

Fiduciary Appeal Higher-Level Review	<i>Department of Veterans Affairs</i> <i>Pension and Fiduciary Service</i>	Date
Name of Veteran	Name of Beneficiary	VA File Number

Issue:

Appeal the Hub Manager's removal of a fiduciary under § 13.500

Appointment Process	Response
Did VA generate a rating decision that states the beneficiary can manage his/her VA benefits without supervision under §13.500(a)(1)(i)?	Y/N
Did the beneficiary request the removal of the fiduciary?	Y/N
Did the beneficiary request supervised direct pay under § 13.110?	Y/N
Is the fiduciary's further service barred under § 13.130?	Y/N
Did the fiduciary fail to maintain his or her qualifications or does not adequately perform the responsibilities of a fiduciary prescribed in § 13.140?	Y/N
Did the fiduciary fail to timely submit a complete accounting as prescribed in § 13.280?	Y/N
Did VA or a court with jurisdiction determine that the fiduciary misused or misappropriated VA benefits?	Y/N
Did the fiduciary fail to respond to a VA request for information within 30 days after such request is made, unless the Hub Manager grants an extension based upon good cause shown by the fiduciary?	Y/N
Is the fiduciary unable or unwilling to provide the surety bond prescribed by § 13.230 or, if applicable, enter into a restricted withdrawal agreement?	Y/N
Does the fiduciary no longer meet the requirements for appointment under § 13.100?	Y/N
Is the fiduciary unable or unwilling to manage the beneficiary's benefit payments, accounts, or investments?	Y/N

EVIDENCE:

(Detail all evidence relative to the issues considered. In the case of a failure to submit an annual accounting, all attempts to obtain the accounting must be provided as evidence. All evidence relating to the issue on appeal must be documented in this section. If the prompt does not apply, delete it. If there is no prompt for the evidence, add it in the following format: Evidence, any pertinent description, and date MONTH DD, YYYY.)

- Field examination report, dated [MONTH DD, YYYY (field examination appointing the fid)].
- VA Form 21P-4703, signed by [FID NAME], dated [MONTH DD, YYYY].
- Letter requesting the annual accounting for the period ending, [MONTH DD, YYYY], dated [MONTH DD, YYYY].
- Record of telephone call to the fiduciary requesting the accounting for the period ending [MONTH DD, YYYY], dated [MONTH DD YYYY].

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- Accounting received for period ending [MONTH DD, YYYY], dated [MONTH DD, YYYY].
- Letter rejecting accounting for period ending [MONTH DD YYYY], dated [MONTH DD, YYYY].
- Request for new fiduciary appointment.
- Field examination report, dated [MONTH DD, YYYY (field examination appointing a new fid)].
- Request for Higher-level review from [BENEFICIARY NAME, or GUARIDAN NAME], dated [MONTH DD, YYYY].

Decision:

VA [appropriately/inappropriately] removed your fiduciary [Mr./Ms. [FIDUCIARY NAME]] based on 38 CFR 13.500. Therefore, your appeal is [granted/denied].

Statutes, Regulations and Court Decisions:

38 U.S.C. § 5502(a). Payments to and supervision of fiduciaries.

(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

38 U.S.C. § 5507. Inquiry, Investigations and Qualification of Fiduciaries.

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(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of

(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

(A) to be conducted in advance of such certification;

(B) to the extent practicable, to include a face-to-face interview with such person; and

(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

(3) the furnishing of any bond that may be required by the Secretary.

(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

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(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

(d) Temporary Fiduciaries. When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

38 U.S.C. § 6101. Misappropriations by Fiduciaries.

(a) Whoever, being a fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary, shall lend, borrow, pledge, hypothecate, use, or exchange for other funds or property, except as authorized by law, or embezzle or in any manner misappropriate any such money or property derived therefrom in whole or in part and coming into such fiduciary's control in any manner whatever in the execution of such fiduciary's trust, or under color of such fiduciary's office or service as such fiduciary, shall be fined in accordance with title 18, or imprisoned not more than five years, or both.

(b) Any willful neglect or refusal to make and file proper accountings or reports concerning such money or property as required by law shall be taken to be sufficient evidence prima facie of such embezzlement or misappropriation.

38 U.S.C. § 6106. Misuse of Benefits by Fiduciaries.

(a) Fee Forfeiture in Case of Benefit Misuse by Fiduciaries. A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

(b) Misuse of Benefits Defined. For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws

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administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

(c) Regulations. —The Secretary may prescribe by regulation the meaning of the term “use and benefit” for purposes of this section.

38 C.F.R. § 13.100 Fiduciary appointments.

(a) Authority. Except as prescribed in paragraph (b) of this section, the Hub Manager will appoint a fiduciary for a beneficiary who:

- (1) Has been rated by VA as being unable to manage his or her VA benefits,
- (2) Has been determined by a court with jurisdiction as being unable to manage his or her financial affairs, or
- (3) Has not reached age of majority.

