

CR 83-140

CERTIFICATE

STATE OF WISCONSIN)
) SS.
DEPARTMENT OF VETERANS AFFAIRS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John B. Ellery, Secretary of the Department of Veterans Affairs and custodian of the official records of said department do hereby certify that the annexed repeal, amendments and repeal and recreation of rules relating to the appeal of denials of benefits from and suspension of benefits by the department, the writing-off of loans, the repeal of the department's rules relating to condominiums, the amendment of the department's survey requirements and the deletion of the requirement that the Wisconsin veterans home provide tobacco to home members, were duly approved and adopted by the Board of Veterans Affairs of the Department of Veterans Affairs on November 18, 1983.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Veterans Affairs at 77 N. Dickinson St., in the city of Madison, this 18th day of November, 1983.

BY: 
JOHN B. ELLERY, Secretary

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9:25am
Revisor of Statutes
Bureau

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ORDER OF THE
DEPARTMENT OF VETERANS AFFAIRS
REPEALING, AMENDING AND REPEALING AND RECREATING RULES

Revisor of Statutes
Bureau

An Order to repeal VA 1.08(1)(b) and VA 4.03(5); to amend VA 1.11, VA 4.03(7), and VA 6.01(11), and to repeal and recreate VA 1.03 of the Wisconsin Administrative Code, relating to the appeal of denials of benefits from and suspension of benefits by the department, the writing-off of loans, the repeal of the department's rules relating to condominiums, the amendment of the department's survey requirements, the deletion of the requirement that the Wisconsin Veterans Home provide tobacco to Home members, and technical changes including changes required to make the language of the Code sex-neutral.

ANALYSIS PREPARED BY DEPARTMENT OF VETERANS AFFAIRS.

VA 1.03, interpreting s. 45.35(1), Stats., and numerous other provisions of Chapter 45, Stats., setting forth the limitations which pertain to the granting of specific benefits to veterans and their dependents or survivors, has been repealed and recreated to specify in detail the procedures for appeals by applicants who have been denied department benefits. This section as repealed and recreated defines appealable actions, specifies the time and manner for filing appeals, creates rules governing the conduct of hearings, including the evidence which may be received at such hearings, and other matters including procedures to be followed before a proposed decision is submitted to the Board of Veterans Affairs by either a hearing examiner or the Loan Advisory Council and limitations on the right to petition for rehearing.

VA 1.08(1)(b), interpreting s. 45.35(1), Stats., and specific benefit provisions of Chapter 45, has been repealed because its 30 day limitation on appealing suspensions of benefits has been expanded to 60 days and incorporated in the repealed and recreated VA 1.03.

VA 1.11, interpreting ss.15.05(1), 45.351(2)(a) and 45.72(3) and (5)(e), Stats., is amended to delete the provisions relating to the superintendent fo the G.A.R. Memorial Hall, a position eliminated by Chapter 27, Laws of 1983, to redraft this section in sex-neutral language and to provide that the Secretary of the department has clear authority to write off loans which the department deems uncollectable. The Secretary presently has the authority to make compromise settlements on loans but the authority to write-off uncollectable loans, which is essentially an administrative function, has in the past been vested in the Board of Veterans Affairs.

VA 4.03(5), interpreting ss. 45.71(8) and 45.76(1)(a)2, Stats., is repealed to delete the restrictions on condominium loans from the department's rules, including a requirement that the department be in receipt of the recorded condominium declaration and bylaws, and a requirement that professional management be provided for any condominium having more than 16 units. These restrictions are deemed unnecessary by the department because it finds that Chapter 407, Laws of 1977, which became effective August 1, 1978, provides adequate safeguards for condominium unit purchasers and because most unit owners associations no longer employ professional management.

VA 4.03(7), interpreting ss. 45.73(1) and 45.76(3)(a)1, Stats., is amended to eliminate the requirement that surveys be provided in conjunction with second mortgage housing loans and to permit the department to accept a surveyor's or

professional engineer's letter in lieu of a survey, in connection with direct housing loan applications, where there is little question as to the location of the house and other improvements within the perimeter of the legal description and when the cost of the survey will be in excess of \$300 instead of the present \$750. A professional engineer's or surveyor's letter consists of a plot plan showing the location of the buildings and other improvements in relation to the encroachments and perimeters of the legal description.

VA 6.01(11), interpreting s. 45.365(1)(a), Stats., has been amended to delete the requirement that the department furnish tobacco to members of the Wisconsin Veterans Home.

