## Section A. Evaluating Competency

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 | Guidelines for Evaluating Competency |
| 2 | Considering Competency While Evaluating Evidence |
| 3 | Process for Making Competency Determinations |
| 4 | Changing Competency Status |
| 5 | Evaluating Competency in Special Circumstances |

#### 1. Guidelines for Evaluating Competency

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| Introduction | This topic contains information on the guidelines for evaluating competency, including   * jurisdiction for competency determinations * effect of judicial findings on rating activity decisions related to competency * presuming competency * making a finding of incompetency, and * considering the Veterans Service Center Manager’s (VSCM’s) opinion regarding competency. |

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| Change Date | August 27, 2015 |

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| a. Jurisdiction for Competency Determinations | Jurisdiction on competency determinations for Department of Veterans Affairs (VA) purposes is dependent on the stage of the process the decision is in.  Use the table below to determine jurisdiction of the competency  determination. |

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| **If ...** | **Then ...** |
| * an initial competency determination is needed, and * *no* court decree of incompetency or court appointment of a fiduciary by reason of incompetency has been received | the rating activity at the original station of origination (SOO) has sole authority to make the original competency determination. |
| * an initial competency determination is needed, and * either a court decree of incompetency or court appointment of a fiduciary by reason of incompetency has been received | a proposal of incompetency/due process is not required per [38 CFR 3.353(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=c8a9d8c42f99e567ddd918e370817379&mc=true&node=se38.1.3_1353&rgn=div8). The claims folder may be referred directly to the fiduciary hub for appointment of a fiduciary.  ***Reference***:For more information on referral of court documents to the fiduciary hub, see M21-1, Part III, Subpart iv, 8.A.5. |
| * a finding of incompetency has been proposed, and * *no* additional medical evidence or request for a hearing has been received | the Fiduciary Service Representative (FSR) has the authority to finalize the competency determination.  ***Important***: The FSR does *not* have the authority to overturn the proposed competency decision. |
| * a finding of incompetency has been proposed, and * either additional medical evidence *or* a request for a hearing has been received | the rating activity co-located with the fiduciary hub has the authority to make the final competency determination. |
| * an appeal is received regarding a competency determination, and * the competency determination was completed by the fiduciary hub | the Veterans Service Center (VSC) co-located with the fiduciary hub has jurisdiction over the appeal. |
| * an appeal is received regarding a competency determination, and * the competency determination was completed by a VSC/Pension Management Center (PMC) | the VSC/PMC that completed the competency determination has jurisdiction over the appeal. |
| an appeal is received regarding the appointment of a fiduciary | the fiduciary hub handles all appeals of fiduciary appointments. |

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| ***Reference***: For more information on competency determinations, see   * [38 CFR 3.353(b)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1353&rgn=div8) , and * M21-1, Part III, Subpart iv, 8. |

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| b. Effect of Judicial Findings on Rating Activity Decisions Related to Competency | Judicial findings of a court with respect to competency of a Veteran are not binding on the rating activity.  However, if a Veteran is declared by a court to be incompetent, develop all necessary evidence for a rating determination. |

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| c. Presuming Competency | In the absence of clear and convincing evidence to the contrary, presume that a person is competent.  ***Reference***: For more information on presuming competency, see [38 CFR 3.353(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1353&rgn=div8). |

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| d. Making a Finding of Incompetency | A finding of incompetency cannot be made without a definite expression by a responsible medical authority unless the medical evidence of record is   * clear * convincing, and * leaves no doubt as to the beneficiary’s incompetency.   ***Note****:*If competency of a VA beneficiary is raised without relevant medical evidence or statement from a responsible medical authority, development must be undertaken for medical evidence before the case can be forwarded to the rating activity.    ***References***: For more information on   * prescribed standard forms, see M21-1, Part III, Subpart ii, 2.B.1 * medical authority in a finding of competency, see [38 CFR 3.353(c)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1353&rgn=div8), and * end products (EPs), see M21-4, Appendix B. |

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| e. Considering the VSCM’s Opinion Regarding Competency | After development of information with regard to social, economic, and industrial adjustment, the Veterans Service Center Manager (VSCM) may be of the opinion that a beneficiary rated, or proposed to be rated, incompetent is actually capable of handling, without limitation, the funds payable. In this case, he/she will refer the evidence and finding to the rating activity.  The rating activity should consider the VSCM’s finding as new evidence and, after any necessary additional development, prepare a rating based on the evidence of record.  ***Reference***: For more information on procedures related to evidence of incompetency, see M21-1, Part III, Subpart iv, 8.A.2. |

