Evaluating Evidence

Instructor Lesson Plan

Time Required: 3 Hours

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| Lesson Description | |
| The information below provides the instructor with an overview of the lesson and the materials that are required to effectively present this instruction. | |
| TMS # | 4201894 |
| Prerequisites | Prior to this lesson, the Veteran Service Representative (VSR) should have at least 12 months of VSR experience. |
| target audience | The target audience for Evaluating Evidence is VSR, Intermediate Level, VSR, Journey Level and Authorization Quality Review Specialist (AQRS).  Although this lesson is targeted to teach the aforementioned employees, it may be taught to other VA personnel as mandatory or refresher type training. |
| Time Required | 3 hours |
| Materials/ TRAINING AIDS | Lesson materials:   * Evaluating Evidence PowerPoint Presentation * Evaluating Evidence Student Handout |
| Training Area/Tools | The following are required to ensure the students are able to meet the lesson objectives:   * Classroom or private area suitable for participatory discussions * Seating, writing materials, and writing surfaces for student note taking and participation * Handouts, which include a practical exercise * Large writing surface (easel pad, chalkboard, dry erase board, overhead projector, etc.) with appropriate writing materials * Computer with PowerPoint software to present the lesson material   Students require access to the following tools:   * VA government funded equipment (GFE) computer * Internet access with Web browser (Chrome, Microsoft Edge etc.) * VA TMS to complete the assessment |
| Pre-Planning | * Become familiar with all training materials by reading the Instructor Lesson Plan while simultaneously reviewing the corresponding PowerPoint slides. This will provide you the opportunity to see the connection between the Lesson Plan and the slides, which will allow for a more structured presentation during the training session. * Become familiar with the content of the student handouts and their association to the Lesson Plan. * Practice is the best guarantee of providing a quality presentation. At a minimum, do a complete walkthrough of the presentation to practice coordination between this Lesson Plan, the student handouts, and the PowerPoint slides and ensure your timing is on track with the length of the lesson. * Ensure that there are copies of all handouts before the training session. * When required, reserve the training room. * Arrange for equipment such as flip charts, an overhead projector, and any other equipment (as needed). * Talk to people in your office who are most familiar with this topic to collect experiences that you can include as examples in the lesson. * This lesson plan belongs to you. Feel free to highlight headings, key phrases, or other information to help the instruction flow smoothly. Feel free to add any notes or information that you need in the margins. |
| Training Day | * Arrive as early as possible to ensure access to the facility and computers. * Become familiar with the location of restrooms and other facilities that the students will require. * Test the computer and projector to ensure they are working properly. * Before class begins, open the PowerPoint presentation to the first slide. This will help to ensure the presentation is functioning properly. * Make sure that a whiteboard or flip chart and the associated markers are available. * The instructor completes a roll call attendance sheet or provides a sign-in sheet to the students. The attendance records are forwarded to the Regional Office Training Managers. |

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| Introduction to Evaluating Evidence | | |
| INSTRUCTOR INTRODUCTION  Slide 3 | | Complete the following:   * Introduce yourself * Orient learners to the facilities * Ensure that all learners have the required handouts |
| time required | | 0.25 hours |
| Purpose of Lesson  Explain the following:  Slide 4 | | This lesson is intended to reinforce knowledge of how to identify and evaluate relevant evidence. This lesson will contain discussions and exercises that will allow the student to gain clarification of how to:   * Evaluate evidence * Find facts from evidence * Determine the relevancy of records |
| Lesson Objectives  Discuss the following:  Slide 5  Handout 2 | To achieve the purpose of this lesson, the VSR, given all available resources to include the live manual, will be required to complete the following lesson objectives.  TheVSR will be able to:   * Define evidence and identify examples of evidence * Identify benefits to properly evaluating evidence * Demonstrate fact finding using a variety of evidence types * Define and identify relevant records for the purpose of VA’s duty to assist * Recognize the relevancy of clinical records for mental health claims * Demonstrate the documentation of non-relevant records | |
| Explain the following: | Each learning objective is covered in the associated topic. At the conclusion of the lesson, the learning objectives will be reviewed. | |
| Motivation  Slide 6 | This lesson will give you the tools to reduce extraneous development, decrease claim review time, and improve claim development. This lesson is meant to improve your thought process on reviewing evidence, finding facts, and decision making on claims development. | |
| STAR Error code(s) | 4B2 – Does the record show VCAA compliant development to obtain all indicated evidence (including a VA exam, if required) prior to deciding the claim? | |
| END OF COURSE ASSESSMENT  Handout 15 | **Important:** Inform students there will be an end of course assessment. The students will be required to achieve a passing score of 80% or greater in order to receive credit for the training. The trainee may use any available resource to complete the assessment. This includes but not limited to lesson handout, internet/intranet web sites, job aides, PowerPoint and any applicable reference materials. | |
| References  Slides 7  Handout 3 | Explain where these references are located in the workplace.  All M21-1 references are found in the [Live Manual Website](https://vaww.compensation.pension.km.va.gov/).   * [38 U.S.C. 5103A, Duty to assist claimants](http://www.law.cornell.edu/uscode/text/38/5103A) * [38 CFR 3.156, New Evidence](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5) * [38 CFR 3.159, Department of Veterans Affairs assistance in developing claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=f22875bb0218c30077b243a4e74103e5&mc=true&node=se38.1.3_1159&rgn=div8) * [38 CFR 3.303, Principles relating to service connection](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5) * [38 CFR 3.304, Direct service connection; wartime and peacetime](http://www.ecfr.gov/cgi-bin/text-idx?SID=229c3db3fdc3db346cb7ae0cf9524a39&mc=true&node=pt38.1.3&rgn=div5) * [M21-1, Part I, 1.A, Description and General Information on Duty to Notify and Duty to Assist](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part I, 1.C, Requesting Records](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part III, Subpart ii, 2.D, Supplemental](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) Claims * [M21-1, Part III, Subpart ii, 2.E, Claims for Increase](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part III, Subpart iii, 1.B, Evidence Requested From the Claimant](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part III, Subpart iv, 5, Evaluating Evidence and Making a Decision](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/) * [M21-1, Part IV, Subpart ii, 2.B, Determining Service Connection (SC)](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=) | |

