

REDUCTIONS & OFFSETS

(Money, Money, Money)

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Objectives

- ▶ Identify common causes for reductions
- ▶ Identify common reasons for offsets

- ▶ Understand due process procedures
- ▶ Understand impact on monetary benefits

Reductions

- ▶ Improvement in S/C disability
- ▶ Failure to report for VA exam
- ▶ Change in employability status
- ▶ Hospitalization at government expense
- ▶ Medicaid nursing home
- ▶ Incarceration
- ▶ Fugitive felon status

Improvement in S/C

- ▶ Medical evidence
 - VA exam or VA treatment records
 - Private treatment records
- ▶ VA review exam

38 CFR 3.105(e)

Due Process

- ▶ Running award
 - Proposed rating
 - Notice to veteran – 60 days to respond
 - Final rating
 - Reduce end of month 60 days from date of notice of final rating
 - If hearing requested within 30 days of proposal notice, defer reduction
- ▶ Non-running award
 - Reduce based on “facts found”

Failure to report

- ▶ Does not report for VA exam
- ▶ Does not provide “good cause” for failure to report

38 CFR 3.655

Due Process

- ▶ Running award
 - Notice to veteran – 60 days to respond
 - Notice includes effective date of reduction at end of month (EOM) of 60 day due process
 - Reduce on date in letter
- ▶ If hearing requested in 30 days, defer reduction
- ▶ If notice received of willingness to report for exam before reduction effected, defer reduction

Unemployability (IU)

- ▶ Status verified VA Form 21-4140, Employment Questionnaire
 - Up to age 69, or
 - Up to 20 continuous years of IU (*protection established 38 CFR 3.951(b)*)
- ▶ Income Verification Match (IVM)

38 CFR 3.343

38 CFR 4.16 and 4.18

Employment Regained

- ▶ IU continued at present
- ▶ Diaried for 12 months
- ▶ Review entitlement at end of 12 months

Review IU Entitlement

- ▶ Discontinue if:
 - **Gainful** employment for 12 or more consecutive months, or
 - Veteran fails to furnish requested info to determine employment status
- ▶ Continue IU if:
 - Not **gainful** employment (*below poverty level*)
 - Employment in protected environment
 - Employment only occasional, intermittent, unsuccessful
 - Employment for less than 12 consecutive months

Due Process

- ▶ Running award
 - Proposed rating showing removal of IU
 - Notice to veteran – 60 days to present evidence
 - Reduce effective EOM 60 days from date of notice of proposed rating *(or last payment whichever is later)*
 - Notify veteran of reduction
 - Prepare final rating incorporating effective date of reduction
- ▶ If hearing requested within 30 days of proposal notice, defer reduction

Hospitalization

- ▶ SMC/SMP aid and attendance
 - Discontinued during hospitalization at government expense, **UNLESS**
 - Paraplegia involving paralysis of both lower extremities, together with loss of anal and bladder sphincter control, *or*
 - Hansen's disease, *or*
 - For Pension only: blindness (visual acuity 5/200 or less or concentric contraction of visual field to 5 degrees or less)

38 CFR 3.352(a)

Hospitalization (cont'd)

- ▶ Discontinued when hospitalization at government expense regardless of disability */F* entitlement under:
 - 38 USC 1114(r)(1)
 - 38 USC 1114(r)(2)

38 CFR 3.552(b)

Hospitalization (cont'd)

- ▶ Hospital treatment at VA hospital or any hospital at VA expense
- ▶ Institutional, domiciliary or nursing home care in VA institution or domiciliary at VA expense

Note: Beneficiaries in State homes are exempt from reduction

38 CFR 3.551

Due Process

- ▶ Running award
 - Notice to veteran – 60 days to respond
 - Notice includes effective date of reduction
 - If hearing requested in 30 days, defer reduction
- ▶ Non-running award
 - Payment on “facts found”

Effective Date

- ▶ SMC/SMP for A&A
- ▶ Reduce first day of second month after month veteran admitted – overpayment created

Example:

Veteran admitted 6-14

Reduction effective 8-1

VA Care – Pension

- ▶ Admission to domiciliary or nursing home care, or
- ▶ Readmission if readmitted within six months of a previous admission requiring reduction
- ▶ Veteran has neither spouse nor child
- ▶ Veteran has spouse or child but receiving benefits without dependents

38 CFR 3.551(e)

Effective Date

- ▶ Reduce 1st day of the 4th month after the date of admission to domiciliary or nursing home care, *or*
- ▶ Reduce 1st day of the month following readmission if readmitted within 6 months of previous admission requiring reduction

