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# Office of General Counsel (OGC) Updates

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

**Presenter:** Lisa Troen, Management and Program Analyst, OAR

**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](https://www.ecfr.gov/current/title-38/chapter-I/part-14/subject-group-ECFRe2d861683c66a39/section-14.636)
* [38 CFR 14.629, Requirements for accreditation of service organization representatives; agents; and attorneys](https://www.ecfr.gov/current/title-38/chapter-I/part-14/subject-group-ECFRe2d861683c66a39/section-14.629)

VBA may solicit waivers prior to sending for a reasonableness review to OGC. However, once the case has been sent to OGC, any subsequent waiver received CANNOT be acted upon by VBA until the case is either released by OGC, or a reasonableness determination has been completed.

When AAFC’s receive late flowing waivers (meaning after the reasonableness referral has been sent), they should send notification of the waiver to OGC to their internal Fee Reasonableness corporate box (OGCFeeReasonableness@va.gov), using the subject line “WAIVER – [Veteran Name]”. Please also include the VA file number or claim ID in the message.

The following attorneys submitted universal waivers of present and future fees:

* James W. Brakewood,
* Paul M. Goodson, and
* Daniel J. Adams (POA Code 67J).

 They should no longer be found eligible for direct payment of fees.

Many AAFCs are aware of the dispute between Attorney Adam Werner and his previous firm, Gordon & Partners, on entitlement to fees. The regulation governing payment of fees for representation ([38 CFR 14.636(b)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ecfr.gov%2Fcurrent%2Ftitle-38%2Fchapter-I%2Fpart-14%2Fsubject-group-ECFRe2d861683c66a39%2Fsection-14.636&data=05%7C01%7C%7C8f7d53c85c0d45c5945f08dbbdddad53%7Ce95f1b23abaf45ee821db7ab251ab3bf%7C0%7C0%7C638312532014569082%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=tFOABJcMDhRED8ZvwAN7E%2BhflRO2rok6Zs2qZpg0ptY%3D&reserved=0)) does not provide recognition of a law firm as an accredited attorney. Rather, each attorney is individually accredited by the Office of General Counsel under [38 CFR 14.629(b)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ecfr.gov%2Fcurrent%2Ftitle-38%2Fchapter-I%2Fpart-14%2Fsubject-group-ECFRe2d861683c66a39%2Fsection-14.629&data=05%7C01%7C%7C8f7d53c85c0d45c5945f08dbbdddad53%7Ce95f1b23abaf45ee821db7ab251ab3bf%7C0%7C0%7C638312532014725295%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=6VP%2Bja43O9ezg39KG%2FhueJWWHhbI3HBIFFfaR7uxYn0%3D&reserved=0). The settlement between the two parties does not affect VBA’s payment to the attorney who signed the fee agreement and the VA Form 21-22a.

Only matters within OGC’s scope, mainly reasonableness reviews and accreditation dates, should be sent as inquiries directly to their corporate email box. All other matters, such as generally attorney fee policy and procedure, should be sent to the OAR attorney fee corporate mailbox.

The “How to Challenge a Fee” fact sheet sent with all fee decision letters instructs the Veteran to file their reasonableness reviews directly with OGC. It is imperative for VBA to identify the reasonableness review requests. In order to streamline the process, OGC implemented a standard naming convention when uploading their motion. **They will be uploading their motions for reasonableness reviews as “Applications: Informal Claims” and subject line “Claimant Fee Motion”.**

# Question and Answer – OGC Updates

**1. Question - To clarify, we solicit a waiver upfront (prior to any RR referral) and we receive one from the attorney we can continue to process it without sending it to OGC for Reasonableness Review or we still send it to OGC even though we have a waiver?**

Answer - Correct, process the case with the waiver without sending to OGC.

**2. Question - We're now seeing a waiver by Werner and directing payment to Gordon, but often there's no fee agreement by Gordon. How do we handle those?**

Answer - If there is no fee agreement of record from Gordon during the applicable period, then in the presence of a waiver from Werner (not conditioned on a redirection of payment to Gordon), fees would be released to the Veteran. If the waiver is conditioned on the payment going to Gordon, it should be deemed invalid, and payment should go to Werner if no fee dispute/motion is of record from the Veteran.

**3. Question - When a claimant files a Reasonableness Review directly with OGC are we still required to track those with open EPs and 60-day OGC follow-ups as the manual requires?**

Answer - "Yes, AAFC are required to track all reasonableness reviews. Per M21-5, 8.B.5.g. Process for Referrals for Reasonableness Review, Step 4, change the EP 400-AFM to an EP 400-ORR and 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.

