Pension and fiduciary service

Rating DIC Claims Under 38 USC 1151

Handout

July 2024

Handout for Rating DIC Claims Under 38 USC 1151

Lesson Overview

| Topic | Description |
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| Time Estimate: | 30 minutes |
| Purpose of the Handout: | Provide entry-level PMC RVSRs with narrative examples for DIC under 38 USC 1151 |
| Target Audience: | Entry-level PMC RVSRs |
| Handout References: | * **Rating DIC Claims Under 38 USC 1151 Handout**
* **Rating DIC Claims Under 38 USC 1151 Power Point**
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| Handout Objectives: | By the end of this lesson, the trainee will be able to:* Understand how to write a narrative for a DIC Under 38 USC 1151 rating decision
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| What You Need: | * Rating DIC Claims Under 38 USC 1151 handout
* Rating DIC Claims Under 38 USC 1151 powerpoint
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Instructor Notes

This handout provides a practical exercise for Rating DIC Claims Under 38 USC 1151.

Narrative Examples for Rating DIC Claims Under 38 USC 1151

**Narrative for DIC Under 38 USC 1151 grant due to accrued grant under 1151 on appeal**

The cause of death is recorded as: metastatic colon cancer with metastases to the liver and lungs. DIC is payable for death which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program, or as the result of having submitted to a VA medical examination.

Entitlement to accrued benefits for compensation for colon cancer with metastasized liver cancer under 38 USC 1151 was granted as 100% disabling effective March 7, 2017 in our rating decision dated July 19, 2023. This decision was made due to a Board of Veterans' Appeal decision regarding your appeal.

The Veteran died on May 24, 2019. Entitlement to accrued benefits for compensation for colon cancer with metastasized liver cancer under 38 USC 1151 was granted as 100% disabling effective March 7, 2017 in our rating decision dated July 19, 2023. This decision was made due to a Board of Veterans' Appeal decision regarding your appeal.

Therefore, we are reconsidering our denial of dependency and indemnity compensation.

Entitlement to DIC is established because death resulted from VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program, or as a result of VA examination. (38 CFR 3.361, 38 CFR 3.800)

**Narrative for DIC Under 38 USC 1151 denial due to negative medical opinion**

The cause of death is recorded as: complications of diverticulitis.

DIC is payable for death which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. The evidence must show that the Veteran's additional death is actually the result of the VA care. Specifically, carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination must be shown; or the proximate cause of death must be an event not reasonably foreseeable. For training and rehabilitation services or compensated work therapy program, it must be shown that the Veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the Veteran's death.

The medical opinion found after review of the available medical records shows no evidence of the diagnosis, evaluation or complaint of diverticular disease by VA. Review of VA diagnosis and treatment was appropriate and timely, accepted appropriate protocols and timely consultation was followed, the standard of care was met in this case. It is less as likely as not complications of diverticulitis was caused by or became worse as a result of the VA treatment, additional disability from carelessness, negligence, lack of skill, or similar incidence of fault on the part of the attending VA personnel or additional disability resulted from an event that could not have reasonably been foreseen by a reasonable healthcare provider, and/or failure on the part of VA to timely diagnose and/or properly treat the claimed disease or disability allowed the disease or disability to continue to progress.

Entitlement to DIC is not established as the Veteran's death was not caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. (38 CFR 3.361, 38 CFR 3.800)

For medical services, the evidence must show that fault on VA's part or an event not reasonably foreseeable proximately caused death. Entitlement to DIC is denied because the evidence fails to establish that VA medical or educational services were the proximate cause of death. (38 CFR 3.361)

**Narrative for DIC Under 38 USC 1151 denial due to negative medical opinion**

The cause of death is recorded as: melanoma of skin, site unspecified.

DIC is payable for death which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. The evidence must show that the Veteran's additional death is actually the result of the VA care. Specifically, carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination must be shown; or the proximate cause of death must be an event not reasonably foreseeable. For training and rehabilitation services or compensated work therapy program, it must be shown that the Veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the Veteran's death.

The VA medical opinion found: It is less as likely than not the claimed condition (death from melanoma) was caused by or became worse as a result of the VA treatment. It is less as likely than not that additional disability resulted from carelessness, negligence, lack of skill, or similar incidence of fault on the part of the attending VA personnel or additional disability resulted from an event that could not have reasonably been foreseen by a reasonable healthcare provider. It is less as likely than not that failure on the part of VA to timely diagnose and/or properly treat the claimed disease or disability allowed the disease or disability to continue to progress.

