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# Claim for Increase Update

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

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

**References:**

* [Agent and Attorney Fees - Office of Administrative Review (va.gov)](https://vbaw.vba.va.gov/OAR/attorney-fees.asp)
* TMS Item 4636329 - January 2023 Office of Administrative Review National Agent and Attorney Fee Coordinator Call
* M21-5, Chapter 8, Section A, 1.i., Fees for Representation Involving Claims for Increase

Please note that the information covered during the January 2023 AAFC National Call regarding the topic of initial claims for increase was intended to clarify current guidance and assist AAFCs in determining when fees for representation involving claims for increase are warranted. To ensure clear and consistent guidance is provided on this topic, the M21-5 adjudication manual has been updated to address the questions that were raised during the January 2023 call and subsequently submitted to OAR.

Please refer to the guidance published in the M21-5 and the updated call materials published in TMS 4636329.

# EP 400 Reasonableness Review

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

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

**References:**

* OGC Fact Sheet: [How to Challenge a Fee](http://www.va.gov/OGC/docs/Accred/HowtoChallengeaFee.pdf)
* M21-5, Chapter 8, Section B, 5., Reasonableness Review of Fees by OGC
* M21-4, Appendix C, 1.b., Index of Claim Labels

A reasonableness review is an analysis and determination by the Office of General Counsel (OGC), initiated by a motion filed by the claimant/appellant (or by OGC’s own motion) for review under 38 CFR 14.636(i), of whether a fee meets the requirement in 38 CFR 14.636(e) that fees be reasonable.

A motion for a reasonableness review is appropriate when a claimant believes that

* the agent or attorney did not earn the fee called for in the fee agreement
* the fee is too high, or
* the fee is otherwise unreasonable.

Although 38 CFR 14.636(i) requires that a claimant file a motion for reasonableness review with OGC, refer the case to OGC for consideration of a reasonableness review when the claimant submits a statement to the agency of original jurisdiction (AOJ). The statement may indicate a request to review a fee’s reasonableness, or communicate that:

* the agent or attorney fee amount or percentage is too high or unreasonable
* the agent or attorney did not earn the fee called for in the fee agreement
* the agent or attorney should be paid for fees only until the date the representation was revoked, or
* the claimant does not want to pay the agent or attorney.

An AOJ eligibility determination finding two or more agents/attorneys eligible for payment of fees must be referred to OGC for a reasonableness review regardless of whether the claimant submits any statement implicating reasonableness of fees.

The AAFC must submit a reasonableness review to OGC if an agent or attorney was previously accredited and validly represented a claimant for a period of time, but lost accreditation prior to the decision granting entitlement. The AAFC must withhold for fees for the entire period and send the decision notice Agent/Attorney Loss of Accreditation shown in M21-5, Chapter 8, Section B.9 to the agent/attorney and the claimant along with appeal rights.

**Important:** It is urgent to provide information necessary for OGC’s reasonableness review on the earliest possible date after a statement is received from the claimant that can be construed as a possible reasonableness request or after a determination is made finding multiple agents or attorneys eligible to fees. Do not delay referral of cases implicating reasonableness review to OGC.

The AOJ informs the claimant that it is forwarding the individual’s statement to OGC for evaluation of whether it meets the requirements for a request for reasonableness review. The AAFC must send the OGC Fact Sheet, “How to Challenge a Fee,” with the notification.

The AAFC must email OGC (ogcaccreditationmailbox@va.gov) explaining that either the AOJ has received a written communication from the claimant that is possibly a request for reasonableness review, or two or more agents/attorneys have been found eligible for payment of fees and includes the written communication from the claimant interpreted as a reasonableness review, and a copy of all applicable fee eligibility decisions.

The AAFC must also:

* upload a copy of the email into VBMS
* change the EP 400-AFM to EP 400-ORR (compensation claims) or EP 400-ORRPMC (pension claims); OFO issued a reminder regarding this guidance on February 13, 2023
* close the “Attorney Fee” tracked item previously established to control the 65-day suspense
* add a new “Attorney Fee” tracked item with “referral to OGC” to the EP 400-ORR
* label all fee-related documents in VBMS.

Upon receipt of the claimant’s information from the AOJ, OGC reviews the information provided and other documents as needed from the eFolder. If necessary, OGC will inform the claimant in writing of the requirements in 38 CFR 14.636(i) for requesting OGC review of the fee agreement for reasonableness.

Once a reasonableness decision has been issued by OGC, the AAFC will release the funds as directed by OGC's decision. If the withheld fee amount has already been released, no additional action is required by VBA.

The AAFC will also close the “Attorney Fee” tracked item with “referral to OGC” and clear the EP 400-ORR.

# Question and Answer – EP 400 Reasonableness Review

**1. If an attorney waives fees on a case that was sent to OGC for a reasonableness review, is there a way to expedite the OGC decision?**

The AAFC should contact OGC referencing the pending request for reasonableness review and attaching the attorney/agent fee waiver with a request for review and expedited treatment. OGC will review the waiver submission and determine whether a dismissal of the pending fee review is appropriate.