**4. Question - Can we solicit waivers by emailing the attorney, or do we need an official letter sent?**

Answer - Waivers may be solicited via email, so long as the email documentation is uploaded to the eFolder, there is no reason to question the authenticity of the email recipient, and the email is signed by the attorney who signed both the VA Form 21-22a and fee agreement. All waivers must be completed in writing. Verbal waivers are not acceptable.

**5. Question - What if Gordon submits a fee agreement while the claim is still pending, with no waiver from Werner.**

Answer - Then the case would need to be referred to OGC for multiple attorneys.

# VBMS-A Updates (DIC Processing, Assessment Fee Enhancement and Non-Rating HLR Date)

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

**Presenter:** Ambria Davis, Senior Management and Program Analyst, OAR

Please refer to the Agent and Attorney Fees [resource page](https://vbaw.vba.va.gov/OAR/attorney-fees.asp) for a list of all call topics.

An email was sent out on April 21, 2023, instructing personnel to utilize finance to manually process an 18/31J transaction for fee deductions establishment for all Dependency and Indemnity (DIC) and Survivors Pension CPD award types.

This is guidance is rescinded. **Please utilize VBMS-A to establish the fee deductions for DIC and Survivors Pension CPD award types.**

The “Agent/Attorney Fee” field name changed to “**Total Fee Including Assessment**” on April 7, 2024, with the VBMS 33.5 release. This enhancement reiterates the fact that the assessment fee must be included in this field. This field is the **only** amount sent to eMPWR.

On May 19, 2024, with the VBMS 34.1 release, users who send out a non-rating higher-level review decision will now see the date the award was generated on the document, rather than the date the award was authorized.

# Question and Answer – VBMS-A Updates

**1. Question - Has the issue with VBMS-A non-initial accrued awards been fixed or do we still send 31J for subsequent accrued awards?**

Answer - OAR has not released communication for the resolution of the subsequent accrued award functionality. Please continue to follow the instructions disseminated on March 14, 2024. The AAFC should NOT send finance a request to establish an 18/31J transaction. Please see below for the instructions.



**2. Question - For the "Total Fee Including Assessment" enhancement, do we manually calculate that or does the system calculate it?**

Answer - VBMS-A will automatically calculate the total fee including the assessment fee. All AAFCs are also required to complete a manual "Agent/Attorney Fee Calculator" to verify the rates calculated by VBMS-A. The field name was updated from "Agent/Attorney Fee" to "Total Fee Including Assessment" to remind personnel utilizing the VBMS-A calculator override to ensure the complete fee to include the assessment is entered in that field. The manual Agent/Attorney Fee Calculator field name remains as "Agent/Attorney Fee".

# Fee Deduction Reminder

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

**Presenter:** Ambria Davis, Senior Management and Program Analyst, OAR

**References:**

* [M21-5 8.B.2.a., *When to Request Finance Transactions or Utilize Award Action for Possible Direct Payment of Fees*](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.2.b., *VBMS-A Agent/Attorney Fee Calculator Overrides*](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)
* [M24-1 Chapter 03 All Programs Part 06 Attorney Fee (NEW PROCEDURES) Section 6.01 (j)](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001057/content/554400000204941/M24-1-Chapter-03-All-Programs-Part-06-Attorney-Fee-NEW-PROCEDURES)
* [Attorney Fee Frequently Asked Questions](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001057/content/554400000202769/Attorney-Fee-Frequently-Asked-Questions)

Per M21-5 8.B.2.a., a fee deduction is required when a grant of benefits is made under any of the AMA decision review lanes (supplemental claim, higher-level review, or direct appeal to the Board) as well as grants of individual unemployability and clear and unmistakable error under any claim type. The AAFC will make the final adjudication determining whether direct payment of fees is payable or not payable. A deduction of fees does not always represent fee entitlement.

A fee deduction is independent from the AAFC’s decision to grant or deny fee entitlement. Withholding the fee protects the claimant in the event the agent/attorney wins an appeal for entitlement to fees. AAFCs must track the release of funds to the claimant in the same manner as tracking the release to the agent/attorney (EP 400).

The VBMS-A Automated Fee Calculator cannot be utilized for awards involving the following:

* entry of priors,
* utilization of the generate award override (GAO) function,
* use of pension protected rates, and
* unprocessed Cost of Living Adjustment (COLA) adjustments.

The Calculator Override box must be selected to input the correct fee deduction amount (including the assessment fee) in the cases listed above, and during other scenarios that would prohibit the automated calculation. Do not send the case to finance for legacy fee deduction processing. Enter the correct fee amount in VBMS-A.

Legacy procedures for establishment of fee deduction through finance is applicable to:

* Agent/attorney fee processing before July 25, 2022,
* Month of death,
* Apportionments (running or terminated), and
* Restored Entitlement Programs for Survivors (REPS), Chapter 18.