#### 2. Considering Competency While Evaluating Evidence

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| Introduction | This topic contains information about considering competency while evaluating the evidence, including   * considering whether to address competency of a Veteran * the competency of a child incapable of self-support, and * the competency of [other beneficiaries](#_c.__Considering). |

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| a. Considering Whether to Address Competency of a Veteran | If the claimant is a Veteran, consider whether to address competency in a decision whenever qualifying evidence raises a question as to the mental capacity to contract or to manage his/her own affairs, including disbursement of funds without limitation.  When addressing competency, it is ***not*** required to make a separate issue on the rating decision unless incompetency is proposed *or* a previous rating of incompetency is being reconsidered.  Use the table below for guidance on what action, if any, to take on the matter of competency. |

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| **If the evidence...** | **Then ...** |
| suggests but does not clearly and convincingly show that the person is incapable of managing the VA benefit payment without limitation | * do not develop * do not propose incompetency, and * state in the narrative of the rating decision issue that there was no clear and convincing evidence of incompetency. |
| clearly and convincingly shows that the person is incapable of managing the VA benefit payment without limitation | propose incompetency. |

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| ***Important***:   * Competency generally *must* be addressed in cases where a mental condition is evaluated as totally disabling. This includes * when individual employability (IU) is awarded on the basis of a single mental health disability, and * when assigning a temporary total evaluation for a mental disorder under [38 CFR 4.29](http://www.ecfr.gov/cgi-bin/text-idx?SID=fb2fa87e2740e7b548397ebe1093bf66&node=se38.1.4_129&rgn=div8). * The mere existence of a mental condition with a total evaluation does not automatically correlate to a Veteran’s inability to manage his/her benefits, but many of the symptoms warranting a total disability evaluation could render the Veteran unable to manage benefits. * Carefully consider the facts in these cases to determine whether the regulatory standard warrants a proposal of incompetency. When the evidence shows the Veteran is competent, address the competency determination as part of the narrative within the mental condition issue.   The following text has been added to the glossary as *VA COMPETENT* within the Veterans Benefits Management System- Rating (VBMS-R) for selection in these cases:  *There is no evidence of record that shows that you are unable to manage your financial affairs.*  ***References***: For more information on   * the presumption of competency, see M21-1, Part III, Subpart iv, 8.A.1.c * the evidentiary standard for proposing incompetency, see M21-1, Part III, Subpart iv, 8.A.1.d, and * subordinate issues and ancillary benefits, see M21-1, Part III, Subpart iv, 6.B.2. |

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| b. Considering the Competency of a Child Permanently Incapable of Self-Support | If the claimant is a child over the age of 18 and permanently incapable of self-support, the rating activity must resolve the issue of competency for the child because entitlement depends upon permanent incapacity for self-support due to physical or mental disability.  If incapacity is due to mental disability   * consider competency a factor in determining whether the child is permanently incapable of self-support * determine competency under the same criteria applicable to Veterans, and * record the determination in a rating.   ***Note***: Since the incompetency procedures referred to in M21-1, Part III, Subpart v, 9.B.3 are for payment purposes, do not apply those procedures *except* in cases where the child would receive direct payment in his/her own right.  ***References***: For more information on   * due process procedures in incompetency cases, see M21-1, Part III, Subpart v, 9.B.3, and * conditions which determine permanent incapacity for self-support, see [38 CFR 3.356](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1356&rgn=div8). |

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| c. Considering the Competency of Other Beneficiaries | If there is evidence of incompetency and the claimant is another beneficiary, such as a surviving spouse, parent, or VA insurance beneficiary   * consider competency a rating issue under [38 CFR 3.353](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1353&rgn=div8) *except* when there has been a judicial determination of incompetency, and * propose a rating on the issue or undertake any required development.   ***References***: For more information on   * processing judicial determinations of incompetency, see M21-1, Part III, Subpart v, 9.B.2.g * processing a court decree of incompetency or court appointment of a fiduciary by reason of incompetency, see M21-1, Part III, Subpart v, 9.B.2.f, and * processing a court appointment of a fiduciary without a judicial determination of incompetency, see M21-1, Part III, Subpart v, 9.B.2.e. |

#### 3. Process for Making Competency Determinations

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| Introduction | This topic contains information about the process for making competency determinations, including   * making initial competency determinations based on medical evidence * jurisdiction of a final competency determination, and * making final competency determinations when additional medical evidence or a hearing request is received. |