(b) Exceptions. The Hub Manager will not appoint a fiduciary for a beneficiary who:

- (1) Is eligible for supervised direct payment under § 13.110, or
- (2) Is not a beneficiary described in paragraph (a)(1) or (a)(2) of this section and has not reached age of majority, but
 - (i) Is serving in the Armed Forces of the United States, or
 - (ii) Has been discharged from service in the Armed Forces of the United States, or
 - (iii) Qualifies for survivors' benefits as a surviving spouse.

(c) Retroactive benefit payments. The Hub Manager will withhold any retroactive, one-time, or other lump-sum benefit payment awarded to a beneficiary described in paragraph (a) of this section until the Hub Manager has appointed a fiduciary for the beneficiary and, if applicable, the fiduciary has obtained a surety bond under § 13.230.

(d) Initial appointment. In appointing a fiduciary, the Hub Manager will make every effort to appoint the person, agency, organization, or institution that will best serve the interest of the beneficiary. The Hub Manager will consider the results of a field examination,

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which will include a face-to-face meeting with the beneficiary and the beneficiary's dependents at their residence when practicable, and will conduct the investigation prescribed in paragraph (f) of this section. The Hub Manager will also consider whether:

- (1) VA benefits can be paid directly to the beneficiary with limited and temporary supervision by VA, as prescribed in § 13.110;
- (2) The circumstances require appointment of a temporary fiduciary under paragraph (h) of this section; and
- (3) The proposed fiduciary is complying with the responsibilities of a fiduciary prescribed in § 13.140 with respect to all beneficiaries in the fiduciary program currently being served by the proposed fiduciary and whether the proposed fiduciary can handle an additional appointment without degrading service for any other beneficiary.

(e) Order of preference in appointing a fiduciary. The Hub Manager will consider individuals and entities for appointment in the following order of preference, provided that the proposed fiduciary is qualified and willing to serve and the appointment would serve the beneficiary's interest:

- (1) The preference stated by the beneficiary in the fiduciary program, if the beneficiary has the capacity to state such a preference. If the beneficiary has a legal guardian appointed to handle his or her affairs, the Hub Manager will presume that the beneficiary does not have the capacity to state a preference and will consider individuals and entities in the order of preference prescribed in paragraphs (e)(2) through (10) of this section;
- (2) The beneficiary's spouse;
- (3) A relative who has care or custody of the beneficiary or his or her funds;
- (4) Any other relative of the beneficiary;
- (5) Any friend, acquaintance, or other person who is willing to serve as fiduciary for the beneficiary without a fee;
- (6) The chief officer of a public or private institution in which the beneficiary receives care or which has custody of the beneficiary;
- (7) The bonded officer of an Indian reservation, if applicable;

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(8) An individual or entity who has been appointed by a court with jurisdiction to handle the beneficiary's affairs;

(9) An individual or entity who is not willing to serve without a fee; or

(10) A temporary fiduciary, if necessary.

(f) Investigation of a proposed fiduciary. Except as prescribed in paragraph (f)(3) of this section, before appointing a fiduciary for a beneficiary in the fiduciary program, the Hub Manager will conduct an investigation regarding the proposed fiduciary's qualifications.

(1) The investigation will include:

(i) To the extent practicable, a face-to-face interview of the proposed fiduciary;

(ii) A review of a credit report on the proposed fiduciary issued by a credit reporting agency no more than 30 days prior to the date of the proposed appointment;

(iii) A criminal background check to determine whether the proposed fiduciary has been convicted of any offense which would be a bar to serving as a fiduciary under § 13.130 or which the Hub Manager may consider and weigh under the totality of the circumstances regarding the proposed fiduciary's qualifications;

(iv) Obtaining proof of the proposed fiduciary's identity and relationship to the beneficiary, if any; and

(v) A determination regarding the need for surety bond under § 13.230 and the proposed fiduciary's ability to obtain such a bond.

(2) The Hub Manager may, at any time after the initial appointment or reappointment of the fiduciary for a beneficiary, repeat all or part of the investigation prescribed by paragraph (f)(1) of this section to ensure that the fiduciary continues to meet the qualifications for service and there is no current bar to service under § 13.130.

(3) The Hub Manager must conduct the requirements of paragraphs (f)(1)(i),(ii) and (iii) for every subsequent appointment of the fiduciary for each beneficiary.

(4) VA will not conduct the investigation prescribed by paragraph (f) of this section if the proposed fiduciary is an entity, such as the trust department of a bank that provides fiduciary services.

