

Testimony of Kaanan Mackey Fugler

Surviving Spouse of SSGT Matthew Mackey, United States Marine Corps

Before the House Committee on Veterans' Affairs

Chairman Bost, Ranking Member Takano, and distinguished members of the House Committee on Veteran Affairs, I thank you for the opportunity to share issues and challenges surviving military families face accessing benefits through the Department of Veterans Affairs.

My Loss

I am the surviving spouse of SSG Matthew Mackey. Matt served in both the Marine Corps and the Army National Guard for nearly two decades. He served four years in the Marine Corps and I was lucky enough to be by his side during the last two of those years. When his enlistment ended, he wanted to spend more time with our growing family while continuing to serve this great country. He did this by joining the Iowa National Guard. We had 12 years together. My family spent nine years and seven months of that time separated by training, schools, or deployments. Getting married at 19, I spent my entire adult life at home, raising our family, while my husband served our country.

In 2010, mere months after returning home from an Operation Iraqi Freedom deployment, Matt died because of an accident, in my arms, while on Title 32 orders. When he died, every hope and dream for OUR future was shattered in a moment. I was left to raise our five young children. Our oldest child was 11 and our youngest turned two a week after the funeral. My children had the last bit of their innocence ripped away from them in a little room off the ICU. It was there I had to tell them that their dad would not be coming home with us. I watched heartbroken as my nine-year-old son ran out of the room bawling, wanting to know who would teach him to be a man now?! I chose to spend my life by my husband's side; my children did not have that choice.

My career had been put on hold to move around and be there for our children during training and deployments. I have spent the last 13 years continuing to put my life on hold while helping our children grieve, grow, and heal. I lost years of being able to vest in my own retirement. Though I utilized my education benefits and obtained a master's degree, the gaps in my education and employment will affect my earning potential and will continue to put me at a disadvantage to my civilian counterparts. My survivor benefits helped not only offset my husband's income, but the loss of my own income because of our military life.

Remarriage Issues

While my husband was on that last deployment, he wrote our children each a “what if” letter. In those letters, he tells my children that he wanted me to find someone to pick up our broken pieces and would love them when he was unable. Matt didn’t want me to be alone the rest of my life. He certainly didn’t want our children to grow up without a father figure in their lives. I was lucky enough to find someone willing to take on that role. Josh came into our lives and helped mend our broken pieces. He helped remind us that there was still a life to live. In 2017, after years of dating and struggling with the idea of losing my earned benefits, I made the decision to get remarried.

Josh had almost a decade of military service himself. He understood military loss from another perspective and understood what I would give up marrying him. He was willing to wait years to marry me, so that I wouldn’t have my earned benefits ripped away by choosing love. That was not fair of me to ask of anyone. It was important for us to show my children that love, and morals, were more important than money. I should never have to be forced by the government to make the decision between love and money.

Based on current law, I would have had to wait another 24 years to remarry; that’s almost half of my life. That is what Congress believes is the appropriate amount of time I should be alone, in my grief, to keep my earned benefits. Disallowing surviving spouses to maintain benefits earned during our marriage is an archaic idea of thinking that we should be supported by the “next man.” Removing my benefits shows that my time and my contribution are worthless in the eyes of the federal government. The government kept telling me that my loss was a “debt that could not be repaid.” However, what they really mean is that my loss is America’s debt, until I’m another man’s responsibility. My husband died. I didn’t get divorced. It certainly was not my choice to be a widow at 31 and faced with the decision of moving forward with love or money. But it was my choice to show my children that life continues and to build a new chapter for my family.

Due to this archaic law, Congress, through the VA and DoD, has made our futures all about ways that we can lose our earned benefits. A piece of paper will never change that I’m Matt’s widow; it just also means I am someone else’s spouse. It doesn’t wipe away the 12 years spent sacrificing my own employment while Matt served, nor the 13 years after his death spent raising our broken family.

VA Education Issues

My remarriage created two files within the VA since I remarried a disabled veteran: one under Matt and another under Josh. This has led to confusion when I applied for CHAMPVA, Chapter 35 upon remarriage, and when calling in regarding my children’s benefits. When I was remarried, my Fry Scholarship was stopped under my deceased spouse, as I was no longer eligible. I applied for Chapter 35 under my current husband's VA file due to his disability rating. I was initially denied Chapter 35 under my new spouse and told that since I had elected Fry Scholarship under my deceased spouse I was unable to utilize Chapter 35 under my current spouse. I brought in TAPS policy to assist. We did not find anything in VA policy that prevents me from using a benefit earned by my current husband. The VA policy was reviewed after

TAPS inquired, and it was determined that I was eligible to use Chapter 35 under my new spouse. However, this was not before it caused a debt on the Fry side under my deceased husband. Because of this, I had to pay for a semester of college out of pocket. VA did eventually backdate Chapter 35 benefits to the date of my remarriage. This pay was used to pay off the Fry Scholarship debt caused by my remarriage.

