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| Slide 1 – Title Slide | Hello, my name is Tom Fryzel. I’m a Training Consultant with the Compensation Service Training Staff.Today, I’m going to talk to you about Favorable Findings in VBMS-R and Supplemental Claims from a rating perspective. |
| Slide 2 – Objectives | Our objectives today are to define favorable findings, to describe VBMS-R entry procedures for favorable findings, to describe VBMS-R deletion procedures for favorable findings, to describe process for overturning favorable findings, to identify changes impacting EP 020 and to identify characteristics of EP 040. |
| Slide 3 – References | Today’s references are Public Law (PL) 115-55, Veterans Appeals Improvement and Modernization Act of 2017, more commonly known as AMA, 38 CFR 3.103(f), Procedural due process and appellate right38 CFR 3.104(c), Favorable findings Manual for Supplemental Claims is M21-1, Part III, Subpart ii, Chapter 2, Section D and then Completing the Rating Decision NarrativeM21-1, Part III, Subpart iv, Chapter 6, Section C –and there is also a Favorable Findings Job Aid for VBMS-R. |
| Slide 4 – AMA Improved Decision Notice Requirements | AMA requires VA to issue improved decision notices for all decision on or after February 19, 2019. Our discussion today will focus on elements 1 through 6. |
| Slide 5 - VBMS-R Functionality | VBA made updates to VBMS-R to ensure VBA rating decisions meet the new AMA notice requirements. These updates include: generated language changes, updated glossary fragments, and the addition of favorable finding functionality. Decisionmakers will cover all essential elements through use of the items noted above and existing functionality to include: calculators, the evaluation builder, and limited free text. |
| Slide 6 – Favorable Findings: Definition | 38 CFR 3.104(c) defines what a Favorable Findings is.A Favorable Finding is a conclusion either on a question of fact or on an application of law to facts made by an adjudicator concerning the issue(s) under review.Any finding favorable to the claimant made by either a VA adjudicator or by BVA is binding on all subsequent VA and Board adjudicators, unless rebutted by evidence that identifies a clear and unmistakable error in the favorable finding. Favorable findings relate to a material element that would be required to grant the benefit sought. |
| Slide 7 – Documenting Favorable Findings | Decisionmakers must address any favorable findings in rating decisions based on the decision rendered as shown below:When decisions are granted, there is no requirement to list a favorable finding. If issues are denied or if we are confirming a denial in VBMS, our Favorable Findings Tab will be used to identify and save any favorable findings.If we are granting an increase or continuing an existing evaluation rely on system generated language from the Evaluation Builder. Separate favorable findings list is not required. |
| Slide 8 - Good examples of Favorable Findings | Favorable findings depend on the type of claim and the theory of entitlement.For example, if we are considering direct service connection, we may tell the Veteran that the evidence shows that a qualifying event, injury or disease had its onset during your service. Your service treatment records show treatment for left ankle sprain on January 31, 2015. In our actual narrative decision, what we may explain is that we are denying for example, there is not a current diagnosis.In issues of secondary service connection, a claim issue is secondary to the primary nonservice-connected disability would be an example of a favorable finding and then in the narrative portion of our denial we will explain that your stroke is due to your non-service connected hypertension, for example. |
| Slide 9 - Good examples of Favorable Findings | For Aggravation, we may get an example like this:The claimed issue existed prior to military service. Your entrance examination dated January 31, 2015 shows you entered active duty with pes planus. Then, in the narrative section of a rating decision for denial we may explain that there is no treatment in service and therefore no aggravation.For Presumptive we may say that you have been diagnosed with a disability. You were diagnosed with hypertension on January 31, 2015 at VAMC-Syracuse. In the denial you may explain that hypertension is not associated with herbicide exposure |
| Slide 10 - Bad examples of Favorable Findings | Bad examples of favorable findings are favorable findings that are not specific. They are broad in nature.For example, service connection is warranted, current diagnosis, without mention of where, when or even what the diagnosis is.Diagnosis in service treatment records, again no date, no description of what the disability is, and the same thing with private treatment records.You may say Vietnam service is confirmed and a previous example with hypertension, we could go on and explain further as to how it was dealt with and whether or not it should be service connected.VA Houston examination report dated March 9, 2018, does not tell us what was in the examination report. |
