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# Apportionment Reminder

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

**Presenter:** Eric Colinarez, Management and Analyst, OAR

**References:**

* [M21-5 8.B.2.a., *When to Request Finance Transactions or Use Award Actions 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)

The Office of Administrative Review (OAR) is aware of VBMS-A fee deduction failures with claims involving apportionments. Please, do not utilize VBMS-A to enter a fee deduction that currently has an apportionment or has any terminated apportionment on the record. Please send a memo to finance to request the establishment of the fee deduction (M21-5 8.B.2.a).

The presence of VA Form 21-0788 Information Regarding Apportionment of Beneficiary Award within the folder is an indication of an apportionment decision. Additionally, data within the “Allotments” tab within VBMS-A or data within in “Allotment” column on the Award Information screen are also indicators of an apportionment.

# HLR Return Attorney Fee Processing Reminder

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

**Presenter:** Eric Colinarez, Management and Analyst, OAR

**References:**

* [M21-5 8.B.1.a., *Process for Possible Direct Payment of Fees*](https://www.knowva.ebenefits.va.gov/system/templates/selfservice/va_ssnew/help/customer/locale/en-US/portal/554400000001018/content/554400000205497/M21-5-Chapter-8-Section-B-Processing-a-Case-Seeking-Direct-Payment-of-Fees#:~:text=8.B.1.a.%C2%A0%20Process%20for%20Possible%20Direct%20Payment%20of%20Fees)
* Higher Level Review (HLR) Return – Attorney Fee Processing EP400 Interim Processing Guidance

Following the completion of an HLR Return end product (EP), if an attorney fee adjustment is necessary, ROs will take appropriate steps, to include actions indicated in **M21-5 8.B.1.a, stages 1 – 3 (to include adding a tracked item).**

Once the Summary of the Case Fee Decision Notice letter has been sent and a 65-day suspense has been established:

 -The RO will affix the ***Appeal Issue Intertwined***special issue to the EP 400.

Note: The *Appeal Issue Intertwined* special issue should only be added to an EP 400 if it is related to an HLR Return.

**The AAFC must add the “Attorney Fee” tracked item to the EP 400 to ensure accurate routing and claim status.**

# Question and Answer – HLR Return Attorney Fee Processing Reminder

**1. Question** - **Can we add the *Appeal Issue Intertwined* special issue in the beginning of 65-day appeal period?**

Answer - Yes. M-21-5 8.B.1.a (step 3) instructs the AAFC (Authorizer) to add the *Appeal Issue Intertwined* special issue if the EP 400 is the result of an HLR Return

**2. Question - The OGC reasonableness review 400's are they also being pulled once the appeal intertwined SI is added.**

Answer - Yes. All, EP400 with the *Appeal Issue Intertwined* special issue will be recalled and assigned to DROC-DC.

# Supplemental Claims Fee Processing Update

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

**Presenter:** Donald West, Management and Analyst, OAR

**References:**

* [38 CFR § 14.636(c)(1)(i)](https://www.ecfr.gov/cgi-bin/text-idx?SID=d2c26ca0a302603f9666cce9daedaaa0&mc=true&node=se38.1.14_1636&rgn=div8)
* [M21-5 Chapter 8.A.1.h., *Fees for Representation Involving Supplemental Claims*](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 court held that once VA has initially adjudicated an issue, fees may be charged for work on later claims involving that issue without the requirement of a new initial decision, **regardless of the date of any prior initial decision**. As a result, agent/attorney fee eligibility now applies to all supplemental claims. This ruling applies to fee decisions on underlying claims processed under the AMA on or after July 30, 2021.

Example: Rating decision dated April 2, 2014, with notification letter dated April 4, 2014, denied service connection for hearing loss. VA received a supplemental claim on August 3, 2022, with new and relevant evidence, a valid fee agreement, and complete VA Form 21-22a. Rating decision dated November 5, 2022, with notification letter dated November 6, 2022, granted service connection for hearing loss.

Analysis: Fees are due even though the initial decision was prior to the AMA effective date. A summary of the case decision notice is required.

# Question and Answer – Supplemental Claims Fee Processing Update

**1. Question** - **With this new update what happens to the cases already reviewed and denied fees based on the AMA date, if attorney comes back and fights the case after the manual change how do we proceed?**

Answer - AAFCs should ensure fee decisions issued on or after August 21, 2024 (the date of the manual change), follow the published procedural guidance for supplemental claims. However, agents and attorneys should submit a valid appeal for the Board to dispute eligibility for fees for fee decisions issued prior to that date.

**2. Question - Does this change on supplemental apply retroactively to all previous denials because of this, i.e. if an atty was previously denied because of this, can they come back and have the decision reconsidered.**

Answer - No, the change is not retroactive. AAFCs should ensure fee decisions issued on or after August 21, 2024 (the date of the manual change), follow the published procedural guidance for supplemental claims. However, agents and attorneys should submit a valid appeal for the Board to dispute eligibility for fees for fee decisions issued prior to that date.

# Failure to Make Funds Available

**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.6.a., *Corrective Action for Failure to Make Funds Available for Payment of Fees and Recouping Fee Payments*](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)

When the award did not result in a retroactive benefit to the claimant, AAFCs will not create a debt. For example, benefits were granted but withheld for separation pay. AAFCs must follow the steps 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.*

However, AAFCs must create a debt if the retroactive benefit was released to the claimant. AAFCs must follow the steps 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.*

AAFCs are reminded that the memo to create the debt and pay the fee cannot be completed prior to the expiration of the 65-day due process period.

