

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

---

ALMA GALLETTA, individually and on behalf of herself and all others similarly situated,	:	
	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	
	:	
vs.	:	
	:	
JENNIFER VELEZ, Commissioner, New Jersey Department of Human Services;	:	
VALERIE HARR, Director, New Jersey Division of Medical Assistance & Health Services; and BERGEN COUNTY BOARD OF SOCIAL SERVICES,	:	<b>CLASS ACTION COMPLAINT</b>
	:	
Defendants.	:	

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**Nature of Action**

1. This is a class action lawsuit brought by Alma Galletta on behalf of herself and all others similarly situated seeking to enjoin the New Jersey Department of Human Services (“NJ DHS”) from including as “countable income” her Veterans Administration Improved Pension (VAIP) awarded pursuant to 38 USC §1541(d)(1) for unreimbursed medical expenses in determining eligibility for Medicaid benefits.

**Jurisdiction**

2. Jurisdiction is founded upon 28 U.S.C. §1331.

3. At all relevant times herein, all defendants are alleged to have acted within the course and scope of their employment, under color of State law, and pursuant to customs, practices and policies of the State of New Jersey.

**Venue**

4. Venue is appropriate in this judicial district, as Plaintiff resides therein, and all material conduct occurred therein.

**Parties**

5. Plaintiff Alma Galletta is an individual who, on or about May 17, 2012, applied for benefits under New Jersey's medical assistance ("Medicaid") program, 42 U.S.C. §§ 1396, et. seq., N.J.S.A. §§ 30:4D-1, et. seq., and N.J.A.C. §§ 10:71-1.1, et. seq.

6. Plaintiff is a resident of the State of New Jersey.

7. Plaintiff Alma Galletta resides with her daughter at 550 Winne Ave, Oradel, New Jersey at all relevant times herein.

8. Plaintiff is an elderly individual, being over the age of sixty-five at the time she filed the application for Medicaid benefits and at all times relevant herein. N.J.A.C. §10:71-3.9(a)(1).

9. Defendant Jennifer Velez (“Commissioner Velez”) was at all relevant times the Commissioner of the New Jersey Department of Human Services (“DHS”), which supervises administration of the Medicaid program in New Jersey. DHS has offices located at 222 South Warren Street, Trenton, New Jersey 08625. As such, she has a duty to insure that the state’s federally funded Medicaid program is administered in accordance with federal law, including implementing policies that set forth eligibility standards in compliance with federal law.

10. Defendant Valerie Harr (“Director Harr”) was at all relevant times the Director of the New Jersey Division of Medical Assistance and Health Services (“DMAHS”), which is responsible for administration of the Medicaid program. She reports directly to Commissioner Velez and exercises supervision over the activities of DMAHS. DMAHS has offices located at Quakerbridge Road Office Complex, Building 7, Quakerbridge Road, PO Box 712, Trenton, New Jersey 08625-0712. As such, she has a duty to insure that the state’s federally funded Medicaid program is administered in accordance with federal law, including implementing policies that set forth eligibility standards in compliance with federal law.

11. Defendant Bergen County Board of Social Services (“BCBSS”) administers the Medicaid program through DMAHS which is in the DHS.

N.J.A.C. § 10:71-1.5.

**General Allegations**

12. The Medicaid program is a cooperative federal-state venture established as Title XIX of the Social Security Act. 42 U.S.C.A §§ 1396, et. seq.

13. 42 U.S.C.A § 1396a(a) sets forth the contents of a State Medicaid plan (“State Plan”), which is required in order for a state to participate in the federal/state cooperative Medicaid program and to receive financial participation from the United States federal government.

14. The State of New Jersey has chosen to participate in the Medicaid program and has developed a State plan and promulgated statutes and regulations to implement the state plan. N.J.A.C. §§ 30:4D-1, et seq.; N.J.A.C. §§ 10:71-1.1, et. seq.

15. The United States Department of Health and Human Services (“HHS”) has promulgated regulations defining income for the purpose of Supplemental Security Income (“SSI”) eligibility, 20 CFR §§ 416.1102 and 416.1103.

16. The State of New Jersey, by and through Defendants herein, is obligated to comply with HHS regulations governing SSI eligibility in awarding Medicaid benefits, in order to qualify for matching funds. 42 U.S.C. § 1396a(a)(17)(B). 20 CFR § 416.1102 defines income as anything received in cash

or in kind which is available to meet basic needs for such items as food, clothing or shelter.

17. 20 CFR § 416.1103 excludes from income certain amounts not available to meet basic needs, and specifically excludes “assistance provided in cash or in kind ... under a Federal, State or local government program, whose purpose is to provide medical care or services ...”. CFR § 416.1103(a)(3).

18. In 2009, DHS received approval to consolidate three Medicaid-supported home and community based service programs operated by DHS into a single program known as Global Options for Long Term Care pursuant to the waiver program established pursuant to N.J.S.A §30:4D-17.23 through §30:4D-17.32.

19. On or about May 15, 2012, Plaintiff Alma Galletta applied at the Bergen County Board of Social Services (“BCBSS”) for Medicaid benefits pursuant to the Global Options program. Under the program, Ms. Galletta would be eligible to receive community based services as she had spent down her remaining assets pursuant to N.J.A.C. § 10:71-4.5(c).

