2	4	9	5	1	2	10
315	Huntington Regional Office, WV	25	15	11	11	4	6	13	18	22	14	0	0	7	1	9
316	Atlanta Regional Office, GA	21	32	76	46	74	131	115	124	136	89	77	80	73	14	16
317	St. Petersburg Regional Office, FL	95	112	125	80	72	70	69	126	93	120	118	140	80	39	24
318	Winston-Salem Regional Office, NC	20	33	42	18	23	15	13	12	5	15	8	12	12	24	11
319	Columbia Regional Office, SC	13	26	25	20	28	33	16	37	33	20	11	12	15	9	2
320	Nashville Regional Office, TN	28	29	22	30	23	20	16	16	19	11	12	12	17	15	26
321	New Orleans Regional Office, LA	32	57	3	10	6	5	8	25	39	24	20	19	32	26	13
322	Montgomery Regional Office, AL	38	152	128	127	175	219	177	163	149	165	165	136	90	59	40
323	Jackson Regional Office, MS	7	10	14	8	7	9	24	16	22	26	26	9	11	7	7
325	Cleveland Regional Office, OH	101	96	74	26	11	9	20	40	39	21	21	34	18	16	7
326	Indianapolis Regional Office, IN	29	23	22	53	70	63	55	97	80	96	67	47	42	47	27
327	Louisville Regional Office, KY	57	34	64	33	60	52	30	31	23	11	10	21	23	30	16
328	Chicago Regional Office, IL	9	17	45	20	21	9	8	11	6	3	3	5	8	16	8
329	Detroit Regional Office, MI	47	46	43	69	74	126	137	136	134	165	159	105	77	38	23
330	Milwaukee Regional Office, WI	32	40	46	34	16	15	8	4	9	4	4	2	6	4	3
331	St. Louis Regional Office, MO	3	3	23	4	20	23	15	31	43	51	40	18	35	14	4
333	Des Moines Regional Office, IA	20	18	10	5	15	15	13	18	30	41	11	20	13	7	5
334	Lincoln Regional Office, NE	2	1	4	4	9	11	9	1	14	5	0	0	1	1	0
335	St. Paul Regional Office, MN	67	60	80	38	46	6	4	7	0	2	3	4	2	3	2
339	Denver Regional Office, CO	141	76	52	71	68	63	97	19	12	7	5	12	4	3	0
340	Albuquerque Regional Office, NM	92	151	239	206	107	88	40	43	19	15	32	31	14	12	17
341	Salt Lake City Regional Office, UT	21	12	23	24	23	23	20	6	5	1	12	3	3	7	1
343	Oakland Regional Office, CA	92	89	149	133	146	113	115	58	67	32	39	31	11	4	2
344	Los Angeles Regional Office, CA	186	161	186	279	91	50	56	60	16	21	21	20	13	14	6
345	Phoenix Regional Office, AZ	197	138	189	246	208	158	113	100	63	86	79	100	78	62	35
346	Seattle Regional Office, WA	41	30	25	37	32	19	33	19	14	12	16	7	13	7	3
347	Boise Regional Office, ID	18	9	13	8	3	8	3	2	7	1	2	1	0	0	0
348	Portland Regional Office, OR	82	23	32	26	15	17	4	10	16	10	14	13	11	4	1
349	Waco Regional Office, TX	56	36	93	44	71	70	59	70	78	64	87	95	62	62	31
350	Little Rock Regional Office, AR	59	31	26	8	9	9	22	17	12	23	4	12	15	21	25
351	Muskogee Regional Office, OK	134	204	101	25	31	24	36	39	30	14	11	11	12	20	9
354	Reno Regional Office, NV	16	16	16	12	11	7	21	20	28	23	22	13	27	12	5
355	San Juan Regional Office, PR	1	2	3	2	3	1	1	3	2	0	1	7	1	3	1
358	Manila Regional Office, PI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
362	Houston Regional Office, TX	75	174	166	94	109	81	95	140	106	87	70	36	26	49	57
372	Washington Regional Office, DC	27	30	16	12	3	0	1	3	3	3	2	4	11	8	5
373	Manchester Regional Office, NH	4	1	3	2	0	3	1	1	2	4	3	0	0	3	1
377	San Diego Regional Office, CA	28	57	68	58	22	56	24	14	38	32	28	17	16	5	2
402	Togus VAMROC, ME	0	1	0	5	2	16	16	14	16	22	8	3	6	5	3

