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# Agent and Attorney Fee Coordinator Resources

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), Quality Review Team Management

**Presenter:** Kat Calvitti, Program Analyst, OAR

**References:**

* [Agent and Attorney Fees](https://vbaw.vba.va.gov/OAR/attorney-fees.asp) Intranet Page

The Agent and Attorney Fees page listed under [Program Resources](https://vbaw.vba.va.gov/OAR/programresources.asp) on the [OAR intranet](https://vbaw.vba.va.gov/OAR/index.asp) contains resources available related to agent and attorney fee processing.

This page contains information for Agent and Attorney Fee Coordinators, VA-Accredited Representatives, and Support Services Division. OAR recently updated the Agent and Attorney Fee Coordinator List to reflect corporate mailboxes for each Regional Office.

The AAFC Call Bulletins and presentations are also included on this page, as well as within the specific TMS course. As a reminder, employees must complete the training item in TMS to receive credit for these calls.

OAR posted the November 2022 Addendum to address questions that arose during the call on this page. Going forward, any questions related to topics presented during these calls will be included in the Call Bulletins. OAR will compile a list of questions that are not related to topics presented during the calls and provide responses in an excel document which will also be listed on this page. Employees are encouraged to review the document for responses after each call.

# Question and Answer – Agent and Attorney Fee Coordinator Resources

**Question: What are the procedures for requesting access for eMPWR?**

**Answer:** Please refer to the [View-Only eMPWR Access Job Aid](https://vbaw.vba.va.gov/OAR/docs/empwr-access-job-aid.pdf) for instructions to request access to eMPWR.

**Question: What is the link for the Agent and Attorney Fee Coordinator (AAFC) list?**

**Answer:** Please refer to the [Agent Attorney Fee Coordinator List](https://www.benefits.va.gov/COMPENSATION/cma-poc.asp) for a list of the designated corporate mailboxes at each Regional Office.

**Question: Will a copy of the AAFC Call slides be available?**

**Answer:** The AAFC Call slides are available in the specific TMS course (upon activation) and on the [Agent and Attorney Fees](https://vbaw.vba.va.gov/OAR/attorney-fees.asp) page under the “National AAFC Call Bulletins and Presentations” section.

**Question: What is the link for the Agent and Attorney Fee page?**

**Answer:** The Agent and Attorney Fee page is: <https://vbaw.vba.va.gov/OAR/attorney-fees.asp>

# Claim for Increase

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), Quality Review Team Management

**Presenter:** Lisa Troen, Authorization Quality Review Specialist, DROC DC

**References:**

* 38 CFR §14.636, Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans’ Appeals​
* M21-5, Chapter 8, A.1.i.  Fees for Representation Involving Claims for Increase
* M21-5, Chapter 8, A.1.a. Regulatory Criteria for Payment of Fees

For fee purposes, an initial decision on a claim includes an initial decision on a claim for increase in rate of a benefit. For a claim to be subject to fees, it must be pursued through one of the AMA decision review lanes (supplemental claim, higher-level review, or direct appeal to the Board).

**Example:** In January 2018, the Veteran was granted service connection for depression (under appeal) and assigned a 30 percent evaluation. The Veteran was represented by an attorney and a valid direct-pay fee agreement was of record. As such, fees were paid on the appeal. Two years later, the Veteran submits an initial claim for increase on VA Form 21-526EZ. The RO issues a rating decision increasing the Veteran's evaluation for depression to 50 percent. Although the Veteran continues to be represented by the attorney, fees are not warranted on the increase of the previously appealed issue. The Veteran's claim for increase filed on VA Form 21-526EZ is considered an initial claim for purposes of determining fee eligibility.

**Example:** An initial rating decision granted service connection for a right knee condition at 10 percent on February 20, 2019. The Veteran properly appointed an attorney, who timely submitted a completed direct-pay fee agreement and filed a claim for increase on a VA Form 21-526EZ for the right knee on March 10, 2019. The evaluation was confirmed and continued on a rating decision dated May 5, 2019. On April 10, 2020, a supplemental claim was received on VA Form 20-0995 for the right knee condition. A rating decision dated May 15, 2020, granted an increased evaluation from 10 percent to 20 percent. Fees are payable on the supplemental claim.