| Slide 11 - Important Considerations for Favorable Findings | If there are multiple bases of service connection being considered and/or multiple denial reasons, relevant text must be added to the rating Narrative in order to address the unmet elements and favorable findings relative to each theory of service connection under consideration. |
| Slide 12 - Nuts and Bolts of Favorable Findings | VBMS-R will have functionality in May 2019 that will give a drop down that will require specific free text.Prior to May 2019, Favorable Findings will require manual input, derived from previously disseminated Excel spreadsheetVBMS-R will store favorable findings that can either be selected or deselected on subsequent ratings. Once it has been “selected” it does not need to be “selected” again. If it is being overturned, it will be “deselected”. |
| Slide 13 – Documenting Favorable Findings – Step 1 | Step 1: From the Disability Decision Information (DDI) Screen, select the necessary information from the drop-down menus and radio button, and continue by selecting Next |
| Slide 14 - Documenting Favorable Findings – Step 2 | Step 2: Once all Decision Screens are complete, the Facts, Analysis, and Favorable Findings tabs will appear on the Decision Screen.  |
| Slide 15 - Documenting Favorable Findings – Step 3 | Step 3: Within the Favorable Findings tab, users can add, edit, and delete favorable findings free text information for any issue that is created for a claim in the Rating application. Each favorable finding free text is added to the Rating narrative.It’s important to note, the edit and save icon toggle back and forth. To remove the grey, you will select “edit”. When you are done editing select “save”. You will notice that the background changes to white when you are editing, and grey once you select save. |
| Slide 16 - Documenting Favorable Findings – Step 4 | Step 4: Select the Add Favorable Finding button to manually input the favorable findings in your rating narrative. |
| Slide 17 - Documenting Favorable Findings – Steps 5 thru 7 | Step 5: To save your findings, select Save. (The Save button is underneath actions and to the left.)Step 6: To edit a favorable finding, select the pen and paper icon under the Actions column.Step 7: To delete a favorable finding, select the trash icon under the Actions column and that’s to the right. |
| Slide 18 - Documenting Favorable Findings – Step 8 | Step 8: Return to the Analysis tab to build the rating narrative. |
| Slide 19 - Documenting Favorable Findings – Step 9 | And finally, Step 9: Select either Copy or Append to add the favorable findings to the rating narrative.For example, Favorable Findings identified in this decision: The evidence shows that a qualifying event, injury, or disease had its onset during your service. Your service treatment records dated January 31, 2015, shows treatment for a skin rash. |
| Slide 20 - Overturning Favorable Findings | Favorable Findings are binding on all subsequent adjudicators. Decisionmakers may overturn a prior favorable finding when clear and unmistakable evidence is present to refute the finding. Users must provide a justification in VBMS-R when removing a prior Favorable Finding. Document the decision to overturn favorable findings within the body of the decision for the impacted issues.Any overturned favorable findings must be removed from the list of favorable findings.Adjudicators have single signature authority to overturn a favorable finding. |
| Slide 21 - Clear and Unmistakable Rebuttal Standard | Clear and Unmistakable rebuttal standard this is satisfied by a finding that the evidentiary record as a whole completely lacks any plausible support for the favorable finding. Overturning previously established favorable findings can be done with single signature authorityHowever, if overturning the favorable finding results in a Clear and Unmistakable error, then normal CUE signature requirements existDifferent than a CUE, to overturn a favorable finding the adjudicator does not have to determine that the outcome of the claim would have been different. |
| VBMS-Rating: Favorable Findings Job Aid | Before we talk about 020s, let me show you what the job aid looks like and what the drop-down worksheet looks like.(Image of job aid): Here we have the job aid. The job aid breaks down the steps that we have just spoken about for documenting favorable findings in VBMS-R. This job aid will be distributed with this training. IT will walk you through the same information that we’ve talked about.(Image of excel document): Next let’s talk about the drop-ins. These are the drop-ins that the rating agency will have to input manually until May of 2019. For example, for direct (incurrence), you will see “The evidence shows that a qualifying event, injury, or disease had its onset during your service”. Then you would further add how you came to that conclusion. For example, your service treatment records show right ankle sprain on January 31, 2015.This drop-in product contains different theories for service connection, also different types of claims.For example, direct, secondary, aggravation, presumptive (just reading down the left column…), 1151, PTSD and some other issues. For example, SMC, permanent and total (P&T), helpless child, civil service preference, Chapter 17, hospitalization, ancillary benefits.Let’s go back into our slide presentation and talk a little bit more about the claims themselves. |
