#### Department of Veterans Affairs M21-1, Part IV, Subpart ii

**Veterans Benefits Administration May 14, 2014**

**Washington, DC 20420**

#### Transmittal Sheet

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| Changes Included in This Revision | The table below describes the changes included in this revision of Veterans Benefits Manual M21-1, Part IV, “Compensation, DIC and Death Compensation Benefits,” Subpart ii, “Compensation.” ***Notes***: * The term “regional office” (RO) also includes pension management center (PMC), where appropriate.
* 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 the term “veteran” to “Veteran”
* update obsolete terminology, where appropriate
* renumber each topic based on the standard that the first topic in each section is Topic 1
* 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.
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| Reason(s) for the Change | Citation |
| To revise block to provide basic introductory information for entitlement under 1151. The remainder of Topic 1 includes more detailed entitlement information to supplement this block. | M21-1, Part IV, Subpart ii, Chapter 2, Section G, Topic 1, Block a (IV.ii.2.G.1.a) |
| * To include instructions for a five part analysis for consideration of a claim under 38 U.S.C. 1151. This block supplements Block a to provide detailed entitlement criteria for 1151 claims.
* To move material on hospital care from former Block b to Blocks d and h.
 | IV.ii.2.G.1.b |
| * To move information on causation and fault to Blocks h through j.
* To relocate information on determining whether a disability exists for 1151 claims from Block d to Block c.
* To include guidance that psychiatric disabilities are covered under 38 U.S.C. 1151, per VAOPGCPREC 01-99.
 | IV.ii.2.G.1.c |
| To include definitions for hospital care, medical or surgical treatment and examination. | IV.ii.2.G.1.d |
| * To relocate information on fault from prior Block e to new Blocks i through k and q.
* To include guidance on what types of care are covered as a part of VA hospital care, medical or surgical treatment, or examination.
* To relocate guidance from *Mangham v. Shinseki* (previously located at M21-1, IV.ii.1.A.3.a) directing that domiciliary care is not considered hospital care for 1151. purposes.
* To include guidance from VAOPGCPREC 01-99 directing that disability or death resulting from independent causes occurring coincident with treatment or examination are not covered under 38 U.S.C. 1151.
 | IV.ii.2.G.1.e |
| * To relocate the definitions of consent from Block f to Blocks l through n.
* To incorporate guidance on the statutory authority for coverage of injuries sustained as a part of vocational rehabilitation service.
* To incorporate cross references to establishing causation for claims based on vocational rehabilitation services.
 | IV.ii.2.G.1.f |
| * To move information on establishing that an event is not reasonably foreseeable from Block g to Block k.
* To incorporate guidance on the statutory authority for coverage of disability or death caused by participation in a Compensated Work Therapy (CWT) program.
* To incorporate a note documenting the effective date for coverage for disability or death caused by participation in a CWT program, as authorized in *PL 106-419*.
 | IV.ii.2.G.1.g |
| * To move information directing that compensation under 38 U.S.C. 1151 is not the same as service-connected (SC) compensation from Topic 1, Block h to Topic 3, Block b.
* To incorporate guidance on the definition of proximate cause, previously covered in Block c, to Block h.
* To incorporate guidance from VAOPGCPREC 01-99 and *Sweitzer v. Brown* directing that disabilities arising from independent causes occurring coincident with the examination or the process of reporting to examination are not covered under 38 U.S.C 1151.
* To incorporate guidance from *Viegas v*. *Shinseki* directing that causation may be established when a disability arises as a result of VA’s installation and maintenance of the equipment necessary for treatment to occur.
 | IV.ii.2.G.1.h |
| * To move information directing that direct and presumptive SC should not be routinely put into issue for 1151 claims from Topic 1, Block I to Topic 4, Block a.
* To add information on identifying and explaining the fault requirement.
 | IV.ii.2.G.1.i |
| * To move information on obtaining medical evidence and opinions from Topic 1, Block j to Topic 3, Block g.
* To move information on establishing fault associated with proximate cause from Block e to Block j.
