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# Board of Veterans’ Appeals Effectuations

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

**Presenter:** Chelsey Kondrak, Senior Management and Program Analyst, OAR

**References:**

* [M21-5, 4.5.a., *Types of Board Actions*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000141022/M21-5-Chapter-4-Appeals-Modernization-Act-AMA-Control-and-Other-Activities)
* [M21-5, 4.5.c., *Authority to Implement Board Decisions*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000141022/M21-5-Chapter-4-Appeals-Modernization-Act-AMA-Control-and-Other-Activities)
* [M21-5, 4.5.d., *Review of Board Actions*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000141022/M21-5-Chapter-4-Appeals-Modernization-Act-AMA-Control-and-Other-Activities)
* [M21-5, 7.G.1.d., *Determining When an Examination is Needed for Board Grants*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000140917/M21-5-Chapter-7-Section-G-Board-of-Veterans-Appeals-Board-Decisions-and-Remands)
* [M21-5, 7.G.1.e., *Reviewing the Claims Folder and/or Implementing the Board Decision*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000140917/M21-5-Chapter-7-Section-G-Board-of-Veterans-Appeals-Board-Decisions-and-Remands)
* [M21-5, 7.G.1.g., *Determining the Effective Date for a Grant of Benefits by the Board*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000140917/M21-5-Chapter-7-Section-G-Board-of-Veterans-Appeals-Board-Decisions-and-Remands)
* [March 2024 OAR Quality Call Bulletin](https://vbaw.vba.va.gov/OAR/docs/march2024-quality-call-bulletin.pdf)

**Board Effectuations (Legacy Appeal)**

Pursuant to M21-5, Chapter 7, Section G.1.e., *Reviewing the Claims Folder and/or Implementing the Board Decision*, when the Board decides an issue under legacy appeal, the Board returns the claim to the Decision Review Operations Center (DROC) or the Regional Office (RO) for review of the claims folder and implementation of the decision, if necessary. If the Board’s decision awards benefit(s), then the claims processor(s) must review the decision and take the following actions:

* determine the effective date in accordance with M21-5, Chapter 7, Section G.1.g, if not provided in the Board decision,
* follow the guidance in M21-5, Chapter 7, Section G.1.d and obtain an exam, if necessary, to determine the appropriate current evaluation; however, all evidence of record must be reviewed in the event a staged rating is required to fully cover the entire period of entitlement,
* issue a rating decision addressing the Board grant of benefit(s), and
* route the claim to the authorization activity.

For a legacy appeal and when effectuating a grant of service connection, the medical and lay evidence in the claims folder must be reviewed to determine if it is sufficient to establish the appropriate level of disability evaluation for the period of entitlement covered by the grant of benefits. If the evidence is not sufficient to establish a current evaluation, an adequate examination must be obtained. All evidence of record should be reviewed if a staged rating is required.

**Board Effectuations (AMA)**

In accordance with M21-5, Chapter 4, Section 5.a., *Types of Board Actions*, under the Appeals Modernization Act (AMA), the Board forwards two types of actions to the Veterans Benefits Administration (VBA) for completion: full grants and remands. For Board full grants, VBA takes the following actions:

* implements the Board decision,
* decides any associated downstream issues, such as effective date and evaluation,
* inputs the award data,
* notifies the appellant, and
* releases any payment.

The authority to implement Board decisions belongs to Rating Veterans Service Representatives (RVSR) for rating issues and Veterans Service Representatives (VSR) for non-rating issues under the AMA. As with normal processing, decision makers will use Veterans Benefits Management System – Rating (VBMS-R) to generate decisions on rating issues, with the codesheet documenting all issues addressed within the scope of the appeal, including downstream issues. If development is required before a Board grant can be effectuated, the decision maker must defer the affected issue(s). For multiple issue grants, a partial decision should be rendered to award benefits for issues that do not require development prior to deferring any remaining issues.

**March 2024 OAR Quality Call Bulletin**

Following the March 2024 OAR Quality Call, OAR received the following question from a DROC employee:

Should the VSR provide review rights in the notification letter for the below scenarios when the Board issues a grant? Do the below scenarios mean the Board assigned the effective date or is the effective date still a reviewable downstream issue, since the Board did not specify an actual date (e.g., 50% is warranted from January 1, 2024)?