Pursuant to authority vested in the Department of Veterans Affairs by Sections 45.35(3) and 45.73(1), Stats., the Department of Veterans Affairs repeals, amends and repeals and recreates rules interpreting ss. 15.05(1), 45.35(1), 45.35a(2)(a), 45.365(1)(a), 45.71(8), 45.73(3) and (5)(e), 45.73(1) and 45.76(3)(a)1., Stats., as follows:

SECTION 1. VA 1.03 is repealed and recreated to read:

VA 1.03 PROCEDURE FOR APPEALS BY APPLICANTS FOR BENEFITS

(1) APPEALABLE ACTIONS. Any applicant for any benefit available through the department may appeal from a decision of the

department concerning any such application. Any applicant for benefits whose benefits have been suspended pursuant to s. 45.35(17), Stats., may appeal such suspension.

(2) APPLICATIONS PENDING APPEAL FOR DENIAL OF SUSPENSION OF BENEFITS. During the pendency of an appeal of a suspension of benefits from the department, no decision shall be issued by the department concerning any of the appellant's applications for benefits from the department which were pending in the department at the time of the decision to suspend benefits, or which are submitted by the applicant during the pendency of the appeal even if the decision is not related to the matter being appealed. If the final decision in the appeal affirms the suspension of benefits, any of the appellant's applications shall be denied by the department. If the final decision in the appeal reverses the suspension of benefits, the department shall then determine whether or not the applications should be approved.

(3) TIME AND MANNER FOR FILING APPEAL. An appeal shall be in writing and shall be filed with the State of Wisconsin, Department of Veterans Affairs, 77 N. Dickinson St., Madison, WI 53702. An appeal must be received by the department within 60 calendar days after the date of the department decision appealed. Any questions about time computations for procedural matters shall be resolved by reference to s. 801.15(1), Stats.

(4) CONDUCT OF HEARING. The hearing on the appeal shall be held before a hearing examiner or before the loan advisory council at the discretion of the secretary. The hearing examiner or members of the loan advisory council shall have the powers enumerated under s. 227.09, Stats. The department shall present evidence first unless the hearing examiner or the loan advisory council varies the order of proceeding in the interest of obtaining the most cogent presentation of the case. An appellant may appear in person, with or without counsel, or by counsel or other agent of the appellant's choice.

(5) EVIDENCE. In accordance with s. 227.08, Stats., the hearing examiner or loan advisory council shall not be bound by common law or statutory rules of evidence. Parties may stipulate to some or all of the facts, and the hearing examiner or loan advisory council may base the proposed decision upon the stipulation. All exhibits shall be marked and made available for inspection by the opposing party before being shown to a witness, unless the exhibit shall have been marked and a copy made available to the opposing party prior to hearing.

(6) RECORD OF APPEAL. A stenographic, electronic, or other record of the hearing shall be kept, and shall be transcribed at the request of any party. Such transcription shall be at the department's expense if the purpose for transcription is deemed reasonable to the department's or the loan advisory council's or hearing examiner's satisfaction. Copies of the tape recordings, transcripts, or other record shall be furnished to any party upon

request at the cost of production to the department, except that copies may be provided free of charge to parties who can demonstrate that they are indigent.

(7) PROPOSED DECISION. The hearing examiner or loan advisory council shall issue a proposed written decision to the board of veterans affairs, including findings of fact, conclusions of law, order and opinion pursuant to s. 227.09(2), Stats. The proposed decision shall be served on all parties at least 20 calendar days before it is submitted to the board of veterans affairs for final decision. Each party adversely affected may file objections to the proposed decision, briefly stating the reasons and authorities for each objection, and may file a brief and present oral argument to the board at the meeting of the board at which the party's case is to be heard.

(8) FINAL DECISION. The board of veterans affairs shall issue in writing the final decision, findings of fact, and conclusions of law.

(9) PETITION FOR REHEARING. A party aggrieved by a final decision may petition the board for rehearing pursuant to s. 227.12, Stats. Any other party shall have 20 days from the date the petition for rehearing is mailed to them at their last known address to file a reply to the petition.

SECTION 2. VA 1.08(1)(b) is repealed.

SECTION 3. VA 1.11 is amended to read:

1.11 Duties and responsibilities of the secretary. The administrative and executive duties of the department shall be vested in the secretary to be administered ~~by him~~ under the rules and regulations of the department and subject to and in accordance with the policies established by the board. The secretary shall:

(1) ~~He shall~~ Employ a commandant for the Grand Army Home, he shall designate an employe of the department as his deputy secretary, and he shall appoint such persons as may be necessary to carry out the functions of the department, ~~and shall, with the approval of the board, appoint a superintendent of the G.A.R. Memorial Hall.~~

(2) ~~He shall~~ Administer and supervise all programs of the department, and he shall serve as an ex-officio member of all advisory, standing and special committees appointed by the board, unless specifically exempted.