# Failure to Make Funds Available

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), Quality Review Team Management

**Presenter:** Tracy Plante, AAFC, DROC St. Petersburg

**References:**

* M21-5 8.B.6, Corrective Action for Failure to Make Funds Available For Payment of Fees and Recouping Fee Payments
* [M21-5, Appeals and Reviews, Resources](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000126665/M21-5%2C%20Appeals%20and%20Reviews%2C%20Resources)

The most recent update to the manual created a more distinct separation in the processing procedures for the two scenarios that are encountered when funds were not made available for direct payment of fees. This update also provides a more detailed process for the appropriate actions and end products to be used when addressing these claims. Manual procedures were updated December 13, 2022, to reflect new guidance regarding appropriate corrective actions for claims that were a failure to make funds available for payment of fees:

* when the award did not result in a retroactive payment
	+ fees will be controlled under the EP 400
* when a retroactive payment of past-due benefits has been released
	+ fees will be controlled under the EP 600.

If the failure to pay agent/attorney fees were discovered and the qualifying award did not result in a retroactive payment, then follow the steps outlined in M21-5 8.B.6.c. Corrective Action for Failure to Make Funds Available for Payment of Fees when the Award did not Result in a Retroactive Payment.

If the failure to pay agent/attorney fees were discovered and the qualifying award did result in a retroactive payment, follow the steps outlined in M21-5 8.B.6.d. Corrective Action for Failure to Make Funds Available for Payment of Fees when a Retroactive Payment of Past-Due Benefits has been Released.

When reviewing a claim to determine if VA failed to make funds available for direct payment of fees, the main issue that needs to be decided is if there was release of a retroactive payment of past-due benefits to the claimant.

If the failure was associated with a $0 net award due to an offset, review the following to determine your next course of action:

* Has an audit error worksheet (AEW) subsequently been generated, authorizing Concurrent Retirement and Disability Pay (or Combat Related Special Compensation); and
* Did the AEW correctly process an 04E transaction to recoup any funds for fees for the same past-due benefits period?

If the AEW has been processed and did not correctly recoup the fee amount using an 04E transaction, then a debt would need to be created. In all instances, when funds were not withheld to make funds available for direct payment of fees or when fees were not recouped from funds that were paid by VA, no debt is to be created without giving the claimant due process.

Note: If the AEW correctly recouped the fees and fees have not yet been paid (by use of an 06A transaction), fees should now be released using the 06J1 transaction.

# Question and Answer – Failure to Make Funds Available

**Question: I've been told that finance is unable to process 06Bs in the intended manner. Currently, we must request an 06b transaction and wait for those funds to be transferred to our station before we can complete the FTW process. Is there currently an issue with eMPWR that does not allow for 06B transactions to be processed the same day (like with 06A's)?**

**Answer:** That is correct, an 06B cannot be requested and released at the same time as we do with an 06A. The fees need to be brought on station and once they are received, they can be released. The suspense date may need to be updated if the fees are not received within the initial 10-day period. Additionally, another fee release memo is not required to release the funds as the current memo directs all actions to be completed.

# Fee Decision Notice Review

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), Quality Review Team Management

**Presenter:** Lisa Troen, Authorization Quality Review Specialist, DROC DC

**References:**

* 38 CFR §14.636, Payment of Fees for Representation by Agents and Attorneys in Proceedings Before Agencies of Original Jurisdiction and Before the Board of Veterans’ Appeals
* M21-5, Chapter 8, Section A, Introduction to Fees
* M21-5, Chapter 8, Section B, Processing a Case Seeking Direct Payment of Fees

When a Fee Eligibility Decision is Required:

A fee eligibility decision (AFED) is required anytime there is a valid fee agreement of record and there is a grant of benefits, with one exception. An AFED is not required on a grant of benefits for an original claim (EP010, 110, or 180) as fees may only be charged after an agency of original jurisdiction (AOJ) has issued notice of an initial decision on a claim. An AFED is also not required when a decision on benefits is solely denials or confirmed and continued issues as eligibility is contingent on a claim being resolved favorably to the claimant, meaning any or all of the relief sought is granted.