20. At all relevant times, the income limit in order to be eligible is \$2,094.00 for an approved assisted living facility. N.J.A.C. §10:71-5.1(a); N.J.A.C. 10:71-5.6.

21. On or about July 6, 2012, Plaintiff was denied eligibility by BCBSS because her income exceeded the \$2,094.00 limit (Exhibit "A"). Specifically, Plaintiff receives social security income of \$1,223.00 and a Veterans Administration Improved Pension ("VAIP") for unreimbursed medical expenses in the amount of \$1,094.00.

22. Plaintiff received the first VAIP check on or about February 1, 2012 in accordance with the provisions of 38 USCS § 1541(d)(1). Specifically, the Department of Veterans Affairs ("DVA") determined that Plaintiff Alma Galletta was entitled to "aid and attendance" allowance effective June 24, 2011 based on evidence of record showing that she was entitled to "special monthly pension because of the need for aid and attendance" and that the evidence showed that she was "in need of assistance of another person in performing routine activities of daily living." (Exhibit "B") and 38 CFR 3.352 which sets forth criteria for aid and attendance.

23. The DVA determined that Plaintiff had annual unreimbursed medical expenses (UMEs) of \$43,093.00 representing the costs of Medical insurances and home based services, which reduced her countable income to \$0.00 (Exhibit "C").

24. The VAIP consists of a monthly payment of \$684.00 designated as pension and \$410.00 designated as aid and attendance for a total payment of \$1,094.00 pursuant to 38 U.S.C. § 1541(d)(1) which provides that "if a surviving

spouse who is entitled to pension under subsection (b) of this section is in need of regular aid and attendance, the annual rate of pension payable to such surviving spouse shall be \$13,128 reduced by the amount of the surviving spouse's annual income" (Exhibit "D").

25. In computing the VAIP benefit, the applicant's income from all sources is subtracted from the applicable guaranteed benefit level, and the resulting difference, if any, is the amount of VAIP award. 38 U.S.C. § 1541(d)(1). The DVA determined that, as result of the UMEs, Plaintiff's countable income was \$0.00 (Exhibit "C").

26. The amounts received by Plaintiff as VAIP are attributable to the exclusion under 38 U.S.C. §1541(d)(1) of unreimbursed medical expenses and therefore constitute reimbursements for using non-VA income to pay medical expenses.

27. In denying Plaintiff's application for Medicaid benefits, BCBSS improperly applied a portion of the VAIP, i.e., \$684.00, as income and by doing so placed Plaintiff \$36.72 over the income limit (Exhibit "E").

28. Given that the VAIP represents medical reimbursement, the VAIP payments should not be counted as income for purposes of determining Medicaid eligibility, as it does not constitute income within the meaning of 20 CFR §§ 416.1102 and 416.1103.

29. In fact, the Department of Veterans Affairs classifies Plaintiff's VAIP as all Aid & Attendance due to her need for assistance with activities of daily living (Exhibit "D").

30. Despite being advised that the total amount of Plaintiff's VAIP is classified as Aid & Attendance, the BCBSS continues to improperly count \$684.00 of Plaintiff's VAIP as income, causing her to be denied benefits to which she is entitled (See Exhibit "F").

29. The Secretary of HHS has stated:

Where the SSI program reduces its payments to take into account assistance of this type (medical or social) furnished under other governmental programs, SSI is, in effect, nullifying or frustrating achievement of those other programs' purposes. Consistent with the intent underlying these medical care and services and social services programs, SSI policy is being modified so as to exclude from the definition of income [in cash or in kind compensation] . . . furnished for the purpose of providing medical care and services or social services under any governmental program.

Notice of Proposed Rule Making, 43 Fed. Reg. 41055 (Sept. 14, 1978).

### **CLASS ACTION ALLEGATIONS**

30. Plaintiff brings this suit as a class action on behalf of herself and on behalf of all others similarly situated (the "Class") pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Subject to additional information obtained



through further investigation and/or discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Plaintiff seeks to represent the following Class:

(a) All those persons who have been denied or may in the future be denied Medicaid benefits by The New Jersey Department of Human Services by and/or through actions of any county board of social services, from six years next preceding the filing of this action as a result of including as “countable income” a Veterans’ Administration Improved Pension (“VAIP”) awarded pursuant to 38 U.S.C. § 1541(d)(1) for unreimbursed medical expenses.

31. This action may be brought and may be properly maintained as a class action for the following reasons:

(a) Numerosity: On information and belief, members of the Class are so numerous that their individual joinder is impractical. The precise number of Class members is unknown to Plaintiff.

(b) Existence and Predominance of Common Questions of Fact and Law: Common questions of fact and law exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include, but are not limited to, whether the New Jersey Department of Human Services is violating certain United States Department of Health & Human Services (“HHS”) regulations

defining income for the purpose of Supplemental Security Income (“SSI”) eligibility in counting as income Veterans Administration Improved Pensions (“VAIP”) awarded pursuant to U.S.C. § 1541(d)(1) for unreimbursed medical expenses. These and other questions of law and fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class.

(c) Typicality: Plaintiff’s claims are typical of the claims of the Class which she represents since she was denied Medicaid benefits as a result of the NJDHS policy of counting as income her VAIP, awarded pursuant to 38 U.S.C. § 1541(d)(1) for unreimbursed medical expenses.

(d) Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the Class that she seeks to represent; she has retained counsel competent and highly experienced in complex class action litigation and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and her counsel.

