#### Department of Veterans Affairs M21-1, Part III, Subpart iv

**Veterans Benefits Administration July 15, 2015**

**Washington, DC 20420**

#### Transmittal Sheet

|  |  |
| --- | --- |
| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part III, “General Claims Process,” Subpart iv, “General Rating Process.”***Notes***: * Unless otherwise noted, the term “claims folder” refers to the official, numbered, Department of Veterans Affairs (VA) repository – whether paper or electronic – for all documentation relating to claims that a Veteran and/or his/her survivors file with VA.
* Minor editorial changes have also been made to
* update incorrect or obsolete references
* update obsolete terminology, where appropriate
* reassign alphabetical designations to individual blocks, where necessary, to account for new and/or deleted blocks within a topic
* update section and topic titles to more accurately reflect their content
* clarify block labels and/or block text, and
* bring the document into conformance with M21-1 standards.
 |

|  |  |
| --- | --- |
| Reason(s) for the Change | Citation |
| To add a new Block a providing a definition of evidence and examples of types of evidence that may be in a claims folder. | M21-1, Part III, Subpart iv, Chapter 5, Topic 1, Block a(III.iv.5.1.a) |
| * To add a new Block b providing a definition of rules of evidence.
* To add notes that the Federal rules of evidence do not apply in Department of Veterans Affairs (VA) proceedings and distinguish VA proceedings from Federal proceedings.
* To add a note that a VA General Counsel precedent opinion is considered an administrative issue for effective date purposes.
* To add a note that rules announced in precedent judicial decisions generally apply to all cases that are still open on direct review when the new rule is announced and list an exception.
* To add reference for more information on rules of evidence to *Flynn v. Brown* and *Manio v. Derwinski.*
 | III.iv.5.1.b |
| To add a new Block c to define findings of fact and conclusions of law. | III.iv.5.1.c |
| To remove old Block d information on determining the value of testimony for incorporation at M21-1, Part III, Subpart iv, 5.2. | -- |
| * To remove information on VA’s duty to assist and the need to evaluate all evidence for incorporation into another part of this chapter.
* To add information that the decision maker is to evaluate evidence after verifying proper development and procedures have been followed and specify what this process entails.
 | III.iv.5.1.d |
| To remove old Block e with unnecessary guidance on determining the issues. | -- |
| To add a new Block f with guidance on evaluating evidence and the steps to follow in evaluating evidence. | III.iv.5.1.f |
| To add a new Block g with guidance on the Rating Veterans Service Representative (RVSR) responsibility for reviewing evidence previously located in old M21-1, Part III, Subpart iv, 5.3.a. | III.iv.5.1.g |
| To add a new Block i and provide guidance on the effects of rating schedule readjustment. | III.iv.5.1.i |
| To add a new Block j and provide guidance on the standards of evidentiary proof. | III.iv.5.1.j |
| * To add a new Block k and provide guidance on the reasonable doubt rule.
* To add cross-references to 38 CFR 3.102 and 38 CFR 4.3.
 | III.iv.5.1.k |
| * To add a new Block l on understanding the entitlement criteria that must be proven and make a distinction between conjunctive versus disjunctive criteria.
* To add a cross-reference to 38 CFR 4.21.
 | III.iv.5.1.l |
| To add a new Block m and provide guidance on choosing between two levels of evaluation with discussion of 38 CFR 4.7. | III.iv.5.1.m |
| * To add a new Block n and discuss the role of presumptive provisions.
* To provide a discussion on *Routen v. West* findings that presumption itself is not a form of evidence but has evidentiary value.
* To add cross-references to 38 U.S.C. 1111, 1153, and 1112 as well as M21-1, Part IV, Subpart ii, 2.B.1.f, 2, and 4.
 | III.iv.5.l.n |
| To remove old Topic 2 guidance on evidence to consider for incorporation into another topic. | -- |
| To relocate and revise the content on evidentiary concepts found in old Topic 4 to Topic 2. | III.iv.5.2 |
| To remove old Block a on types of evidence to consider as this has been incorporated in other sections to include M21-1, Part III, Subpart iv, 5.3.  | -- |
| To add a new Block a and provide guidance on admissibility of evidence. | III.iv.5.2.a |