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| Topic 1: Evaluating Evidence | |
| Introduction  Slide 8 | This topic will describe the analytical steps performed when evaluating evidence. |
| Time Required | 0.75 hours |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Define evidence and identify examples of evidence * Identify benefits to properly evaluating evidence * Demonstrate fact finding using a variety of evidence types   The following topic teaching points support the topic objectives:   * Definition of relevant records and effect on VA’s duty to assist * Analysis needed to determine if records are relevant * Scenarios/examples of fact finding |
| Definition: Evidence  Slide 9  *Handout 4* | Evidence is every type of proof offered to establish facts. Examples are:   * Testimony and statements * Medical records * Personnel records * Financial records * VA Forms * Legal documents   M21-1 III.iv.5.A. – Definition: Evidence  **Question:** Out of this list, which types of evidence are pertinent to establishing dependency?  **Answers will vary, but answers could be VA forms (21-686c), documents (birth certificates, divorce decree, etc.), medical records (for helpless child claims), financial records (for parental dependency), testimony and statements.** |
| Evaluating Evidence  Slide 10 Handout 4 | Evaluating evidence refers to a series of analytical **steps** that must be performed by a VA decision maker in making **findings of fact** for the purpose of drawing **conclusions of law** on each aspect or criterion of the legal standard for entitlement to the benefit and on **applicable procedural matters**.  *M21-1 III.iv.5.A. – Guidelines for Evaluating Evidence*  Remind VSRs that evaluating evidence is a **soft skill** and how we do so is a strategy. We are always developing and improving our approach to:   * reviewing evidence * developing for evidence * making conclusions about procedure * determining what evidence is necessary to decide a claim * undertaking development to obtain necessary evidence * determining when a claim is ready for decision * deciding claims/issues that do not require a rating decision |
| Properly Evaluating Evidence  Slide 11  Handout 4 | Proper evaluation of evidence allows VSRs to perform many duties:   * Identify the issues and facts necessary to substantiate the claim * Examine the significance and relevancy of evidence * Discount non-relevant evidence * Relate facts to appropriate laws and regulations * Identify if further development or clarification is needed * Decide if an examination and/or medical opinion is required * Recognize if a claim is ready for decision * Decide claims that don’t require a rating decision |
| Benefits to Claim Processing  Slide 12  Handout 4 | Evaluating evidence efficiently can improve processing by:   * Reducing extraneous development * Simplifying folder review * Decreasing review time * Improving claim processing time   **Ask:** What other outcomes could happen when a VSR properly evaluates evidence? |
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| Identify Facts from Evidence  *Slide 13*  *Handout 4* | VSRs analyze evidence to determine facts:  Example evidence: DD-214  Example fact: Honorable character of discharge  Question: What other fact(s) can be determined from DD-214s?  Answers will vary. Dates of service, branch of service, RVN service, dates and location in certain theaters, combat medals, etc. |
| Identify the Issues and Facts Required  Slide 14  Handout 5 | A VSR must first consider the benefit and issue (initial, new, increase, supplemental, etc.) to be addressed and facts necessary to substantiate that claim.  Example:  **Issue:** Service connection on a direct basis  **Facts:** focus on finding evidence to support obtaining a direct medical opinion with examination:   * Competent lay or medical evidence of current disability * Evidence establishing an event, injury, or disease in service * Indication that the disability or symptoms may be associated with established event, injury, or disease in service   **Discuss:**  1. Where might a VSR look for evidence establishing an event, injury, or disease in service? **(STRs, personnel record, PEB, clinical records, statement from a combat Veteran about an injury incurred during combat, lay statement, etc.**)  2. Would you review post service VAMC records to find this? **No. Point out that the dates of treatment are a factor.**  3. What about dental records? **Not likely. Dental records should not be relevant if the condition claimed is not dental. Possibly to place the Veteran in a specific location.** |
| Discount Non-Relevant Evidence  Slide 15  Handout 5 | After knowing what facts are required, a VSR can discount evidence that is not **relevant** (that does not relate to) the components of the entitlement standard or procedural issue in the case.  This effectively reduces the amount of evidence on which the VSR must focus. |
| Identify Relevancy of Identified Evidence  Slide 16  Handout 5 | Claimants often identify records that do not relate to the issue or have the possibility of substantiating the claim. We can create a note that indicates the records were not requested because they are not relevant.  ***Example***: A Veteran notes VAMC treatment for his low back while filing a claim for increase for his SC hearing loss. We have no duty to assist in obtaining these records. |
| Documenting Non-Relevant Evidence  Slide 17  Handout 6 | If you do not obtain records because they are not relevant, formal documentation should be completed.   * To do this, add the following note to VBMS using the note feature:   + ***Records from [name of facility or physician] not requested because they are not relevant***, and * Be sure to associate the note to the corresponding claim.   **M21-1 I.1.C.–** RVSRs/DROs will review VBMS notes and agree or disagree. If they agree, the statement will be inserted into the intro/evidence tab. If they disagree, they shall develop or direct development for the records. |
| Facts and Laws Guide Development  Slides 18  Handout 6 | VSRs establish facts by reviewing relevant evidence, applying conclusions of law, and undertaking development to obtain necessary evidence to decide a claim.  **Example:** Veteran submits a statement as part of the claim that an injured to low back was occurred in the Air Force while loading cargo onto a C-130 aircraft during an exercise in July 2002. Personnel records reveal the Veteran served in the Air Force as a loadmaster and participated in a military exercise in the Philippines in July 2002.  **Analysis:** The Veteran’s statement, when viewed along with evidence of record, appears believable. Therefore, the statement is credible. |