(e) Superiority: A class action is superior to other available means of fair and efficient adjudication of the claims of Plaintiff and members of the Class. The injuries suffered by each individual class member are relatively small in comparison to the burden and expense of individual prosecution of the complex

and extensive litigation necessitated by defendants' conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation represents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. In this case, a class action is particularly superior as Defendants have repeatedly reversed their position on Medicaid eligibility in identical circumstances only after individual lawsuits were filed, as was the case in Gartzman v. Velez, et al, 1:11-cv-02520 and Mary Krammer, et al v. Jennifer Velez, et al, 1:11-cv-4924. This has resulted in members of the class being continually denied benefits for long periods of time, establishing the superiority of a class action which would create legally enforceable procedures for all class members on a uniform basis.

(f) By knowingly denying Medicaid benefits by including the VAIP as countable income for determining eligibility for such benefits, Defendants have acted, and refuse to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

**COUNT I**  
(42 USC § 1983)

32. Plaintiff incorporates and restates each of the above paragraphs as if fully set forth herein.

33. Defendants have deprived Plaintiff and members of the Class of their federal and constitutional rights including, but not limited to, those guaranteed by the Fourteenth Amendment by failing and refusing to provide Plaintiff and members of the Class with Medicaid benefits to which they are entitled.

34. Defendants' actions violate the federal Medicaid Act, 42 U.S.C. §1396(a)(10), by improperly treating Plaintiff's VAIP as income. Relief from this violation is available pursuant to 42 USC § 1983 and the Supremacy Clause of the Constitution of the United States.

35. Defendants have deprived Plaintiff and members of the Class their federal and constitutional rights through implementation of a policy that systematically includes the VAIP as income in determining eligibility for benefits under the waiver program.

36. As a direct and proximate result of Defendants' violation of 42 U.S.C. §1983, Plaintiff and members of the Class have been denied Medicaid benefits to which they are entitled.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants, providing the following relief:

- (a) Determining that the claims alleged herein may be maintained as a class action under Rule 23(a), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, and issue an order certifying the Class as defined above;
- (b) Awarding appropriate injunctive and/or declaratory relief, including, without limitation, an order enjoining Defendants from treating VAIP payments as income, a policy that contravenes the federal Medicaid Act;
- (c) Ordering Defendants to re-determine Class members and Plaintiff's Medicaid application in accordance with the federal Medicaid Act and the Regulations, granting eligibility on a retroactive basis for the period of time Plaintiff and Class Members would have been eligible to receive benefits had the correct methodology been used;
- (d) Awarding Plaintiff's attorneys fees and costs pursuant to 42 U.S.C. §1988; and,
- (e) Awarding such other relief as the court may deem equitable and just.

Respectfully submitted,

**WILLIAMS CUKER BEREZOFSKY**

By: /s/ Gerald J. Williams  
GERALD J. WILLIAMS

By: /s/ Alan H. Sklarsky  
ALAN H. SKLARSKY

**WILLIAMS CUKER BEREZOFSKY**

Woodland Falls Corporate Park  
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- and -

**LAW OFFICE OF DONALD D.  
VANARELLI**

By: /s/ Donald D. Vanarelli  
DONALD D. VANARELLI

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dvanarelli@dvanarelli.com

*Co-Counsel for Plaintiff*

DATED: January 25, 2013

JS 44 (Rev. 09/11)

### CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Alma Galletta, individually, and on behalf of herself and all others similarly situated.</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Bergen</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, Telephone Number, and Email Address)</i> Alan H. Sklarsky, Esq., Williams Cuker Berezofsky, LLC 210 Lake Drive East, Ste. 101, Cherry Hill, NJ 08002 856-667-0500: asklarsky@wcblegal.com</p>	<p><b>DEFENDANT'S</b> Jennifer Velez, Commissioner, NJ Dept of Human Services; Valerie Harr, Director, NJ Div. Medical Assistance &amp; Health Services; and Bergen County Board of Social Services. County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;"><b>PTF</b></td> <td style="width:33%; text-align: center;"><b>DEF</b></td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;"><b>PTF</b></td> <td style="width:33%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition)</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district *(specify)*     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
42 U.S.C. Sec. 1983

Brief description of cause:  
Enjoin NJ Dept of Human Services from including Veterans' pension as countable income for Medicaid.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMANDS    CHECK YES only if demanded in complaint

JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):*

JUDGE Robert B. Kugler, U.S.D.J.    DOCKET NUMBER 1:11-cv-04924

DATE 01/25/2013    SIGNATURE OF ATTORNEY OF RECORD /s/ Alan H. Sklarsky

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# EXHIBIT A



**BERGEN COUNTY BOARD OF SOCIAL SERVICES**  
216 ROUTE 17 NORTH  
ROCHELLE PARK, NJ 07662-3300  
(201) 368-4200  
FAX: (201) 368-8706

To: Alma Galletta  
Lawrence Joel  
496 Kinderkamack Rd.  
Oradell, NJ 07649

Date: 07/06/2012 *M. Gil*  
From: M. Gil  
(201) 368-7646

Medicaid Number: 02-10-156572-01

This notification is to advise you of a decision concerning Mr./Mrs. Alma Galletta's eligibility for the

