



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, D.C. 20420

April 18, 2016

Director (00/21PF)
All VA Regional Offices

In Reply Refer To: 21PF
Policy Letter 21-16-01

ATTN: All Compensation, Pension, and Fiduciary Personnel

SUBJ: Beneficiaries Who Are Unable to Manage their VA Benefits; Claim Processing Errors

Purpose

This letter addresses the identification of claim processing errors, which delayed the fiduciary appointment process for certain beneficiaries.

Background

Pension and Fiduciary (P&F) Service identified approximately 14,000 uncontrolled cases consisting of proposed incompetency determinations awaiting finalization or final incompetency determinations for which no fiduciary was appointed. The ratings were proposed at Veterans Service Centers (VSC) and Pension Management Centers (PMC) and date back to 2000. P&F Service reviewed a sample of these out-of-control cases and found the following claim processing errors:

- End product (EP) not established to control for proposed or final incompetency determinations
- EP not established with the proper claim label
- Email notification of proposed or final rating not sent to fiduciary hub
- Email notification of proposed or final rating not acknowledged by fiduciary hub
- Diary for proposed rating not created or resolved

The errors occurred because VBA personnel did not adhere to the process outlined in the Adjudication Procedures Manual and supplemental guidance including:

- M21-1, Part IV, chapter 17, effective prior to July 2007
- M21-1MR, Part III, subpart v, chapter 9, August 2007 through July 2014
- Fast Letter 14-07, *Promulgation Teams*, August 2014 through February 2015
- M21-1MR, Part III, subpart v, chapter 9, March 2015 to present

The Office of Field Operations (OFO) deployed a special team in the Milwaukee Regional Office to review the identified claims on March 24, 2016. This team collected information

that VBA used to develop procedures, prioritize the cases, and facilitate fiduciary appointments when necessary. OFO determined personnel at all fiduciary hubs will be responsible for coordination of all rating and adjudicative processes necessary to resolve pending decisions regarding competency issues related to this group of beneficiaries.

Policy

It is VBA's policy to ensure that beneficiaries who cannot manage their VA benefits receive fiduciary services as quickly as possible after an award of benefits. In an effort to resolve the uncontrolled cases in a timely, equitable and consistent matter, VBA will consider the beneficiary's age, whether we have withheld retroactive benefits, and other factors to determine the priority in which they are worked. VSCs and PMCs will work cases in this population as a priority. Fiduciary hubs will work these cases and similarly situated cases in their current inventory as a priority. VBA will process these cases using the current evidence of record, regardless of the date that VBA received it.

Procedures

Apply the procedures established in this letter to the affected cases effective the date of this letter. The cases will be worked using EP 609 and 297, as appropriate, and notification letters unique to the effort described in this letter.

OFO will:

- Direct the fiduciary hubs to take all necessary actions and control all work as prioritized with the appropriate EP associated with this guidance and population of beneficiaries
- Monitor the fiduciary hubs' progress through the Beneficiary Fiduciary and Field System (BFFS) and corporate functionality to ensure prompt completion
- Monitor the fiduciary hubs' progress through workload reports to ensure all work is processed timely and in compliance with guidance provided

P&F Service will:

- Control all cases identified using EP 850, with claim label "Review, Control and Processing"
- Establish beneficiary records in BFFS for all beneficiaries affected by the processing errors
- Assign a priority to the beneficiary's record in BFFS based upon the beneficiary's age, whether VBA withheld retroactive benefits, and other circumstances
- Establish a task in BFFS to identify the action required
- Manage the data set to ensure the cases are accurately categorized by the type of work required
- Assist the fiduciary hubs with case-specific questions related to the procedures outlined in this guidance

Fiduciary hubs will:

- Be responsible for all work assigned based on the fiduciary hub of jurisdiction
- Monitor progress through BFFS and corporate functionality to ensure prompt completion
- Monitor progress through workload reports to ensure all work is processed efficiently and in compliance with guidance provided
- Review and, if necessary, validate the initial review information established in the BFFS task
- Establish an EP 609 to control cases that require one or more of the following:
 - Notice of due process
 - Finalization of the rating of incompetency when due process was effectively provided
 - Consideration of additional evidence received to contest the original proposal of incompetency
 - Additional development
 - A hearing, if requested
- Establish an EP 297, claim label “FID-Fiduciary Adjustment,” to control cases that require the appointment of a fiduciary
- Make appropriate updates to the corporate and BFFS databases according to the enclosures in this letter
- Reissue proposed incompetency rating notification letters if there is no record of due process notice
- Reissue proposed incompetency rating notification letters to any beneficiary whose due process notification did not include information related to the Brady Handgun Violence Prevention Act (Brady Act)
- Verbally notify the beneficiary of the Brady Act implications if there is no record of prior notice
- Process final ratings of incompetency and notify the beneficiary if the beneficiary was properly notified of the proposed rating and VBA did not receive additional evidence or a hearing request
- Perform initial appointment field examinations based on the priorities established by VBA and controlled in BFFS
- Release any withheld retroactive benefits to the appointed fiduciary

Co-located adjudication activity will:

- Conduct hearings and process ratings based on a review of the current record
- Process rating decisions that require consideration of medical evidence submitted by the beneficiary using EP 609
- Release retroactive benefits to any beneficiary determined able to manage his or her VA benefits using EP 297, claim label “FID-Fiduciary Adjustment”
- Notify the fiduciary hub of jurisdiction of all decisions made and the EP which controls it
- Establish an EP 297, claim label “FID-Fiduciary Adjustment,” upon completion of a final rating of incompetency to control for the appointment of a fiduciary

The procedures for each of the processes covered by this letter are in the following enclosures:

- Enclosure A - *Procedural Table for Requesting a Fiduciary Appointment*, provides the procedures and correspondence for controlling and notifying the beneficiary of a pending fiduciary appointment when VA previously issued a final determination of incompetency.
- Enclosure B - *Procedural Table for Processing Cases Requiring Proposed Rating Notification*, provides the procedures and correspondence for cases in which VBA did not properly issue the original proposed rating notification letter or include the Brady Act information in the notification letter.
- Enclosure C - *Procedural Table for Processing Cases Requiring Final Rating Action - No Additional Evidence or Hearing Request*, provides the procedures and correspondence for finalizing the incompetency rating when VBA properly notified the beneficiary of his or her due process rights and written Brady Act implications, but did not receive additional evidence or a request for a hearing.
- Enclosure D - *Procedural Table for Processing Cases Requiring Final Rating Action- Additional Evidence or Hearing Request*, provides the procedures and correspondence for finalizing the incompetency rating when VA properly notified the beneficiary of his or her due process rights and written Brady Act implications, but VA received additional evidence or there is a request for a hearing.
- Enclosure E - *Procedural Table for Claims that Require Claims Folder Review and Special Processing*, provides the procedures that the Control and Processing Team must use to review cases that require paper claims file review when the eFolder does not contain sufficient evidence regarding the incompetency determination and other special processing issues unique to this effort.
- Letter Guide and Letters – The Letter Guide provides letters approved for use with this guidance and information regarding the appropriate circumstances for application of each letter.

Questions?

Submit questions regarding guidance related to adjudication activity procedures to VAVBAWAS/CO/212A. Questions regarding guidance related to fiduciary hub procedures are directed to VAVBAWAS/CO/F&FE.

/S/

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Enclosures: Enclosure A
Enclosure B
Enclosure C
Enclosure D
Enclosure E
Letter Guide and Letters