

Appeals Management Office (AMO)

Quality Call Bulletin

March 2020

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ERROR TRENDS: JUNE 2019 – JANUARY 2020

Target Audience: DROC QRTs and Management

Presenter: James Fogg, Program Analyst, AMO

Claims Based Accuracy

Authorization			
DROC	Claim (BE Accuracy)	Total Count	In Error
St. Petersburg:	89.8%	108	11
Seattle:	93.5%	92	6
Total	91.5%	200	17

Rating			
DROC	Claim (BE Accuracy)	Total Count	In Error
St. Petersburg:	91.2%	68	6
Seattle:	94.1%	51	3
DC:	96.2%	26	1
Total	93.2%	145	10

Please note that the data presented is raw and does not correlate to the Director's Dashboard for each DROC.

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Issue Based Accuracy

Rating			
DROC	Issue (BE Accuracy)	Total Issues	Issue Errors
St. Petersburg:	96.2%	184	7
Seattle:	96.9%	128	4
DC:	98.6%	73	1
Total	96.9%	385	12

Please note that the data presented is raw and does not correlate to the Director's Dashboard for each DROC.

Top Benefit Entitlement (BE) Error Questions in National AMO Reviews

Authorization:

The top authorization BE error question was Question 7, *Was necessary administrative decision or award generated/completed and correct?* There were 13 errors for this question. The main descriptors in error were:

- Administrative decision provided incorrect entitlement outcome
- Administrative decision was not procedurally complete (e.g., missing signatures, all decision(s) not provided, relevant evidence not discussed)

Rating:

The top rating BE error question was Question 4, *Does the record show VCAA compliant development to obtain all indicated evidence (including a VA exam, if required) prior to deciding the claim?* There were 6 errors for this question. The main descriptors in error were:

- B2cc: VA Medical Opinion was needed: 3

Top AMA Error Questions in National AMO Reviews

Authorization:

The top authorization AMA error question was Question 10, *Was the claimant properly notified?* There were 23 errors for this question. The main descriptors in error were:

- A summary of the applicable laws and regulations

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Rating:

The top rating AMA error question was Question 9, *Was Decision Documentation correct?* There were 11 errors for this question. The main descriptors in error were:

- E2 - The basis for each decision not identified and/or each denial not explained
- E4b - An explanation of the laws and regulations applicable to the claim was not provided (AMA)
- E4c - A summary of favorable findings made by the decision maker was not provided (AMA)
- E4h - Decisionmaker considered and/or listed evidence received after the record closed for a higher-level review

MANUAL UPDATES

Target Audience: DROC QRTs and Management

Presenter: Fred Somers, Program Analyst, AMO

The Appeals Management Office (AMO) is pleased to announce the completion of content migration to our new manual, M21-5, Appeals and Reviews, to serve as consolidated procedural guidance for processing legacy appeals and higher-level reviews (HLR) under the Appeals Modernization Act. The new M21-5, Appeals and Reviews consolidates AMO-related information and guidance in one centralized location – creating a “one-stop shop” for AMO resources.

Content migrated from M21-1, Adjudication Procedures Manual to M21-5, Appeals and Reviews on March 2nd, 2020. Chapter four contains the content of the Appeals Modernization Act (AMA) Control and Other Activities. Chapter five contains content addressing higher-level reviews. Chapter six contains content for controlling legacy appeals. Chapter seven contains the general content for legacy appeals.

A Change Matrix exists for users to quickly reference where content resides in M21-5, Appeals and Reviews. This change matrix is located in the M21-5 Appeals and Reviews Navigation Job Aid. The Job Aid can be found by navigating in CPKM to M21-5, Appeals and Reviews, then clicking M21-5 Resources and scrolling down to the section containing Systems Resources.

Please note that due to the release of M21-5, Appeals and Reviews, there will be a period of time during which cross-references in the M21-1, Adjudication Procedures

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Manual, to content previously maintained in M21-1, Part I, Chapters 5-7, and M21-1, Part III, Subpart ii, Chapter 3, Section E, may be outdated. The M21-1 Staff will update cross-references to this content on a rolling basis as maintenance is completed or other updates are made to the impacted sections.

[M21-5, Chapter 7, Section B Notice of Disagreement \(formerly M21-1, I.5.B – Notice of Disagreement \(NOD\)\)](#)

Provided guidance on the *Shea* court decision, updated the timeframe of acceptance of the legacy NOD, updated examples of issues that are considered within the scope of an appeal, updated processes regarding Letter Creator and modified a telephone script.

