

Vietnam Veterans of America
Agent Orange/Dioxin &
Other Toxic Substances Committee
January 15, 2010

Draft: Position Paper: New Presumptive Diseases

Back Ground:

The Agent Orange Act of 1991 provided authority and requirements for the Secretary of the VA to grant presumptive service connection to a disease based on exposures to herbicides. This law provided:

- That the National Academy of Sciences would conduct a review of the scientific evidence and association between the herbicides used in Vietnam and the health of Vietnam Veterans. (This resulted in the biennial Veterans Agent Orange (VAO) Reviews done ever two years by IOM.)
- That the Secretary of the VA would use the IOM report and other credible scientific evidence to determine if a disease warranted presumptive service connected for exposure to the herbicides.
- That the Secretary would make his decision on the presumptive issues within 60 days of receiving the IOM VAO Review.
- That for those disease that the Secretary decided did not warrant presumptive service connection, he would publish his decision in the Federal Register along with the basis for the decision within 60 days of that decision
- That for those diseases the Secretary decided warranted presumptive service connection, he would publish proposed rules in the Federal Register within 60 days of his decision to grant presumptive service connection.
- That within 90 days of issuing the proposed rules, the Secretary of the VA would issue final rules. The final rules to become effective on the date of issuance.

On July 22, 2009 the Institute of Medicine presented the 2008 VAO Review to the Secretary of the VA. It is our understanding that the Secretary made a decision on September 23, 2009 to grant presumptive service connection for three new diseases (Parkinson's disease, C-Cell leukemia (including Hairy-Cell leukemia and for Ischemic Heart disease). His decision was made effectively within 60 days of receiving the VAO Review. The Secretary sent his decision to the Office of Management and Budget (OMB).

On October 13, 2009 the Secretary publicly announced his presumptive decision. On December 23, 2009 the Secretary of the VA approved the proposed rules and sent them to OMB for review. OMB's web site shows that they received the rules on December 28, 2009. As of this date the proposed rules remain at OMB.

OMB also is reviewing proposed rules for presumptive issues of Gulf War Veterans. These rules have also passed the legal timeline to be published.

Based on the given dates, by Law the Secretary should have published the proposed rules in the Federal Register by November 23, 2009. If that had happened the rules would have become final in February of 2010. As of this date the proposed rules have not been published.

On November 19, 2009 the VA's Veterans' Benefits Administration issued Fast Letter 09-50 to the VA Regional Offices and Centers. The letter explains that claims for these new diseases can not be rated until the new rules become effective. The letter also explains that these claims should be developed to prevent delays in rating the claim when the rules become effective. The letter explains claims based on any of these diseases should be controlled by establishing an end product (EP) 681 future claim diary with a suspense date of May 1, 2010. (Fast Letter 09-50 attached to this paper)

Some veterans have reported they are scheduled for or have completed their C&P exams for the new presumptive disease. We do not know if this is happening throughout the VA or just certain regional offices.

The AO/DOTS Committee position is:

- VA has not complied with the law to publish the proposed rules on these new presumptive issues within 60 days of making his decision. Nor are they likely to have the rules finalized within 210 days of receiving the VAO Review.
- OMB currently has these proposed rules under review.
- VVA should petition OMB to expedite both the Gulf War and the Vietnam Veterans presumptive proposed rules based on they are passed the legal deadline and because these veterans are suffering physically, mentally and financially.
- VVA should petition the VA to expedite finalizing the rules.
- VVA should contact the VA's Veterans' Benefits Administration to ensure that the presumptive claims are being fully developed across all regions in order to ensure quick rating once the rules are final.

This position paper impacts various VVA Staff and the Government Affairs Committee.

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Chairman