

# Office of Administrative Review (OAR)

## Quality Call Bulletin

### December 2021

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#### PENSION REDUCTIONS BASED ON SOCIAL SECURITY (SS) COST OF LIVING ADJUSTMENTS (COLA)

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**Target Audience:** DROC Management, Quality Review Teams (QRT), Decision Review Officers (DRO), and Veterans Service Representatives (VSR)

**Presenter:** Suzanne Ribish, Management and Program Analyst, OAR Program Administration (PA)

#### References:

- 38 C.F.R. §3.27, *Automatic adjustment of benefit rates*
- 38 C.F.R. §3.31, *Commencement of the period of payment*
- M21-1 IX.iii.1.E.6.e, *Counting Recurring Income*
- M21-1 IX.iii.1.H.2, *Cost-of-Living Adjustments (COLAs)*
- M21-1 X.v.2.C, *Cost-of-Living Adjustment (COLA)*
- *VBMS Awards User Guide*

#### Normal Impact of SS COLA:

Normally a SS COLA adjustment will not reduce the rate of current-law pension because the current-law pension maximum annual pension rate (MAPR) always increases at the same time and percentage as the rate of SS, per 38 C.F.R. §3.27, *Automatic adjustment of benefit rates*. If the SS COLA does not reduce the rate of current-law pension, count the increased rate of SS from the effective date of the COLA (generally December 1<sup>st</sup>).

This is an *exception* to the general end-of-the-month rule to count increased income from the first day of the month following the month in which the pensioner receives it.

**Example:** A Veteran is receiving current-law pension based on SS of \$5,000 per year (monthly pension rate is \$637). Effective December 1, 2020, the rate of SS goes up to \$5,205 as a result of the COLA. Pay \$638 per month based on income for VA purposes (IVAP) of \$5,205 from December 1, 2020.

This is considered a “normal” COLA adjustment since the monthly pension rate

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increased on December 1, 2020.

#### **Pension Rate Reduction Due to SS COLA:**

If a SS COLA adjustment results in a decrease in the rate of current-law pension, decrease the pension rate effective the first of the month following the effective date of the COLA/MAPR increase (often referred to as a deferred COLA or protected COLA). We will never allow a SS COLA increase to create a reduction in the rate of pension payable effective 12/01/YY.

- **Note:** If deductible expenses for the calendar year associated with the COLA are projected to increase the rate of pension payable, then carry forward the previous year's pension payment rate until February 1.

**Example:** Effective January 1, 2019, the Veteran's monthly pension rate is \$622. You input the new SS rate effective December 1, 2019, and the monthly pension rate is decreased to \$620. Do "Protected COLA" guidelines apply?

Yes, in this case you cannot pay the reduced rate of pension on December 1, 2019. Instead, continue to pay monthly pension rate of \$622 effective December 1, 2019 and pay reduced monthly rate of \$620 effective January 1, 2020.

#### **Pension Rate Reduction Due to SS COLA Processing:**

If the adjustment will result in reduction of a *running* award, VA must furnish notice of proposed adverse action for the reduction. Do not adjust the award until at least 60 days after the notice of proposed adverse action is sent to the beneficiary unless *the beneficiary requests the reduction*. OAR encourages VSRs to call the beneficiary and request permission to count the correct SS rate on the award immediately to eliminate the need to send due process. When adjusting the award, use withholding reason, "*Pension/Continued Rate COLA*," while processing the award adjustment in the Veterans Benefits Management System – Awards.

#### **SS COLA on Original, New or Suspended Awards:**

The DROCs will most frequently encounter new or reopened pension awards. However, there are instances where the DROCs will need to adjust running awards. As a reminder, M21-1 IX.iii.1.H.2.g, *Original, New, or Suspended Awards*, states: "If the Social Security or other benefit program COLA occurs before an original or new award is processed or when an award is in suspense, no notice of proposed adverse action for a reduction is required." If there is no running award prior to your action, it is unnecessary to issue due process if the SS COLA increase causes a reduction in the rate of pension payable.

