

Lawyer uncovers little-known reg in case of disabled vet

A U.S. Army veteran who served in the 101st Airborne Division, Cranston resident Richard Frusher was diagnosed with schizophrenia in 1974 after he was found banging his head against a wall. He applied for Social Security Disability Insurance, only to be told he was ineligible for benefits. When Frusher was unable to appeal the denial within 60 days due to his mental illness, the case was tossed out.

For the next three decades, Frusher was cared for by his wife and children. In 2003, when applying for Social Security retirement for him, Frusher's wife again inquired about disability. Told it would be a long shot, she persisted and ultimately secured the disability benefits — though only to 2003. When she could not obtain the lost benefits back to 1974, she sought the legal services of attorney Donna M. Nesselbush.

Quick WORD

Citing a little-known exception to the 60-day statute of limitations, Social Security Ruling 91-5p — which states that a claimant whose mental illness prevents him from understanding the procedures to appeal will have "good cause" for a late appeal at any time — Nesselbush brought the case before the Social Security Administration's Appeals Council, which remanded the matter to an administrative law judge in September 2005. Though Richard Frusher died less than a month later, Nesselbush appealed the case to the U.S. District Court, which subsequently denied the claim.

Undeterred, Nesselbush and associate Joseph P. Wilson recently represented Frusher's widow in the 1st U.S. Circuit Court of Appeals, successfully obtaining 36 years of wrongfully denied benefits for the estate.

"This is why I went to law school: to be able to deliver this kind of victory for a frail and now-elderly woman who actually sought these benefits on her husband's behalf for 30 years," Nesselbush said in an interview with Lawyers Weekly's Peter Harrison.

Q. How much money are we talking about?

A. Social Security moves at glacial speeds, so the actual payment aspects have not been all finalized yet. Suffice it to say it will be several hundred thousand dollars of retroactive benefits for his widow and now-adult children.

Q. Why did it take multiple judges to arrive at this decision?

A. The judges are used to seeing requests for reopening [a case after] one year, two years or four years, but nobody is accustomed to reopening something that is 30 years old. ... With the nation facing unprecedented budget deficits, I think the judges were just loath to pay that amount of money without being ordered to do so by a higher authority.

Q. What were you most worried about before trial?

A. Doing all that work and losing. On a serious note, we always knew that it was a long shot, but as we always say here, we went to law school not to litigate the easy cases but to litigate the hard cases and to push the margins of the law. Social Security is full of arcane, legal principles that



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are binding. ... When we got our day in court in the 1st Circuit, the court recognized that those are binding legal authority and applying the facts to that binding legal authority did compel the outcome that we received.

Q. What kind of impact will this have on the practice of SSDI?

A. Social Security denies a lot of people who, in fact, are disabled and entitled to benefits. The national average at the hearing level is that judges pay 60 percent of the cases. ... Many people who are denied, of course, just go away. ... The message here is if you are denied, don't give up. There are trained legal professionals who can help you, and if you truly are disabled and your lawyer knows the law, we can get you what you rightly deserve.

Q. What was your favorite part of working on this case?

A. Knowing that we were right and using every skill we had ever learned from writing the English language to persuasion skills that we all learned in law school. I knew all along that this person deserved those benefits and we were going to do everything we could to prove it.