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(g) Expedited appointment. The Hub Manager may waive the requirements of paragraphs (f)(1)(i) through (iii) of this section and expedite the appointment of a proposed fiduciary if the Hub Manager determines that an expedited appointment would be in the beneficiary's interest and:

(1) The proposed fiduciary is:

(i) The beneficiary's parent (natural, adopted, or step-parent) and the beneficiary is less than the age of majority, or

(ii) The beneficiary's spouse; or

(2) The annual amount of VA benefits the proposed fiduciary would manage for the beneficiary does not exceed the amount specified in 38 U.S.C. 5507(c)(2)(D), as adjusted by VA pursuant to 38 U.S.C. 5312.

(h) Temporary fiduciary appointments.

(1) The Hub Manager may appoint a temporary fiduciary for a period not to exceed 120 days in any of the following circumstances:

(i) VA has removed a fiduciary for cause under § 13.500 and cannot expedite the appointment of a successor fiduciary, and the beneficiary has an immediate need for fiduciary services; or

(ii) The Hub Manager determines that the beneficiary has an immediate need for fiduciary services and it would not be in the beneficiary's or the beneficiary's dependents' interest to pay benefits to the beneficiary until a fiduciary is appointed.

(3) Any temporary fiduciary appointed under this paragraph (h) must be:

(i) An individual or entity that has already been subject to the procedures for appointment in paragraphs (d) and (f) of this section, and

(ii) Performing satisfactorily as a fiduciary for at least one other VA beneficiary for whom the fiduciary has submitted an annual accounting that VA has approved.

(i) Authorization for disclosure of information. The Hub Manager will:

(1) Obtain from every proposed fiduciary who is an individual a written authorization for VA to disclose to the beneficiary information regarding any fiduciary matter that may be appealed

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under § 13.600, including but not limited to the fiduciary's qualifications for appointment under § 13.100 or misuse of benefits under § 13.400. Such disclosures may occur in VA's correspondence with the beneficiary, in a VA fiduciary appointment or misuse of benefits decision, in a statement of the case for purposes of appeal under § 13.600, or upon request by the beneficiary, the beneficiary's guardian, or the beneficiary's accredited attorney, claims agent, or representative;

(2) Notify the proposed fiduciary that the disclosed information may be used by the beneficiary in appealing a VA appointment or misuse decision to the Board of Veterans' Appeals under § 13.600; and

(3) Terminate consideration of a proposed fiduciary if the individual refuses to provide the authorization prescribed in paragraph (i)(1) of this section. Such refusal is a bar to serving as a fiduciary for a beneficiary under § 13.130(b).

(Authority: 38 U.S.C. 501, 5502, 5506, 5507)

38 C.F.R. § 13.110 Supervised direct payment.

(a) Authority. The Hub Manager may authorize the payment of VA benefits directly to an adult beneficiary in the fiduciary program who has reached the age of majority if the Hub Manager determines, based upon a field examination, that the beneficiary can manage his or her VA benefits with limited and temporary VA supervision. In making this determination, the Hub Manager will consider:

(1) Whether the beneficiary is aware of his or her monthly income;

(2) Whether the beneficiary is aware of his or her fixed monthly expenses such as rent, mortgage, utilities, clothing, food, and medical bills;

(3) The beneficiary's ability to:

(i) Allocate appropriate funds to fixed monthly expenses and discretionary items;

(ii) Pay monthly bills in a timely manner; and

(iii) Conserve excess funds; and

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(4) Any other information that demonstrates the beneficiary's actual ability to manage his or her VA benefits with limited VA supervision.

(b) Supervision. The limited and temporary supervision of beneficiaries receiving direct payment under paragraph (a) of this section will consist of:

- (1) Assistance in the development of a budget regarding the beneficiary's income and expenses,
- (2) Assistance with creating a fund usage report to aid the beneficiary in tracking his or her income and expenses, and
- (3) Periodic reviews of the beneficiary's fund usage report, as required by the Hub Manager.

(c) Reassessment. The Hub Manager will reassess the beneficiary's ability to manage his or her VA benefits at or before the end of the first 12-month period of supervision. Based upon a field examination, an evaluation of the factors listed in paragraph (a) of this section, and the results of the supervision prescribed in paragraph (b) of this section, the Hub Manager will determine whether the beneficiary can manage his or her benefits without VA supervision.

(1) If the beneficiary demonstrates the ability to manage his or her VA benefits without supervision, the Hub Manager will prepare a report that summarizes the findings and refer the matter with a recommendation and supporting evidence to the rating authority for application of § 3.353(b)(3) of this chapter regarding reevaluation of ability to manage VA benefits and § 3.353(d) of this chapter regarding the presumption of ability to manage VA benefits without restriction.

(2) If the beneficiary does not demonstrate the ability to manage his or her VA benefits without VA supervision, the Hub Manager will:

(i) Appoint a fiduciary, or

(ii) Continue supervised direct payment for not longer than one additional 12-month period based upon evidence that additional supervision might assist the beneficiary in developing the ability to manage his or her own VA benefits. At the conclusion of the additional period of supervised direct payment, the Hub Manager will conduct the reassessment prescribed by paragraph (c) of this section and either recommend reevaluation under paragraph (c)(1) of this section or appoint a fiduciary under paragraph (c)(2)(i) of this section.