Fee Decision Letter Types/Usage:

|  |  |
| --- | --- |
| **Letter Name** | **When to Use** |
| All requirements met, fees paid | Non-Rosinski Cases |
| All requirements met, calculation with offset | Partial and Complete Rosinski Cases |
| All requirements met, fees not withheld | Failure to Process |
| No NOD/Review, direct payment denied (Non-Original Claim) | Non-original claims that do not meet the requirement |
| NOD/Review filed when another law in effect​ | NOD’s on or before June 19, 2007​ |
| No direct pay fee agreement was filed​ | Fee agreement not timely associated with the file (prior to authorization of payment) due to missing file number/SSN​ |
| *\*\*\*More than one attorney/agent*​ | More than one valid fee agreement of record and neither agent/attorney has waived fees​ |
| *\*\*\*No change in combined evaluation*​ | The decision granting benefits did not change the overall combined evaluation​ |

*\*\*\*These cases are not in Letter Creator, please see*[*M21-5, 8.B.7 & 8*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5%2C-Chapter-8%2C-Section-B---Processing-a-Case-Seeking-Direct-Payment-of-Fees#3).

# Question and Answer – Fee Decision Notice Review

**1. The original TMS training stated fee decisions were required for all cases where a fee agreement existed; however, during the January 2023 AAFC Call it was stated that a fee decision is not needed for cases where the rating decision denied or confirmed and continued a condition. Can you please clarify whether fee decisions are required for all cases where a valid fee agreement is of record or if fee decisions are not required for conditions that are denied or confirmed and continued?**

Fee eligibility decisions are not required when all issues are either denied or confirmed and continued because eligibility is contingent on a claim being resolved favorably to the claimant, meaning any or all the relief sought is granted. A fee decision is also not required on an original claim (EP 010/110/180) as fees may only be charged after an agency of original jurisdiction (AOJ) has issued notice of an initial decision on a claim. See M21-5, 8.B.3.a.

**2. If there is an EP 040 intertwined with an EP 020 where the EP 040 issue is not a grant and the EP 020 is a new contention, do we issue a SOC with no fees due?**

Unless all issues are denied or confirmed and continued, an SOC with no fees due should be completed and sent.

# Processing Fees When Incompetency is Proposed

**Target Audience:** AAFCs, AAFC Management, Authorization Quality Review Specialists (AQRS), Quality Review Team Management

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

**References:**

* [M21-1 X.ii.6.A – *Evaluating and Rating Competency*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000177974/M21-1-Part-X-Subpart-ii-Chapter-6-Section-A-Evaluating-and-Rating-Competency)
* [M21-1 X.ii.6.D – *Processing Awards to Incompetent Beneficiaries*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000177977/M21-1-Part-X-Subpart-ii-Chapter-6-Section-D-Processing-Awards-to-Incompetent-Beneficiaries)
* [M21-1 X.ii.6.E – *Authorizing Awards for Fiduciary Cases*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000177978/M21-1-Part-X-Subpart-ii-Chapter-6-Section-E-Authorizing-Awards-for-Fiduciary-Cases)
* [M21-5 8.B.1.c – *Direct Payment of Fees When Incompetency is Proposed*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees)
* [M21-5 8.B.1.a – *Process When Direct Payment of Fees Is Potentially Allowable*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees)
* [*Pending Fiduciary Withholding Calculator*](https://vbaw.vba.va.gov/OAR/attorney-fees.asp)

The Office of Administrative Review published procedures to streamline the processing of cases involving agent/attorney fee and a proposal of incompetency on December 13, 2022 (M21-5 8.B.1.c). If the rating activity determines a beneficiary is entitled to an original award of benefits, a reinstatement of benefits, or increased benefits, then the claims processor must withhold all retroactive benefits. However, funds for the payment of agent/attorney fees cannot be withheld until the fiduciary is appointed or the beneficiary is deemed competent.

The procedures outlined below will allow the AAFC to withhold all retroactive benefits minus the fee amount. Upon authorization of the award, the fee will be transferred to the finance system (eMPWR accountable balance) and no funds will be released to the beneficiary.

For example, the award net effect reflected on the authorized award is $5,573.67 and the AAFC entered $5,573.67 into the VBMS-A agent/attorney fee deduction field. Upon authorization of the award, the fee deduction amount will be subtracted from the award net effect. The fee amount will be sent to the eMPWR accountable balance, and the difference will be sent to the Veteran’s bank account. In this example, no funds will be left over to go to the Veteran’s bank account ($5,573.67 net effect - $5,573.67 fee amount = $0.00 amount sent to the Veteran’s bank account).

The AAFC initial reviewer must complete the following steps when the direct payment of fees is potentially allowable, and incompetency is proposed:

* completes the *Agent/Attorney Fee Calculator* to determine the fee amount (utilizing gross rates),
* calculates the funds to be withheld using the *Pending Fiduciary Withholding Calculator* (utilizing net rates),
* enters the individual withholding lines for “pending appointment of fiduciary” on the “Other Adjustments” tab in VBMS-A as directed by the *Pending Fiduciary Withholding Calculator*, and
* verifies that the net effect on the award reflects the exact amount of fee due to the agent/attorney.