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| a. Making Initial Competency Determinations Based on Medical Evidence | The regional office (RO) is responsible for all initial competency determinations based on medical evidence. The table below describes the actions involved in making initial competency determinations based on receipt of medical evidence. |

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| Step | Responsible Employee | Action |
| 1 | Rating Veterans Service Representative (RVSR) or designee | * Prepares a rating decision proposing a finding of incompetency after receiving clear and convincing evidence that a payee is incapable of managing his/her own affairs, including disbursement of funds without limitation, and * ensures that the facts contained in the proposed rating decision are complete so that they do not need to be repeated in the final rating decision.   ***Note***: If there is a finding of incompetency by a court, a rating is not necessary for any payee besides a Veteran. For all payees, however, a court adjudication waives the due process requirement. |
| 2 | Veterans Service Representative (VSR) or designee | * Provides the payee notice of * the proposed incompetency rating, and * the opportunity for a hearing * clears any pending EP that would normally be taken at this point, including releasing monthly benefits * notifies power of attorney (POA), if applicable, per M21-1, Part I, 3.B.3, and * establishes a one-month diary using the *Local Regional Office – Special* with remarks *Incomp Due Process*.   ***Note***: Send e-mail notification of the proposed incompetency rating, along with the beneficiary's name and claim number, to the fiduciary hub of jurisdiction. |

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| ***References***: For more information on   * due process requirements for incompetency determinations, see M21-1, Part III, Subpart v, 9.B.3 * jurisdiction for competency decisions, see M21-1, Part III, Subpart iv, 8.A.2.a * determining when a competency rating is needed after a decree by a court, see M21-1, Part III, Subpart iv, 8.A.5.b, and * decree by a court as notice and hearing, see M21-1, Part III, Subpart iv, 8.A.5.a. |

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| **b. Jurisdiction of a Final Competency Determination** | Use the table below to determine jurisdiction of the final competency determination. |

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| **If ...** | **Then the...** |
| no evidence is received during the due process period | FSR at the fiduciary hub has jurisdiction to finalize the previously-proposed competency determination.  ***Important***: The FSR does not have authority to change the previously-proposed competency decision. |
| * a hearing has been requested regarding the competency determination, or * additional medical evidence concerning the issue of competency has been received | RVSR at the RO co-located with the fiduciary hub has jurisdiction of the final determination. |

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| **c. Making Final Competency Determinations When Additional Medical Evidence or a Hearing Request Is Received** | The table below describes the appropriate process for making final competency determinations at the RO co-located with the fiduciary hub when additional medical evidence or a hearing request is received. |

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| Step | Responsible Employee | Action |
| 1 | Fiduciary hub employee | * transfers the claims folder to the RO co-located with the fiduciary hub upon receipt of * a request for hearing concerning the competency determination, or * additional medical evidence concerning the competency determination * transfers jurisdiction of the EP 600 from the fiduciary hub to the RO co-located with the fiduciary hub, and * closes the tracked item in VBMS or Modern Awards Processing – Development (MAP-D) and changes the claim status to *Inter-office action required: Additional Competency Evidence to VSC.* |
| 2 | VSR at the RO co-located with the fiduciary hub | * monitors workload management reports for claims with the status of *Inter-office action required: Additional Competency Evidence to VSC,* and * provides the claims folder for RVSR review and final decision preparation. |
| 3 | RVSR at the RO co-located with the fiduciary hub | * conducts all requested hearings concerning the competency determination * reviews all additional medical evidence received since the initial proposal of a finding of incompetency, and * issues a final decision based on all the evidence of record. |
| 4 | VSR at the RO co-located with the fiduciary hub | * If the beneficiary is rated competent * processes any award actions * sends notification to the beneficiary * clears the pending EP 600, and * returns the claims folder jurisdiction to the SOO. * If the beneficiary is rated incompetent * processes any award actions * sends notification to the beneficiary * completes *VA Form 21-592,*  *Request for Appointment of a Fiduciary, Custodian, or Guardian,* and * sends it to the fiduciary hub.   ***Note***: The fiduciary hub subsequently establishes an EP 290 and releases retroactive benefits upon appointment of a fiduciary, if appropriate. |

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| ***References***: For more information on   * jurisdiction of a final competency determination, see M21-1, Part III, Subpart iv, 8.A.3.b * processing a beneficiary’s request for a hearing, see M21-1, Part III, Subpart v, 9.B.3.h, and * determining when a competency rating is needed after a decree by a court, see M21-1, Part III, Subpart iv, 8.A.5.b. |

