

*Not published*

**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

NO. 14-1680

PAUL L. OLLIS,

APPELLANT,

v.

ROBERT A. McDONALD,  
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

**ORDER**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

This case is hereby submitted for panel decision. Pursuant to Rule 5 of this Court's Rules of Practice and Procedure, proceedings will be stayed for 30 days to permit possible arrangements for representation of the appellant. Additionally, the Court will order the parties to submit, no later than 50 days from the date of this order, supplemental memoranda of law on the following questions:

(1) Is it Congress's intention that 38 U.S.C. § 1151(a) applies when a veteran is referred to a non-VA facility based on a VA medical center's inability to provide a specific treatment, and the veteran subsequently is disabled at the non-VA facility during provision of that treatment?

(2) Does VA have an affirmative obligation to adequately advise the veteran of any differences in compensation and liability under 38 U.S.C. § 1151(a) that would result from receiving treatment at a non-VA facility pursuant to a VA referral, rather than at a VA facility itself? And, as a matter of constitutional dimension, is the veteran denied an important property right without due process of law when such advise is not provided?

(3) When a VA medical center is unable to provide a specific treatment, does VA have an affirmative obligation to provide the veteran with the option to be referred for the treatment elsewhere within the VA system? And, as a matter of constitutional dimension, is the veteran denied an important property right without due process of law when such an option is not provided?

(4) Does a VA doctor's statements to the veteran concerning a procedure and/or his referral of the veteran to non-VA facilities constitute medical treatment under

38 U.S.C. § 1151(a)?

(5) Do VA doctors referring a veteran to a non-VA provider have a duty of care to ensure that the non-VA provider is qualified, licensed, or competent to continue the veteran's medical care? Is there any indication in the record in this case that the referring VA doctor knew or should have known of any incompetence of the non-VA provider to which the appellant was referred?

(6) Do the provisions, generally, or in particular, of The Veterans Access, Choice and Accountability Act of 2014, Pub. L. No. 113-146, § 101, *et seq.*, (hereinafter Veterans Access Act) reflect Congress's intent to expand access for veterans, without penalty or restriction, to medical treatment in non-VA facilities? And was the omission of *express* language in this Act providing compensation for qualifying additional disability or qualifying death of a veteran caused by hospital care, medical or surgical treatment, or examination similar to that provided by 38 U.S.C. § 1151 intentional, or did Congress intend veterans treated pursuant to this Act to be entitled to the same or similar protections as contained in § 1151? And, does the Veterans Access Act have any applicability to the matters on appeal?

Because the appellant is pro se, the Veterans Consortium Pro Bono Program will be requested to investigate the possibility of providing representation for the appellant or locating an amicus curiae, to address the issues noted above in a written brief and at oral argument.

Upon consideration of the foregoing, it is

ORDERED that these proceedings are stayed until 30 days after the date of this order. It is further

ORDERED that the Veterans Consortium Pro Bono Program is requested to investigate the possibility of providing representation for the appellant or locating an amicus curiae, should the appellant remain pro se at the end of the 30-day stay. It is further

ORDERED that the parties, no later than 50 days from the date of this order, submit supplemental memoranda of law not to exceed 25 pages in length on the above questions.

DATED: May 1, 2015

PER CURIAM.

Copies to:

Paul L. Ollis

VA General Counsel (027)

The Veterans Consortium Pro Bono Program