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#### HIGHER-LEVEL REVIEWS (HLR) AND ACQUIRED PSYCHIATRIC CONDITIONS

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**Target Audience:** DROC Management, QRT, DROs, and Rating Veterans Service Representatives (RVSR)

**Presenter:** James Fogg, Program Analyst, OAR PA

**References:**

- *Clemons v. Shinseki*, 23 Vet.App. 1 (2009)
- 38 C.F.R. §3.102, Reasonable doubt.
- 38 C.F.R. §3.155(d)(2), *How to file a claim: Scope of claim*
- 38 C.F.R. §3.2601, *Higher-level review*
- M21-1 V.ii.3.A.1.c, *Definition and Example: Issues Within Scope*
- M21-1 V.iii.13.1.a, *Sympathetic Reading and the Scope of Mental Disorders Claims*
- M21-1 V.iii.13.1.b, *Applying Guidance on Sympathetic Readings to Mental Disorders Claims*
- Compensation Service AMA FAQ, June 19, 2019

**Inquiry:**

An attorney sent an email to the Acting Under Secretary for Benefits concerning the following:

- A regional office (RO) denied a claim for service connection (SC) for PTSD, although a VA examiner diagnosed major depressive disorder (MDD) and opined MDD symptoms were related to the Veteran's military service, noting treatment for depressive symptoms while in service.
- The Veteran subsequently claims SC for bipolar, anxiety, stress and MDD, resulting in another VA medical opinion relating MDD to service. However, the RO denies SC for bipolar while directing Authorization to send a VA Form 20-0995 for depression and anxiety.
- VA received a VA Form 20-0996 for the denial of SC for bipolar, which the DROC denied, while acknowledging the medical opinions.

**OAR's Response:**

- VA may read a claim for a specific acquired psychiatric condition as a claim for another diagnosed acquired psychiatric condition, in accordance with *Clemons v. Shinseki*.
- The HLR decision maker has difference of opinion authority as well as the authority to reverse or revise a prior decision on the grounds of clear and unmistakable error (CUE), in accordance with 38 C.F.R. §3.2601(j).
- In this case, the HLR decision maker should have identified a CUE in the denial of SC of an acquired psychiatric condition and granted SC for the diagnosed condition for which VA received a positive opinion.

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- Compensation Services (CS) has concurred upon this inquiry.
- Following consultation with Pension and Fiduciary Services and CS, OAR has determined this does not conflict with any current Frequently Asked Questions.

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#### **PEER REVIEWS WITHIN THE QUALITY MANAGEMENT SYSTEM (QMS)**

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**Target Audience:** DROC Management and QRTs

**Presenter:** Sixto Olmo, Program Analyst, OAR PA

**References:**

- M21-4 6.5.e, *Peer Reviews*
- M21-4 6.5.f, *Peer Review Disagreements*
- M21-5 3.A.5.e, *Peer Reviews*
- M21-5 3.A.5.e, *Peer Review Disagreements*
- [QMS User Guide 2.0](#)

**Fundamentals of Peer Reviews:**

Peer reviews are required for all errors cited on any type of Individual Quality Review (IQR).

The IQR peer review is intended as a quick touch review to ensure:

- (1) the appropriate use of the applicable error standard,
- (2) proper documentation on the checklist, and
- (3) accurate supporting reference.

Obvious errors that were not cited by the initial Quality Review Specialist (QRS) should be cited and forwarded for corrections. QMS will automatically route all claims that have identified errors on first review to a QRS with authority to perform peer reviews.

**Performing Peer Reviews:**

The QRT must provide a regulation citation, manual reference, or other appropriate reference to support every cited error, regardless of the type of quality review. When conducting a peer review, take the time to conduct a thorough review of the claim. Under no circumstances may the QRS agree or disagree with the initial reviewer without performing a thorough review of the IQR. When conducting a peer review, ensure the cited error is accurate and aligns with the facts of the case. The peer reviewer must also provide feedback on whether they concur with the initial reviewer by adding narrative, with appropriate manual reference(s), in the Comments field.

**Peer Review Disagreements:**

The peer reviewer should contact the initial reviewer to discuss the review in order to reach a consensus regarding the appropriate outcome prior to selecting Agree or Disagree in QMS. This discussion should be expedited to ensure timely resolution of the

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pending quality review. The initial reviewer and peer reviewer should make all efforts to resolve any inconsistencies to avoid the need for a third QRS review. All QRSs are reminded to ensure that cited errors meet the standard for an error as a CUE or violation of policy or directive.

#### Possible Scenarios:

Refer to the following table for the possible scenarios and appropriate system annotations and routing.

	Discussion Outcome	Peer Reviewer Action	Initial Reviewer Action	Resulting QMS Routing
<b>Scenario 1</b>	Peer reviewer adopts initial reviewer checklist	Peer reviewer selects Agree in QMS	No action required	Review is routed to Error Correction with the initial checklist
<b>Scenario 2</b>	Initial reviewer adopts peer reviewer checklist	Peer reviewer selects Disagree in QMS	Initial reviewer selects Agree in QMS	Review is marked complete if all errors removed or routed to Error Correction with the peer review checklist
<b>Scenario 3</b>	Initial and peer reviewer adopt a hybrid checklist	Peer reviewer adapts checklist to the hybrid checklist and selects Disagree in QMS	Initial reviewer selects Agree in QMS	Review is routed to Error Correction with the hybrid checklist
<b>Scenario 4</b>	Initial and peer reviewer are unable to reach a consensus	Peer reviewer selects Disagree in QMS	Initial reviewer selects Disagree in QMS	Review is routed to third QRS with review type Final

#### Third QRS Review Option:

Once the case is with the third QRS, they will have the following options. The third QRS decision is the final decision and will determine the appropriate final routing to a complete or *Error Pending* status.