4. Changing Competency Status

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| Introduction | This topic contains information about changing competency status, including   * proposing incompetency * determining restored competency * limitations after competency is restored, and * evidence required to restore competency. |

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| a. Proposing Incompetency | Issue a rating proposing a change in competency status if the evidence of record will result in a change in competency status from competent to incompetent.  This proposal may be included in a rating addressing other issues, such as evaluation of a mental disorder.  ***Reference***: For more information on procedures to follow upon receipt of evidence of incompetency, see M21-1, Part III, Subpart iv, 8.A.1. |

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| b. Determining Restored Competency | In any case in which the beneficiary has previously been rated incompetent, take necessary development and rating action to determine whether competency has been regained if so indicated in a   * hospital summary * report of release to or discharge from non-bed care, or * report of other material change in condition. |

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| c. Limitations After Competency Is Restored | Restored competency does not in and of itself   * warrant a reduction in the evaluation of a Veteran’s disability, or * establish that a parent or surviving spouse is no longer entitled to Aid and Attendance (A&A). |

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| d. Evidence Required to Restore Competency | Any evidence showing the beneficiary may be capable of handling funds should be referred to the rating activity. The rating activity will consider this evidence, along with all other evidence of record, to determine whether competency should be restored.  Under [38 CFR 3.353(b)(3)](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1353&rgn=div8), a beneficiary is not required to undergo a psychiatric examination and/or field examination before his/her competency may be restored. However, a current psychiatric examination and/or field examination may be requested if needed to properly evaluate the beneficiary’s mental capacity to handle his/her own funds. |

#### 5. Evaluating Competency in Special Circumstances

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| Introduction | This topic contains information about evaluating competency in special circumstances, including   * decree by a court as notice and hearing * determining when a competency rating is needed after a decree by a court * procedures for payee found incompetent by court decree or court appointment of a fiduciary by reason of incompetency * procedures following receipt of court decree restoring competency * VSR actions when reinstating benefits for a Veteran previously rated incompetent * RVSR actions when reinstating benefits for a Veteran previously rated incompetent, and * referral to fiduciary hub after reinstating benefits for a Veteran with a continued finding of incompetency. |

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| Change Date | November 13, 2015 |

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| **a. Decree by a Court as Notice and Hearing** | A payee may be considered to have had notice and hearing under the laws of the State so that additional notice and hearing are not required when   * the payee has been found by a court of jurisdiction to be incompetent, or * a court having jurisdiction has appointed a guardian by reason of incompetency for a payee. |

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| b. Determining When a Competency Rating Is Needed After a Decree by a Court | Use the table below to decide how to proceed with a competency rating of payees who have been found incompetent by a court decree. |

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| If determining the competency of … | Then … | |
| non-Veteran beneficiaries such as a   * parent * surviving spouse, or * child permanently incapable of self-support | a rating (proposed or final) is not required except for children permanently incapable of self-support who are over age 18 and potentially entitled to payment of benefits.  ***References***: For more information on   * a child’s permanent incapacity for self-support, see M21-1, Part III, Subpart iii, 7, and * considering the competency of a child permanently incapable of self-support, see M21-1, Part III, Subpart iv, 8.A.2.b. | |
| a Veteran | judicial findings of a court with respect to the competency of a Veteran are not binding on the rating activity. In such cases,   * develop all necessary evidence for a rating activity determination, such as * an examination * hospital observation, or * a field examination * give great weight to a * court decree of incompetency, and * the inability to manage financial affairs, and * do not make a rating of competency unless there is clear and convincing evidence of that fact.   ***Note***: If the Veteran continues to be rated competent, mention whether the court made a parallel determination or whether the court made a different determination. |

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| **c. Procedures for Payee Found Incompetent by Court Decree or Court Appointment of a Fiduciary by Reason of Incompetency** | The table below describes the appropriate action to take for a payee when an RO receives a court decree of incompetency or a court appointment of a fiduciary by reason of incompetency. |