**MEDICAID ONLY**

<input type="checkbox"/> Approved Effective	<u>YOUR COUNTABLE INCOME</u>	<u>INCOME ELIGIBILITY LIMIT</u>
<input checked="" type="checkbox"/> Denied Effective 07/06/2012	\$2,130.72	\$2,094.00
<input type="checkbox"/> Continued Effective	<u>YOUR COUNTABLE RESOURCES</u>	<u>RESOURCE ELIGIBILITY LIMIT</u>
<input type="checkbox"/> Terminated Effective		\$2,000.00

Based on your application dated 05/15/2012 the following action has been taken:

YOU ARE OVER THE INCOME ELIGIBILITY LIMIT - (10:71-5.2 Determination of Countable Income, 10:71-5.6(c) Income Eligibility Limits)

CC: Alma Galletta  
550 Winne Ave  
Oradell, NJ 07649

Fair Hearing Rights Notice Attached

# EXHIBIT B



**DEPARTMENT OF VETERANS AFFAIRS  
REGIONAL OFFICE AND INSURANCE CENTER  
5000 WISSAHICKON AVE  
PO BOX 8079  
PHILADELPHIA PA 19101**

**EUGENE GALLETTA**

**VA File Number  
070 24 9791**

**Represented by:  
NEW JERSEY DEPT OF MILITARY AND VETERANS' AFFAIRS**

**Rating Decision  
August 29, 2011**

**INTRODUCTION**

The records reflect that Eugene Galletta was a Veteran of the World War II Era. The Veteran served in the Army from November 8, 1945 to November 9, 1946. The Veteran died on June 4, 2010 and an original death claim was received on June 24, 2011. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

**DECISION**

Entitlement to aid and attendance allowance for Alma Galletta is established effective June 24, 2011.

EUGENE GALLETTA  
070 24 9791  
Page 2

### EVIDENCE

- VA Form 21-22 - Appointment Of Veterans Service Organization As Claimant's Representative received on June 24, 2011
- Medical statement from Dr. Elijah D. Owens, M.D. received on June 24, 2011
- Death certificate received on June 24, 2011
- VA Form 21-534 Application for Dependency and Indemnity Compensation, Death Pension & Accrued Benefits by Surviving Spouse or Child received on June 24, 2011
- VA Form 21-530 - Application for Burial Benefits received on June 24, 2011
- VA Form 21-4138, Statement in Support of Claim, received on June 24, 2011
- Veterans Claims Assistance Act (VCAA) letter released on July 6, 2011
- VCAA Notice Response received on July 14, 2011
- Correspondence received on July 25, 2011
- VA Form 21-2680 - Examination For Housebound Status Or Permanent Need For Regular Aid And Attendance received on July 25, 2011
- VA Form 21-4138, Statement in Support of Claim, received on July 25, 2011
- VA Form 21-4142 - Authorization And Consent To Release Information To The Department Of Veterans Affairs (VA) received on July 25, 2011
- Care Giver statement received on July 25, 2011
- Correspondence received on July 28, 2011

### REASONS FOR DECISION

#### Entitlement to aid and attendance allowance for Alma Galletta.

Aid and attendance may be awarded when the claimant is blind in both eyes having visual acuity of 5/200 or less, or has contraction of the visual field to 5 degrees or less; is a patient in a nursing home because of mental or physical incapacity; or, when the evidence shows aid and attendance is required to perform routine activities of daily living.

Entitlement to special monthly pension because of the need for aid and attendance is established. The evidence shows that you are in need of assistance in performing routine activities of daily life. Medical records show that you have been diagnosed with right side cerebrovascular accident. You are unable to walk without assistance. You are confined to a wheelchair. You require the assistance of another person in order to prepare meals. You are also unable to bathe or tend to hygienic needs unattended. Medical evidence notes that you require round the clock home care. You require assistance with managing your medications.

Entitlement to special monthly pension based on the need for regular aid and attendance is granted effective June 24, 2011, the date your claim was received by the Department of Veterans Affairs.

EUGENE GALLETTA  
070 24 9791  
Page 3

**REFERENCES:**

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all Veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, [www.va.gov](http://www.va.gov).

Page 4

ALMA GALLETTA

File Number: 070 24 9791  
Eugene Galletta

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**Veterans Claims Assistance Act (VCAA)**

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**What the Evidence Must Show for Death Benefits**

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To support a claim for Dependency and Indemnity Compensation (DIC) benefits based on a service-connected disability established during the veteran's lifetime, the evidence must show:

- The veteran died while on active military service; **OR**
- The veteran had a service-connected disability(ies) that was either the principal or contributory cause of the veteran's death; **OR**
- The veteran died from a nonservice-connected injury or disease **AND** was receiving, or entitled to receive, VA compensation for a service-connected disability rated totally disabling
  - ⇒ For at least 10 years immediately before death; **OR**
  - ⇒ For at least 5 years after the veteran's release from active duty preceding death; **OR**
  - ⇒ For at least 1 year before death, if the veteran was a former prisoner of war who died after September 30, 1999.

To support a claim for DIC benefits based on a disability that was not service connected or for which the veteran did not file a claim during his or her lifetime, the evidence must show:

- An injury or disease that was incurred or aggravated during active military service, or an event in service that caused an injury or disease; **AND**
- A physical or mental disability that was either the principle or contributory cause of death. This may be shown by medical evidence or by lay evidence of persistent and recurrent symptoms of disability that were visible or observable; **AND**
- A relationship between the disability associated with the cause of death and an injury, disease, or event in military service. Medical records or medical opinions are generally required to establish this relationship.