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| Knowledge Check  *Slide 19*  If students indicate a lack of understanding take time to provide a review of those topics. | Ask the trainees the below:   * True or False? “Evidence is every type of proof offered to establish facts.”   **Answer:** *True*   * True or False? “Evaluating evidence efficiently can improve processing by improving claim processing time.”   **Answer:** True   * After knowing what facts are required, a VSR can discount evidence that is not \_\_\_\_\_\_\_\_\_\_\_\_?   **Answer:** Relevant |

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| Topic 2: Determining Relevancy of Records | |
| Introduction  Slide 20 | This topic will allow the student to define and identify relevant records for the purposes of VA’s duty to assist. |
| Time Required | 1.25 hours |
| OBJECTIVES/ Teaching Points | Topic objectives:   * Define and identify relevant records for the purpose of VA’s duty to assist * Recognize the relevancy of clinical records for mental health claims * Demonstrate the documentation of non-relevant records   The following topic teaching points support the topic objectives:   * Definition of relevant records and effect on VA’s duty to assist * Analysis needed to determine if records are relevant   Scenarios/examples of records deemed relevant and not relevant |
| Definition of relevant records  Slide 21  Handout 7 | Inform the students that ***relevant records***for the purpose of VA’s duty to assist are those records that:   * relate to the disability or injury for which the claimant is seeking benefits, ***and***   have a reasonable possibility of helping to substantiate the claim. |
| Relevant Records – Duty to Assist  Slide 22  Handout 7 | Remind the students that the Department of Veterans Affairs (VA) has a ***duty to assist*** claimants who file a substantially complete application for benefits. This duty to assist includes making reasonable efforts to obtain relevant records:   * in the custody of a Federal department or agency, and * from all non-Federal or private records sources adequately identified by the claimant.   Emphasize that not all medical records have a reasonable possibility of helping to substantiate a pending claim. As a result, VA’s duty to assist applies only to ***relevant*** records. |
| **Relevancy Question 1 - Do the Records Relate the Disability?**  Slide 23-24  Handout 7-8 | Inform the students that for indicated records, the claimant must provide enough information to identify and locate the records:   * The condition for which treatment was provided * The custodian or agency holding the records * Approximate time frame covered by records   **Discussion**: Does this information have a bearing on relevancy? On claims development?  **Discussion**: Often claimants bring up medical facilities or submit statements that have incomplete information. The application might be missing the location, dates, and even the issues being treated.  Clarifying this information via telephone with the claimant can help determine the relevancy of the records and/or provide the information VSRs need to locate and obtain records.  Explain to the students that in nearly all cases, relevance can be determined based on information supplied by the claimant, without reviewing the actual records. Because each case presents unique circumstances, however, relevance must be determined on a case-by-case basis.  Mention that Federal records do not need to be obtained *merely because* they are Federal records. VA’s duty to assist applies to ***relevant*** Federal records.  Remind students that it is important to be able to identify which records are relevant because reasonable efforts ***must*** be made to obtain such records in order to satisfy VA’s duty to assist. Additionally, unnecessary claim delays can be avoided by refraining from requesting records that are not relevant to the Veteran’s claim. |