(3) ~~He shall~~ Coordinate the activities of the department with all state agencies performing functions relating to services available to veterans so as to make the benefits available as promptly and effectively as possible.

(4) ~~He shall~~ Administer the program for temporary emergency grants to prevent want and distress and the program for educational grants for veterans.

(5) ~~He shall~~ Administer the economic assistance and housing loan programs for veterans.

(7) ~~He shall~~ Compile a record of the burial places within the state of persons who served in the armed forces of the United States in time of war, who were called into service in the 1961 Berlin crises call-up, or whose service entitled them to receive either the armed forces expeditionary medal or the Vietnam service medal.

(8) ~~He shall~~ Direct the operation of the ~~Grand Army~~ Home for Veterans at King through the commandant so as to provide that members receive complete personal maintenance and medical care.

(9) ~~He shall~~ direct the operation of the G.A.R. Memorial Hall ~~through the superintendent~~ so as to make the memorial collection instructive and attractive to visitors to the state capitol and shall directly supervise the curator of the Hall.

(10) ~~He shall~~ Formulate and present the department's budget to the legislature.

(11) ~~He shall~~ Present to the legislature all proposed legislation recommended by the board, ~~---He~~ and shall make such reports to and appearances before the legislature on such other matters as it may request ~~of him~~.

(12) ~~He shall~~ Supervise all funds of the department ~~and he,~~ shall see that proper records are kept, and shall account for all funds disbursed for any reason whatsoever.

(13) ~~He shall~~ Make such regular reports to the board as the board may request ~~of him~~.

(14) ~~He shall~~ Conduct an adequate program of public relations for the department.

(15) ~~He shall~~ Make and establish ~~such~~ rules and regulations as ~~may be~~ necessary to carry out the statutes pursuant to the policies established by the board, and ~~he shall~~ make such publication and distribution of ~~such~~ these rules and regulations as ~~he~~ the secretary may deem necessary.

(16) ~~He shall~~ Attempt to obtain full collection of all loans and may take all available legal steps to effect collection provided, however, that ~~he~~ the secretary shall have the authority to approve compromise settlements in appropriate cases and to write-off loans which the department deems uncollectable.

(17) ~~He shall~~ Administer the functions of the department in a careful and businesslike manner.

(18) He If the secretary deems it appropriate to do so, or is directed by the board to do so, may refer any problems arising from the discharge of the above duties to an appropriate committee or council appointed by the board for counsel and advice.

SECTION 4. VA 4.03(5) is repealed.

SECTION 5. VA 4.03(7) is amended to read:

4.03(7) SURVEY. Where the legal description of the property is in metes and bounds, a survey, or copy of a survey, clearly delineating a single perimeter of the entire plot and location of any existing or proposed improvements shall be required in connection with a direct loan, unless the cost of such a survey would be ~~excessive~~ ~~(more than \$750~~ \$300) and it is determined by the department that there is little question as to the location of the improvements within the perimeter. In ~~such~~ these cases a surveyor's or professional engineer's letter will be required.

SECTION 6. VA 6.01(11) is amended to read:

6.01(11) CLOTHING AND COMFORT ITEMS. Clothing, ~~tebaeee,~~ stationery, toiletries, and necessary aids to good grooming,

including barber and beautician services, will be furnished to members as their needs may require. All clothing issued will remain the property of the state of Wisconsin.


SECTION 7. APPLICABILITY. Section VA 1.03 as repealed and recreated by this Order and the repeal of VA 1.08(1)(b) shall apply to any appeal of a department decision made after the effective date of this Order. The amendment of section VA 1.11 shall apply to all loans written-off after the effective date of this Order. The repeal of VA 4.03(5) and the amendment of VA 4.03(7) shall apply to all housing loan applications committed after the date of this Order and the amendment of VA 6.01(11) shall permit the department to cease distributing tobacco on the effective date of this Order.

The repeals, amendments, and repeal and recreation of rules contained in this order shall take affect as provided in Section 227.026(1)(intro.), Stats.

Date: November 18, 1983

STATE OF WISCONSIN,
DEPARTMENT OF VETERANS AFFAIRS

BY:


NORMAN L. MYHRA, Chairman
Board of Veterans Affairs

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