Additionally, AAFCs must ensure all correspondence notices associated with this process are issued.

These notices include the following:

* All Requirements Met, Fees Not Withheld Summary of The Case Fee Decision,
* Debt to Veteran for Failure to Withhold Attorney Fee Letter, and
* Fee Recoupment Procedures – Final Notice.

# Question and Answer – Failure to Make Funds Available

**1. Question** – **When the retroactive benefits was not released, the manual instructs me to complete the “No fee withheld” section of the memorandum. The award was authorized after December 22, 2023, and the release memo instructs me to use the “Complete fee withheld” section of the memo. Which section do I complete?**

Answer – Please continue to follow the steps 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.*

The AAFC must continue to select the “No Fee Withheld” option on the updated version of the release memorandum. If no retroactive funds were released to the claimant, then we will not create a debt. We must utilize the 06A transaction in order to pay the fee. Finance is instructed to pay the fee using the 06A transaction within the “No fee withheld” section of the memorandum. The fee release memorandum will be updated to note the exception for awards authorized after December 22, 2023, that still need to complete this section of the memorandum.

**2. Question – Which section of the memo to release should I complete when the retroactive payment was released?**

Answer – If the retroactive payment was released, then the AAFC must create a debt on the claimant and instruct finance to pay the attorney. Therefore, the AAFC will complete the “Failed to make funds available for payment of fees” section of the release memorandum. Please note that this section of the release memorandum instructs finance to process the 06J7 transaction which simultaneously creates a debt and pays the attorney.

# OGC Follow-up Date

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

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

**References:**

* [M21-5, 8.B.5.h., *Reasonableness Referral Follow-Up*](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)

The Office of General Counsel (OGC) reported misuse of the current follow-up procedures, citing several offices with a cadence of weekly follow-ups for any given case. This frequency is not directed in the manual (or internally by OAR) and ultimately leads to further delay in processing. Based on discussion with OGC and consideration of their procedures to work the earliest referrals first, new follow-up guidance has been implemented/published in the M21-5.

OGC decides reasonableness reviews based upon the date that VBA refers the case to OGC (or when the reasonableness review request is received from the claimant). As such, AAFC’s should refrain from sending follow-up requests to OGC unless the referral date is prior to the date published in the monthly Agent and Attorney Fee Call Bulletin (provided monthly by OGC).

If an AAFC receives a case based on expiration of the initial 60-day suspense period that is pending with OGC, they should ensure that the case was properly referred to OGC and update the suspense for another 60 days without follow-up when the referral date is after the date published in the monthly Agent and Attorney Fee Call Bulletin.

OGC has reported that they are working reasonableness reviews that were referred (or filed) **on or after January 1, 2022**. Follow-ups should only be performed on cases where you identify that the reasonableness request was referred to OGC PRIOR TO this date.

# Question and Answer – OGC Follow-up Date

**1. Question** - **Would it be appropriate to notify OGC regarding a waiver of atty fee that no longer means a reasonableness review is necessary?**

Answer - In the May 2024 AAFC National Call Bulletin and PowerPoint, we discussed procedures and policies for notifying OGC when a waiver is received. This notification is still necessary outside of the updated procedures for reasonableness review follow-up.

**2. Question - How would we go about responding to attorney question on status of review?**

Answer - If the case was properly referred, it is OGC's jurisdiction. You may use this standardized text response, "The Office of General Counsel (OGC) holds authority to determine reasonable fees for discharged attorneys under 38 CFR 14.636(f)(2). This case is currently under OGC jurisdiction. As a result, the Office of Administrative Review (OAR) cannot provide additional information until the completion of OGC’s reasonableness review. Inquiries may be sent to their mailbox (AccreditationMailbox@va.gov).

**3. Question - For OGC reasonableness reviews that are sent after January 1, 2022, AAFCs do not send any follow up emails to OGC correct?**

Answer - Yes. Per M-21-5 8.B.5.h, AAFCs should not send any status requests to OGC unless the referral date is prior to the date published in the monthly Agent and Attorney Fee Call Bulletin (provided monthly by OGC).

**4. Question - Where can we find the date OGC is working or will it only be in the call.**

Answer - OAR will publish the date in the monthly Agent and Attorney Fee Call Bulletin

# Check OGC Website for Address

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

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

AAFC’s are very familiar with checking and verifying accreditation using the OGC accreditation website when reviewing a VA Form 21-22a and accompanying fee agreement. Best practice would also be to verify through this site that no updates were made that are not currently being reflected in the VBA corporate database, prior to authorization of the award and simultaneous release of your summary of case fee decision notice.

There is currently a system functionality project in motion that would allow for automatic update of the VBA Corporate database anytime the OGC database is updated. The OGC team for the project is in development project completion of their portion of work by the end of this month.  Once that is complete it will need to be tested with the corporate database team before it can be deployed to production.  They are estimating final completion during Q1 of FY25.

Verification of the address for the fee decisions and release memos continues to be an important step in the process as we have had several reports of incorrect mailing addresses as well as payments based on an incorrect address or even a firm relationship that was not correctly updated.