[redacted] Graham CSS

405	White River Junction VAMROC, VT	2	2	0	0	0	0	0	0	0	0	0	0	1	0	1
436	Fort Harrison VAMROC, MT	38	22	19	13	3	2	7	2	6	1	7	5	4	3	2
437	Fargo VAMROC, ND	11	12	17	20	25	14	8	6	11	9	6	5	3	2	1
438	Sioux Falls VAMROC, SD	26	50	54	52	44	15	18	7	5	20	5	3	1	5	1
442	Cheyenne Regional Office, WY	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
452	Wichita VAMROC, KS	6	2	1	0	3	0	3	7	7	9	1	4	4	0	2
459	Honolulu VAMROC, HI	239	114	65	80	71	49	17	20	43	7	14	9	17	27	6
460	Wilmington VAMROC, DE	3	4	4	7	0	3	0	1	0	2	0	2	0	0	0
463	Anchorage VAMROC, AK	21	13	7	7	3	5	0	1	1	0	0	0	0	1	0
	Annual IL Rehab Totals:	2,689	2,693	2,839	2,540	2,235	2,035	1,880	1,899	1,836	1,708	1,544	1,426	1,151	889	597
	New IL Case Totals:	N/A	2,588	2,213	2,115	1,728	1,680	2,456	2,539	2,428	2,152	1,723	1,410	1,143	860	666

Data Sources: Annual data is from the OBIEE Positive Outcome Reports. New IL Case Totals have their source in an OBIEE IL summary.

*Note that year end rehabilitation counts may vary slightly from roll-up information provided by state. This variance occurs due to date differences of data pulls. Variances are not significant.

[redacted]

Graham CSS

Exhibit

B

Graham, Gordon A. CSS [redacted]

Copy of VA Outlook Email Dated
June 2, 2016, Page 3 of 5
Announcing Greenhouse Bid Winner
Forty one Days Prior to Presentation
of Proposal of 15'X20' Structure

Graham CSS [redacted]

[redacted]

From: [redacted] VBAVACO
Sent: Thursday, June 02, 2016 8:59 AM
To: [redacted] BASEAT
Cc: [redacted] VBAVACO
Subject: RE: MACRO PURCHASE REQUEST PO # 346-16-011 CONTACT INFORMATION VA101V-16-AP-0617
Attachments: URS Submittal - RFQ1092829 CM Services Gig Harbor WA 27May2016.pdf
Signed By: [redacted]

Attachments not found in VBMS

Hello Kris,

Here is the apparent winner for the Gig Harbor project. Please take a look at the proposal and let me know if you're ok with it or if you have questions. Once you are good with it I will start the award documents to send for the award review.

This is sent as a courtesy, only to show award outcome.

Gig Harbor, WA

A)	$7,336.78 Base	$9,429.39 Option	Bratslavsky		Anchorage, AK
B)	$10,848.66 Base	$10,515.36 Option	Civil		Flagstaff, AZ
C)	$3,784.00 Base	$9,206.00 Option	Gastinger		Kansas City, MO
D)	$1,711.34 Base	$6,597.02 Option	URS-AECOM	Total Project $8,308.36	San Antonio, TX

Thank You,

[redacted]

Contracting Officer
U.S. Department of Veteran Affairs
Veterans Benefits Administration
Pacific District Contracting Team
Blackberry: (267) 216-7412

I CARE

Integrity, Commitment, Advocacy, Respect, Excellence

"The harder right instead of the easier wrong." Secretary of Veterans Affairs – Robert A. McDonald

Exhibit

C

Graham, Gordon A. CSS [redacted]

VA Outlook Email Dated December 5, 2016, From [redacted] with six (6) attachments (not found in VBMS)

[redacted] Graham CSS [redacted]

From: [redacted]/VBAVACO
Sent: Monday, December 05, 2016 11:54 AM
To: [redacted]
Subject: FW: IL Construction PWS graham, gig harbor ,WA
Attachments: Estimate Rev1.pdf; Estimate Rev1.xlsx; Statement of Objective Addendum.docx; Statement of Objective Addendum.pdf; schedule rev1.mpp; schedule rev1.pdf

Attachments not found in VBMS

Hi Kris,

We will need to come up with this change order request payment before we can move forward. I also need you to approve this new report.

Thank You,

[redacted]
Contracting Officer
U.S. Department of Veteran Affairs
Veterans Benefits Administration
Pacific District Contracting Team
Cell: 202-322-3547

I CARE

Integrity, Commitment, Advocacy, Respect, Excellence

"The harder right instead of the easier wrong." Secretary of Veterans Affairs – Robert A. McDonald

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From: [redacted]
Sent: Monday, December 05, 2016 10:18 AM
To: [redacted]
Cc: [redacted]/VBASEAT; [redacted]
Subject: [EXTERNAL] RE: IL Construction PWS graham, gig harbor ,WA

Per your request attached is the Objective Amendment based on the revised scope of work provided 11/30/16. Work product (Amendment, Estimate Rev 1 and Schedule Rev 1) is attached in both MS and PDF format.

If you have any questions, please advise. Standing by for Phase 2 .

The URS/AECOM Federal Office will be sending a change request for phase 1 for 6 added Hours of work for the above deliverable.

[redacted]
Sr. Construction Manager
AECOM
360-951-5900