 Do not utilize VBMS-A to establish the fee deduction for these cases.

# Question and Answer – Fee Deduction Reminder

**1. Question - Just to make it clear on CUEs, we are discussing CUE identified by the claimant and not the VA?**

Answer - Per M21-5 8.A.1.j., if VA identifies and corrects an error by calling a CUE that was not initiated by the claimant or representative, but was instead found while conducting a separate review, and it is not under adjudication of a prior qualifying review, fees are not payable regarding the CUE issue and a decision to deny fees is required. However, a fee deduction is still required per M21-5 8.B.2.a.

 **2. Question - Is the requirement to establish the fee deduction for all AMA lanes and 020 CUE/IU extended to dependency when our claims are based on those ratings even if the decision was to deny fees? Or do we only follow M21-5 8.A.1.k.?**

Answer - Yes, follow the requirements to establish the fee deduction described in M21-5 8.B.2.a. A deduction of fees does not always represent fee entitlement. Please continue to follow the entitlement guidelines outlined in M21-5 8.A.1.k.

**3. Question - For IU and CUE fee deductions, is this interim or permanent guidance? Give an example where we don't release the fee after the 65-day appeal period.**

Answer - The guidance outlined in M21-5 8.B.2.a. is permanent guidance. You would not release a fee withheld at the end of the 65-day appeal period if we have received an appeal to the Board or a OGC reasonableness review request was initiated.

# VBMS-A Summary of the Case Tickets and Reminders

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

**Presenter:** Lisa Troen, Management and Program Analyst, OAR

**References:**

* [April 4, 2024 Email from OFO titled “VBMS-A Summary of Case Fee Decision Error”](https://vbaw.vba.va.gov/OAR/docs/february2024-oar-aafc-call-bulletin.pdf)
* [April 24, 2024 Email from OFO titled “VBMS-A SOC Fee Decision Error- Issues Not Populating”](https://vbaw.vba.va.gov/OAR/docs/february2024-oar-aafc-call-bulletin.pdf)
* [February 2024 National AAFC Call](https://vbaw.vba.va.gov/OAR/docs/february2024-oar-aafc-call-bulletin.pdf)
* [VBMS-A Summary of the Case Fee Decision Notice Job Aid](https://vbaw.vba.va.gov/OAR/docs/vbms-a-summary-of-case-fee-decision-job-aid.pdf)
* [Agent and Attorney Fee Notification Requirements](https://va-hcm03.ns2cloud.com/learning/user/common/viewItemDetails.do?componentTypeID=VA&componentID=4650850&revisionDate=1698068640000&catalogCurrencyCode=USD&returnLink=%2Flearning%2Fuser%2Fcatalogsearch%2FcatalogSearchDispatchAction.do%3FsearchType%3DfilteredSearch%26keywords%3D&backto=%2Flearning%2Fuser%2Fcatalogsearch%2FcatalogSearchDispatchAction.do%3FsearchType%3DfilteredSearch%26keywords%3D) training TMS Course #4650850

This first defect we will discuss today is surrounding the date on the letter. The letter date populating on the letters uploaded to VBMS-Core has been incorrect.

For instance, a case authorized in VBMS-A on March 20, 2024, showed a letter date of March 17, 2024, (3 days prior to complete of the award).

Please be aware of the defect when calculating tracked item suspense dates for the 65-day appeal period (examine for actual date of mailing based on when the case was authorized) as well as during quality reviews.

Investigation of the root cause by the contractors is currently ongoing by the Office of Information Technology (OIT). Please continue to submit IT tickets and notify OAR when this defect is identified – which naturally, will be after the case is closed. Trouble tickets assist OAR in bringing more visibility to the issue, even when the case has already been completed.

A second defect within the VBMS-A Summary of Case Fee Decision Notice functionality has been reported where the letter itself and the accept/reject banner for the letter are not populating on cases that need a concur.

Investigation of the root cause by the contractors is also active for this defect, and we’d appreciate users continue to submit IT tickets and notify OAR when this defect is identified.

OAR has identified a defect within the VBMS-A Summary of Case Fee Decision Notice functionality.  It has been reported that in certain cases, the VBMS-A SOC Tool is failing to populate all applicable decisions/issues (which to be clear, we mean the granted issues from the rating decision, excluding non-monetary ancillary benefits such as DEA).

Please continue to notify the Agent/Attorney Fee mailbox when you encounter this defect, while also holding the case for review and creating a trouble ticket with IT. In your email to OAR, please, as with the other defects, include the IT ticket number and claim ID number.

Once OIT has reviewed the claim, users may then utilize the introduction free text field to add the missed issues.