Third QRS Review	Third QRS Decision	Third QRS Action	Resulting QMS Routing
<b>Option 1</b>	Third QRS adopts the initial reviewer checklist	Selects Agree in QMS	Review is routed to Error Correction with the initial reviewer checklist.
<b>Option 2</b>	Third QRS adopts the peer review checklist	Selects Disagree in QMS	Review is routed to Error Correction with the peer reviewer checklist or marked complete if no error cited.
<b>Option 3</b>	Third QRS makes an independent decision with a new checklist	Selects Disagree in QMS	Review is routed to Error Correction with the third QRS checklist or marked complete if no error cited.

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#### DESELECTION PROCESS WITHIN QMS

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**Target Audience:** DROC Management and QRTs

**Presenter:** Ambria Davis, Program Analyst, OAR PA

**References:**

- M21-4 6.4.c, *Deselections*
- M21-5 3.A.4.c, *Deselections*
- QMS Deselection Job Aid
- QMS QRT Supervisor Guide
- [QMS User Guide 2.0](#)

**QRT Supervisory Responsibilities:**

A reviewer may find it necessary to send a pending review to their supervisor for deselection. QMS allows reviewers to initiate a deselection request but only supervisors can make the deselections final.

QRT Coaches should perform a daily review of any pending deselection requests using the “QRT Coach Team Deselection Requests” list view on the Reviews Tab. Reassign any on-hold reviews to the proper Reviewer.

QRT Coaches have access to list views or dashboards that provide a list of reviews that have been designated for deselection by the QRT team but require Coach’s approval. The QRT Coach should first review the “Deselection Reason” found under the Review Information on the Review Details page and the “Deselection Comment” found under Review Comments. Once ready to make a decision, the QRT Coach can select the “Deselect Approve/Reject” button from the Review Details page and will have the option to “Approve” or “Reject” the request using the drop-down menu.

- Approve: Deselect reviews only if they cannot be reviewed. If approved, the review will change to a “deselected” status and be backfilled in a future review load.
- Reject: When selecting “Reject” it is best practice to leave a note to the QRS employee to whom QMS will reassign the review. The QRS who requested the deselection will see the deselected review on their list of reviews with the “Review Status” as “Assigned”. Or the QRT Coach can reassign the review to another QRS. The QRT Coach should put on hold and reassign reviews that can be completed by another QRS.

**Deselection Reasons:**

Listed below are the appropriate reasons for deselection and in what situations other action should be taken:

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#### Appropriate Deselection Reasons:

- Transaction “not reviewable” (e.g. returned award or returned rating decision)
- Employee no longer in position or in a training status

#### Inappropriate Deselection Reasons:

- Should be completed by the Reviewer:
  - Transaction already authorized or second signed
  - No action taken/cannot identify action
  - Large number of issues
- Should be put on On-Hold for Supervisor action:
  - Sensitive cases – put on hold using “Sensitive Level” reasons
  - QRS not trained on work type - put on hold for supervisor reassignment using “Not Qualified to Review”
  - Incorrect Review Type – identify correct review type and place on hold for “QMS Admin Tech Support” update.

### **ST. PETERSBURG DECISION REVIEW OPERATIONS CENTER (DROC) VIRTUAL IN-PROCESS REVIEW VISIT (VIPR-V) AFTER-ACTION REPORT (AAR)**

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**Target Audience:** DROC Management, QRTs, DROs, RVSRs and VSRs

**Presenter:** Chanda Plair, Senior Management and Program Analyst, OAR PA

OAR conducted a VIPR-V on work performed by St. Petersburg DROC employees the week of October 18 – October 21, 2021. The purpose of the VIPR-V was for OAR to review cases by conducting in-process reviews (IPR) for accuracy. If OAR analysts identified errors, OAR notified the St. Petersburg DROC leadership who were responsible for providing any mentoring and training. These IPRs allowed employees to take immediate and corrective action on any identified deficiencies and provide better decisions to Veterans and their beneficiaries. The IPRs are non-punitive systematic reviews conducted at strategic touch points in the claims process. The St. Petersburg leadership ensured employees initiated and/or completed corrective actions.

