

**TDVS Benefits Bulletin**  
**21-7**

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**TDVS Updates**

Monthly Lunch and Learn

As a reminder, TDVS's next monthly lunch and learn is scheduled for Wednesday, July 14th, 2021 at 11:30 CST on Tennessee's State Veterans' Homes. The guest speakers will be Executive Director Ed Harries of the Tennessee State Veterans' Homes along with Melanie Cook, Marketing & Public Relations Manager. [Tennessee State Veterans' Homes](#) provide long term skilled nursing care for veterans, veteran spouses, and Gold Star parents at their four locations across the State of Tennessee -- Murfreesboro, Humboldt, Knoxville, and Clarksville. All facilities are governed by the Tennessee State Veterans' Homes Board. Here's a quick preview of Wednesday's learning opportunity --



## Summer/Fall Training Schedule

- July 26<sup>th</sup> to July 30<sup>th</sup> – TDVS Accreditation Course for New Service Officers
- August 24<sup>th</sup> or August 25<sup>th</sup> – (Mandatory) Quarterly Accreditation Training – NVLSP Presents a Live Webinar: Ethics for Veteran Advocates
- September 8<sup>th</sup> – September Lunch and Learn – TBD
- October 13<sup>th</sup> to October 15<sup>th</sup> – (Mandatory) Annual Accreditation Training – Montgomery Bell State Park Inn and Conference Center or Virtual

## **VA and Veteran Benefit Updates**

### Montgomery GI Bill and Post-9/11 GI Bill

Last week, the U.S. Court of Appeals for the Federal Circuit issued an important veteran benefit opinion in [Rudisill v. McDonough](#).

The Court found that veterans who qualify for both Montgomery GI Bill and Post-9/11 GI Bill for multiple periods of military service should be able to draw benefits from each program. At present, VA limits veterans to benefits from one of the education programs. Stay tuned to future Benefits Bulletins to see if VA appeals or implements this decision.

### Yale Law School's Veterans Legal Services Clinic Secures Discharge Status Reviews for Post-9/11 Veterans

A Federal Court recently approved a settlement agreement in *Kennedy v. McCarthy* between the United States Army and a class that includes post-9/11 veterans that received less-than-honorable discharges. The Army will take two actions because of this settlement –

- Review all other-than-honorable discharges given between April 17, 2011 and November 17, 2020 to soldiers who were diagnosed or had symptoms of a mental health condition or brain injury.
- Notify soldiers who received upgrade denials between October 7, 2001 and April 16, 2011 informing them that they can reapply for a status change.

You can find information concerning the settlement on the Army Review Boards Agency [website](#). Here are other tools and resources to assist clients seeking a discharge upgrade –

- VA has a [discharge upgrade tool](#) to guide you in assisting clients through the discharge upgrade process.

- TDVS's Fall 2020 Annual Training – [What Every Veteran Advocate Needs to Know About Discharge Upgrades](#)
- [Tools and resources](#) from the Yale Law School Veterans Legal Services Clinic, which was involved in litigating the settlement agreement.

### **Quality Review Insights**

#### VA Forms 21-4142 & 21-4142a

A reminder – when submitting the VA Form 21-4142/21-4142a, these two forms are submitted together. Please note in VetraSpec at the bottom of the fillable form 21-4142 the large letters and link. The 21-4142 is signed and gives VA permission to request documents from a healthcare provider. The 21-4142a gives VA the information needed to make the request(s). Submitting one without the other will cause VA to send a development letter to the Veteran/family member and could significantly delay the claims process.

Additionally, when submitting these two forms together, the claim with which they are accompanying cannot be processed as a fully developed claim (FDC). If sending the 21-4142/21-4142a, when completing the 21-526ez, choose the benefit type “Standard Claim Process”. If FDC is selected and there are accompanying 21-4142/21-4142a, VA will send a development letter to the Veteran/family member explaining the claim cannot be processed as an FDC. This also causes a delay in claims processing.

### **Practice Like a Pro**

#### Veterans Health Administration – Administrative Review

[Benefits Bulletin 21-6](#) highlighted a recent Court of Appeals for Veterans Claims decision that found that VA decisions under the Caregiver Program are eligible for judicial review. The Court ordered the VA to begin notifying claimants of their right to appeal adverse Caregiver Program determinations to the Board of Veterans' Appeals. However, to be eligible for appeal to the Board of Veterans' Appeals the veteran must have exhausted the administrative review process within the Veterans Health Administration (VHA).

Here's a quick summary of VHA's administrative review process --

A veteran, caregiver or surrogate can appeal an adverse Caregiver Program decision in writing to the Patient Advocate (PA). Please note, representatives of veteran service organizations are not authorized to initiate appeals. PA will mail a Notice of Receipt of Clinical Appeal Letter and will route the appeal through clinical channels for processing. Once a decision has been made, the person who submitted the appeal will be informed of the results through their preferred method of communication. If the decision is unfavorable, a

second level appeal can be submitted. The process for a second level appeal is the same as the initial appeal process. The appeal will be submitted through the PA. The appeal will be routed through the appropriate clinical offices. The person submitting the appeal will be notified of the decision within 60 business days. This second review results in a final decision that can now be appealed to the Board of Veterans' Appeals.

[VHA Directive 1041](#) provides the policy for appealing VHA clinical decisions, including Caregiver Program decisions.

### Speed the Award of Benefits - Partial Rating Decisions

Taking advantage of VA's ability to issue partial rating decisions may speed the award of benefits to the veterans you serve.

A [partial rating decision](#) is a rating decision that provides a decision on some issues of a claim, but defers a decision on at least one other issue, pending the outcome of additional development. For example, a veteran filed an original claim for disability compensation on October 30, 2020. The claim contained 30 contentions and VA completed all development work by April of 2021 except for a C&P examination that had to be redone. Upon learning of the pending rework, TDVS requested VA issue a partial rating decision rather than making the veteran wait for one piece of development. Within a week of the request, 29 of 30 issues were adjudicated, and one issue was deferred allowing the veteran to not only begin receiving compensation but opening the door to several ancillary benefits.

Please reach out to the [Appeals Division](#) if you have a veteran that might benefit from this advocacy technique. We'd be happy to provide model language to support the request and engage the VA Regional Office.

### **Advocate Spotlight**

#### Checks and Balances

An important role of a veteran advocate is to serve as a check on the VA. This month's Advocate Spotlight highlights the importance of checking VA decisions for accuracy – Did VA address all contentions, is the veteran receiving the right amount of compensation, have all dependents been added to the award, etc.

Recently, an Appeals Division team member received an inquiry from a Veteran wishing to check the status of their appeal. The Veteran had appealed for an earlier effective date. After discussion with the Veteran and a review of the VBMS files, the Veteran had been granted an earlier effective date by the BVA, from 2018 back to 2005.

VA incorrectly calculated the retro payment because of the many steps in the decision process and more than one condition being considered eligible for the retroactive award. After performing their own calculations on the retroactive award, the TDVS local appeals team member discovered the discrepancy and pushed the inquiry up to the Regional Office (RO). RO personnel quickly acted to correct the error and sent back appreciation for the “nice save”. This check and subsequent teamwork led to a retro payment for the Veteran of over \$92,000. That is a definite *Go Team Veteran!* collaboration.

*If you have an example of teamwork between Veteran service offices/organizations across the state making a difference in the lives of Tennessee veterans, please share with your Regional Director for possible inclusion in an upcoming “Advocate Spotlight.”*

*TDVS Benefits Bulletins Can Be Found on the [VSO Tools](#) Portion of TDVS's Website*