To support your claim for death pension benefits, the evidence must show:

1. The veteran met certain minimum requirements regarding active military service during a period of war. Generally, those requirements involve:
  - 90 days of consecutive service, at least one day of which was during a period of war; **OR**
  - 90 days of combined service during at least one period of war;

ALMA GALLETTA

File Number: 070 24 9791

Eugene Galletta

*(Note: If the veteran's service began after September 7, 1980, additional length-of-service requirements may apply, typically requiring two years of continuous service or completion of active-duty obligations.)*

OR, any length of active military service during a period of war when:

- At the time of death, the veteran was receiving (or entitled to receive) VA disability compensation, or retirement pay for a service-connected disability; OR
- The veteran was discharged from active military service due to a service-connected disability.

2. Your net worth and income do not exceed certain requirements

**To support your claim for accrued benefits, the evidence must show:**

- Benefits were due the veteran based on existing ratings, decisions, or evidence in VA's possession at the time of death, but the benefits were not paid before the veteran's death; AND
- You are the surviving spouse, child, or dependent parent of the deceased veteran.

**VA pays accrued benefits in the following order of priority:**

1. Spouse
2. Children of the veteran (in equal shares)
3. Dependent parents (in equal shares)

**What the Evidence Must Show for Increased Survivor Benefits based on the Need for A&A and/or Housebound Status**

In order to support your claim for increased survivor benefits based on the need for aid and attendance, the evidence must show:

- you have corrected vision of 5/200 or less in both eyes  
OR
- you have concentric contraction of the visual field to 5 degrees or less  
OR
- you are a patient in a nursing home due to mental or physical incapacity  
OR
- you require the aid of another person in order to perform personal functions required in everyday living, such as bathing, feeding, dressing yourself, attending to the wants of nature, adjusting prosthetic devices, or protecting yourself from the hazards of your daily environment (38 Code of Federal Regulation 3.352(a))  
OR

ALMA GALLETTA

File Number: 070 24 9791

Eugene Galletta

- you are bedridden, in that your disability or disabilities requires that you remain in bed apart from any prescribed course of convalescence or treatment. (38 Code of Federal Regulation 3.352(a))

In order to support your claim for increased benefits based on being housebound, the evidence must show:

- you are substantially confined to your immediate premises because of permanent disability.

**VA is Responsible for Getting the Following Evidence:**

- Relevant records that you adequately identify and authorize VA to obtain from any Federal agency. These may include records from the military, VA medical centers (including private facilities where VA authorized treatment), or the Social Security Administration.
- VA will provide a medical examination for you, or get a medical opinion, if we determine it is necessary to decide your compensation claim.

**On Your Behalf, VA Will Make Reasonable Efforts to Get the Following Evidence:**

Relevant records not held by a Federal agency that you adequately identify and authorize VA to obtain. These may include records from State or local governments, private doctors and hospitals, or current or former employers.

**How Can You Help:** If you have any information or evidence that you have not previously told us about or given to us, please tell us or give us that evidence now. If the evidence is not in your possession, you must give us enough information about the evidence so that we can request it from the person or agency that has it. If the holder of the evidence declines to give it to us, asks for a fee to provide it, or VA otherwise cannot get the evidence, we will notify you. *It is your responsibility to make sure we receive all requested records that are not in the possession of a Federal department or agency.*

**How VA Determines the Effective Date:** If we grant a claim for death benefits, the beginning date of your entitlement will generally be based on when we received your claim. However, if VA received your claim within one year of the date of the veteran's death, entitlement will be from the first day of the month in which the veteran died.

The veteran's death certificate is evidence relevant to determining the effective date of any benefits we award.

Higher levels of benefits are available for a veteran's surviving spouse and/or parents who are unable to perform certain activities of daily living or leave their home. Higher levels of benefits may be effective from the date medical evidence first establishes entitlement.



ALMA GALLETTA

File Number: 070 24 9791  
Eugene Galletta

### VCAA NOTICE RESPONSE

Date of Claim: June 30, 2011

We provided a notice to you about the evidence and information VA needs to support your claim for benefits. At this time, you may choose to indicate whether you intend to submit additional information or evidence that would help support your claim.

Your signed response will let us know whether to decide your claim without waiting 30 days, or whether we should give you the full 30 days from the date of the letter sent with this notice response before deciding your claim.

Your signature on this response will not affect:

- Whether or not you are entitled to VA benefits;
- The amount of benefits to which you may be entitled;
- The assistance VA will provide you in obtaining evidence to support your claim; or
- The date any benefits will begin if your claim is granted.

### RESPONSE

I elect *one* of the following: (Whichever box you check, you have one year from the date of the notice to give VA any other information or evidence you think will support your claim.)

I have enclosed all the remaining information or evidence that will support my claim, or I have no other information or evidence to give VA to support my claim. Please decide my claim as soon as possible.

I will send more information or evidence to VA to support my claim. VA will wait the full 30 days from the date of the letter sent with this notice response before deciding my claim.

Alma Galletta  
Claimant/Representative Signature

July 12, 2011  
Date

# EXHIBIT C

MAR 05 2012



DEPARTMENT OF VETERANS AFFAIRS  
VAROIC PHILADELPHIA  
5000 WISSAHICKON AVE  
PO BOX 8079  
PHILADELPHIA PA 19101

In Reply Refer To: 310/PMC/MJW  
XSS 070 24 9791  
GALLETTA, Eugene

ALMA GALLETTA  
550 WINNE AVE  
ORADELL, NJ 07649

Dear Mrs. Galletta:

U.S. Senator Robert Menendez has expressed an interest in your claim. His office will receive a copy of this letter.