The AAFC authorizer must complete the following steps when the direct payment of fees is potentially allowable, and incompetency is proposed:

* verifies the accuracy of both calculators, the net effect, and the fee deduction amount entered in VBMS-A, and
* digitally signs and uploads the *Pending Fiduciary Withholding Calculator* to the eFolder.

In addition to the steps outlined in M21-5 8.B.1.c, the AAFC initial reviewer and authorizer must follow all steps outlined in M21-5 8.B.1.a.

# Question and Answer – Processing Fees When Incompetency is Proposed

**1. Was the manual updated to indicate not to withhold the agent/attorney fees until the fiduciary is appointed when incompetency is proposed?**

The manual (M21-5 8.B.1.c) informs processors to "not hold agent/attorney fees approved under the eligibility decision until a fiduciary is appointed, as this could result in considerable delay to the payment to the agent/attorney". This guidance has been available prior to the December 13, 2022 update.

**2. Do we get additional transaction credits when completing the *Pending Fiduciary Withholding Calculator*?**

Please follow the actions outlined in M21-5 8.B.1.a and M21-5 8.B.1.b when fees are potentially allowable and there is a proposal of incompetency to obtain transactional credit.

**3. On Poll Question 1 during the January 2023 AAFC Call, would $172.03 be entered in the attorney fee other adjustments tab and $669.41 entered in the other adjustment pending fiduciary other adjustments tab?**

**Poll question 1: The award net effect reflected on the authorized award is $841.44 and the AAFC entered $172.03 into the VBMS-A agent/attorney fee deduction field. How much money will be released to the Veteran's bank account?** **The answer to the poll question was $669.41 will be released to the Veteran’s bank account.**

The first poll question illustrated the general principles of fee processing. It was not related to a pending fiduciary claim. Upon authorization of the award, the fee deduction amount will be subtracted from the award net effect. The fee amount will be sent to the eMPWR accountable balance, and the difference will be sent to the Veteran’s bank account. Therefore, $172.03 was entered into the agent/attorney fee deduction field in VBMS-A and nothing was withheld for “pending appointment of fiduciary”.

**4. In Poll Question 2, how is the attorney fee the same as the retro payment?**

**Poll question 2: The award net effect reflected on the authorized award is $5,573.67 and the AAFC entered $5,573.67 into the VBMS-A agent/attorney fee deduction field. How much money will be released to the Veteran’s bank account? The answer was $0.00.**

Upon authorization of the award, the fee deduction amount will be subtracted from the award net effect. The fee amount will be sent to the eMPWR accountable balance, and the difference will be sent to the Veteran’s bank account. In this example, no funds will be left over to go to the Veteran’s bank account. The AAFC will first determine the fee amount utilizing the Agent/Attorney Fee Calculator and will enter the fee deduction amount in VBMS-A. Then the AAFC must utilize *the Pending Fiduciary Withholding Calculator* to determine individual withholding lines for “pending appointment of fiduciary” on the “Other Adjustments” tab. This action will reduce the net effect to match the exact amount of the fee.

**5. Are two awards required during the proposal of incompetency?**

Only one award is processed.

**6. Is there training for when to use the Pending Fiduciary Withholding Calculator?**

The training course will be released in the near future.

**7. During the December 2022 AAFC Call, it was stated that a debt must be created if VA funds were used to pay the fee and the AAFC failed to establish the collectible receivable when the corresponding AEW was processed. Does this also apply to the inadvertent release of all incompetency withholdings when the fiduciary hub releases fee after a fiduciary is assigned?**

If VA funds (06A transaction) were used to pay the fee when processing a rating decision with a proposal of incompetency, then the fiduciary hub must establish the collectible receivable prior to the authorization of the award. In this scenario, the net effect of the award for the rating decision with a grant of benefits and a proposal of incompetency would reflect zero. The AAFC would have instructed finance to pay fees from VA funds using an 06A transaction. If the fiduciary hub inadvertently releases 100% of retroactive benefits, then a debt would need to be established to recoup the fee paid using VA funds. Please note the M21-5 was updated on December 13, 2022 to clarify procedures for processing agent/attorney fees when incompetency is proposed. Prior to this date, AAFCs utilized various methods to pay fees including the use of VA funds (06A transaction). As of December 13, 2022, the AAFC must follow the instructions in M21-5 8.B.1.c to ensure the net effect of the award for the rating decision with a grant of benefits and a proposal of incompetency will reflect the exact amount of the fee. The AAFC will enter the fee deduction in VBMS-A. Therefore, upon authorization of the award funds for the fee will be transferred to the accountable balance. The AAFC will NOT utilize VA funds to pay the fee. After the fiduciary is appointed, the fiduciary service representative will verify that the withholdings remaining in the system are all due to the beneficiary/fiduciary.