| Slide 22 - Lets talk about 020s | Okay, let’s talk about 020s. For 020s, not too much has changed, other than they are new and increases only. There’s no more reconsiderations or claims to reopen. They must be received on a prescribed form, if not a Request for Application (RFA) is needed.Bear in mind, that duty to assist is part of the 526EZ and ITF is accepted for an 020. There’s still a low threshold for examination. |
| Slide 23 - Lets talk about 020s and 040s | There’s some important considerations.For example, if on February 20, 2019 (which is the day after the implementation of AMA), a Veteran file a supplemental claim in which the appeal period is still pending, for example, the previous decision was made in December 2018.For reviews of decisions issued on or after February 19, 2019, the claimant, or his/her authorized representative, must seek review in writing by submitting either VA Form 20-0996, or VA Form 20-0995.  VBA will not accept review requests in any format other than the prescribed forms.  For decisions issued prior to February 19, 2019, the legacy appeals process still applies.  Accordingly, a claimant seeking review of a compensation decision issued prior to February 19, 2019, must submit a timely VA Form 21-0958, Notice of Disagreement, and may opt-in upon receipt of a Statement of Case (SOC)/Supplemental Statement of Case (SSOC). |
| Slide 24 - Lets talk about 020s | Here’s another thing to consideration.I have a reconsideration that was received prior to February 19, 2019 but not CESTd until well after February 19, 2019. How come the EP claim label does not say “reconsideration”?This is a known issue; the appropriate staffs are aware of this issue and are working on a solution. |
| Slide 25 - Lets talk about 040s | Let’s talk about 040sWhat is an 040?An 040 is a supplemental claim, a supplemental claim is any complete claim for a Department of Veterans Affairs (VA) benefit on a prescribed application form where the claimant or his/her authorized representative disagrees with the decision VA made on an initial or supplemental claim for the same or similar benefit on the same or similar basis. |
| Slide 26 - Lets talk about 040s | Same or similar benefit on the same or similar basis . . . What does that mean?Generally, the same or similar benefit on the same or similar basis means VA has previously decided a claim for the same benefit type.Examples of types of benefits:Service connection for right knee arthritisEntitlement to individual unemployabilityIn claims for compensation, a claim based on a new theory of service connect is a supplemental claim. A new theory of service connection is sufficient new and relevant evidence to satisfy the evidentiary threshold. |
| Slide 27 - Lets talk about 040s | Some characteristics of a 040:They are filed on a VA Form 20-0995.Issues previously decided (formerly known as recons & reopens) are now supplemental claims.If claimed on anything other than a 0995, DROC must process Request for Application (RFA).A supplemental claim cannot be associated with an intent to file (ITF). |
| Slide 28 - Lets talk about 040s | Do not provide Section 5103 notice for a supplemental claim that is filed within a year of the date VA issues notice of a prior decision on the same issueSupplemental claims must be a complete claim.To be a complete claim they must identify or include potentially new evidenceIncomplete supplemental claims result in an Incomplete Claim Letter under EP 400. |
| Slide 29 - Summary | Summary, today we talked about the following things:We defined favorable findings, we described VBMS-R entry and deletion procedures for favorable findings, favorable findings, we described process the process for overturning favorable findings, we identified changes impacting EP 020 and we identified characteristics of EP 040. |
| Slide 30 - Questions | **Question 1**: In the future, how will we know the favorable findings for the last rating were pulled in? Do they appear in the Master Record? Will they pull into my narrative if I associate the same contention? **Answer 1**: In VBMS-R you will have the option to select/deselect previously used favorable findings.**Question 2**: When will VBMS-R be fixed to address the incorrect laws it pulls into the rating? **Answer 2**: The next update is due in May 2019.**Question 3**: Does 38 CFR 3.400(z) apply to Supplemental Claims? **Answer 3**: No, the CFR for supplemental claim effective dates is 38 CFR 3.2500(h) (1-2) |