| To add additional guidance on what constitutes credible evidence and include related examples of what constitutes credible evidence. | III.iv.5.2.b |
| To add a new Block c with a definition and examples of what constitutes competent evidence. | III.iv.5.2.c |
| To add revise the definition of probative value. | III.iv.5.2.d |
| To remove old Topic 4, Blocks d, e, f, g, and h. | -- |
| To add a new Block e on determining the probative value of evidence to include other considerations when determining how much weight to assign to evidence. | III.iv.5.2.e |
| To add a new Block f with definitions of positive and negative evidence. | III.iv.5.2.f |
| To add a new Block g and provide guidance on court holdings on negative evidence. | III.iv.5.2.g |
| To add a new Block h and provide guidance on court holdings on negative evidence and the duty to assist. | III.iv.5.2.h |
| To remove old Topic 3 on responsibility for reviewing evidence for incorporation into another topic. | -- |
| To relocate and revise the content on evaluating medical evidence found in old Topic 5 to Topic 3. | III.iv.5.3 |
| To remove old Topic 5, Block a guidance on the RVSR responsibility for reviewing evidence as this has been relocated to M21-1, Part, III, Subpart iv, 5.1.g. | -- |
| To add a new Block a and provide guidance related to a treating physician’s treatment background and probative value. | III.iv.5.3.a |
| To remove old Topic 5, Blocks b and c. | -- |
| To add a new Block b with the definitions of the types of medical assessments. | III.iv.5.3.b |
| * To add a new Block c with guidance on probative value as it relates to medical assessments based on history and policy applications.
* To add reference to *Reonal v. Brown* and *Coburn v. Nicholson*.
 | III.iv.5.3.c |
| To add a new Block d with discussion of Disability Benefits Questionnaires (DBQs) and the Acceptable Clinical Evidence (ACE) Program. | III.iv.5.3.d |
| To remove information on when to reject medical evidence as this now appears in another part of this chapter. | III.iv.5.3.e |
| To remove information on citing medical treatises as this information is duplicate of other information in this block. | III.iv.5.3.f |
| To provide guidance that a current disability and a nexus are required to award service connection. | III.iv.5.3.h |
| To relocate and revise the content reviewing hospital reports for sufficiency for rating purposes found in old Topic 7 to add Topic 4. | III.iv.5.4 |
| * To add a new Block c on requesting clarification from private physicians.
* To add cross-references to 38 CFR 4.2, *Savage v. Shinseki*, and M21-1, Part I, Subpart I, Section C, Topic 2.
 | III.iv.5.4.c |
| To remove old Topic 6 on insufficient examinations as this now is discussed in new Topic 4. | III.iv.5.6 |
| To add reference to 38 U.S.C. 1154(a). | III.iv.5.6.a |
| To provide information on lay evidence and when it may be accepted. | III.iv.5.6.b |
| To provide guidance that non-VA evidence does not have inherently less probative value than evidence originated by VA. | III.iv.5.8.a |
| To add references for more information on weighing medical evidence/opinions to *Nieves-Rodriguez v. Peake* and *Stefl v. Nicholson*. | III.iv.5.9.b |
| To add references for more information on awarding benefits when all of the evidence is favorable to *Traut v. Brown* and *Rose v. West*. | III.iv.5.9.c |
| * To provide information that an examiner’s statement of being unable to render an opinion should not be characterized as “non-evidence.”
* To add references to *Gilbert v. Derwinski*, *Ortiz v. Principi*, and M21-1, Part III, Subpart iv, Chapter 5, Topic 1.
 | III.iv.5.9.e |
| To add reference to *Forshey v. Principi* and *Maxson v. Gober*. | III.iv.5.9.g |
| To remove old Topic 13 which contained unnecessary guidance on handling other consideration in the analysis. | -- |
| To add a new Topic 10 on decision making principles. | III.iv.5.10 |
| To add a new Block a with guidance on evaluation of evidence and responsibilities of the decision maker. | III.iv.5.10.a |
| To add a new Block b and provide guidance on decision making in a non-adversarial system. | III.iv.5.10.b |

|  |  |
| --- | --- |
| Rescissions | None |

|  |  |
| --- | --- |
| Authority | By Direction of the Under Secretary for Benefits |

|  |  |
| --- | --- |
| Signature | Thomas J. Murphy, DirectorCompensation Service |

|  |  |
| --- | --- |
| Distribution | LOCAL REPRODUCTION AUTHORIZED |