1. Entitlement to a 20% evaluation for the left leg is granted.

2. Entitlement to an initial 50% evaluation is granted for the entire period on appeal.

In response to the question received from the DROC employee, OAR provided the answer:

Pursuant to M21-5, Chapter 7, Section G.1.e., Reviewing the Claims Folder and/or Implementing the Board Decision, if the Board’s decision awards benefit(s), then the claims processor must review the decision and determine the effective date in accordance with M21-5, Chapter 7, Section G.1.g., if not provided in the Board decision.

M21-5, Chapter 7, Section G.1.g., *Determining the Effective Date for a Grant of Benefits by the Board* states, “When a Board grant does not prescribe a specific disability evaluation and/or effective date, the RO or DROC must review the appeal record and take jurisdiction of these downstream issues.” Therefore, in accordance with this guidance, the VSR must provide review rights in the notification letter for these scenarios.

**Downstream Issue: Effective Date**

As directed in M21-5, Chapter 7, Section G.1.g., *Determining the Effective Date for a Grant of Benefits by the Board*, when a Board grant does not prescribe a specific disability evaluation and/or effective date, the RO or DROC must review the appeal record and take jurisdiction of these downstream issues.

* This includes determining the period of entitlement covered by the Board decision.
* Although the Board may order that the evaluation is warranted “for the entire appeal period,” determining the period of entitlement is not intuitive in every case.
* While these circumstances will typically result in an effective date assigned based on the general rule, decisionmakers must determine whether any other effective date rules apply to the facts of the case.

**Example:** Rating decision dated 05/01/18 increased the evaluation of the Veteran’s service-connected (SC) posttraumatic stress disorder (PTSD), from 30% to 70% disabling, effective 01/01/17. The Veterans Benefits Administration (VBA) notified the Veteran of the decision on 05/01/18. Subsequently, the Veteran submitted a VA Form 21-8940, Veteran’s Application for Increased Compensation Based on Unemployability, on 10/01/18, within one year of notification of the decision. The Veteran has not worked since 10/15/16. Rating decision dated 12/01/18 denied entitlement to total disability based on individual unemployability (TDIU). The Veteran submitted a legacy appeal, which was subsequently perfected to the Board of Veterans’ Appeals (Board). Board decision, dated 06/01/24, granted the Veteran entitlement to TDIU, due to the SC PTSD, throughout the entire appeal period. The Board’s decision does not reference a specific date of entitlement.

In this case, although the appeal originates from the 12/01/18 decision denying TDIU, based on the claim received 10/01/18, entitlement to TDIU is warranted from 01/01/17, the date the Veteran’s SC PTSD met the schedular requirements for individual unemployability, under 38 C.F.R. § 4.16(a). The Veteran met all requirements for TDIU within the one-year period prior to the date of receipt of the claim for TDIU (38 C.F.R. § 3.400(o)(2), Rice v. Shinseki, 22 Vet. App. 447 (2009)).

When the Board issues a decision granting entitlement to a specific evaluation for a disability for the **entire period on appeal** but does specifically state or clearly indicate the effective date, the decisionmaker at that point in time must review the file to determine the correct effective date.

In this case, assignment of the correct effective date falls under the VBA decisionmaker’s jurisdiction.

VBA should provide the claimant with appeal rights for the effective date in the event the VBA decisionmaker assigns an incorrect effective date.

**AAFC Summary**

VBA decisionmakers should review both the decision section and the order section of the Board decision to identify if the Board provided a specific effective date.

If the Board decision does not provide a specific effective date, then the effective date is considered a downstream issue.

Agent and attorney fees should be calculated through the date of the rating decision implementing the Board decision.

As a result, VBA will afford claimants appeal rights and the opportunity to formally request review in the event the effective date assigned by the VBA decisionmaker does not accurately cover the entire appeal period as directed by the Board.

# VBMS-A Fee Deduction Limit Removal

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

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

The November 2022 National Agent and Attorney Fee Call previously informed AAFCs that deductions greater than $99,9999 could not be entered in the “Other Adjustment” tab.

Currently, fee deductions are entered on the “Agent/Attorney Fee” tab. The VBMS-A fee deduction will allow entries greater than $99,999. AAFCs may utilize the “Agent/Attorney Fee” tab in VBMS-A to establish fee deductions larger than $99,999.