(Authority: 38 U.S.C. 501, 5502)

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38 C.F.R. § 13.120 Field examinations.

(a) Authority. The Hub Manager will order a field examination regarding fiduciary matters within the Hub Manager's jurisdiction for any of the reasons prescribed in paragraph (c) of this section. For purposes of this section, field examination means the inquiry, investigation, or monitoring activity conducted by designated fiduciary hub or other qualified VA personnel who are authorized to:

- (1) Interview beneficiaries, dependents, and other interested persons regarding fiduciary matters;
- (2) Interview proposed fiduciaries and current fiduciaries regarding their qualifications, performance, or compliance with VA regulations;
- (3) Conduct investigations and examine witnesses regarding any fiduciary matter;
- (4) Take affidavits;
- (5) Administer oaths and affirmations;
- (6) Certify copies of public or private documents; and
- (7) Aid claimants and beneficiaries in the preparation of claims for VA benefits or other fiduciary or claim-related material.

(b) Scope of field examinations. Field examinations may include, but are not limited to:

(1) Assessing a beneficiary's and the beneficiary's dependents' welfare and physical and mental well-being, environmental and social conditions, and overall financial situation, based upon visiting the beneficiary's current residence and conducting a face-to-face interview of the beneficiary and the beneficiary's dependents, when practicable;

(i) The Hub Manager will waive the requirements of paragraph (b)(1) of this section if the Veterans Health Administration (VHA) has approved the fiduciary as the beneficiary's family caregiver, and VHA's status report regarding the beneficiary indicates the beneficiary is in an excellent situation.

(ii) The provisions of paragraph (b)(1)(i) of this section do not apply when the Hub Manager has information that a fiduciary, who is also the beneficiary's VHA-designated family caregiver, is misusing a beneficiary's VA funds under management, is neglecting a beneficiary, or has failed to

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comply with the requirements of § 13.140, or there is insufficient evidence to determine the beneficiary's well-being.

(2) Assessing the beneficiary's ability to manage his or her own VA benefits with only limited VA supervision (see § 13.110 regarding supervised direct payment);

(3) Collecting and reviewing financial documentation, including income and expenditure information;

(4) Providing any necessary assistance to the beneficiary with issues affecting current or additional VA benefits, claims, and non-VA matters that may affect or conflict with VA benefits;

(5) Making appropriate referrals in cases of actual or suspected physical or mental abuse, neglect, or other harm to a beneficiary;

(6) Investigating, when necessary, allegations that a beneficiary's fiduciary has engaged in misconduct or misused VA benefits to include but not limited to allegations regarding:

(i) Theft or misappropriation of funds,

(ii) Failure to comply with the responsibilities of a fiduciary as prescribed in § 13.140,

(iii) Other allegations of inappropriate fund management by a fiduciary, and

(iv) Other special circumstances which require a visit with or onsite review of the fiduciary, such as a change in an award of benefits or benefit status, or non-fiduciary program matters.

(b) Reasons for conducting field examinations. A Hub Manager will order a field examination to:

(1) Determine whether benefits should be paid directly to a beneficiary under § 13.110 or to a fiduciary appointed for the beneficiary under § 13.100;

(2) Determine whether benefit payments should continue to be made directly to a beneficiary under § 13.110 or to a fiduciary on behalf of a beneficiary; or

(3) Ensure the well-being of a beneficiary in the fiduciary program or to protect a beneficiary's VA benefit funds.

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(Authority: U.S.C. 501, 512, 5502, 5506, 5507, 5711)

38 C.F.R. § 13.200 Fiduciary accounts.

Except as prescribed in paragraph (b) of this section, any fiduciary appointed by VA to receive payments on behalf of a beneficiary must deposit the beneficiary's VA benefits in a fiduciary account that meets the requirements prescribed in paragraph (a) of this section.

(a) Separate accounts. Except as prescribed in paragraph (b) of this section, a fiduciary must establish and maintain a separate financial institution account for each VA beneficiary that the fiduciary serves. The fiduciary must not commingle a beneficiary's funds with the fiduciary's funds or any other beneficiary's funds, either upon or after receipt. The account must be:

- (1) Established for direct deposit of VA benefits,
- (2) Established in a Federally-insured financial institution, and in Federally-insured accounts when funds qualify for such deposit insurance, and
- (3) Titled in the beneficiary's and fiduciary's names and note the existence of the fiduciary relationship.