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| Step | Responsible Employee | Action |
| 1 | VSR | Refers the court documents to the fiduciary hub using   * *VA Form 21-592,* if not already provided, or * memorandum or letter, if *VA Form 21-592* was previously furnished, and * a copy of the decree of incompetency or the letters of appointment of a fiduciary.   ***Notes***:   * Do not establish EP 290 at the RO. * Do not refer for rating action at this point. |
| 2 | Fiduciary hub personnel | Establishes EP 290. Follow fiduciary hub procedures to establish a fiduciary.  For a non-Veteran beneficiary, no further action is warranted.  For a Veteran beneficiary, refers the case to the co-located RO for a formal incompetency rating. |
| 3 | RVSR at RO co-located with fiduciary hub | Completes a final formal incompetency rating for the Veteran beneficiary. |
| 4 | VSR at RO co-located with fiduciary hub | * If the Veteran is rated competent * processes any award actions * sends notification to the beneficiary * clears the pending EP 600, and * return the claims folder jurisdiction to the SOO. * If the beneficiary is rated incompetent * processes any award actions, * sends notification to the beneficiary, and * sends notification to the fiduciary hub.   ***Note***: The fiduciary hub subsequently establishes EP 290 and releases retroactive benefits, if appropriate. |

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| d. Procedures Following Receipt of Court Decree Restoring Competency | Use the table below to determine the appropriate action after receipt of a court decree restoring competency of a Veteran or other payee previously found to be incompetent. |

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| If a court decree … | Then … |
| declares a Veteran, previously rated incompetent, competent | * take the necessary development action, and * prepare a new rating, prominently entering a notation of the court’s declaration on the rating, if incompetency is confirmed and continued. |
| applies to a non-Veteran beneficiary for whom a rating of incompetency is not required | request the VSCM to promptly certify the validity of the decree so that direct payments may be made to the beneficiary. |

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| **e. VSR Actions When Reinstating Benefits for a Veteran Previously Rated Incompetent** | Use the table below to determine the appropriate actions following receipt of a request to reinstate benefits for a Veteran previously-rated incompetent, whose benefits were terminated due to   * failure to submit *VA Form 21-0516-1, Improved Pension Eligibility Verification Report* * failure to report for VA reexamination per [38 CFR 3.655](http://www.ecfr.gov/cgi-bin/text-idx?SID=fd8d3f4d7e6a5698b75c2553ed05cab4&mc=true&node=se38.1.3_1655&rgn=div8) * failure to notify VA of whereabouts, or * similar instance of failure to participate in the claims process. |

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| **If new medical evidence...** | **Then the VSR will...** |
| is not received with the request to reinstate benefits | reinstate benefits, as warranted, with continuation of the prior incompetency determination without rating action. |
| is received with the request to reinstate benefits | refer the newly-received medical evidence to RVSR for review for competency determination. |

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| **f. RVSR Actions When Reinstating Benefits for a Veteran Previously Rated Incompetent** | Use the table below to determine the appropriate actions after a VSR has referred a claims folder for RVSR review due to the receipt of new medical evidence from a Veteran previously-rated incompetent who is now requesting reinstatement of benefits. |

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| **If the medical evidence received...** | **Then ...** |
| * shows the Veteran continues to be incompetent, or * does not address the Veteran’s competency | no rating action is necessary.  RVSR should prepare *VA Form 21-6789, Deferred Rating Decision*, instructing resumption of benefits (as warranted) with the continuation of the prior finding of incompetency. |
| indicates that the Veteran is now competent | RVSR should issue a rating decision addressing the issue of competency.  ***Reference***: For more information on determining restored competency, refer to M21-1, Part III, Subpart iv, 8.A.4.b. |

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| **g. Referral to Fiduciary Hub After Reinstating Benefits for a Veteran With a Continued Finding of Incompetency** | When an incompetent Veteran’s benefits are reinstated with a continued finding of incompetency, as directed in M21-1 Part III, Subpart iv, 8.A.5.d-e, notify the fiduciary hub of jurisdiction via the appropriate fiduciary hub mailbox as shown by selecting the appropriate fiduciary hub location from the list below.   * [Columbia Fid-Hub e-mail](mailto:vavbacms/ro/fid@va.gov) * [Louisville Fid-Hub e-mail](mailto:vavbalou/ro/fidhub) * [Lincoln Fid-Hub e-mail](mailto:vavbalin/ro/fidhub) * [Indianapolis Fid-Hub e-mail](mailto:ind.fidhub@va.gov) * [Salt Lake City Fid-Hub e-mail](mailto:vbawa.hub@va.gov) * [Milwaukee Fid-Hub e-mail](mailto:VAVBAMIW/RO/FidHub)   ***Note***: The fiduciary hub will consider whether the prior failure to submit necessary information for continuance of benefits indicates the need for appointment of a different fiduciary. |