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| Slide 1 – Title Slide | Welcome everyone, my name is Jim Davis. I’m a member of the Compensation Service Training Staff in Baltimore.Today we are going to talk about Favorable Findings for Dependency. |
| Slide 2 – Lesson Objectives | Our lesson objectives are to define favorable findings, explain when to use and input favorable findings and overturning favorable findings |
| Slide 3 – References | Our references for today’s topic, Public Law 115-55, Veterans Appeals Improvement and Modernization Act 201738 CFR 3.103(f), Decision NoticesM21-1, Part III, Subpart v, 2. B, Decision Notices We’re also providing you with some job aids with the Appeals Modernization Act Letter Guide, March 2019, Approved Language for Favorable Findings – Dependency, February 6, 2019 andAMA Approved Text for PCGL Letters, February 12, 2019 |
| Slide 4 – Define Favorable Finding | A favorable finding is a determination of fact, based on applicable laws and regulations, made by the adjudicator on an issue under review. Favorable findings should relate to a material element that would be required to grant the benefit sought.So today we are discussing specifically the favorable findings required for a dependency claim. Now the things you require for a dependency claim have not changed. The AMA updates changed our notification requirements, no anything about making a decision on whether somebody is a dependent or not. |
| Slide 5 - AMA Notice Requirements | Favorable Findings DO NOT apply to award adjustments (award adjustments being drill pay adjustments, military retired pay adjustments, incarceration adjustments or return to active duty). So we do not have to meet the favorable finding requirements for those types of adjustments.The Favorable Findings DO apply to dependency, character of discharge determinations, line of duty determinations, and other benefit entitlement issues in non-rating claims. Now one of the first handouts we gave you, they listed on there is the AMA Letter Guide. I’m not going to bring that up, it’s over 74 pages long. However, inside of there they do give you directions on types of letters, such as character of discharge, how to modify the existing letter inside of Letter Creator to meet the AMA requirements. So, that’s a very handy thing for you to have and you should review it and use when appropriate.AMA notice requirements (with exception of favorable findings noted above) DO apply to all non-rating decision. So, if you’re making a decision other than those we talked about above, the award adjustments, AMA requirements apply. |
| Slide 6 – Required Elements of a Decision Notice | All right, the required elements of a decision notice.Each decision notice (both rating and non-rating issues) must:inform the claimant of the issues adjudicatedsummarize the evidence VA considered, summarize the laws and regulations applicable to the claim, and summarize the applicable review options the claimant may use to seek further review of the decision.We also have to explain how to obtain or access evidence used in making the decision and identifyfor denied claims, the element(s) required to grant the claim that were not met, and a listing of findings that are favorable to the claimant under 38 CFR 3.104(c).So this is the big change, is the notification requirements in our dependency claims. |
| Slide 7 – Favorable Findings Requirement | Each notice of a decision affecting benefits must address any findings made by the adjudicator that are favorable to the claimant. Not all claims will have favorable findings. Favorable Findings are only going to be in the letter whether it’s RADL or PCGL, if we deny a dependent.The element selection generates favorable finding language. So once you’ve gone in and you say not an award dependent, you’re going to make other selections that are going to generate your letter telling the Veteran what parts he/she did not meet and what parts they did not.Elements specific to dependent type...for example, we have separate elements for a spouse, a minor child. We’ve got foster child listed here and I’m sure you’re all going, “Oh, but we don’t grant for foster children”, that would be an element that would not be met because the relationship to the Veteran would not be established. We’ll look at that later. Then we have separate elements for school child. So let me pull up right now, (image of job aid)Here’s our approved language for Favorable Findings Dependency. This is going to be one of the most important things you can have right now, especially if you have to use a PCGL Letter. If Awards Status dropdown in VBMS-A is “Not an Award Dependent,” then your letter must contain “We couldn’t pay for” this specific language and then you will insert the elements that were not met “even though we aren’t able to pay additional compensation for your dependent, the following findings were favorable…” and you have to list all of them.Now as I go down, you’re going to see this first, if the subtype is the minor adopted child, you must answer all these elements, whether the element was met or not met. All 10 of them and there are 10 for adopted child. Scroll down through them and as I said before, everything here is information you previously had to have and it’s just formalizing it and putting into the letter. Specifically explaining to the Veteran what was in favor of their claim and what stopped their claim from being granted.We continue down…we get minor child and we have 9 different elements that have to be answered if you are denying for biological child. We go down to step child and they have 10 elements. Minor stepchild, each of these have to be answered in your letter if you are denying. For that dependent school age child has 8 elements that you must answer. With your child is not elected Chapter 35, now Chapter 35 only applies to our Veterans that are 100 percent total or permanent and total (P&T). But you have to answer this element every time for school child, even if the Veteran is only 30 percent. It’s one of those required elements, so were’ going to