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## Va. inmate seeks pardon based on heart-health problems

By Frank Green



The high-tech pump that keeps Jason C. Smallwood's failing heart running is the same model implanted last year in former Vice President Dick Cheney.

Smallwood, however, is a Virginia prison inmate serving 11 years for drug convictions.

Prisoners have a constitutional right to adequate health care, and since 2009, surgeons at the VCU Medical Center have twice implanted the left ventricle assist device, or LVAD, in Smallwood's chest.

"Without it, I pretty much wouldn't be here," said Smallwood, a healthy-looking, 6-foot-1, 27-year-old Portsmouth native who is serving his sentence at the Powhatan Correctional Center.

Locked up since 2007, Smallwood is not due to be released until 2017, but he is asking Gov. Bob McDonnell to grant a conditional pardon so he can be closer to the hospital and in his family's care.

The corrections department now budgets \$150 million a year for inmate health care, or roughly \$4,800 a year per inmate, though Smallwood's expenses are much higher.

He is held at the prison's infirmary, where he remains tethered at all times to either a portable computer and batteries or a base module to power and monitor the pump via a line running into his abdomen.

Though he and his family have asked, he is not on the heart-transplant waiting list and now says he is not sure he wants to be.

The Virginia Department of Corrections does not comment on the health problems of individual inmates but said there has been only one prisoner in the 31,000-inmate system who has ever received an LVAD.

The hospital and the corrections department would not give the cost of LVAD implants, paid for in Smallwood's case by Anthem, the department's insurance carrier. But Virginia Health Information, a state agency that collects and disseminates health-care data, said there were 32 LVAD operations in central Virginia in 2010, with costs for the procedure and related hospital stay ranging from about \$400,000 to about \$2 million.

The manufacturer says the LVAD hardware is priced at \$80,000. A 2003 study estimated the cost of an LVAD implant procedure to be roughly \$200,000 to \$300,000 each. Smallwood's family says the ongoing annual costs for care could total \$45,000.

Smallwood's mother, Janice Vaughan of Portsmouth, said that if her son is released he would be covered by Medicaid and he would live with his aunt and uncle in Sandston so he could be near VCU Medical Center.

Vaughan and an aunt of Smallwood's, Valerie S. Deloach, said the family could provide around-the-clock care and transportation to and from the hospital — which now runs \$1,475 a trip — that would save a great deal of money.

His LVAD, called a HeartMate II, manufactured by the Thoratec Corp., is the only system approved for use as both a "bridge" device for those waiting for a heart transplant and a "destination" device for long-term, permanent heart support.

Thoratec says the pump has been implanted in 7,000 patients and that studies show a survival rate of 74 percent after one year for destination patients. Pumps have thus far lasted more than six years in several patients without needing replacement.

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**Smallwood wasn't always** a heart patient, but the problem runs deep in his family

In 1991, when he was 7 years old, his father, Ralph Smallwood, collapsed and died at age 31 from undiagnosed heart disease. His grandfather, Judson Smallwood, died from a heart attack at age 30.

Smallwood's mother, who also has heart disease, said, "Throughout Jason's childhood, I kept him under medical

care, and there was no history of a heart defect or problem."

But, she said, when Jason was 21, he collapsed and was diagnosed with congestive heart failure. Smallwood recalls, "I was at home, and I was having problems breathing at night. I was planning on going to the hospital the next day."

Instead, he passed out.

"When I woke up, I was at the hospital, and they came in there and they told me that I had congestive heart failure and that I would need a defibrillator, pacemaker, so they put that in me — that was the first surgery that I had."

The defibrillator and medications kept him going, but his heart problem grew worse.

Meanwhile, in 2005, Smallwood was convicted of possession of cocaine with intent to distribute, and in 2007 he was convicted of possession of heroin with the intent to distribute; both offenses were in Tidewater. He netted 11 years in prison.

His heart condition worsened, and in February 2009, while he was being held at the Powhatan Correctional Center, he was told he had only had a few days to live.

"A doctor called me at home and told me.... When I arrived two days later — I had to get visitation permission — he was in the critical-care hospital in MCV," Vaughan recalled.

"The doctors told me to go home and make arrangements," she said. "On my way home from Richmond to Portsmouth that night, one of the doctors called my cellphone and said come back tomorrow, and we will help him."

When she arrived the next day, the doctors told her about the LVAD procedure. Smallwood had the first operation in February 2009, but the device, a HeartMate I, had to be replaced in January 2010 with a HeartMate II.

Though he has sought a transplant in the past, he said in an interview last month that he is not sure he wants the risk and uncertainty.

Smallwood is not eligible for a medical clemency because he cannot show that he has only 90 days left to live. So he has applied for a conditional pardon from the governor, citing his unusual circumstances.

"My condition makes what was intended to be corrective punishment ... cruel and unusual punishment because it will lead to dying in prison if a conditional pardon is not granted," he wrote to McDonnell.

The governor's office confirmed it has received the pardon request but did not comment further.

Smallwood said last month, "I'm just hoping, praying, that he sees this as extreme circumstances."