Example

- ▶ Single NSC veteran admitted to VA domiciliary on 1-27-15
 - Reduce 5-1-15
- ▶ Discharged 6-2-15 and readmitted 10-17-15
 - Restore 6-2-15
 - Reduce 11-1-15

Medicaid Covered Nursing Home Care

- ▶ Veteran or surviving spouse having no dependent for VA purposes
- ▶ Medicaid covered care
- ▶ Pension (live or survivor) limited to \$90 month
- ▶ Effective 11-5-90 to 11-30-16

38 CFR 3.551(i)

Due Process

- ▶ Running award
 - If 3rd party or ambiguous notice
 - Notice to claimant – 60 days to respond
 - Notice includes effective date of reduction
 - If hearing requested in 30 days, defer reduction
 - If unambiguous first party notice, contemporaneous notice

Effective Date

- ▶ Running award
 - Due process
 - Reduce to \$90 effective latest of:
 - 1st day of month after Medicaid begins
 - 1st day of month after 60 day due process letter
 - Earliest date to prevent creating overpayment
- ▶ Non-running award
 - Facts found

Example

- ▶ Running award, single vet in NH since 3-6-15
 - Medicaid began 3-15-15
 - Due Process letter issued 5-27-15
 - Award action taken 10-2-15
- ▶ Reduce to \$90 effective latest of:
 - 1st day of month after Medicaid begins (4-1-15)
 - 1st day of month after 60 day due process letter (9-1-15)
 - Earliest date to prevent creating overpayment (11-1-15)
- ▶ In this case, reduce 11-1-15

Incarcerated Beneficiaries

- ▶ Restriction on payment during incarceration
 - Federal, State, local or other penal institution for more than 60 days
 - All payees: veterans, surviving spouses, children, parents

38 CFR 3.665 and 3.666

Exceptions

- ▶ Payments not reduced where payee:
 - Participating in work–release program
 - Residing in halfway house (also called residential re–entry center by Bureau of Prisons (BOP))
 - Under community control

Incarceration – Compensation/DIC

- ▶ Conviction of a **felony**
- ▶ Incarcerated over 60 days
- ▶ S/C evaluation 20% or greater
 - Reduce to 10% rate
- ▶ S/C evaluation 10% or DIC beneficiary
 - Reduce to ½ 10% rate
- ▶ S/C evaluation 0% with special SMC k
 - Reduce to ½ 10% rate

38 CFR 3.665, 3.350, 3.959

Incarceration – Pension

- ▶ Conviction of **felony** or **misdemeanor**
- ▶ Imprisoned in Federal, State, local or other penal institution or correctional facility
- ▶ Exceeds 60 days imprisonment
- ▶ Pension payments discontinued

38 CFR 3.666

Due Process

- ▶ Running award
 - Notice to veteran – 60 days to respond
 - Info regarding dependent's rights to apportionment
 - VA to attempt to develop for apportionment simultaneously if whereabouts known
 - Reduce effective 61st day of incarceration
- ▶ If hearing requested within 30 days of proposal notice, defer reduction

Fugitive Felon

- ▶ Anyone fleeing to avoid prosecution, custody or confinement after
 - Conviction of an offense, or
 - Attempt to commit an offense which is a felony in place where committed, and
 - Violating condition of probation or parole imposed for commission of felony under Federal or State law

38 CFR 3.665(f), 3.666(e)

38 USC 5313B

Fugitive Felon (cont'd)

- ▶ No benefits payable on behalf of
 - Veteran who is fugitive felon
 - Dependent who is fugitive felon
- ▶ No apportionment payable if veteran or dependent is fugitive felon

Due Process

- ▶ Running award
 - Notice to beneficiary – 60 days to respond
 - Reduction effective for period in fugitive felon status
- ▶ If hearing requested within 30 days of proposal notice, defer reduction
- ▶ No apportionment made if veteran or dependent is a fugitive felon

Offsets

- ▶ Reasons for offsets
 - Military retired pay/Survivor Benefit Plan
 - Readjustment pay
 - Separation pay
 - Severance pay (non-disability, disability, combat)
 - Military reserve duty
 - Federal Tort Claims Act

Military Benefits

- ▶ 38 CFR 3.750 prohibits duplication of payments when veteran receives certain types of military pay
- ▶ Military benefits payable
 - Monthly, or
 - Lump sum
- ▶ Total/partial withholding of VA benefits
 - Depends on military payment type

