



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Successive VA Errors
Created a \$210,000 Debt
for a Veteran with a
“Service-Connected
Mental Illness”

MANAGEMENT ADVISORY
MEMORANDUM

MEMO #21-02447-05

NOVEMBER 4, 2021



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The Office of Inspector General (OIG) has released this management advisory memorandum to provide information on matters of concern that the OIG has gathered as part of its oversight mission. The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation, except for the standards of planning; data collection and analysis; fraud, other illegal acts, and abuse; and follow-up.

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DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL
WASHINGTON, DC 20001



September 21, 2021¹

MANAGEMENT ADVISORY MEMORANDUM

TO: Thomas Murphy, Acting Under Secretary for Benefits
Veterans Benefits Administration (20)

FROM: Larry Reinkemeyer, Assistant Inspector General
VA Office of Inspector General's Office of Audits and Evaluations (52)

SUBJECT: Successive VA Errors Created a \$210,000 Debt for a Veteran with a
"Service-Connected Mental Illness"

In April 2021, while conducting a review of debts created when the Veterans Benefits Administration (VBA) reduced veterans' disability levels, the VA Office of Inspector General (OIG) discovered VBA had incorrectly created a debt of about \$210,000 for a veteran. Because of the size of the debt and VA's plan to withhold the veteran's entire monthly compensation benefits (over \$1,100) until the debt was recouped, and given the veteran's history of a prior suicide attempt and mental health treatment for suicidal ideation, the review team promptly contacted VBA for corrective action.

This memorandum is meant to formally and transparently convey the information regarding the previously shared case to help VBA determine if additional actions are warranted.² The OIG is taking no additional steps at this time but encourages VBA to examine its controls and oversight mechanisms to help ensure this type of error can be prevented or promptly addressed in the future.³

VBA Created the Debt When Correcting an Error regarding a Temporary 100 Percent Evaluation

The \$210,000 debt was created when a rating veterans service representative from the Louisville, Kentucky, VA regional benefits office attempted to correct an error made more than two years before. The error left a temporary 100 percent disability evaluation in place that was granted

¹ This memorandum was sent to the Veterans Benefits Administration on September 21, 2021, to provide the opportunity for review and comment.

² The OIG issues management advisory memorandums when exigent circumstances or areas of concern are identified by OIG hotline allegations or in the course of oversight work, particularly when immediate action by VA can help reduce further risk of harm to veterans or significant financial losses. Memorandums are published unless otherwise prohibited from release or to safeguard protected information.

³ No system-level problems were identified that warranted a formal recommendation at this time. Nevertheless, the OIG will remain alert to information concerning issues like the one addressed in this management advisory memorandum.

when the veteran was hospitalized for a “service-connected mental illness.”⁴ When a veteran stays in a VA hospital for over 21 days for treatment of a service-connected disability, a temporary 100 percent evaluation is warranted from the date of admission through the end of the month of hospital discharge.⁵ In this veteran’s case, however, the temporary 100 percent evaluation continued for almost seven years after discharge.

The veteran, who had an overall evaluation of 20 percent, including a 10 percent evaluation for a mental illness, was hospitalized in July 2011. In September 2011, a rating veterans service representative from the New Orleans, Louisiana, VA regional benefits office granted the veteran a temporary 100 percent evaluation payable beginning August 2011. Although the veteran was discharged from the hospital in November 2011, the temporary 100 percent evaluation remained in effect. It continued until a May 2018 decision by a rating veterans service representative from the Saint Petersburg, Florida, VA regional benefits office ended the temporary evaluation effective August 2018 and reduced the overall evaluation to 60 percent. Although discontinuing the temporary evaluation was appropriate, it should have been made effective as of December 2011 and the veteran’s condition reevaluated from that point forward.⁶ Ultimately, in October 2020, the Louisville rating veterans service representative retroactively reinstated the mental illness evaluation of 10 percent, and the overall evaluation of 20 percent. Doing so created a debt of about \$210,000 from December 2011 to September 2018. Figure 1 illustrates the decisions on the evaluation of the veteran’s mental illness and their effects.

