

Disability Assistance and Memorial Affairs-HVAC

Sep 11, 2013

STATEMENT OF
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FOR THE RECORD
VETERANS' AFFAIRS SUBCOMMITTEE
ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

WITH RESPECT TO
Implementation Update: Fully Developed Claims

WASHINGTON, DC

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and our Auxiliaries, I would like to thank you for the opportunity to provide

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testimony for the record regarding fully developed claims.

The Fully Developed Claim (FDC) program is simply the formalization of a local VA regional office practice which has existed for decades. Historically, many of VA's Veteran Service Center Managers (formerly Adjudication Officers) agreed to quickly work fully developed claims submitted by veteran service organizations (VSOs). This program was regularized by the Veterans Benefits Administration (VBA) in 2009 and rolled out to all VA regional offices in 2010.

Since 2010, VBA has refined the FDC program and increasingly encouraged veterans and VSOs to submit claims which do not require development of non-governmental evidence. The VA Under Secretary for Benefits, Allison Hickey, expressed a goal that 20 percent of all claims submitted to VBA should be fully developed. Data obtained from VBA shows that FDCs from all sources totaled 21 percent of all claims submitted in the month of July 2013.

While we could claim "mission accomplished" by meeting the FDC goal, that does little to describe both the benefits and problems associated with the FDC program as it is currently implemented. In our testimony we will discuss those issues, as well as our impressions of Section 506 of PL 112-154 which allows VA to award retroactive benefits of up to one year in certain qualifying FDC cases.

Fully Developed Claims Program – What it is

The FDC program shifts the burden of much of the evidence necessary to adjudicate a claim from VA to veterans and other claimants. Essentially, in exchange for a promise to process a claim more quickly, VA requires claimants to locate, obtain and submit all non-government held records necessary to their claim at the time they submit an application to VA.

Those who successfully complete this task, and who take no action that disrupts VA in processing their claims, are rewarded with a decision often within 90-120 days of submission, rather than the more common eight to twelve months VA takes to work non-FDCs.

This is a clear win for VA. In exchange for promising to work a claim to completion more quickly, VA is relieved of the need to develop a claim. This reduces the number of employees (FTE) necessary to perform this work which allows VA to assign them to perform other tasks. In addition, because the bulk of the development is done by the claimant and not VA, traditional measures of claims processing timeliness (average days pending, average days to complete) are reduced. This allows VA to assert that it is processing claims more quickly.

Further, claimants may themselves believe that they have a win since they receive a decision

from VA more quickly than do their peers who submitted claims through the non-FDC process. One would think that this is a win-win for both VA and veterans; but is it?

The claims adjudication process follows certain basic steps: claims submission, review, development, decision, and notification. In the FDC program, claims submission, review, decision, and notification are the same as before. What has changed is that much of the development occurs before the claim is submitted to VA, not after. Development must still be done, except in the FDC program, it is done on the veteran's clock, not VA's. If the veteran is focused, knowledgeable and efficient, or has sought the assistance of a trained VSO representative, he or she can accomplish the development much more quickly than can VA. However, if he or she lacks full understanding of what is necessary to successfully complete his or her claim, he or she may take longer to complete the application package. Regardless, development time, whether performed by the veteran or by VA, should be included when considering whether veterans are indeed winners.

We believe that for many veterans, the total time to gather evidence, submit a claim to VA and receive a decision is little different under the FDC program than under the non-FDC model. In addition to the time factor involved in veteran development, there are also some hidden costs inherent in the pre-filing development undertaken by veterans. For example, many private health care providers are reluctant to provide records directly to the claimant or charge significant fees which must be paid, while those same records may be provided to the VA upon official request without cost. As part of the FDC program the VA encourages that the veteran submit a completed Disability Benefit Questionnaire (DBQ); however, many VA treatment providers are reluctant to assist the veteran in this regard. Worse still, we have many reports of VA health care providers refusing to complete DBQs despite VA directives to do so. Finally, private health care providers find DBQ instructions to be confusing.

The FDC program is obviously a success for VA, because timeliness numbers appear improved over traditional claims processing. For most veterans, however, we suggest that this process, from beginning to end, is more a draw than a win. Further, we should not be pitting one veteran against another for VA resources. There are other problems inherent with the FDC program which limits its usefulness and effectiveness:

If a claim is already pending before VA, the submission of a claim under the FDC program is barred.

