

Service Bulletin

June 2010

DEPARTMENT OF VETERANS AFFAIRS (VA)

<http://www.va.gov>

VA Announces New Hotline for Homeless Veterans

<http://www1.va.gov/HOMELESS/NationalCallCenter.asp>

VA has established a new telephone hotline to provide emergency support and resources to homeless veterans. Family members, workers at community agencies and non-VA providers also may call the hotline at 1-877-4AID VET to find out about programs and services available to assist homeless veterans. Well-trained expert responders will staff the hotline 24 hours a day, seven days a week.

Homeless veterans are in need of food and shelter, clothing, financial assistance, and treatment for medical conditions. Additionally, many require access to permanent housing, veteran's benefits and vocational resources. VA assistance is available for homeless veterans who may have mental health issues, substance abuse, depression, traumatic brain injury and post-traumatic stress disorder. The responders operating the new hotline will ensure veterans receive the help they need and deserve.

The National Call Center for Homeless Veterans is the latest in a series of initiatives to help homeless veterans. Last year, Secretary of Veterans Affairs Erik K. Shinseki launched a campaign to eliminate homelessness among Veterans within five years. VA has approximately 4,000 agreements with community partners to help homeless veterans. Last year, more than 92,000 homeless Veterans were served by VA's specialized homeless programs.

VA Announces Change to Medication Copays for Some Veterans

www.va.gov/healtheligibility

As previously announced on January 7, 2010, VA froze prescription copayment increases for six months. Veterans who generally have higher income and no service-connected disabilities - referred to as Priority Groups 7 and 8 veterans - will now pay an additional

\$1 for each 30-day supply of outpatient medications. Taking effect July 1, 2010 the increase to \$9 from \$8 is the first change in VA's medication co-pay since Jan. 1, 2006.

This change does not impact veterans in Priority Groups 2 through 6 who will continue to pay \$8 for each 30-day supply of medications for their non-service connected conditions unless otherwise exempted. These veterans will also continue to have their out-of-pocket expenses for VA outpatient medications capped at \$960 per calendar year.

Veterans who have an injury or illness connected with their military service resulting in a disability rated 50 percent or greater – who are known as Priority Group 1 Veterans -- are exempt from the co-pay.

VA generally sets its outpatient medication co-pay rate based upon a regulation that ties the rate to the Medical Consumer Price Index for prescription drugs. Veterans who have difficulty paying copayments for outpatient medications should discuss the matter with their local VA Medical Center enrollment coordinator.

VA Implements Shorter Claims Forms and Process for “Fully Developed Claims”

VA has shortened application forms to reduce paperwork for veterans. The new forms, which are being made available on VA's Web site at www.va.gov/vaforms, include:

- A shortened VA Form 21-526 for veterans applying for the first-time to VA for disability compensation or pension benefits. This form has been cut in half – from 23 to 10 pages.
- VA Form 21-526b for veterans seeking increased benefits for conditions already determined by VA to be service-connected. This new form more clearly describes the information needed to support claims for increased benefits.
- VA Form 10-10EZ, “Application for Health Benefits.” This revised online application provides enhanced navigation features that make it easier and faster for Veterans to apply for their health care benefits. This new version also allows Veterans to save a copy of the completed form for their personal records.

In order to make the claims process faster, VA has also introduced two new forms for veterans participating in the Department's new fully developed claim (FDC) program. Gathering the information and evidence needed to support a veteran's disability claim often takes the largest portion of the processing time. If VA receives all of the available evidence when the claim is submitted, the remaining steps in the claims-decision process can be expedited without compromising quality.

To participate in the FDC program, veterans will complete and submit an FDC Certification and VA Form 21-526EZ, “Fully Developed Claim (Compensation),” for a compensation claim, or a VA Form 21-527EZ, “Fully Developed Claim (Pension),” for a

pension claim. The forms were designed specifically for the FDC program. These six-page application forms include notification to applicants of all information and evidence necessary to “fully develop” and substantiate their claims. With this notification, veterans and their representatives can “fully develop” their claims before submission to VA for processing.

Along with the application and certification, veterans must also submit all relevant and pertinent evidence to “fully develop” their claims. A claim submitted as “fully developed” may still require some additional evidence to be obtained by VA, to include certain federal records and a VA medical examination.

U.S. Court of Appeals for Veterans Claims (CAVC)

<http://www.vetapp.gov/>

***Jones v. Shinseki*, 23 Vet.App. 382 (2010)**

http://www.uscourts.cavc.gov/documents/Jones_07-3060_published_opinion_3-25-2010.pdf

The principal issue before the Court was whether VA fulfilled its duty to assist by obtaining two VA medical examinations in which the examiners concluded they were unable to render an opinion whether there was a causal link between service and the appellant's current disabilities without resort "to mere speculation."

How should the Court treat a situation in which an examiner's opinion is unclear or silent as to whether all information that reasonably bears on a medical analysis has been gathered or the reasoning behind the inconclusive opinion is absent? Stated another way, how thoroughly must an examiner develop and describe the information gathered and explain the essential medical reasoning before the Board may rely on his or her representation that an opinion cannot be rendered "without resort to mere speculation"? The Court determined that the phrase must not become a mantra that short circuits the careful consideration to which each claimant's case is entitled.

The Court determined that an examiner's conclusion a diagnosis or etiology opinion is not possible without resort to speculation is a medical conclusion just as much as a firm diagnosis or a conclusive opinion. However, a bald statement that it would be speculative for the examiner to render an opinion as to etiology or diagnosis is fraught with ambiguity. For example, it is not clear whether the examiner lacks the expertise to render such an opinion, or whether some additional testing or information is needed, and possibly available, that would permit such an opinion, either of which would render the opinion inadequate for resolving the claim. Thus, before VA can rely on an examiner's conclusion that an etiology opinion would be speculative, the examiner must explain the basis for such an opinion or the basis must otherwise be apparent in the VA's review of the evidence. See *Steffl v. Nicholson*, 21 Vet.App. 120, 124 (2007) (a medical opinion "must support its conclusion with an analysis that the Board can consider and weigh against contrary opinions").

The Court further concluded the VA Secretary must ensure that any medical opinion, including one that states no conclusion can be reached without resorting to speculation, is "based on sufficient facts or data." *See Nieves-Rodriguez v. Peake*, 22 Vet.App. 295, 302 (2009). Therefore, it must be clear, from either the examiner's statements or the VA decision, that the examiner has indeed considered "all procurable and assembled data," by obtaining all tests and records that might reasonably illuminate the medical analysis. When the record leaves this issue in doubt, it is the VA's duty to remand for further development.

The examiner may also have an obligation to conduct research in the medical literature depending on the evidence in the record at the time of examination. *See Wallin v. West*, 11 Vet.App. 509, 514 (1998). The phrase "without resort to speculation" should reflect the limitations of knowledge in the medical community at large and not those of a particular examiner. Finally, the examiner should clearly identify precisely what facts cannot be determined. For example, it should be clear in the examiner's remarks whether it cannot be determined from current medical knowledge that a specific in-service injury or disease can possibly cause the claimed condition, or that the actual cause cannot be selected from multiple potential causes.



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