The following rationale was provided: The Veteran was initially diagnosed in 10/2010. Per protocol, he underwent surgical excision to include tissue around the site of the melanoma which involved the R thumb. A sentinel lymph node biopsy was appropriately performed and negative at that time. A PET scan was also performed and negative in 12/10 for metastatic disease.

Despite the negative sentinel lymph node biopsy in 2010, Veteran unfortunately had a high risk melanoma. This is based on its depth extending into subcutaneous fat and ulceration. Based on these features, the Veteran's melanoma was more likely to recur and progress. VA recognized the high risk nature of Veteran's melanoma and appropriately informed the Veteran about using adjuvant systemic therapy with interferon to improve his outcome.

As detailed above, the VA record documents that systemic therapy with interferon was proposed several times by VA clinicians for treatment to improve survival from his melanoma. This was an appropriate treatment plan based on the medical-scientific data at that time.

However, Veteran reportedly refused treatment with interferon. The VA record clearly documents the Veteran "refused adjuvant systemic therapy with interferon both at the time of his original resection and at the time of his advance to regional disease."

Review of the claims file demonstrates that the VA diagnosis and treatment plan were appropriate and timely, accepted appropriate protocols were followed, and the standard of care for treatment of melanoma for the time period at issue was met.

Entitlement to DIC is not established as the Veteran's death was not caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. (38 CFR 3.361, 38 CFR 3.800)

For medical services, the evidence must show that fault on VA's part or an event not reasonably foreseeable proximately caused death. Entitlement to DIC is denied because the evidence fails to establish that VA medical or educational services were the proximate cause of death. (38 CFR 3.361)

**Narrative for DIC Under 38 USC 1151 denial due to no VAMC treatment records identified or found**

The cause of death is recorded as: end stage renal disease; with squamous cell carcinoma of the lung contributing.

DIC is payable for death which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. The evidence must show that the Veteran's additional death is actually the result of the VA care. Specifically, carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination must be shown; or the proximate cause of death must be an event not reasonably foreseeable. For training and rehabilitation services or compensated work therapy program, it must be shown that the Veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the Veteran's death.

Entitlement to DIC is not established as the Veteran's death was not caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. (38 CFR 3.361, 38 CFR 3.800)

For medical services, the evidence must show that fault on VA's part or an event not reasonably foreseeable proximately caused death. Entitlement to DIC is denied because the evidence fails to establish that VA medical or educational services were the proximate cause of death. (38 CFR 3.361)

**Narrative for DIC Under 38 USC 1151 denial due to no response to our request for evidence**

The cause of death is recorded as: acute respiratory failure, probable sepsis and pulmonary edema and complications of dementia with a contributing condition of dehydration.

DIC is payable for death which is caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. The evidence must show that the Veteran's additional death is actually the result of the VA care. Specifically, carelessness, negligence, lack of proper skill, error in judgment, or similar instance of fault on the part of the Department in furnishing the hospital care, medical or surgical treatment, or examination must be shown; or the proximate cause of death must be an event not reasonably foreseeable. For training and rehabilitation services or compensated work therapy program, it must be shown that the Veteran's participation in an essential activity or function of the training, services, or CWT program provided or authorized by VA proximately caused the Veteran's death.

Our letter to you, dated September 26, 2023 requested that you submit evidence supporting your claim for DIC under 38 USC 1151. To date, we have not received a reply to our request, therefore, your claim for DIC under 1151 is denied.

Entitlement to DIC is not established as the Veteran's death was not caused by VA hospitalization, medical or surgical treatment, vocational rehabilitation, compensated work therapy program (CWT), or as the result of having submitted to a VA medical examination. (38 CFR 3.361, 38 CFR 3.800)

For medical services, the evidence must show that fault on VA's part or an event not reasonably foreseeable proximately caused death. Entitlement to DIC is denied because the evidence fails to establish that VA medical or educational services were the proximate cause of death. (38 CFR 3.361)

**Narrative for DIC Under 38 USC 1151 denial due to no new and relevant evidence for a supplemental claim**

A claimant may file a supplemental claim by submitting or identifying new and relevant evidence. (38 CFR 3.2501)

New evidence is evidence not previously part of the actual record before agency adjudicators. (38 CFR 3.2501)

The VA Medical Center records submitted in connection with the current claim does not constitute new and relevant evidence because it was previously considered in the rating decision of September 5, 2018.

Therefore, the claim for death benefits under 38 USC 1151 remains denied because the evidence submitted is not new and relevant.