⁴ VBA’s compensation program provides tax-free monthly benefits to veterans in recognition of the effects of disabilities caused by diseases, events, or injuries incurred or aggravated during active military service. The amount of monthly benefits depends on the disability evaluation, which varies from 0 percent to 100 percent in increments of 10 percent based on impaired earning capacity. In the context of VA benefits, service-connected means a disability was incurred or aggravated during active military service (38 C.F.R. § 3.1).

⁵ 38 C.F.R. § 4.29.

⁶ 38 C.F.R. § 4.29(a); VA Manual 21-1, part 4, sub. 2, chap. 2, sec. J, topic 3, “Preparing the Rating Decision for Hospitalization Ratings Under 38 CFR 4.29,” July 5, 2015.

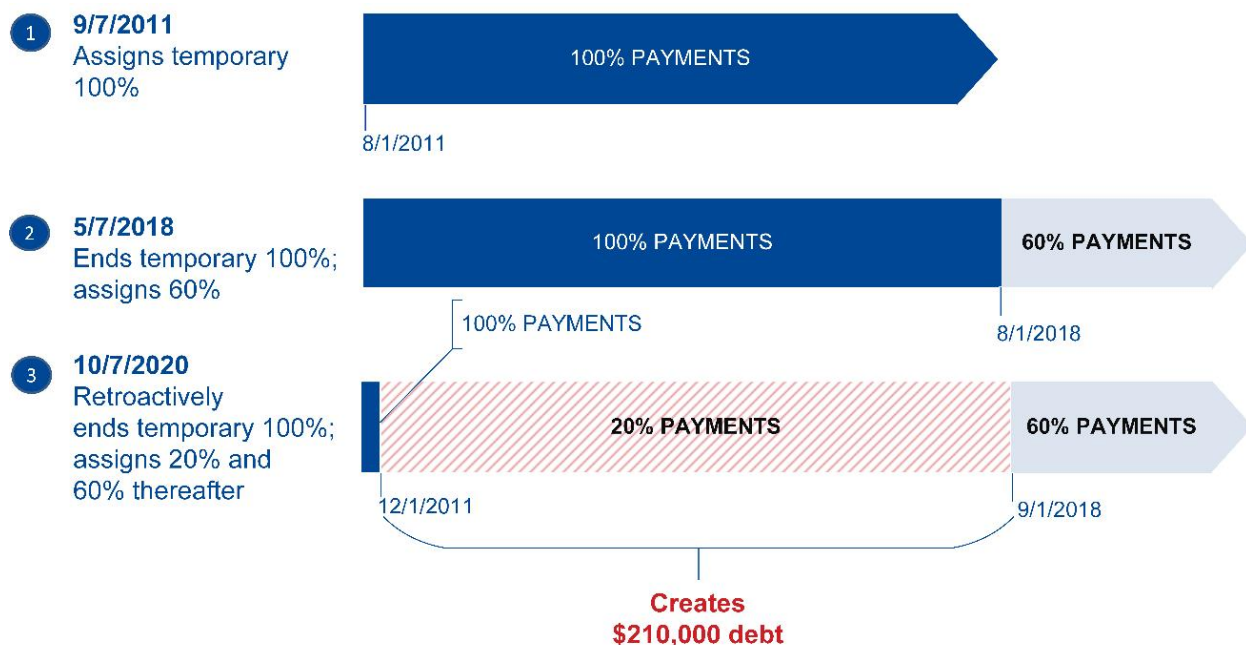


Figure 1. Rating decisions related to the evaluation of the veteran’s mental illness.

Source: VA OIG’s analysis of VBA rating decisions.

Note: The figure shows the overall combined evaluation, which includes another service-connected disability.