have to answer that no matter what. So we go through we have aged attending approved educational institution. Some of the questions that have come in, you know “how do I answer that question if I haven’t received a 21-674, if we don’t have the actual 21-674, the factual elements available in the case. We can’t answer it” So it’s not met. So it’s just based on the information in the claim folder. If we don’t have it then it’s not met. We continue down and we get adoptive parents, the different types of parents…I’m going to skip through this and go down to pages 12 and 13 in your handout.Removal of dependent, so if you’re going to take a dependent off you’re going to have to use this (job aid) and this is where you going to get the language for doing it. If you’re taking them off because they elected Chapter 25, if a marriage was terminated, there’s specific language that you have to use for that.And it goes through, that you adopted child out of… all of these are providing you the language to use.On pages 14 and 15, we get to the grants. Now this is very different. Prior to this all we’d have to do is say we granted your spouse, from the date of marriage, from the date of your award. Now you have to go in and do all of that and you have to provide all of the 38 CFR references. So there is quite a bit. This is the major changes in our PCGL letters that we’ve got to either cut and paste or type all this information in and there’s a different set of regulations for each type, minor biological, adopted. We come down the stepchild, school child and we get into language for the parents. And that is the end of the handout, so I would definitely make sure to save that and keep it handy. It’s going to be very useful in processing PCGL letter. Let me go back to the Power Point. |
| Slide 8 - Favorable Findings Requirement | For example: If we denied a claim to add a dependent spouse the decision notice would identify the element(s) not met with a summary of applicable laws and regulations. Then list the element(s) met that are favorable to the veteran. The decision notice will state:“We couldn’t pay for <Dependent’s Name> as a dependent, because not all required elements were met. The following list contains an explanation of the elements required to establish entitlement to additional compensation for your dependent:”“You failed to provide the date and place of the marriage. (38 CFR 3.204).” We have to tell them the exact 38 CFR that required that. |
| Slide 9 - Favorable Findings: Examples | The next thing wee have to do is tell them everything that was favorable for their claim.“Even though we aren’t able to pay additional compensation for your dependent, the following findings were favorable to your claim:”You are rated 30% or greater service connectedYou provided < Dependent’s Name>’s social security number.Your relationship with < Dependent’s Name> has been established.You provided your spouse's name.You provided marital history, as requested.You provided your spouse’s date of birth.So all those elements that we know we have to confirm with the Veteran that we have received them. |
| Slide 10 - PCGL/Letter Templates | Alright, your PCGL letter templates, what we have to update inside of that letter.VSRs will continue to use PCGL or other templates to generate non-rating decision notification letters, when necessaryThe following sections must be amended when providing notice:“What We Decided”You’re going to Include any favorable findings, if applicable, for each issue decided or include the applicable laws and regulations for each issue decided.So that’s back to that long list I gave you where you would go in and we have grants back on page 12 and 13 and you would put in that we got it and gives all the laws that apply or favorable findings. (Show image of job aid). This is what you have to copy and paste in under what you should do. If you disagree with our decision and your going to cut and paste the entire section. You’ll see what we no longer give out the 4107 or the 21-0958, we’re giving them the 20-0998 and we reference the 20-0995 and 20-0995 and the 10182, if they want to appeal. So this is now the required replacement for what you should do if you disagree with our decision. So I would get this handout and save it. Back to the Power Point. |
| Slide 11 - PCGL/Letter Templates (cont.) | Issue(s) Adjudicated/Evidence Considered, you’re going to follow the existing guidance for these on evidence and everything. There’s been no change to that.Enclosures, the only thigk we’re going to include is the VA Form 20-0998, Your Rights to Seek Further Review of Our Decision. Do not include the VA Form 4107 or any application forms. We are no longer attaching those forms to PCGL letters. |
| Slide 12 - VBMS-A: Non-Rating Decisions | Inside of VBMS-A, non-rating decisions. So, we’re into our dependency decision inside of VBMS-AVBMS-Awards was updated to include functionality related to:Documenting dependency decisions Favorable findingsElements met/not metLaws and regulationsOverturning favorable findings indicated in a prior dependency decision Documenting justifications for overturning the decisionNotice to the claimantNotifying claimants of AMA review optionsUpdated text under the “What to Do if You Disagree” sectionUpdated enclosures (i.e. 20-0998, no longer provides application forms)This is all automatic inside of VMBS-A in the RADL. |
| Slide 13 - Inputting Favorable Findings | The favorable findings are automatically included in the decision notice, if we selected they’re not an award dependent. When we select not an award dependent (I’m going to review the screenshots with you) where you have to go in and you’re going to answer all the elements whether it’s met or not met, which is going to build your letter and put everything into its proper category, whether it is met or not met. |
| Slide 14 - Inputting Favorable Findings (cont.) | So, inputting that favorable finding, we’re in the depending screen. We select a person, which is automatically, we’re going to get them into minor biological child and we say not an award dependent.What’s critical here is just like when we’re in VBMS-Core, if we have to do something additional we get that caution triangle. We would click the edit key to get us into there. |