My adult children have also had issues in utilizing their education benefits. None of my adult children can access their VA benefits online. ID.me uses their military IDs to verify them but it's connected to their dad's information and not their own. This causes issues with certifying enrollment when changes are made during the semester.

My oldest son, Jon, was denied the Fry Scholarship as the VA determined "his dad was not deceased". This was due to the processor not doing his due diligence and checking the file to see the DD1300 with all 6 names on it. Once we called VA that issue was corrected and they sent out my son's Certificate of Eligibility. Additionally, half of last year, he was unable to even receive the text messages to certify his enrollment at school. He again called VA and was told that he could certify through email. This fall, he was finally able to receive the text messages for certification.

My daughter, Chloe, recently had issues regarding the text messages to certify enrollment. In October she dropped a course but was still a full-time student. When the text message arrived to certify her enrollment, it states if you dropped a class reply "NO." She did as instructed. She was then instructed to go online and certify her enrollment. She is unable to go online as instructed because of the ID.me account linked to her dad's information and not her own. She called VA Education and was told that the account was noted and there would be no problem with her payment. The next month, she wasn't paid. She waited a few days to see if it was just delayed since she had to call. In the meantime, she received the next text to certify the next month of enrollment. This time she typed "YES," as there had been no change in the last month to her enrollment. She did not get the automated reply. Again, she calls VA Education. This time she is told that because she didn't certify her enrollment for two consecutive months that her BAH was suspended. Chloe informed them that she called last month and was informed it had been taken care of and she told him the exact time she replied to the text for this month. This processor certified her enrollment and told her that she would get paid in the next 2 weeks. Thankfully, she had money in her bank account to cover her rent and other bills that were due while she waited on another glitch in VA's processing to be corrected and her to receive payment, but not every student does.

Turning off VA benefits

Remarrying required me to go through the process of stopping all my earned survivor benefits. My experience in stopping my VA benefits was vastly different from Social Security or DoD, which were incredibly simple in comparison.

For VA Education I had to send in a copy of my marriage license and statement asking that they stop my Fry Scholarship. That process took under a month.

DIC needed to be stopped for me and transferred to my children. I promptly reported my remarriage within 30 days of receiving my Marriage License. I faxed the VA my statement of remarriage, the VA 21- 534a (transferring partial DIC to my children), a copy of my DD 1300, and my new marriage license. I was told this process would take 8 to 12 weeks.

I did my due diligence and provided the required information in a timely manner per VA policy. I then spent the next seven months making phone calls, getting my file flagged multiple times, faxing another copy of my paperwork directly to the processing center, getting TAPS involved, and even a Congressional inquiry, just to get someone to open the file and even begin the process five months later. I did everything short of closing my bank account to stop the payments in my name. There was no way that a reasonable person could look at all these events and say that I did not do my part in a timely manner, acting in good faith, to prevent an overpayment within the VA's own guidelines.

Nearly 10 months after I remarried, my DIC finally stopped. I then received a letter of debt for over \$12,000. I disputed this debt as it occurred not by me failing to do my part, per VA policy, but the VA failing to fulfill their own processing timeline. Five years later, I sat before a Veterans Law Judge for the Board of Veterans' Appeals and laid this all out. I eventually received a letter stating the debt was forgiven since I clearly made every effort possible to stop my benefits. Every surviving spouse that remarries will get a debt from the VA no matter how timely we submit our documents due to the method that VA uses in processing claims. Most of our community trusts that the VA will process their forms in a timely manner and just accepts the thousands of dollars of debt that are incurred while they wait.

DIC for High School Survivors

When surviving children turn 18 while still in high school, they are required to submit VA Form 21-674 60 days before their birthday to prevent a break in pay. This form serves to inform VA that even though they turned 18, they are still in high school and remain dependent. Our children are not filing new claims, they are simply stating that they are still in high school, yet VA cannot figure out how to process these claims in a timely manner. The forms themselves are one of the overall issues. On the form they are required to include their high school graduation date. There is no place on the form to include the date that they would be starting college and utilizing a VA education benefit. There is also not a question asking if they will be going to college and not using VA educational benefits. Additionally, there is no direction regarding who should sign the form, the parent, or the minor child (they are not 18 when the form needs to be submitted).