The OIG Found VBA Underevaluated the Veteran’s Mental Illness

Although discontinuing the temporary evaluation for the mental illness in December 2011 was appropriate, 10 percent was an underevaluation according to the schedule for rating disabilities based on the medical evidence in the claims file:

- In March 2012, the veteran was again hospitalized for 15 days with depressed mood and suicidal ideation.
- In May 2012, a VA examination showed the mental illness caused total occupational and social impairment.
- In December 2017, a VA examination showed the mental illness caused occupational and social impairment with reduced reliability and productivity.⁷

After the OIG review team contacted the director of quality assurance for VBA’s Compensation Service, a senior quality review specialist reviewed the case. The reviewer confirmed that 10 percent appeared to be a gross underevaluation. The review team concluded that if employees had considered all the medical evidence and properly evaluated the veteran’s mental illness, any

⁷ For the general rating formula for mental disorders, see 38 C.F.R. § 4.130.

overpayment resulting from failure to discontinue the veteran's temporary 100 percent evaluation after he left the hospital would have been reduced or the debt possibly eliminated.

Any Overpayment Was Due to Administrative Error and No Debt Should Have Been Created

The overpayment caused by VBA's failure to discontinue the temporary 100 percent evaluation should have been considered an administrative error. Administrative errors occur when VBA overpays veterans because employees make mistakes in judgment or misapply the law.⁸ Veterans are not responsible for repaying overpayments that are found to be the result of administrative errors.⁹ VBA staff must adjust the payment rates to eliminate the resulting overpayment and prevent a debt from being created.¹⁰ However, mistakes are generally not considered administrative errors if veterans were at fault because they took or failed to take an action, committed fraud with the intent of achieving financial or personal gain, or knew or should have known they were not entitled to the erroneous benefits.¹¹

In October 2020, a veterans service representative, a supervisor, and the assistant veterans service center manager from the Louisville office decided that the erroneous payments were the result of an administrative error. This decision indicated that the overpayment was not the veteran's fault and the resulting debt should be waived. The office referred the decision to the Compensation Service for approval since the overpayment was more than \$25,000.¹²

The Compensation Service, however, returned the case to the Louisville office for further consideration. The response from the Compensation Service's quality assurance officer noted a finding of administrative error requires a determination about whether the veteran knew or should have reasonably known of the error that created the debt, but the Louisville office's decision did not address this issue.

The Compensation Service response stated that the veteran knew he was not entitled to the 100 percent evaluation from December 1, 2011. It mentioned a letter VBA sent to the veteran in September 2011 explaining that the 100 percent evaluation would continue until the end of the month in which he left the hospital. Following VBA's letter, the veteran or his representative notified VA numerous times that he was still receiving benefits at the 100 percent rate after he was discharged in November 2011. On that basis, the Compensation Service instructed the

⁸ VA Manual 21-1, part 3, sub. 5, chap. 1, sec. I, topic 3, block a, "Definition: Administrative Error," May 7, 2020.

⁹ 38 U.S.C. § 5112(b)(10); VA Manual 21-1, part 3, sub. 6, chap. 2, sec. B, topic 3, block e, "Eliminating an Overpayment Resulting From Correction of an Administrative Error," October 11, 2017.

¹⁰ VA Manual 21-1, "Eliminating an Overpayment Resulting From Correction of an Administrative Error."

¹¹ VA Manual 21-1, part 3, sub. 5, chap. 1, sec. I, topic 3, block b, "Determining Whether to Attribute the Erroneous Payment of Benefits to Administrative Error," May 7, 2020.

¹² VA Manual 21-1, part 3, sub. 5, chap. 1, sec. I, topic 3, block h, "Approval of Administrative Decisions Involving Administrative Error," May 7, 2020.

Louisville office director to determine whether the veteran reasonably had knowledge of the error. Louisville office employees then decided the veteran had reasonable knowledge of the overpayment and created the debt.

The OIG agrees that the veteran was initially aware the temporary 100 percent evaluation lasted only through November 2011, but subsequent developments led him to reasonably believe he was entitled to the continued 100 percent evaluation.