**2. Should we change the claim label from EP 400 - AFM to EP 400- ORR (compensation claims) or EP 400 - RRPMC (pension claims) for old reasonableness review cases that are currently pending with OGC?**

Yes, the EP 400-AFM should be changed to the appropriate EP 400-ORR or EP 400-ORRPMC for old reasonableness cases that are currently pending with OGC. The EP 400-ORR should be used for compensation claims involving OGC Reasonableness Reviews and EP 400-ORRPMC should be used for pension claims involving OGC Reasonableness Reviews.

# Dependency Claims

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

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

**References:**

* M21-5 8.A.1.k., Fees for Representation Involving Dependency Claims

For fee purposes, when processing a claim for dependency, the AAFC must review the facts of the case to determine whether the current entitlement to dependency (or earlier effective date for previously established dependents) is the result of a qualifying review.

If entitlement to dependency (or earlier effective date for previously established dependents) arose based on the grant of benefits from a qualifying review and was received within a year of the notification of the grant of benefits, then fees are warranted. If the entitlement was based upon an event (marriage, birth, etc.) or natural progression of an already established dependent (minor child to school child) and was not the result of the grant benefits from a qualifying review, then fees are not warranted.

**Example:** A decision on a supplemental claim, dated June 14, 2021, increased the Veteran's overall combined percentage from 20 percent to 40 percent. On August 1, 2021, VA received a VA Form 21-686c for a spouse and two children. Additional dependency benefit for the spouse and children was granted based on the effective date of the supplemental claim. Fees are warranted for the grant of dependency because the entitlement to the additional dependency benefit was the result of the supplemental claim.

**Example:** A Veteran currently rated at 40 percent receives an increase to an overall combined percentage of 60 percent with a retroactive effective date of January 3, 2018, based on a higher-level review decision dated March 13, 2022. On May 5, 2022, VA receives a VA Form 21-686c for the birth of a new child. The minor child was added to the Veteran's award effective April 1, 2022, based on the date of birth of March 29, 2022.

Fees are not warranted for the grant of dependency because the entitlement to benefits (or earlier effective date) was not the result of the higher-level review.

# Published Questions and Answers Review

**1. 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)?**

January 2023 National AAFC Call Bulletin

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.

**2. If there are multiple attorney fees open at one time, why are they lumped together on one report? It takes a lot of time to go back and research funds that need to be released only to find out they are not your fees.**

December 2022 National AAFC Call Bulletin

The eMPWR system currently combines all award offsets into one cumulative amount. Therefore, it was directed that both the 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.

**3. The Attorney Agent Fee Coordinator Training (VA TMS VA 4115519) contains information that conflicts with the procedures published in M21-5, Chapter 8. Should we follow guidance provided in that training course?**

November 2022 National AAFC Call Addendum

The Attorney Agent Fee Coordinator training (VA TMS 4115519) has been removed from the VBA Learning Catalog and the Talent Management System. Please follow the guidance published in M21-5, Chapter 8 for agent and attorney fee processing.

**4. If a complete/partial Rosinski claim fee is granted (requiring an 06A) and a downstream AEW is received within the 65-day appeal period, should processing the AEW be deferred until the 06A is completed?**

December 2022 National AAFC Call Bulletin

If the AEW is generated prior to the end of the fee decision appeal period, the AAFC promulgating the AEW award will input the fee amount into VBMS-A. Upon authorization the funds for the fee will be transferred to the eMPWR accountable balance. The original AAFC will instruct finance to pay the fee using the funds now available in the accountable balance (via 06J1/06J3 transactions) instead of using the 06A.

Note: Fees are based on the pre-reduction amounts. Fees must be calculated based on gross rates even when the award net effect is reduced to $0.00 due to adjustments.

The AAFCs must utilize the “All Requirements met, calculation with offset” agent/attorney fee eligibility decision (summary of the case). Please refer to the December 2022 National AAFC Call Bulletin for audit error worksheet processing guidance.

**5. 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.**

January 2023 National AAFC Call Bulletin

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.

**6. The notes at the bottom of M21-5, 8.B.4.d seem to contradict each other. If there was an assessment fee previously collected from the upstream rating claim, should an assessment fee be deducted from attorney fees calculated on a downstream EP 130 dependency claim?**

November 2022 National AAFC Call Addendum

Only one assessment fee may be charged when the past-due benefits are based on the same rating. Therefore, an assessment fee will not be charged if the AAFC determines fees are due for a dependency claim received within one year of notification of a fee eligible rating decision.

**7. Is the same information available in both eMPWR and FAS?**

December 2022 National AAFC Call Bulletin

Attorney Fee Award fee deduction amounts can be viewed in FAS by the AAFC. However, finance personnel are only able to process the new 06J transactions to handle these amounts in eMPWR.