Military Retired Pay

- ▶ Full retirement based on years of service
- ▶ Disability military retirement
 - Permanent Disability Retired List (PDRL)
 - Temporary Disability Retired List (TDRL)
- ▶ VA pay $>$ retired – pay difference to date of last payment (DLP), then full VA
- ▶ VA pay $<$ retired – withhold VA to DLP, then full VA

Lump Sum Payments

- ▶ Readjustment pay
- ▶ Separation pay
- ▶ Severance pay
 - Non-Disability
 - Disability
 - Combat (discharged 1-28-08 or later)

(Review handout)

Readjustment Pay

- ▶ Date of VA compensation entitlement determines amount of withholding
 - Before 9-15-81 - 75% of pre-tax amount
 - Between 9-15-81 and 9-30-96 - pre-tax amount
 - After 9-30-96 - post-tax amount

38 CFR 3.700(a)(2)

Separation Pay

- ▶ Date separation pay issued determines amount of withholding
 - Paid before 10-1-96 – pre-tax amount
 - Paid on or after 10-1-96 – post-tax amount

38 CFR 3.700(a)(5)

Severance Pay

- ▶ **Non-disability**
- ▶ No offset if comp entitlement before 9-15-81
- ▶ Pre-tax amount withheld if entitlement on or after 9-15-81 and severance pay issued on or before 9-30-96
- ▶ Post-tax amount withheld if entitlement on or after 9-15-81 and severance pay issued after 9-30-96

38 CFR 3.700(a)(3)

Severance Pay (cont'd)

- ▶ **Disability**
- ▶ Can be for one or more service connected disabilities
- ▶ Withholding up to amount of severance pay for severance disabilities
- ▶ Pay compensation for non-severance disabilities
- ▶ Combat incurred disabilities

Example

Single Veteran S/C for 2 disabilities with combined evaluation of 50%

- 30% for disability awarded severance pay
 - 30% for disability with no severance pay
- ▶ 50% rate **\$836.13**
- ▶ Option 1:
- Withholding for severance disabilities **\$407.75**
 - Pay difference **\$428.38**
- ▶ Option 2:
- Pay compensation for non-severance disabilities **\$407.75**
 - Withhold difference **\$428.38**

Severance Pay Combat Incurred

- ▶ Combat incurred
 - Separated from service on or after 1-28-08
 - Incurred disability in LOD
 - Disability result of combat-related operations *or*
 - Disability result of armed conflict
 - DoD makes determination

Severance Pay Combat Incurred (cont'd)

▶ Exception:

- Veteran separated from service prior to 1-28-08 *IF*
 - Incurred disability in LOD in combat zone
 - DoD placed veteran on TDRL
 - Removed veteran from TDRL on or after 1-28-08
 - Awarded disability severance pay for same disability

Military Reserve Duty

10 U.S.C. 12316 and 38 U.S.C. 5304(c) prohibit the concurrent receipt of drill pay and Department of Veterans Affairs (VA) disability compensation or pension.

38 CFR 3.700(a)(1)

Military Reserve Duty (cont'd)

- ▶ VA Form 21-8951, Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances (*signed by veteran*)
- ▶ Determine the number of days – typically 63 days
 - 48 armory drill training sessions
 - 15 days active duty training

Military Reserve Duty (cont'd)

- ▶ Withheld amount
 - Rate in effect on last day of fiscal year in which drill held
- ▶ Forms generally received after training completed
- ▶ Withholding is prospective (*no overpayment created*)

Due Process

- ▶ When info received from veteran, contemporaneous notice
- ▶ Failure of veteran to submit waiver, due process sent due to “adverse action”

Effective Date

- ▶ Withholding of amount determined based on rate in effect last day of fiscal year (FY) when duty performed
- ▶ Withholding effective 1st day of next calendar month
- ▶ Discontinue withholding effective day following number of reserve duty days
- ▶ Generally, no overpayment created

Example

20% S/C Veteran reports 68 reserve duty days during FY 2014. Notice received in VA 12-15-14. Award action taken 10-2-15.

- ▶ Withhold amount in effect last day of FY when duty performed \$258.83 (FY 2014 ended 9-30-14. Use 12-1-13 rate. Pay \$4.40 monthly)
- ▶ Withholding effective 1st day of next calendar month of award 11-1-15
- ▶ Discontinue withholding effective day following number of reserve duty days 1-9-16 (30 days in November, 30 days in December and 8 days in January)

Recap

- ▶ Common causes for reductions?
- ▶ Common reasons for offsets?
- ▶ Bottom line – impact on VA benefits?

QUESTIONS?