In March 2012, the veteran claimed an increased evaluation for his mental illness after having been hospitalized again with suicidal ideation. Although the veteran did not receive a decision on his claim for increased evaluation, the veteran or his representative contacted VBA at least 21 times over about the next two years regarding his evaluation. For example, in February 2013 he asked for confirmation that his temporary 100 percent evaluation was valid, and in September 2013 he requested clarification whether it had been made permanent. Ultimately, the veteran sought congressional assistance to confirm the accuracy of the 100 percent evaluation. The Saint Petersburg office responded to the member of Congress in May and July 2014 that the veteran had a 100 percent evaluation, making it reasonable for the veteran to believe he was entitled to this evaluation.

Communications from four other regional benefits offices also made it reasonable for the veteran to believe he was entitled to keep the money he had received. When employees from the offices in Atlanta, Georgia, and Waco, Texas, eventually proposed to reduce the 100 percent evaluation in December 2017, they told the veteran the adjustment was the result of a clear and unmistakable error, and reassured the veteran that he would not be responsible for any overpayment of benefits. Furthermore, staff in two additional regional benefits offices—first Winston-Salem, North Carolina, in July 2019 and then Houston, Texas, in April and July 2020—told the veteran that any debt would be waived. Even after two Louisville office veterans service representatives created the debt of almost \$210,000 on October 19, 2020, they sent the veteran a notification letter dated October 20, 2020, stating the overpayment created as a result of the corrective action would be waived and the veteran would not be responsible for the overpayment.

VBA Eliminated the Veteran's Debt after Discussions with the OIG

The OIG review team contacted the director of quality assurance for VBA's Compensation Service on April 22, 2021, and provided a detailed accounting of the case. The same day, the director reported he had assigned the case to a senior quality review specialist for expedited review and correction. The Compensation Service recorded a new decision on April 23, 2021. The new decision attributed the debt to administrative error and approved waiving the debt. The Compensation Service's quality assurance officer reported contacting the veteran on April 23, 2021, and informing him the debt would be waived. The debt was ultimately eliminated from VA's electronic system on April 30, 2021.

Conclusion

The OIG does not request any further action on this case because the veteran's debt has been eliminated. However, this case shows how important it is for VBA employees to carefully review all available evidence when determining the appropriate evaluation of a condition following hospitalization, and when determining whether to create a debt for the veteran if an evaluation is reduced. The many attempts by the veteran and his representative to clarify the record are indicative of the stress veterans feel when there is uncertainty about their compensation or potential debt. VBA should consider whether any additional steps should be taken to avoid this type of error.

VBA Response

Included in appendix A is VBA's response that it finds no issue with the content of this document and concurs without comment on the OIG's management advisory memorandum. According to the acting under secretary for benefits, "VBA remains steadfast in our commitment to safeguard the funds of this most vulnerable population and is taking steps to ensure this type of error does not happen in the future."

Appendix: Management Comments

Department of Veterans Affairs Memorandum

Date: October 8, 2021

From: Under Secretary for Benefits (20)

Subj: OIG Management Advisory Memorandum - Successive VA Errors Created a \$210,000 Debt for a Veteran with a Service-Connected Mental Illness (2021-02447-AE-0109)

To: Assistant Inspector General for Auditing and Evaluations (52)

This is in response to the OIG Management Advisory Memorandum - Successive VA Errors Created a \$210,000 Debt for a Veteran with a Service-Connected Mental Illness (2021-02447-AE-0109).

VBA appreciates the opportunity to review OIG's Management Advisory Memorandum on the circumstances which led to the creation of an erroneous debt of \$210,000. We find no issues with the content of this document and concur with no comment.

VBA remains steadfast in our commitment to safeguard the funds of this most vulnerable population and is taking steps to ensure this type of error does not happen in the future.

The OIG removed point of contact information prior to publication.

(original signed by)

Thomas J. Murphy

Acting

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

OIG Contact and Staff Acknowledgments

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