(b) Exceptions. The general rule prescribed in paragraph (a) of this section regarding establishment and maintenance of separate accounts does not apply to the following fiduciaries:

- (1) The beneficiary's spouse,
- (2) State or local Government entities,
- (3) Institutions, such as public or private medical care facilities, nursing homes, or other residential care facilities, when an annual accounting is not required. See § 13.280 regarding accounting requirements, or
- (4) A trust company or a bank with trust powers organized under the laws of the United States or a state.

(Authority: U.S.C. 501, 5502, 5509, 5711)

38 C.F.R § 13.210 Fiduciary investments.

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(a) General. A fiduciary must conserve or invest any VA benefits that the fiduciary receives on behalf of a beneficiary, whether such benefits are in the form of recurring monthly payments or a one-time payment, if the beneficiary or the beneficiary's dependents do not need the benefits for current maintenance, reasonably foreseeable expenses, or reasonable improvements in the beneficiary's and the beneficiary's dependents' standard of living. Conservation of beneficiary funds is for the purpose of addressing unforeseen circumstances or planning for future care needs given the beneficiary's disabilities, circumstances, and eligibility for care furnished by the Government at Government expense. Fiduciaries should not conserve VA benefit funds under management for a beneficiary based primarily upon the interests of the beneficiary's heirs or according to the fiduciary's own values, preferences, and interests.

(b) Types of investments. An investment must be prudent and in the best interest of the beneficiary. Authorized investments include United States savings bonds or interest or dividend-paying accounts insured under Federal law. Any such investment must be clearly titled in the beneficiary's and fiduciary's names and identify the fiduciary relationship.

(c) Exceptions. The general rules regarding investment of VA benefits do not apply to the following fiduciaries:

(1) The beneficiary's spouse, and

(2) The chief officer of an institution in which the beneficiary is being furnished hospital treatment or institutional, nursing, or domiciliary care. VA benefits paid to the chief officer may not be invested.

(Authority: 38 U.S.C. 501, 5502)

38 C.F.R. § 13.220 Fiduciary fees.

(a) Authority. The Hub Manager with jurisdiction over a fiduciary appointment may determine whether a fee is necessary to obtain the services of a fiduciary. A fee is necessary only if no other person or entity is qualified and willing to serve without a fee and the beneficiary's interests would be served by the appointment of a qualified paid fiduciary. The Hub Manager will not authorize a fee if the fiduciary:

(1) Is a spouse, dependent, or other relative of the beneficiary; or

(2) Will receive any other form of payment in connection with providing fiduciary services for the beneficiary.

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(b) Limitation on fees. The Hub Manager will authorize a fiduciary to whom a fee is payable under paragraph (a) of this section to deduct from the beneficiary's account a reasonable monthly fee for fiduciary services rendered.

(1) For purposes of this section, reasonable monthly fee means a monetary amount that is authorized by the Hub Manager and does not exceed 4 percent of the monthly VA benefit paid to the fiduciary on behalf of the beneficiary for a month in which the fiduciary is eligible under paragraph (b)(2) of this section to collect a fee.

(2) A monthly fee may be collected for any month during which the fiduciary:

- (i) Provides fiduciary services on behalf of the beneficiary,
- (ii) Receives a recurring VA benefit payment for the beneficiary, and
- (iii) Is authorized by the Hub Manager to receive a fee for fiduciary services.

(1) Fees may not be computed based upon:

- (i) Any one-time, retroactive, or lump-sum payment made to the fiduciary on behalf of the beneficiary;
- (ii) Any funds conserved by the fiduciary for the beneficiary in the beneficiary's account under § 13.200 or invested by the fiduciary for the beneficiary under § 13.210, to include any interest income and return on investment derived from any account; or
- (iii) Any funds transferred to the fiduciary by a prior fiduciary for the beneficiary, or from the personal funds of patients or any other source.

(2) The Hub Manager will not authorize a fee for any month for which:

- (i) VA or a court with jurisdiction determines that the fiduciary misused or misappropriated benefits, or
- (ii) The beneficiary does not receive a VA benefit payment. However, the Hub Manager may authorize a fee for a month in which the beneficiary did not receive a benefit payment if VA later issues benefits for that month and the fiduciary:

(A) Receives VA approval to collect a fee for the month for which payment was made,

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(B) Provided fiduciary services during the month for which payment was made, and

(C) Was the beneficiary's fiduciary when VA made the retroactive payment.

(Authority: 38 U.S.C. 501, 5502, 6101, 6106)

38 C.F.R. § 13.230 Protection of beneficiary funds.

(a) General. Except as prescribed in paragraph (c) of this section, within 60 days of appointment, the fiduciary must furnish to the fiduciary hub with jurisdiction a corporate surety bond that is conditioned upon faithful discharge of all of the responsibilities of a fiduciary prescribed in § 13.140 and meets the requirements of paragraph (d) of this section, if the VA benefit funds that are due and to be paid for the beneficiary will exceed \$25,000 at the time of appointment. The Hub Manager will not authorize the release of a retroactive, one-time, or other pending lump-sum benefit payment to the fiduciary until the fiduciary has furnished the bond prescribed by this section.