It’s helpful for our tickets to generally look the same, so we’ve created this standard text for you to use in your requests:

**Short Description:** Ticket opened for OAR/OIT: VBMS-A Summary of the Case Fee Decision Notice defect in accurately generating the correct contentions within the fee decision letter. Claim ID\_\_\_\_\_ EP\_\_\_.

**Description:** When VSR enters all necessary fields in the Summary of the Case Fee Decision within Award Adjustments, VBMS-A is not generating all the granted contentions correctly under "Summary of the Case" fee decision letter as required.

**Unexpected Results: Actual results** of VBMS-A Summary of the Case fee decision: “benefits were awarded for the following issues: \_\_\_\_\_\_”. **Expected Results**: “benefits were awarded for the following issues \_\_\_\_\_\_”.

**Steps to Reproduce:** VSR enters VBMS-A, click Record Decisions, click the Award Adjustments tab, click into the Agent/Attorney fee tab, click Summary of the Case, select "All requirements met, fees withheld" (or other applicable letter type), enter the decision date, select "Recipients" and "Due Decision", click Done and preview.

OAR has reached out to the OIT regarding tickets that are being held for authorization. However, we have not received a response. There have been a large number of cases reported that OIT is able to use to investigate the root cause of this defect. AAFC’s cans/should work with local leadership to determine if authorization of the current claim and/or future claims are necessary based on station goals or individual production requirements.

Please continue to submit IT tickets for this issue on future cases until further notice.

# Question and Answer – VBMS-A Summary of the Case Tickets and Reminders

**1. Question - I am requesting clarification of when to send a formal fee decision. One of my AAFCs received a comment on a case which stated the following: "Prior award dated April 2024 failed to issue Summary of Case Fee decision notice letter when fee agreement is on file and SC is granted on one of the issues at least 0%. Please have AFC complete summary of Case Fee decision notice letter as required. M21-5-8.B.3.a. When to Make a Fee Decision and Send Decision Notice". As this was an "initial decision" a formal fee decision would not be required or am I incorrect?**

Answer - As discussed in the AAFC Notification Requirements Training (TMS# 4650850), No Change in Combined Evaluation is in decisions where a rating decision grants a benefit (whether compensable or non-compensable), but there is no payment change. Letters are required in these cases because a favorable decision was rendered and there is a valid fee agreement of record. Per M21-5, 8.B.3.a., A Summary of Case Fee decision notice letter is required when there is a valid fee agreement of record, executed during the retroactive period, and valid representation as stated in M21-5, Chapter 8, Section B, 2.a.

There are two scenarios that do not require a fee eligibility decision. A fee eligibility decision should not be issued if the rating or non-rating decision only denies and/or confirms and continues benefits. Additionally, a fee eligibility decision should not be issued on an original claim (EP 110, EP 010, EP 180, etc.) for benefits that is being adjudicated for the first time.

**2. Question - Regarding the April 24, email VBMS-A SOC Fee Decision Error- Issues Not Populating: will guidance be given as to when the award should be authorized? I assume it's ok to use the same workaround of copying and pasting the issues in the automated SOC? My coach has me sitting on a rating that's Pending Auth for 3 weeks now. For the 3 I've opened a ticket for and notified OAR, they're just sitting in my queue pending auth. This raises various issues to include what if another EP needs to get rated in any of those claims?**

Answer - The Office of Administrative Review (OAR) has reached out to the Office of Information Technology (OIT) regarding tickets that are being held for authorization. OAR has not received a response or guidance from OIT. There has been a considerable number of cases reported that OIT can use to investigate the root cause of this defect.  Please continue to work with local leadership to determine if authorization of the current claim and/or future claims are appropriate where station goals or individual production necessitate. Please continue to submit IT tickets for this issue on future cases until further notice.

**3. Question - If we hold the case and create a ticket and send the email to OAR, should we add a suspense pending OIT response?**

Answer - This is a workload management question. Please send to local management for guidance. OAR is not currently requiring this additional step.

**4. Question – This question is specifically concerning BEST and AMA/IU/CUE attorney fee decision. We received an 0995 to return dependents after the Veteran failed to verify their status. I would deny entitlement to fees based on no qualifying review. The slides state we should still withhold fees but deny entitlement and wait 65 days to release fees. Can we get clarification if the slides cover this specific issue?**

Answer - Yes, all AMA claim types should deduct fees and hold for release until after the 65-day appeal period.

**5. Question - For EP 020 (that are not IU or CUE) and the decision is "VA never received a qualifying request to review this decision. Therefore, this award warrants no direct payment of fees", do we need to track the SOC with EP 400?**

Answer - No, the EP400 is to track the release of funds. If fees are not deducted, an EP400 is not warranted.