| Slide 15 - Inputting Favorable Findings (cont.) | It would bring up the favorable findings and here you see that we have all nine elements that are required for a biological minor child and we have to answer each and every one of those. |
| Slide 16 - Dependency Denial Example | So under this example that we’re going to work through, John Smith a service connected veteran submits a VA Form 21-686c wishing to add minor child Larry Smith to his award. A review of the file show’s he is rated at 30% for sleep apnea. All information to add the minor child is present on the 686c except the minor child’s social security number.All attempts to contact the veteran by phone have been unsuccessful. We mailed the Veteran a development letter asking for the social security number. The veteran fails to respond within 30-days with requested information. |
| Slide 17 - Dependency Denial Example (Cont...) | We have Larry Smith, minor biological child, not an award dependent, we click on edit because we have our yellow caution. |
| Slide 18 - Dependency Denial Example (Cont...) | It brings us to the next screen and we see that we said we had all the elements met, less the social security number. The VSR has ticked off met on all 8 elements that were met and on the social security number is no being met. We click the Save button. |
| Slide 19 - Dependency Denial Example (Cont...) | When we come back into our main dependency screen we’re going to see that our yellow caution triangle has been replaced with a green circle with a white check mark inside of it. We’re going to click done. |
| Slide 20 - Generated Favorable Finding Text | This is going to generate the favorable finding text."The following text displays in the letter:Even though we aren’t able to pay additional compensation for your dependent, the following findings were favorable to your claim:You are rated 30% or greater service connected.You provided < Dependent’s Name>’s age.Your relationship with < Dependent’s Name> has been established. You provided your child’s name. |
| Slide 21 – Generated Favorable Finding Text (cont.) | You provided < Dependent’s Name's> place of birth.< Dependent’s Name> is unmarried.You provided <Dependent> address.You provided < Dependent’s Name>’s date of birth. |
| Slide 22 - Generated Favorable Finding Text (cont.) | You look into our letter. It’s actually generated inside of RADL. We see at the top we have that standard text, we couldn’t pay Larry.It comes down, you said “you did not provide Larry Smith social security number” as required and you’ll see that on that negative (what you didn’t give us) we have all the CFR references that say you must give it to us. Then down below, we list the 8 that were met and there are no CFR references next to them. |
| Slide 23 - Overturning Favorable Findings | The veteran may file a new claim to add a previously denied dependent that calls into question a prior favorable finding. They could file an increase.Once it is determined that a prior favorable finding is no longer favorable we must overturn that favorable finding and notify the veteran of the reason why the prior finding was overturned.We take the same approach as inputting favorable findings to overturn a favorable finding. The only difference is we now take the “met” element that was previously favorable and change to “not met”. Once you change the element you will be prompted with the following message:"You are electing to overturn a prior favorable finding. Please provide a justification that meets the clear and unmistakable evidence standard necessary to overturn a favorable finding.” |
| Slide 24 - Overturning Favorable Findings (cont.) | So to overturn it, we come into our dependency screen. We see we have a green circle with a checkmark and we would have to select edit again. |
| Slide 25 - Overturning Favorable Findings (cont.) | We would come in and based on whatever that was, it could be that the child is now married. Or in this case (for this demonstration), we’re going to say that the Veteran filed for an increase and was reduced. |
| Slide 26 - Overturning Favorable Findings (cont.) | Once we did that, Veteran entitlement is now changed to Not Met and we’re going to click Save. |
| Slide 27 - Overturning Favorable Findings (cont.) | It’s going to bring up “Please provide a justification that meets the clear and unmistakable evidence standard necessary to overturn a favorable finding.” You’ve got a text box here where you’re going to type it in. |
| Slide 28 - Overturned Favorable Finding Generated Text | In this case, our answer was“The following text displays in the letter:Favorable Findings Overturned (Header)“Based on evidence of record, we have overturned the following finding(s) that we had originally decided in favor of your claim:In the text box you will list the prior favorable finding that is being overturned and then provide justification for overturning.<You are rated 30% or greater service connected.>”“The overturned issue's explanation appears in the letter:“The rating decision dated 2/1/2019 reduced your service connection percentage from 30% to 20% therefore you are no longer eligible for the benefit sought. (38 CFR 3.4)” |
| Slide 29 - Overturned Favorable Finding Generated Text | This is going to generate the letter. This is the same Veteran we had before.Now you are going to see that we not only did you not provide Larry’s social security number, but you are not rated at 30 percent. You’ll also see down below the 7 elements that are still met.We’ve got the favorable findings overturned and we explained it, “you’re no longer over 30 percent.”And this all comes in automatically on the RADL. |
| Slide 30 -Questions | **Question**: The favorable findings on the letter are confusing. Do we have to answer each item as “met” or “not met” even if it does not satisfy the situation?**Answer**: Yes. We do. These are the requirements under the law. |