(b) Accumulated funds. The provisions of paragraph (a) of this section, which require a fiduciary to furnish a surety bond, apply in any case in which the accumulation over time of VA benefit funds under management by a fiduciary for a beneficiary exceeds \$25,000. Except as prescribed in paragraph (c) of this section, within 60 days of accumulated funds exceeding the prescribed threshold, the fiduciary will furnish to the fiduciary hub a bond that meets the requirements of paragraph (d) of this section.

(c) Exceptions.

(1) The provisions of paragraphs (a) and (b) of this section do not apply to:

(i) A fiduciary that is a trust company or a bank with trust powers organized under the laws of the United States or a state;

(ii) A fiduciary who is the beneficiary's spouse; or

(iii) A fiduciary in the Commonwealth of Puerto Rico, Guam, or another territory of the United States, or in the Republic of the Philippines, who has entered into a restricted withdrawal agreement in lieu of a surety bond.

(2) The Hub Manager may, at any time, require the fiduciary to obtain a bond described in paragraph (a) of this section and meeting the requirements of paragraph (d) of this section, without regard to the amount of VA benefit funds under management by the fiduciary for the beneficiary, if special circumstances

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indicate that obtaining a bond would be in the beneficiary's interest. Such special circumstances may include but are not limited to:

- (i) A marginal credit report for the fiduciary; or
- (ii) A fiduciary's misdemeanor criminal conviction either before or after appointment for any offense listed in § 13.130(a)(2)(ii);

(d) Bond requirements. A bond furnished by a fiduciary under paragraph (a) or (b) of this section must meet the following requirements:

- (1) The bond must be a corporate surety bond in an amount sufficient to cover the value of the VA benefit funds under management by the fiduciary for the beneficiary.
- (2) After furnishing the prescribed bond to the fiduciary hub, the fiduciary must:
 - (i) Adjust the bond amount to account for any increase or decrease of more than 20 percent in the VA benefit funds under management by the fiduciary for the beneficiary, and
 - (ii) Furnish proof of the adjustment to the fiduciary hub not later than 60 days after a change in circumstance described in paragraph (d)(2)(i) of this section.
- (3) The bond furnished by the fiduciary must also:
 - (i) Identify the fiduciary, the beneficiary, and the bonding company; and
 - (ii) Contain a statement that the bond is payable to the Secretary of Veterans Affairs.

(e) Periodic proof of bond. A fiduciary must furnish proof of adequate bonding:

- (1) With each annual accounting prescribed by § 13.280, and
- (2) At any other time the Hub Manager with jurisdiction requests proof.

(f) Liability.

- (1) Except as otherwise provided by the terms of the bond, the surety and the fiduciary guaranteed by the surety are jointly and severally liable for any misappropriation or misuse of VA benefits by the fiduciary.

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(2) VA may collect on the bond regardless of any prior reissuance of benefits by VA under § 13.410 and until liability under the terms of the bond is exhausted.

(g) Bond expenses.

(1) Authority. The fiduciary may deduct from the beneficiary's account any expense related to obtaining, maintaining, or adjusting a bond prescribed by this section.

(2) Notice. The Hub Manager will provide the beneficiary written notice regarding any bond furnished at the beneficiary's expense under paragraph (a), (b), or (c)(2) of this section or adjusted under paragraph (d)(2) of this section.

(Authority: 38 U.S.C. 501, 5502, 5507)

38 C.F.R. § 13.240 Funds of beneficiaries less than the age of majority.

(a) General. Except as prescribed in paragraph (b) of this section, a fiduciary who receives VA benefits on behalf of a beneficiary who is less than the age of majority may use the benefits only for the use and benefit of that beneficiary and only if the fiduciary first determines that the person or persons who have custody of the beneficiary and are responsible for the beneficiary's needs are unable to provide for those needs.

(b) Education benefits. A fiduciary who receives VA education benefits on behalf of a beneficiary who is less than the age of majority may use the benefits for the beneficiary's education regardless of the ability of the person or persons who have custody of the beneficiary to pay for the beneficiary's education.

(Authority: 38 U.S.C. 501, 5502)

(Only include the accounting section if, the fiduciary is being removed due to a misuse allegation based on the failure to submit an approvable accounting)

38 C.F.R. § 13.280 Accountings.

(a) General. Except as prescribed in paragraph (d) of this section, a fiduciary for a beneficiary must submit to the fiduciary hub with jurisdiction an annual accounting regarding the VA benefit funds under management by the fiduciary for the beneficiary if:

(1) The amount of VA benefit funds under management for the beneficiary exceeds \$10,000;

(2) The fiduciary deducts a fee authorized under § 13.220 from the beneficiary's account;

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(3) The beneficiary is being paid VA compensation benefits at a total disability rating (100 percent), whether schedular, extra-schedular, or based on individual unemployability; or

(4) The Hub Manager determines an accounting is necessary to ensure the fiduciary has properly managed the beneficiary's funds.

