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Missouri State Auditor

November 26, 2014

Missouri Veterans Commission
and
Larry D. Kay, Director
Jefferson City, Missouri

This letter reports the results of our review of seven complaints received by my office from elected federal officials related to the handling of pension and disability claims by Veterans Service Officers (VSO) employed by the Missouri Veterans Commission (MVC). The objectives of our review were to determine whether the VSOs properly handled the claims, including whether decisions were properly documented and veterans (or their guardians) were properly informed of the status of their claims.

Methodology

Our methodology included reviewing policies and procedures, case files and other pertinent documents; and interviewing various personnel of the MVC, as well as certain external parties.

Background

Under Title 38 of the Code of Federal Regulations (CFR), certain veterans and their spouses are eligible for pension and other benefits. Claims are processed by the federal Department of Veterans Affairs (VA). Under Section 42.007.5.2, RSMo, the MVC is required to aid and assist all Missouri veterans, their dependents, and legal representatives in preparing, presenting and prosecuting claims for compensation, education, pensions, insurance benefits, hospitalization, rehabilitation, and all other matters in which a veteran may have a claim against the United States or any state arising out of or connected with service in the military forces of the United States. The MVC is one of many entities that assist veterans in completing and filing benefit claim forms with the VA. According to the MVC, 44 VSOs are employed to assist veterans with their claims. In light of the statutory directive to aid veterans, any failure to communicate or engage in dialogue with veterans could be counterproductive to its mission of assisting veterans. The MVC estimates its VSOs file approximately 15,000 claims per year, and approximately 6,000 Missouri claims are currently backlogged at the VA. The average claim takes 156 days to process by the VA. The VA communicates its claim determinations directly to the veteran. If a claim is denied by the VA, the MVC receives a copy of the documentation the VA sends to the veteran. For veterans residing in a state veterans home, part or all of the pension benefits received by the veteran may be used to offset the cost of care the MVC provides to the veteran.

The MVC maintains physical case files for each claim filed by VSOs. The MVC has instituted a quality control function that requires a claims specialist to check the accuracy of approximately 20 percent of claims filed, including 100 percent of claims filed by first-year VSOs. In addition, VSOs at each veterans home conduct peer reviews of other VSO case files. The MVC is also in the process of implementing an electronic claims submission system.

Complaints, MVC Response, and SAO Conclusion

Complaint 1 - the VSO did not file a Notice of Disagreement after the VA denied the original claim.

MVC position - The original claim was filed in June 2010 and denied by the VA in October 2010. The VSO did not file a Notice of Disagreement because the claim was re-opened. When a claim is denied, there are three options; file a Notice of Disagreement, re-open the claim by submitting new and material evidence, or accept the VA ruling. By re-opening the claim, the veteran has more time to submit new evidence that could aid in getting a claim approved. The VSO indicated a Notice of Disagreement would not be appropriate in this situation because, at the time, the veteran had new evidence to submit to the VA. The VA would have made its decision using the same information it used to deny the claim. Also, by submitting additional information to re-open the claim, the veteran is aware a Notice of Disagreement need not be filed. The re-opened claim was filed in June 2013 and the VA denied the claim again in February 2014. The VA denied another claim in July 2014 that resulted in the MVC filing another Notice of Disagreement in September 2014, which is still pending.

In September 2014, the SAO was provided additional documentation maintained by the veteran. According to the veteran's notes, he was under the impression a Notice of Disagreement was filed after the VA denied the original claim in October 2010. The veteran made multiple phone and email inquiries over the course of 3 years as to the status of the appeal and offered to provide the MVC additional medical records, including audiograms from the 1970's. There is no documentation in the MVC's files that indicate why these medical records were not submitted with the original claim. In addition, in an email dated February 11, 2013, the VSO stated he would inquire on the status of the veteran's appeal, even though an appeal had not been filed.

SAO conclusion: Based on the information provided by the MVC, the VSO's decision to re-open the case instead of filing a Notice of Disagreement appears adequately supported. The VSO documented this decision in the case file, but the VSO did not provide written notification of this decision to the veteran. In addition, the case file contained no documentation related to the veteran's email correspondence or conversations the VSO had with the veteran from the time the original claim was denied until the claim was re-opened in June 2013. Providing written notification of MVC decisions to veterans could help prevent misunderstandings regarding the status of claims.