| **Obtain Clinical Records for SC Mental Disorders**  Slide 25  Handout 8 | For the purposes of adjudicating claims for SC for mental disorders, all clinical records from military service are considered relevant and shall be obtained.  Tell the students that we will now review some claim-based scenarios to help them identify whether records are relevant or not relevant. |
| **Documenting Non-Relevant Evidence**  Slide 26  Handout 8 | If you do not obtain records because they are not relevant, formal documentation should be completed.   * Be sure to associate the note to the corresponding claim. |
| Knowledge Check  *Slide 27*  If students indicate a lack of understanding take time to provide a review of those topics. | Ask the trainees the below:   * True or False? “If the records relate to the disability or injury for which the claimant is seeking benefits, and have a reasonable possibility of substantiating the claim, obtain the records.”   **Answer:** *True*   * True or False? “If there is no specific reason to believe that the records identified by the Veteran would contain necessary information to substantiate the claim, obtain the records.”   **Answer:** *False*   * True or False? “ALL clinical records from military service are considered relevant and shall be obtained.”   **Answer:** *True* |
| **Scenario 1 – Are the Records Relevant?**  Slide 28  Handout 9 | A Veteran is SC for hypothyroidism evaluated at 30 percent since 1982. She submits a claim for increase in 2020. She indicated she is currently being treated for hypothyroidism at Denver VAMC.  Do we have a duty to assist in obtaining these Denver VAMC Federal records? Why or why not?  **Answer: Yes. They relate to the condition and can potentially substantiate an increase in benefits.** |
| **Scenario 2 – Are Records Relevant?**  Slide 29  Handout 9 | A Veteran files a claim for an increased evaluation for residuals of an SC left ankle fracture. He reports treatment at the Mayo Clinic for headaches.  Do we have a duty to assist in obtaining Mayo Clinic medical records? Why or why not?  **Answer: No. The information available shows that the identified private records would** *not* **be relevant as they do not relate to the Veteran’s SC disability, nor do they have a reasonable possibility of substantiating the claim.** |
| **Scenario 3 – Are Records Relevant?**  Slide 30  Handout 9 | A Veteran with verified RVN service was previously denied for diabetes mellitus due to no current diagnosis. The Veteran submits a VA Form 21-4142/21-4142a indicating treatment for diabetes mellitus.  Do we have a duty to assist in obtaining these private treatment records?  **Answer: Yes. Records are relevant. These records are relevant as they relate to the disability claimed AND they can help substantiate this presumptive claim by providing a diagnosis of diabetes mellitus.** |

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| Practical Exercise | | |
| Time Required | | 0.5 hours |
| EXERCISE | | Ask students to complete the Practical Exercise found on page 8 of the handout.  Ask if there are any questions about the information presented in the exercise, and then proceed to the Review. |
| Lesson Review, Assessment, and Wrap-up | | |
| Introduction  Discuss the following: | The Evaluating Evidence lesson is complete.  Review each lesson objective and ask the students for any questions or comments. | |
| Time Required | 0.25 hours | |
| Lesson Objectives | You have completed the Evaluating Evidence lesson.  The student should be able to:   * Identify benefits to properly evaluating evidence * Define evidence and identify examples of evidence * Demonstrate fact finding using a variety of evidence types * Define and identify relevant records for the purpose of VA’s duty to assist * Recognize the relevancy of clinical records for mental health claims * Demonstrate the documentation of non-relevant records | |
| Assessment | Remind the students to complete the on-line assessment in TMS to receive credit for completion of the course.  The assessment will allow the participants to demonstrate their understanding of the information presented in this lesson. | |