(b) Scope of accounting. For purposes of this section, accounting means the fiduciary's written report regarding the income and funds under management by the fiduciary for the beneficiary during the accounting period prescribed by the Hub Manager. The accounting prescribed by this section pertains to all activity in the beneficiary's accounts, regardless of the source of funds maintained in those accounts. An accounting consists of:

(1) A beginning inventory or account balance,

(2) An itemization of income,

(3) An itemization of expenses,

(4) An ending inventory or account balance,

(5) Copies of financial institution documents reflecting receipts, expenditures, and beginning and ending balances, and

(6) Receipts, when required by the Hub Manager.

(c) Submission requirements. Fiduciaries must submit annual accountings to the fiduciary hub as follows:

(1) The fiduciary must submit accountings on the appropriate VA form not later than 30 days after the end of the accounting period prescribed by the Hub Manager.

(2) The fiduciary must submit a corrected or supplemental accounting not later than 14 days after the date of VA notice of an accounting discrepancy.

(d) Exceptions. The provisions of this section that generally require the submission of an annual accounting do not apply to a fiduciary who is:

(1) The beneficiary's spouse;

(2) A chief officer of a Federal institution;

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(3) A chief officer of a non-VA facility receiving benefits for a beneficiary institutionalized in the facility and:

(i) The beneficiary's monthly care, maintenance, and personal use expenses equal or exceed the amount of the beneficiary's monthly VA benefit; and

(ii) The amount of VA benefit funds under management by the fiduciary does not exceed \$10,000; or

(4) A fiduciary who receives benefits on behalf of a beneficiary and both permanently resides outside of the United States or in the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary was appointed outside of the United States or in the Commonwealth of Puerto Rico or the Republic of the Philippines.

(e) Failure to comply with accounting requirements. The Hub Manager will treat any willful neglect or refusal to file proper accountings as prima facie evidence of embezzlement or misappropriation of VA benefits. Such evidence is grounds for starting a misuse investigation under § 13.400.

(Authority: 38 U.S.C. 501, 5502, 5509, 6101)

38 C.F.R. § 13.400 Misuse of benefits.

(a) Definition of misuse. Misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment of benefits for the use and benefit of a beneficiary and the beneficiary's dependents, if any, and uses any part of such payment for a use other than the use and benefit of the beneficiary or the beneficiary's dependents. For the purpose of this section, use and benefit means any expenditure reasonably intended for the care, support, or maintenance of the beneficiary or the beneficiary's dependents. Such expenditures may include the fiduciary's efforts to improve the beneficiary's standard of living under rules prescribed in this part.

(b) Misuse determinations. Upon receipt of information from any source regarding possible misuse of VA benefits by a fiduciary, the Hub Manager may, upon his or her discretion, investigate the matter and issue a misuse determination in writing. This decision will:

(1) Identify the beneficiary,

(2) Identify the fiduciary,

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(3) State whether the fiduciary is an individual fiduciary serving 10 or more beneficiaries or a corporation or other entity serving one or more beneficiaries,

(4) Identify the source of the information,

(5) Describe in detail the facts found as a result of the investigation,

(6) State the reasons for the Hub Manager's determination regarding whether the fiduciary misused any part of the beneficiary's benefit paid to the fiduciary, and

(7) If the Hub Manager determines that the fiduciary did misuse any part of the beneficiary's benefit, identify the months in which such misuse occurred.

(c) Notice. The Hub Manager will provide written notice of the misuse determination prescribed in paragraph (b) of this section, including a copy of the Hub Manager's written decision, an explanation regarding the reconsideration procedure prescribed in paragraph (d) of this section, and the beneficiary's right to appeal under § 13.600, to:

(1) The fiduciary;

(2) The beneficiary or the beneficiary's legal guardian, and the beneficiary's accredited representative, attorney, or claims agents;

(3) The court of jurisdiction if the fiduciary is also the beneficiary's court-appointed guardian and/or conservator; and

(4) The Director of the Pension and Fiduciary Service.

(d) Finality and reconsideration of misuse determinations.

(3) The Hub Manager's misuse determination is a final decision, unless:

(i) The Hub Manager receives a written request for reconsideration from the fiduciary or the beneficiary not later than 30 days after the date that the Hub Manager mailed notice of his or her misuse determination; or

(ii) The Hub Manager receives a notice of disagreement from the beneficiary not later than 1 year after the date that the Hub Manager mailed notice of his or her misuse determination.

(2) The fiduciary or the beneficiary may submit additional information pertinent to reconsideration of the misuse determination and not previously considered by the Hub Manager, provided that the additional information is submitted with the written reconsideration request.