My four adult children that have gone through the process of turning 18 on DIC have each faced a different barrier to getting DIC continued. My oldest three (2 December and 1 January birthday) did not receive a payment at all until after they graduated high school and received back pay. Alexis had her form returned because I had signed the form since she wasn't 18 when we had to mail it in 60 days early. Hers took five months

to process. Jon was denied his DIC, like his Fry benefits, as the processor determined his dad was not deceased. A few months later I inquired about hardship. We were informed since he was not homeless or behind on his bills, he did not meet the criteria of financial hardship for expedited processing. Our surviving children are losing a large portion of their income for months during the most expensive year of high school; I'd consider that a financial hardship. He received his back pay nine months later. Chloe got her back pay seven months after her birthday. Aiden submitted his paperwork this past August for an October birthday and is still waiting for it to be processed. We called VA at the beginning of December when his payment was not received and were told that VAR put his paperwork in the national queue November 24th and that no one has looked at it. The PCR did put in a request to process the claim, but he told us not to expect it to be processed soon, as claims in that queue aren't regularly checked. This is also causing a debt (that we will have to pay back) on his minor sister's side as her pay has increased by \$200 since his payment stopped.

The biggest surprise that we had during this call was the identity verification questions. Aiden can't even remember his own social security number, and was told that if the representative heard me give him the security answers- what are your dad's service dates, his social security number, or branch of service- they would disconnect the call. At 18 how many of you would be able to provide those answers without prompting?

In addition, Aiden, like many of our surviving children, has been awarded a full tuition scholarship from the University of Alabama. He should be able to save his VA education benefits for graduate school and keep his DIC while attending undergraduate, in lieu of the Fry Scholarship. However, our children are only paid DIC through the month they graduate high school, even though VA policy states that they can receive this benefit until they begin utilizing education benefits.

None of my children have ever been paid past their graduation month. In all my children's cases VA had still not even paid them from the time they turned 18 to graduation, when they actually graduated. Surviving children are losing two to three months of earned DIC just over the gap between graduation and fall semester. Is the VA going to require them to make ANOTHER new claim on their graduation day to cover the summer months or use during college? The process can be simplified by asking the right questions on the form, and not sticking our children's claims in the national queue for months before someone looks in there and processes the claim.

Parental Status

If my testimony is not appalling enough for members of this committee; current laws and policies set forth for surviving spouses, deem that I am no longer my children's parent. Per VA policy, as the only living parent to my children, I am only their fiduciary. Can you imagine what it's like to call into VA or DoD trying to find an answer to a problem with your children's benefits and being told that you are not privileged to any access beyond taking care of their financial needs. Many of the current VA and DoD

policies rescinded my access when I remarried, even with having dependent children under my “guardianship” that remains eligible for benefits. This effectively rendered my children benefits inaccessible since they “have access” that they can’t access due to being minors. Had I divorced my husband before his death or had children with him and not been married and he had granted me access prior to his death; I would still have this access upon my remarriage.

It’s not just the loss of money that a surviving spouse loses when they remarry, its the ability to advocate for our children. Imagine your child is 9 years old and in the ICU being diagnosed with Type 1 Diabetes. You are obviously concerned, but you can’t speak to the insurance about it because you are her guardian, not her parent. This means that you must sign a piece of paper giving yourself permission to discuss her medical issues. This is because since she isn’t 18, she can’t give you permission, and at 9 she is terrified and wouldn’t even know where to start. Additionally, Congress fixed the “Widow Tax” but my children are left in a loophole that requires them to pay SBP taxes at a higher tax rate since it is viewed as unearned income for them. I am unable to take back the tax burden that unmarried widows now can take on themselves.

This is why surviving spouses are so passionate about the need to pass a comprehensive remarriage bill for surviving spouses. Congress has the power to fix so many of the hardships I have described today, in a single comprehensive bill. Passing the Love Lives on Act of 2023 would facilitate access to my children’s information, enable me to take on their tax burden at a lower rate, and remove a tremendous income barrier created by my husband’s service and death that was subsequently taken away upon remarriage. While the other challenges could be resolved by VA simply fixing its process for processing claims.

Thank you for the opportunity to share some of my experience here today, and I look forward to answering any questions you may have.