#### **Pre VIPR-V Data Sample and Raw Data:**

In preparation for the VIPR-V, OAR reviewed the St. Petersburg DROC local errors for Fiscal Year 2021 (FY21). The data was populated from QMS. This data was used as a reference point of comparison to the final IPR results.

- 730 DRO errors
- 849 RVSR errors
- 527 VSR authorization errors
- 261 VSR development errors

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As of July 16, 2021, OAR identified 730 local errors cited by St. Petersburg DROC Rating Quality Review Specialists (RQRS) on DROs in fiscal year to date (FYTD). The RQRS cited the most errors for the following descriptors:

- DecTxtRtg1p - The decision maker did not properly identify or document favorable findings
- SysComRtg1d - The proper end product (EP) was not reflected on the rating decision Codesheet to include proper date of claim (DOC) for EP
- NlqrAMAFavFind1 - The decision maker identified a proper favorable finding, but the associated free text was missing or improper
- DecTxtRtg1m - The laws and regulations applicable to the claim were not provided (AMA)
- NlqrEffIncor - The past effective date(s) assigned was/were not correct

As of July 16, 2021, OAR identified 849 local errors cited by St. Petersburg DROC RQRS on RVSR in FYTD. The RQRS cited most errors for the following descriptors:

- DecTxtRtg1p - The decision maker did not properly identify or document favorable findings
- DecTxtRtg1m - The laws and regulations applicable to the claim were not provided (AMA)
- NlqrAMAFavFind1 - The decision maker identified a proper favorable finding, but the associated free text was missing or improper
- EffDtRtg1e - Effective date equal to DOC was not applied or was applied inappropriately
- EvlCorRtg1a - A reduction was proposed or completed but was not warranted

As of July 16, 2021, OAR identified 527 local authorization related errors cited by St. Petersburg DROC Authorization Quality Review Specialists (AQRS) on VSRs in FYTD. Most errors cited were for the following descriptors:

- SysCom1d - All periods of active duty (for pension, relevant periods) or other service related to claimed issues not verified and updated in VBMS (EOD, RAD, Branch, Char SVC, Sep Reason, VADS and/or VERIFIED)
- SysCom1g - Necessary flashes were not entered and/or correct
- SysCom1e - Power of Attorney (POA) information/access not correctly updated in all systems
- SysCom1b - End product incorrect
- SysCom1i - Direct Deposit information (when there is a pending/running award) – incorrect

As of July 16, 2021, OAR identified 261 local development related errors cited by St. Petersburg DROC AQRS on VSRs in FYTD. Most errors cited were for the following descriptors:

- DevNot1c - Supplemental development letter not sent to Veteran/claimant as required



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- DevExm1d - Examination/opinion request incomplete or incorrect - selecting incorrect examination type/DBQ
- DevExm1b - Necessary medical opinion not requested
- DevExm1f - Examination/opinion request incomplete or incorrect - failure to identify or include pertinent information such as evidence to review. C-file not sent to examiner when required
- SysCom1g - Necessary flashes were not entered and/or correct

#### **RFD Sample, Errors and Analysis:**

OAR analysts completed a review of 18 Ready For Decision (RFD) transactions. No reviews contained errors. The accuracy rate for RFD transactions was 100%.

#### **RDC Sample, Errors and Analysis:**

OAR analysts completed a review of 30 Rating Decision Complete (RDC) transactions. 4 reviews contained errors and the E2 category was identified as a trend. The decision makers did not properly explain the basis of the effective date and the basis for an evaluation in the rating narratives. The accuracy rate for RDC transactions was 86.67%.

#### **Pending Authorization Sample, Errors and Analysis:**

OAR analysts completed a review of 12 Pending Authorization transactions. No reviews contained errors. The accuracy rate for Pending Authorization transactions was 100%.

#### **Accuracy and Error Trends:**

The overall accuracy of the visit for all review types was 93.34%.

OAR analysts identified error trends in the RDC cycle. OAR analysts identified the E2 category as a trend. The decision makers did not properly explain the basis of the effective date and the basis for an evaluation in the rating narratives.

#### **Commendations and Recommendations:**

Commendations:

- Great collaboration and cooperation
- Sample provided timely

Recommendations:

- Employee participation in mentoring sessions
- Exclusion of cases where employees did not perform reviewable actions

As a result of the St. Petersburg DROC VIPR-V, OAR assigned St. Petersburg DROC the following action item:

- Monitor the identified errors for RDC claims for corrective action. The St. Petersburg DROC should confirm their employees initiated or completed actions to correct the error(s) within 5 business days from receipt of the AAR.