We made a decision on your claim for dependency and indemnity compensation (DIC), death pension and accrued received on June 24, 2011.

This letter tells you about your entitlement amount and payment start date and what we decided. It includes a copy of our rating decision that gives the evidence used and reasons for our decision. We have also included information about additional benefits, what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

### Your Award Amount and Payment Start Date

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason For Change
\$1,056.00	Jul 1, 2011	Granted Pension
1,094.00	Dec 1, 2011	Cost of Living Adjustment

We're paying you as a surviving spouse with no dependents. *Let us know right away if there is any change in your marital status.*

### You Can Expect Payment

Your payment begins the first day of the month following your effective date. You will receive a payment covering the initial amount due under this award, minus any withholdings, in approximately 15 days. Payment will then be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.



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XSS 070 24 9791  
Galletta, Eugene

## What We Decided

We granted death pension benefits effective June 24, 2011.

We have approved an additional allowance for aid and attendance effective June 24, 2011.

We couldn't approve your claim for accrued benefits.

We have denied your claim for service connected death benefits, called dependency and indemnity compensation (DIC).

## How Did We Make Our Decision?

We have enclosed a copy of your Rating Decision for your review. It provides a detailed explanation of our decision, the evidence considered, and the reasons for our decision on your claim for aid and attendance benefits. Your Rating Decision and this letter constitute our decision based on your claim received on June 24, 2011. It represents all claims we understood to be specifically made, implied or inferred in that claim.

We granted death pension benefits because the veteran served during a period of war, and you meet the income and net worth requirements set by law.

Please be advised that we could not approve your entitlement to DIC since there is no evidence of record to indicate that the veteran's cause of death was due to his service under 38 CFR 3.312.

DIC may be paid to *eligible dependents*:

- when the veteran died while in service, *or*
- when the veteran died of a service-connected condition.

DIC may also be paid when the veteran was totally disabled because of service-connected condition(s) but died from other causes if:

- the veteran was totally disabled by reason of service connected disability(ies) for a period of 10 years or more immediately preceding death, *or*
- the veteran was totally disabled by reason of service connected disability(ies) from date of discharge from military service for at least a 5 year period immediately preceding death.

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XSS 070 24 9791  
Galletta, Eugene

An accrued benefit is any money we owe a veteran at the time of death. We can't approve your claim for accrued benefits because VA didn't owe the veteran any money.

### What Income And Expenses Did We Use?

We used your total family income as shown below to award your death pension benefit from July 1, 2011.

#### Income We Counted

	Annual IRA	Annual Social Security	Annual Retirement	Annual Interest
Yourself	\$1,716	\$13,026	\$3,884	\$300

We used family medical expenses you paid in the amount of \$43,039.00 which reduces your countable income to \$0.00.

We also used last expenses of \$13,076.00 (\$13,676 funeral bill - \$600 burial benefit) when calculating your income for VA purposes from July 1, 2011 to July 1, 2012.

We used your total family income as shown below to adjust your death pension benefit from December 1, 2011.

#### Income We Counted

	Annual IRA	Annual Social Security	Annual Retirement	Annual Interest
Yourself	\$1,716	\$13,486	\$3,884	\$300

We used your medical expenses of \$43,039.00 which represents the amount you pay for Medicare (Part B and D) premiums, private medical insurance, and caregiver fees as a continuing deduction from March 1, 2012. This reduces your countable income to \$0.00. If the amount you pay for medical expenses changes or you are no longer paying medical expenses, tell us immediately. If you don't tell us about changes in your medical expenses, we may pay you too much money. You would have to pay back this money.

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XSS 070 24 9791  
Galletta, Eugene

### **What Are Your Responsibilities?**

You are responsible to tell us right away if:

- your income or the income of your dependents changes (e.g., earnings, Social Security benefits, lottery and gambling winnings)
- your net worth increases (e.g., bank accounts, investments, real estate)
- your continuing medical expenses are reduced
- you gain or lose a dependent
- your address or phone number changes

### **Direct Deposit**

On your application, you requested to have your payments forwarded to your bank account. Your payments will be automatically deposited into this account each month. *If your account information has changed since you filed your claim with us, please notify us immediately.* Direct Deposit is the safest and most reliable way to get your money. For more information about Direct Deposit, please call us toll free by dialing 1-877-838-2778.

### **Are You Entitled to Additional Benefits?**

We've enclosed VA Form 21-8767, "Death Pension Award Attachment," which explains other benefits.

You should contact your State office of veteran's affairs for information on any tax, license, or fee-related benefits for which you may be eligible as a veteran (or surviving dependent of a veteran). State offices of veteran's affairs are available at <http://www.va.gov/statedva.htm>.

### **What You Should Do If You Disagree With Our Decision**

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision*. The enclosed VA Form 4107, "*Your Rights to Appeal Our Decision*," explains your right to appeal.

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XSS 070 24 9791  
Galletta, Eugene

### If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

<b>If you</b>	<b>Here is what to do.</b>
Telephone	Call us at 1-877-294-6380. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at <a href="https://iris.va.gov">https://iris.va.gov</a> .
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to your VA file number 070 24 9791.