# Field Engagement – Tell Me More

**1. I want to confirm that the *All Requirements Met, Fees Not Withheld Summary Of The Case Fee Decision* mentioned in M21-5 8.B.6.d Step 3 should still be sent if a *All Requirements Met, Fee Withheld* *Summary Of The Case Fee Decision* was previously sent.**

Yes, the *All Requirements Met, Fees Not Withheld*fee decision must be sent when the AAFC recognizes that the funds were not made available for fees. This is true even when a different fee decision was previously issued.

**2. I have not seen anything in the manual about follow-up requests for reasonableness reviews. I know that they're supposed to give a response within 120 days but I have one that has been pending almost a year. I keep emailing the same email address but I haven't heard anything back yet.**

A reasonableness review must be submitted before the expiration of the 120 days after final VA action. In most cases, final VA action means 120 days from the date of the decision (M21-5 8.5.b. Time Limit for Motions For Reasonableness Review). The Office of General Counsel is responsible for reasonableness reviews, and it is known that the resolution time is extensive (exceeding 120 days from the date initiated). OAR will review M21-5, 8.B.5.g Process for Referrals for Reasonableness Review to determine if any updates are necessary to include guidance related to follow-up requests.

**3. Where can I find the AAFC coordinator list?**

Please refer to the [Agent Attorney Fee Coordinator List](https://www.benefits.va.gov/COMPENSATION/cma-poc.asp) for a list of the designated corporate mailboxes at each Regional Office.

**4. When there are multiple attorney fees and multiple stations from my understanding, they are all getting lumped together and financed at the original station of jurisdiction for the first attorney fee. This change has made the process of inquiries and releasing funds more complicated. In some instances, another station has released funds that belonged to another station.**

Please refer to the December 2022 National Agent and Attorney Fee Coordinator Call (VA TMS 4636328). The eMPWR system currently combines all award offsets into one cumulative amount. Future eMPWR enhancements will separate the award balance with a creation date equal to the award authorization date on the proceeds report, and within the Veteran’s record.It was directed that both the financial administrative specialist (FAS) and AAFC must verify their specific amount deducted properly within the eMPWR system. An enhancement to eMPWR that will separate the deductions by award date is anticipated for a future release, which will allow for better identification of which transactions were successful.

**4. Clarification is needed regarding when to send the agent/attorney fee eligibility decision (summary of the case). Some of the examples include reasons why fees are being denied. Also, the invalid fee agreement letters do not contain appeal rights but the manual also states to send agent/attorney fee eligibility decision that contains appeal rights.**

Per M21-5 8.B.3.a, an agent/attorney fee eligibility decision will be sent when fees are potentially allowable. This criterion is met when there is a valid fee agreement of record (M21-5 8.A.3.e). The agent/attorney fee eligibility decision does not need to be sent when the rating or non-rating decision denies or confirms and continues benefits. Additionally, it does not need to be sent for original claims.

OAR is currently in the process of updating the procedures in manual concerning notice required when the AAFC determines the fee agreement is invalid.

**5. When there is a failure to withhold. Do we use the EP 600 or EP 400 to control the claim?**

The procedures for failure to make funds available (previously identified as failure to withhold) were recently updated in the manual. If the failure to pay agent/attorney fees were discovered and the qualifying award did not result in a retroactive payment, then an EP 400 will control the release of funds. Please follow the steps outlined in M21-5 8.B.6.c. Corrective Action for Failure to Make Funds Available for Payment of Fees when the Award did not Result in a Retroactive Payment. If the failure to pay agent/attorney fees were discovered and the qualifying award did result in a retroactive payment, then an EP 600 will control the release of funds. Please follow the steps outlined in M21-5 8.B.6.d. Corrective Action for Failure to Make Funds Available for Payment of Fees when a Retroactive Payment of Past-Due Benefits has been Released.