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(3) The Hub Manager will close the record regarding reconsideration at the end of the 30-day period described in paragraph (d)(1)(i) of this section and furnish a timely request submitted by the fiduciary or the beneficiary, including any new information, to the Director of the VA Regional Office with jurisdiction over the fiduciary hub for a final decision.

(4) In making the misuse determination on reconsideration, the Regional Office Director's decision will be based upon a review of the information of record as of the date of the Hub Manager's misuse determination and any new information submitted with the request. The decision will:

- (i) Identify the beneficiary,
- (ii) Identify the fiduciary,
- (iii) Identify if the fiduciary is also the beneficiary's court-appointed guardian or conservator,
- (iv) Identify the date of the Hub Manager's prior decision,
- (v) Describe in detail the facts found as a result of the Director's review of the Hub Manager's decision and any new information submitted with the reconsideration request, and
- (vi) State the reasons for the Director's final decision, which may affirm, modify, or overturn the Hub Manager's decision.

(5) The Hub Manager will provide written notice of the Regional Office Director's final decision on reconsideration to:

- (i) The fiduciary,
- (ii) The beneficiary or the beneficiary's legal guardian, and the beneficiary's accredited representative, attorney, or claims agent;
- (iii) The court, if the fiduciary is also the beneficiary's court-appointed guardian or conservator; and
- (iv) The Director of the Pension and Fiduciary Service.

(e) Reporting of misuse. Except as prescribed in § 1.204 of this chapter, which requires VA management officials to promptly report possible criminal matters involving felonies to the VA Office of Inspector General, reporting of misuse cases will occur as follows:

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(1) Not later than 30 days after a final determination is made under paragraph (d) of this section that a fiduciary has misused VA benefits, the Director of the VA Regional Office who has jurisdiction over the fiduciary hub will notify the VA Office of Inspector General for purposes of any further action that the Inspector General deems appropriate under separate authority, and the court of jurisdiction if the fiduciary is also the beneficiary's court-appointed legal guardian and/or conservator.

(2) For purposes of application of § 13.410 regarding reissuance and recoupment of benefits, the Office of Inspector General will advise the Director of the Pension and Fiduciary Service of any final decision regarding prosecution of a fiduciary who misused VA benefits and any final judgment of a court in such a prosecution not later than 30 days after the decision is made or judgment is entered.

(Authority: 38 U.S.C. 501, 5502, 6106)

38 C.F.R. § 13.500 Removal of Fiduciaries.

(a) The Hub Manager may remove a fiduciary if the Hub Manager determines that fiduciary services are no longer required for a beneficiary or removal is in the beneficiary's interest. Reasons for removal include, but are not limited to:

(1) Beneficiary reasons. (i) A VA rating authority determines that the beneficiary can manage his or her own VA benefits without VA supervision or appointment of a fiduciary;

(ii) The beneficiary requests appointment of a successor fiduciary under § 13.100;

(iii) The beneficiary requests supervised direct payment of benefits under § 13.110; or

(iv) The beneficiary dies.

(2) Fiduciary reasons.

(i) The fiduciary's further service is barred under § 13.130;

(ii) The fiduciary fails to maintain his or her qualifications or does not adequately perform the responsibilities of a fiduciary prescribed in § 13.140;

(iii) The fiduciary fails to timely submit a complete accounting as prescribed in § 13.280;

(iv) VA or a court with jurisdiction determines that the fiduciary misused or misappropriated VA benefits;

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- (v) The fiduciary fails to respond to a VA request for information within 30 days after such request is made, unless the Hub Manager grants an extension based upon good cause shown by the fiduciary;
- (vi) The fiduciary is unable or unwilling to provide the surety bond prescribed by § 13.230 or, if applicable, enter into a restricted withdrawal agreement;
- (vii) The fiduciary no longer meets the requirements for appointment under § 13.100; or
- (viii) The fiduciary is unable or unwilling to manage the beneficiary's benefit payments, accounts, or investments.

(b) Procedures.

(1) If the Hub Manager determines that it is necessary to remove a fiduciary and appoint a successor fiduciary, the Hub Manager will:

- (i) Provide the fiduciary and the beneficiary written notice of the removal; and
- (ii) Instruct the fiduciary regarding the fiduciary's responsibilities prior to transfer of funds to a successor fiduciary or provide other instructions to the fiduciary.

(2) The fiduciary must:

- (i) Continue as fiduciary for the beneficiary until the Hub Manager provides the fiduciary with the name and address of the successor fiduciary and instructions regarding the transfer of funds to the successor fiduciary; and
- (ii) Not later than 30 days after transferring funds to the successor fiduciary or as otherwise instructed by the Hub Manager, provide the fiduciary hub a final accounting.

(Authority: 38 U.S.C. 501, 5502, 5507, 6106)

Signature of Reviewer, Position

Date