If you are looking for general information about benefits and eligibility, you should visit our website at <https://www.va.gov>, or search the Frequently Asked Questions (FAQs) at <https://iris.va.gov>.

We sent a copy of this letter to your representative, New Jersey Dept of Military and Veterans' Affairs, whom you can also contact if you have questions or need assistance.

Sincerely yours,

*Eileen Kostic*

Eileen Kostic  
Veterans Service Center Manager

To email us visit <https://iris.va.gov>

Enclosure(s): Rating Decision  
VA Form 21-8767  
VA Form 4107

cc: U.S. Senator Robert Menendez  
New Jersey Dept of Military and Veterans' Affairs



## DEATH PENSION AWARD ATTACHMENT

Information concerning Department of Veterans Affairs, Federal, State or local benefits may be obtained from your nearest VA office or any national service organization representative. You may call VA toll-free at 1-800-827-1000 (Hearing Impaired TDD line 1-800-829-4833) or contact VA by Internet at <https://iris.va.gov>.

### WHEN IS YOUR VA CHECK DELIVERED?

A check covering the initial amount due under this award will be mailed within 15 days. Thereafter, checks will be delivered at the beginning of each month for the prior month.

### HOW CAN YOU RECEIVE ADDITIONAL BENEFITS FOR DEPENDENTS?

You may be entitled to additional benefits for the veteran's unmarried children if the children are under age 18 or under 23 if attending an approved school, or if, prior to age 18, the child has become permanently incapable of self-support because of mental or physical defect. Children who meet one of these criteria may receive pension in their own right if there is no surviving spouse. You may contact VA as shown above for information on applying for this benefit.

### HOW CAN YOU RECEIVE AID AND ATTENDANCE OR HOUSEBOUND BENEFITS?

VA may pay a higher rate of pension to a surviving spouse who is blind, a patient in a nursing home, otherwise needs regular aid and attendance, or who is permanently confined to his or her home because of a disability. You may contact VA as shown above for information on applying for this benefit.

### HOW CAN CERTAIN EXPENSES INCREASE YOUR RATE OF IMPROVED PENSION?

Family medical expenses and educational or vocational rehabilitation expenses actually paid by you may be used to increase your rate of pension. Family medical expenses are amounts paid by you for medical expenses, including premiums paid for health insurance for yourself and relatives you are under an obligation to support. VA will deduct the amount you paid for medical expenses from your countable income if the expenses qualify for exclusion under the formula provided by law. Educational or vocational rehabilitation expenses are amounts paid for courses of education, including tuition, fees, and materials, and may be deducted from the respective incomes of a surviving spouse and the earned income of a child, if the child is pursuing a course of postsecondary education or vocational rehabilitation or training. Keep track of the unreimbursed amounts you pay. Normally these expenses are reported at the end of the year with an Eligibility Verification Report.

### ARE YOUR BENEFITS EXEMPT FROM CLAIMS OF CREDITORS?

VA pension payments are exempt from claims of creditors. With certain exceptions, the payments are not assignable and are not subject to attachment, levy, or seizure except as to claims of the United States.

### HOW DO YOU REPORT A CHANGE OF ADDRESS?

Please notify this office immediately of any change of address.

### WHAT CONDITIONS AFFECT RIGHT TO PAYMENTS?

1. Your benefits may be affected by any changes in the amount of family income and marital or dependency status of the surviving spouse or children.

a. Change in family income and net worth: You are required to report the total amounts and sources of all income and net worth for you and your dependents for whom you have been awarded benefits. Some income is not countable. If you report such income, VA will exclude it when computing your income for VA purposes. Benefit rates and income limits change frequently; however, you can find out what the current income limitations and rates of benefits are by contacting VA as shown above.

b. Change in marital or dependency status: You or your survivors must notify us of any change in marital or dependency status or upon your death. Examples of changes in marital or dependency status include the death of a dependent, the marriage of you or your dependent child, and discontinuance of a child's school attendance. **Note: The law provides that entitlement to benefits is permanently lost if the surviving spouse or child marries or enters into a relationship where the individuals hold themselves out to the public as being married.**





Department of Veterans Affairs

## YOUR RIGHTS TO APPEAL OUR DECISION

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- appeal to the Board of Veterans' Appeals (the Board) by telling us you disagree with our decision
- give us evidence we do not already have that may lead us to change our decision

This form will tell you how to appeal to the Board and how to send us more evidence. You can do either one or both of these things.

**NOTE:** Please direct all new evidence to the address at the top of our letter. Do not send evidence directly to the Board until you receive written notice from the Board that they received your appeal.

### WHAT IS AN APPEAL TO THE BOARD OF VETERANS' APPEALS?

An appeal is your formal request that the Board review the evidence in your VA file and review the law that applies to your appeal. The Board can either agree with our decision or change it. The Board can also send your file back to us for more processing before the Board makes its decision.

### HOW CAN I APPEAL THE DECISION?

**How do I start my appeal?** To begin your appeal, write us a letter telling us you disagree with our decision. This letter is called your "Notice of Disagreement." If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in your letter which claims you are appealing. *Send your Notice of Disagreement to the address at the top of our letter.*

**What happens after VA receives my Notice of Disagreement?** We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. You must complete this VA Form 9 and return it to us if you want to continue your appeal.