Complaint 2 - the VSO failed to file a pension claim and only provided excuses for over 2 years regarding why the claim was not filed.

MVC position - The VSO did not originally file a claim when the veteran was admitted to a MVC home in December 2009 because the veteran's assets were significant. The veteran's guardian was orally notified of this decision. While there is no set maximum asset limit, the VSO thought the assets would prevent the approval of a claim and recommended the veteran consider filing the claim a year later. VA personnel exercise discretion during the claim review process. According to 38 CFR 3.275, the veteran's income, along with factors such as asset liquidity, the veteran's life expectancy, number of dependents meeting the definition of a member of the family, and potential rate of asset depletion should all be considered when evaluating a claim. The guardian subsequently refused to disclose financial information during each of the next 2 years. In addition, the guardian gifted himself monies from the veteran's

individual retirement and other bank accounts, but refused to pay for physical therapy services for the veteran. The MVC contacted the Elder Abuse and Neglect Hotline in September 2012 to discuss concerns of possible fiduciary abuse by the guardian and the guardian's unwillingness to use the veteran's resources to pay for prescribed physical therapy services.

SAO conclusion: Based on information provided by the MVC, the VSO's decision not to file a pension claim appears adequately supported and the VSO documented this decision in the case file. However, the MVC did not provide written notification of this decision to the guardian. Providing written notification of MVC decisions to guardians could help prevent misunderstandings regarding the status of claims.

Complaint 3 - the VSO provided excuses to a family member of the veteran for over a year as to why the VA had not processed the claim, when in fact, the VSO had failed to file the claim.

MVC position - The veteran was admitted to a MVC home in December 2010. The VSO did not file a pension claim because the VSO could not obtain complete and accurate information due to the veteran being declared legally incapacitated in June 2011 with no one holding Power of Attorney. A family member of the veteran tried to present a Durable Power of Attorney to the MVC in September 2011; however, the MVC could not recognize it because it was drafted after the veteran had been declared incapacitated. Conversations with the veteran's family regarding the MVC not accepting the Durable Power of Attorney are documented in the veteran's medical records. The family member was appointed legal guardian in March 2012 and presented a claim form to congressional staff who helped file the claim.

SAO conclusion: Based on information provided by the MVC, the VSO's decision not to file a pension claim appears adequately supported and the VSO documented this decision in the case file. Although it is documented in the veteran's medical records that a social worker met with the family, the MVC did not provide written notification of why the MVC could not accept the family member's Power of Attorney. Providing written notification of MVC decisions to family members could help prevent misunderstandings regarding MVC actions taken.

Complaint 4 - the VSO failed to file an appeal for a veteran and failed to file a claim on behalf of the veteran's parent.

MVC position - The MVC filed a claim in April 2009 and the claim was denied in July 2009 by the VA. The MVC reopened the claim in October 2009 and new information was submitted. The VA then determined the veteran was 40 percent disabled effective May 2009. The veteran subsequently filed appeals with the VA for other medical conditions and the VA determined the veteran to be 100% disabled effective April 2010.

The MVC VSO office located in St. Charles assisted with filing an April 2009 claim with the VA for a parent (the widow of another veteran) whose claim was unrelated to the claim discussed in the preceding paragraph. Soon after, the parent was admitted to the St. James Veterans Home. When family members asked about the status of the claim, the St. James VSO stated he had no record of a claim being filed, apparently unaware of the previous claim assisted by the St. Charles VSO office. In December 2009, the veteran contacted the MVC to inquire about the status of the parent's claim. The MVC contacted the VA Pension Maintenance Center in December 2009 regarding the status of the claim. In February 2010 the VA Pension Maintenance Center replied that in January 2010 the VA determined the parent was no longer eligible to file a claim since she had passed away and pensions are not passed down to the heirs of the deceased.

SAO conclusion: Based on information provided by the MVC, decisions made by the VSO appear adequately supported and were documented in case files. However, the MVC did not inform the veteran in writing stating when the veteran's claim was filed with the VA. Providing written notification to

veterans that includes the date the claim was filed could help prevent misunderstandings regarding the status of claims. In addition, the VSO at the St. James home was apparently unaware that a claim had already been filed by the St. Charles VSO office. According to MVC officials, the MVC will soon be implementing a new electronic claims system that should eliminate any confusion regarding the filing status of claims.