An FDC will not be accepted if an appeal on another issue is pending if the claims folder is not located at the home Regional Office (RO), such as if the pending appeal has been brokered out to another RO or if the appeal has already been sent to the Board of Veterans Appeals.

VBA Fast Letters make it clear that submission of any additional evidence, no matter how

inconsequential to the claim, results in the subsequent exclusion of the claim from the program.

Submission of an appeal on a previously decided issue will kick a claim out of the FDC program.

Although VA is responsible for developing necessary records held by the federal government, such as active duty service medical records, VA will not accept an FDC where development of National Guard and Reserve medical records are required. Keep in mind that during the wars in Iraq and Afghanistan, approximately half of all those deployed were activated Guard and Reserve personnel. While service treatment records created for Guard and Reserve members during a period of deployment are technically federal records, the physical location of those records becomes the issue and is outside of the veteran's control.

There are unintended consequences of the FDC program. Principle among them is that many veterans believe that they should submit only one issue with a fully developed claim. The theory here is that each additional issue claimed substantially increases the likelihood that a VA employee will decide additional development is needed, thereby kicking the entire claim out of the FDC program. Further, veterans often limit the single FDC issue to what they view as an "easy claim" or a "sure thing" in the hope that a quick decision will lead to monetary benefits. This strategy may prove successful in the short term, but at a cost. Claims filed later have later effective dates. This means that some veterans lose months of benefits in exchange for a quicker decision by VA.

The VFW supports the FDC program. Throughout this Fiscal Year the percentage of FDC claims submitted by the VFW has steadily increased. In July 2013, 21.8 percent of all claims submitted were accepted by VA as fully developed.

Section 506 of Public Law 112-154

Section 506 states, in pertinent part:

(2)(A) Effective dates. The effective date of an award of disability compensation to a veteran who submits an application therefor that sets forth an original claim that is fully-developed (as determined by the Secretary) as of the date of submittal shall be fixed in accordance with the facts found, but shall not be earlier than the date that is one year before the date of receipt of the application.

(B) Definition. For purposes of this paragraph, an original claim is an initial claim filed by a veteran for disability compensation.

In our view, this law, while well intentioned, will have minimal impact on claims processing by VBA. Further, few veterans will benefit from this liberalizing statute. There are several

reasons for this conclusion:

It only applies to original claims. According to VA, original claims make up 40 percent of its workload. As of August 31, 2013, VA had 240,000 original claims pending. Section 506 would not apply to the vast bulk of pending disability claims.

Qualifying as an FDC will be difficult. The data shows that 23 percent of original claims have eight or more issues; most of the remaining claims have more than one issue. As discussed above, the more issues submitted with a claim the more difficult it will be to submit a fully developed claim.

While encouraging veterans to file for compensation for conditions they believe are related to service is the right thing to do, the possibility of receiving an additional year of benefits will encourage veterans who have previously not submitted a claim to file one. As a consequence, this provision solicits more claims when VA is struggling to dig out of its current backlog problem.

While veterans are encouraged to submit fully developed claims, because of the number of issues claimed and the increased difficulty in submitting an FDC with each additional issue, we anticipate that many claims will not qualify for the FDC program, resulting in increased customer dissatisfaction when they do not qualify.

For the same reasons, a decision that a claim is not FDC eligible and, hence, not eligible for up to one year of retroactive benefits, will result in increased appeals.

Further, even if a claim does qualify for FDC processing, there is no guarantee that VA will award retroactive benefits because the award is based on “facts found” and is not automatic. Again, failure to award retroactive benefits will result in increased customer dissatisfaction and increased appeals.

The VFW fully supports the FDC program as amended by Section 506. We have invested hundreds of man-hours in training VFW service officers in preparing and submitting fully developed claims which meet the requirements of the program. We believe that this program can be a win-win for both veterans and VA. However, it is important to recognize the limitations of this program, and the implications it may have on some veteran’s claims.

This concludes my testimony. Thank you for the opportunity to submit the VFW’s views for the record.

Information Required by Rule XI2(g)(4) of the House of Representatives

Pursuant to Rule XI2(g)(4) of the House of Representatives, VFW has not received any federal grants in Fiscal Year 2013, nor has it received any federal grants in the two previous

Fiscal Years.

Monday Morning Workload Report; August 31, 2013;

<http://www.vba.va.gov/reports/mmwr/>