**How long do I have to start my appeal?** You have one year to appeal our decision. *Your* letter saying that you disagree with our decision must be postmarked (or received by us) within one year from the date of *our* letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

**What happens if I do not start my appeal on time?** If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- show that we were clearly wrong to deny the benefit *or*
- send us new evidence that relates to the reason we denied your claim

**Can I get a hearing with the Board?** Yes. If you decide to appeal, the Board will give you a hearing if you want one. The VA Form 9 we will send you with the Statement of the Case has complete information about the kinds of hearings the Board offers and convenient check boxes for requesting a Board hearing. The Board does not require you to have a hearing. It is your choice.

### Where can I find out more about appealing to the Board?

- You can find a "plain language" booklet called "How Do I Appeal," on the Internet at: <http://www.va.gov/vbs/bva/pamphlet.htm>. The booklet also may be requested by writing to: Mail Processing Section (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.
- You can find the formal rules for appealing to the Board in the Board's Rules of Practice at title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: <http://www.gpoaccess.gov/cfr/index.html>. A printed copy of the Code of Federal Regulations may be available at your local law library.

# EXHIBIT D



DEPARTMENT OF VETERANS AFFAIRS  
VAROIC PHILADELPHIA  
5000 WISSAHICKON AVE  
PO BOX 8079  
PHILADELPHIA PA 19101

May 23, 2012

In Reply Refer To: 310/NPCC/LG  
XSS 070 24 9791  
Calouri, C

ALMA GALETTA  
550 WINNE AVE  
ORADELL NJ 07649

Dear Mrs. Galetta:

This letter from the Department of Veterans Affairs certifies that Alma Galetta is receiving death benefits with aid and attendance.

The current benefit paid is as follows:

Gross Benefit Amount	\$1094.00/mo.
Pension Amount	\$684.00/mo
Aid and Attendance	\$410.00/mo
Net Amount Paid	\$1094.00/mo.
Effective Date	December 1, 2011

If you reside in the con- nited States, Alaska, Hawaii, or Puerto Rico, you may contact VA with questions ; our toll-free number 1-877-294-6380 (for hearing impaired TDD 1-800-829-4833) or contact us online (<https://iris.va.gov>).

Sincerely yours,

*Eileen Kostic*

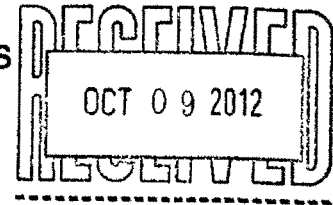
Eileen Kostic  
Veterans Service Center Manager

To email us visit <https://iris.va.gov>



# EXHIBIT E

**BERGEN COUNTY BOARD OF SOCIAL SERVICES  
LAW OFFICES  
216 ROUTE 17 NORTH  
ROCHELLE PARK, NJ 07662-3300**



TEL. (201) 368-4207



FAX (201) 368-4274

October 5, 2012

Donald D. Vanarelli, Esq.  
242 St. Paul Street  
Westfield, NJ 07090

RE: Alma Galletta  
OAL Docket No. HMA10517-2012N  
Our File No. 0210156572

Dear Mr. Vanarelli:

Please accept this letter in response to the interrogatories concerning the Alma Galletta Medicaid fair hearing. I trust this letter will serve to answer your questions.

The denial of Medicaid is not particularly complicated. In the course of the Medicaid application made on or about May 17, 2012, Ms. Galletta was determined to have the following monthly income for Medicaid purposes, as per N.J.A.C. 10:71-5.4:

Social Security benefits	\$1,123.00
V.A. benefits	684.00
Private pension	<u>323.72</u>
	\$2,130.72

Ms. Galletta had applied for the Global Options Program, which has an eligibility income standard of \$2,094.00 monthly. N.J.A.C. 10:71-5.6, Table B. Ms. Galletta's monthly income exceeded the eligibility standard. Ms. Galletta's income would also have exceeded the standard for a community-based program.

Enclosed are various documents provided in the application regarding Ms. Galletta's income. Also enclosed is the worksheet and the denial letter.

Very truly yours,

Mitchell I. Steinhart  
Counsel

MIS:mp/w

Enc.

cc: Mercedes Gil, Human Services Specialist 2, BS, w/enc.

# EXHIBIT F



DEPARTMENT OF VETERANS AFFAIRS  
VARO PHILADELPHIA  
5000 WISSAHICKON AVE  
PO BOX 8079  
PHILADELPHIA PA 19101

ALMA GALLETTA  
550 WINNE AVE  
ORADELL, NJ 07649

In Reply Refer To: 310/PMC  
XSS 070 24 9791  
GALLETTA, Eugene

Dear Mrs. Galletta:

This letter from the Department of Veterans Affairs certifies that Alma Galletta is receiving Aid & Attendance benefits due to her need for assistance with activities of daily living.

The current benefit paid is as follows:

Gross Aid & Attendance	\$1,094.00/mo.
Net Amount Paid	\$1,094.00/mo.
Effective Date	December 1, 2011

If you reside in the continental United States, Alaska, Hawaii, or Puerto Rico, you may contact VA with questions by calling our toll-free number 1-877-294-6380 (for hearing impaired TDD 711) or contact us online (<https://iris.va.gov>).

Sincerely yours,

*Eileen Kostic*

Eileen Kostic  
Veterans Service Center Manager

To email us visit <https://iris.va.gov>