# Clear and Unmistakable Errors

**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:**

* [*Held v. McDonough*, 37 Vet. App. 28 (2023)](https://efiling.uscourts.cavc.gov/cmecf/servlet/TransportRoom?servlet=ShowDoc&dls_id=01209986494&caseId=131673&dktType=dktPublic)
* [38 C.F.R. 14.636(c)(2)(ii)](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.ecfr.gov%2Fcurrent%2Ftitle-38%2Fpart-14%23p-14.636(c)(2)(ii)&data=05%7C02%7C%7Cb61e5625a0704ee967df08dc8a50fb2e%7Ce95f1b23abaf45ee821db7ab251ab3bf%7C0%7C0%7C638537327636001509%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=zWjoQ1v6xJzXHzd%2FgOvWIHuPj%2BC%2FAGLw%2F1ntlQixNzE%3D&reserved=0)
* [M21-5 8.A.1.j., *Fees for Representation Involving Requests to Revise Based on Clear and Unmistakable Error (CUE)*](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000205495/M21-5-Chapter-8-Section-A-Introduction-to-Fees)

The United States Court of Appeals for Veterans Claims (CAVC) decided *Held v. McDonough* on November 14, 2023.

In *Held v. McDonough*, 38 C.F.R. § 14.636(c)(2)(ii) was invalidated. CAVC removed the requirement to file a notice of disagreement (NOD) for fee entitlement when the notice of the decision being challenged based on CUE was issued before February 19, 2019.

Prior to November 14, 2023, a fee can be earned for representation provided on:

* a claimant’s request to revise a prior decision on the basis of CUE as long as notice of the decision being challenged based on CUE was issued on or after February 19, 2019, or
* a claimant's request to revise a prior decision on the basis of CUE where notice of the decision being challenged based on CUE was issued before February 19, 2019, as long as a legacy NOD was filed with respect to the challenged decision on or after June 20, 2007.

Effective November 14, 2023, in accordance with *Held v. McDonough*, 37 Vet. App. 28 (2023), the Court found 38 C.F.R. 14.636(c)(2)(ii) to be invalid. Therefore, a fee can be earned for representation provided on a claimant's request to revise a prior decision on the basis of CUE.

**If the fee issue is pending on or after November 14, 2023, then the provisions of *Held v. McDonough* apply. The effective date given for implementation of *Held* does not apply to the date of claim the CUE was filed or the underlying decision being challenged.**

In all cases, regulatory POA requirements and fee agreement requirements must be satisfied.

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.

Please refer to the examples in M21-5 8.A.1.j.

# Question and Answer – Clear and Unmistakable Errors

**1. Question - Does *Held v. McDonough*, 37 Vet. App. 28 (2023) only apply to CUEs or will requirements for supplemental claims processing change due to this court decision?**

Answer - The decision on *Held v. McDonough* applies to CUEs and the eligibility of the representative for fee earned for representation provided on a claimant's request to revise a prior decision based on CUE. Please see M21-5 8.A.1.j. and *Held v. McDonough,* 37 Vet. App. 28 (2023).

**2. Question - Does the November 14, 2023, effective date apply to the date of claim (DOC) for what we are processing and/or to the date on which we are now processing it? For example, a claim for CUE was received on August 9, 2023. The decision being challenged was issued on September 9, 2013. The rating decision granting benefits based on the CUE claim was issued on June 15, 2024. The Summary of Case Fee decision notice needs to be issued. Does the requirement for an NOD still apply since the DOC was prior to November 14, 2023?**

Answer – If the fee issue is pending on or after November 14, 2023, the provision of *Held v. McDonough* will apply. As such, fees will be due in the example above since the Summary of the Case Fee Decision notice will be issued after November 14, 2023.

**3. Question - Does the decision from *Held v. McDonough*, 37 Vet. App. 28 (2023) change the requirements for the Veteran or representative to identify the alleged CUE?**

Answer - When the Veteran or their representative are requesting revision of a decision based on CUE the procedures in manual reference M21-1 X.ii.5.A.2.a. must be followed. 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. Refer to the examples in M21-5 8.A.1.j.