Complaint 5 - the VSO failed to file a claim for 18 years of retroactive benefits on behalf of a veteran's widow.

MVC position - A family member of the widow wanted to file a retroactive claim at the 2011 pay rate. The VSO did not file the claim because 38 CFR 3.402 states surviving spouses are to receive benefits effective the date of receipt of the claim if the claim is filed more than one year after the veteran's death. It is not uncommon for the VSO, as in this case, to refer veterans and/or legal representatives to their elected officials because the situation would require a change in current law to comply with the veteran's wishes.

SAO conclusion: Based on information provided by the MVC, the VSO's decision not to file the requested retroactive benefit claim appears appropriate. However, the VSO did not maintain supporting documentation of this decision in a case file or provide written notification to the veteran. The MVC's current policy does not require case files to be maintained if the veteran does not reside in a MVC home and claims are not submitted to the VA. Providing written notifications that includes reasons why the VSO did not file a claim and the contact information of elected officials, could help prevent misunderstandings.

Complaint 6 - the VSO failed to file a disability claim until the MVC Director of the Veterans Services Program was contacted. Since the claim was not filed timely, the veteran passed away in 2012 without ever receiving disability benefits.

MVC position - The MVC filed a claim in November 2010 for various medical conditions, including a condition dating back to 1944. The veteran then spoke with the Director of the Veterans Services Program in January 2011. In November 2011, the VA approved disability for one condition, denied another, and stated an error was made in 1944 regarding a medical condition, resulting in the VA denying a portion of the claim. The MVC then filed a Notice of Disagreement in December 2011 for all three medical conditions. In May 2012 the VA increased the approved medical condition from 60 percent disabled to 70 percent disabled.

SAO conclusion: Based on information provided by the MVC, personnel handled this case properly and properly documented decisions in the case file. The MVC had already filed a claim with the VA at the time the veteran contacted the Director of the Veterans Service Program. However, the VSO did not provide written notification informing the veteran of the filing date of the claim. Providing written notification to veterans that includes the date the claim was filed could help prevent misunderstandings regarding the status of claims.

Complaint 7 - the VSO handling of a disability claim is questionable.

MVC position - The VSO filed a claim for 5 medical conditions with the VA in November 2010. The VA approved 2 conditions and denied 3 conditions in August 2011. The VSO filed a Notice of Disagreement and the VA denied the conditions again in March 2013. The MVC, on behalf of the veteran, requested and was granted a hearing with an Administrative Law Judge from the Board of Veterans Appeals. The veteran is currently waiting for the hearing to be scheduled. According to MVC officials, the veteran

believes the Veterans Benefits Administration has overlooked evidence in denying his claim. The MVC attends all administrative hearings and assists with explaining all documentation in the case file.

SAO conclusion: Based on information provided by the MVC, the VSO handled this case appropriately and documented the decisions in the case file. However, the VSO did not provide written notification to the veteran that stated the date the claim was filed. Providing written notifications to veterans that includes the date the claim was filed could help prevent misunderstandings regarding the status of claims.

Overall SAO Conclusions: VSOs decisions regarding the cases reviewed appeared adequately supported and the VSOs documented these decisions in 6 of the 7 case files. However, MVC policies do not require VSOs provide written notification of these decisions to veterans and/or guardians. In addition, for one complaint reviewed, the MVC did not maintain a case file. This is due to the MVC's current policy of not maintaining a case file unless a claim is filed with the VA or the veteran resides in a MVC home. While there are no legal requirements that the MVC has to provide written notification or maintain case files, the lack of notification to the veteran in writing may deprive the veteran of benefits that he or she is entitled. In addition, written notifications coupled with complete case file documentation would help avoid misunderstandings and aid the MVC in the event the handling of claims are questioned. With the MVC implementing a new electronic submission system, the MVC should consider automatically generating written notifications to notify veterans or their guardians of the actions taken by the MVC on their behalf. The MVC should also consider requiring case files be maintained for all veterans requesting assistance.

My office plans to conduct a full and comprehensive audit of the MVC beginning in 2015 and my staff will assess the status of these suggestions during that audit.

Sincerely,

A handwritten signature in black ink, reading "Thomas A. Schweich". The signature is fluid and cursive, with the first name "Thomas" and last name "Schweich" clearly legible, and the middle initial "A" in the center.

Thomas A. Schweich
State Auditor