[M21-5 Chapter 7, Section C Decision Review Officer \(DRO\) Process \(formerly M21-1, I.5.C- Decision Review Officer \(DRO\) Process](#)

Clarified language regarding assignment of hearings and removed an unnecessary reference.

[M21-5 Chapter 7, Section D Documenting Appeal Decisions \(formerly M21-1, I.5.D – Documenting Appeal Decisions\)](#)

Provided clarification on when review rights are required for downstream issues, and clarified that issues pending at the time of a Statement of the Case (SOC), or Supplemental Statement of the Case (SSOC), that are not specifically withdrawn due to election of an Appeals Modernization Act lane for that issue remain under the legacy process.

[M21-5 Chapter 5, Higher Level Reviews \(formerly M21-1 I.6 – Higher Level Reviews\)](#)

Clarified that late flowing evidence can be considered on a higher-level review (HLR) if it is date stamped prior to the notification letter of the decision being reviewed, clarified inextricably intertwined issues with an HLR, provided clarification on request for informal conferences, and provided guidance of what to do when an HLR is erroneously established.

[M21-5, Appeals and Reviews - Resources](#)

Added AMO Job Aid under System Resources section for Setting SharePoint Alerts and the M21-5 Navigation Job Aid.

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HIGHER-LEVEL REVIEW DUTY TO ASSIST ERROR NOTIFICATION

Target Audience: DROC QRTs and Management

Presenter: James Fogg, Program Analyst, AMO

Questions arose concerning when the Decision Review Operations Center (DROC) must notify the claimant that the DRO identified a duty to assist (DTA) error during the Higher-Level Review (HLR). Also, there is a question concerning who must notify the claimant once the DTA error has been identified.

M21-1 5.5.e (formerly M21-1 I.6.5.e – Handling DTA Errors), Handling DTA Errors, states, in part:

Send the HLR DTA letter to the Veteran if requesting an examination, or, if generating a subsequent development letter based on the action required.

As stated in M21-1 5.5.d (formerly M21-1 I.6.5.d – Returning DTA Errors for Correction), Returning DTA Errors for Correction, the return of a request to correct a DTA error concludes the HLR for that issue. As stated in step 3 of the table in M21-1 5.5.e (formerly M21-1 I.6.5.e – Handling DTA Errors), the VSR promulgates the EP 030 in VBMS-A and, for full DTA error returns, stations should send a copy of the rating decision and notification letter to the Veteran and their representative, if any. This notification letter must include the following:

VA completed your request for higher-level review and identified an error in assisting you in gathering evidence to support your claim in each of your claimed conditions.

This step further notifies the VSR that decision review rights must be suppressed in the notification letter.

Although this step only refers to full returns, the finding of a DTA error is our decision on the HLR and we should provide notification of the completion of the HLR Decision. This would prevent any delay in the notification of the DTA error finding that may result from a backlog of development cases.

To summarize: Completion of a HLR return, whether a full return or not, is a decision. We must notify the claimant and their representative, if any, when a decision has been issued. Send notification of the DTA error identified in the HLR return, without appeal rights, when promulgating the EP 030 to avoid potential backlog of development.

QUESTIONS

1. If appeal rights are suppressed in ADL, "Please refer to your Board of Veterans' Appeals Decision for information on how to seek additional review." automatically populates. Is this acceptable?

Response: The language cited is specific to effectuating certain Board decisions with no downstream issues and does not apply to notification of a higher-level review (HLR) duty to assist (DTA) error. When notifying the claimant of a HLR DTA, complete full return letters in PCGL and in accordance with M21-5, Chapter 4, Topic 5.5.e.

2. Is DTA needed if no exam is needed, but just an opinion or addendum and the veteran does not actually have to go to an exam? Should we send the HLR DTA letter under the 040 if we're only requesting an opinion or addendum? If DTA error is only for opinion or addendum, to which the veteran does not need to report, do we still send the HLR DTA letter under the 040?

Response: When the higher-level reviewer issues a higher-level review (HLR) Return, whether it is a full or partial return, the DROC should notify the claimant of this return when the EP 030 is promulgated. This would apply even if VA is only developing for a medical opinion, exam clarification, or for a VA examination (VAE) using the Acceptable Clinical Evidence (ACE) process.

In cases where an opinion, clarification, or a VAE using the ACE process, it would be a best practice to modify the HLR duty to assist letter to inform the claimant that their presence may not be required.

Failure to notify the claimant of the HLR DTA return (EP 030) is considered an error. However, failure to send the development letter is not critical and is considered a correctable comment.