 | IV.ii.2.G.1.j |
| * To relocate the information on care in non-VA facilities or contract care from Block k to Block e.
* To move information on determining when an event is not reasonably foreseeable from Block g to Block k.
* To incorporate information from *Schertz v. Shinseki* defining the correct standard for determining whether an event is reasonably foreseeable.
 | IV.ii.2.G.1.k |
| * To add a block defining informed consent and informed consent procedures per *McNair v. Shinseki* and *Halcomb v. Shinseki*
* To add reference to the consent requirement change as amended by *PL 104-204*.
 | IV.ii.2.G.1.l |
| * To relocate information on express and implied consent previously included in Block f to Blocks m and n.
 | IV.ii.2.G.1.m-n |
| To add a new block describing what the evidence must show to establish proximate cause for 1151 claims based on participation in vocational rehabilitation or CWT. | IV.ii.2.G.1.o |
| To add a new block describing how to determine whether a disability is due to natural progression of disease or whether a disability is due to failure to diagnose or treat a pre-existing condition. | IV.ii.2.G.1.p |
| To add a new block describing the difference between the fault requirement under 38 CFR 3.358 versus 38 CFR 3.361. | IV.ii.2.G.1.q |
| To add a new block describing the difference between the definition of hospitalization under 38 CFR 3.358 versus hospital care under 38 CFR 3.361.  | IV.ii.2.G.1.r |
| To reorganize the content of Topic 2 to include guidance on specific instances of causation. | IV.ii.2.G.2 |
| * To delete the prior Block a, as this information is now included in M21-1, IV.ii.2.G.1.d and e.
* To delete the information on natural progression, as natural progression is now covered in M21-1, IV.ii.2.G.1.p.
 | IV.ii.2.G.2.a |
| To relocate information previously included in old M21-1, IV.ii.2.G.34.e regarding disabilities resulting from vocational rehabilitation and CWT training to M21-1, IV.ii.2.G.1.f. | ---- |
| To add a new topic with information on procedures for considering a claim for benefits under 38 U.S.C. 1151. | IV.ii.2.G.3 |
| * To relocate information on the requirements for a claim for benefits under 38 U.S.C. 1151, previously included at M21-1, IV.ii.1.A.3.f.
* To relocate information directing that a claim for benefits under 38 U.S.C. should not be solicited, previously included at M21-1, III.ii.2. B.7.c.
 | IV.ii.2.G.3.a |
| To move information directing that compensation under 38 U.S.C. is not the same as service-connected compensation, previously included at M21-1, IV.ii.2.G.33.h. | IV.ii.2.G.3.b |
| To add a block to direct that SC may be established for disabilities that are secondary to disability compensated under 38 U.S.C. 1151. This information was previously included as a note in M21-1, IV.ii.2.G.33.a | IV.ii.2.G.3.c |
| To move information on granting benefits under 38 U.S.C. 1151 based on aggravation from M21-1, IV.ii.2.G.35.a. | IV.ii.2.G.3.d |
| To relocate information directing that compensation under 38 U.S.C. 1151 confers eligibility to compensation for paired organs or extremities, previously included at M21-1, IV.ii.1.A.3.e. | IV.ii.2.G.3.e |
| To add a new block directing that relevant records be obtained in prior to deciding a claim for benefits under 38 U.S.C. 1151. | IV.ii.2.G.3.f |
| * To relocate information on requesting medical opinions in 1151 claims, previously included at M21-1, IV.ii.2.G.33.j.
* To add information on the threshold for requesting an examination and/or medical opinion in 1151 claims, per *Trafter v. Shinseki.*
 | IV.ii.2.G.3.g |
| To relocate information on requesting advisory opinions in 1151 claims, previously included at M21-1, IV.ii.2.G.35.h. | IV.ii.2.G.3.h |
| To relocate information directing the direct or presumptive SC should not be routinely put at issue in 1151 claims, previously included at M21-1, IV.ii.2.G.33.i. | IV.ii.2.G.4.a. |
| To revise and relocate information on preparing *Reasons for Decision* in 1151 ratings in compliance with automated decision letter (ADL\_ standards, previously included at M21-1, IV.ii.2.G.c and d. | IV.ii.2.G.4.b-c |
| To relocate information on assigning effective dates for 1151 claims, previously included at M21-1, IV.ii.1.A.3.d | IV.ii.2.G.4.d |

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| Rescissions | None |

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

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| Signature | Thomas J. Murphy, DirectorCompensation Service |

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| Distribution |  |