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**Chapter 2 - Preliminary Development of Claims**

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**2.01 DEFINITION OF A CLAIM**

a.    Any communication from the insured or anyone representing him or her, whether by letter, form, or any other writing, which indicates an intent to file claim for disability insurance benefits will be accepted as a claim.

b.    The claim may be on a form prescribed by VA (formal claim) or in another form (informal claim). There is no difference in the effect of a formal or informal claim. An informal claim has all the attributes of a formal claim and the same adjudicative procedure must follow.  This does not bar Live Claims from requesting a formal claim, if all necessary information is not provided on the informal claim.

c.    Whenever the word "claim" is used, it means a formal or informal claim.

d.    The intent to file may be either expressed or implied. A VA employee may not file a claim on an insured’s behalf, unless they are acting within the authority granted to them as a VA fiduciary, power of attorney or legal guardian.

e.    If it is determined that a written communication does not constitute a claim, see M29-1, Part III, Chapter 4, for extenuating circumstances before denying the request.

f.     While title 38 United States Code 5100-5109B apply to insurance, title 38, Code of Federal Regulations, 3.150 through 3. 161, do not.

**2.02 NECESSITY FOR CLAIM**

a.    The law requires the filing of a claim as a prerequisite for granting disability insurance benefits (premium waiver).

b.    A claim after death for insurance benefits is a claim for waiver of premiums.

**2.03 UNSIGNED CLAIMS**

The absence of a signature does not invalidate a claim if the insured prepared or caused a claim to be prepared. If the insured did not sign the claim, appropriate development should be undertaken to determine if he or she prepared or authorized the action.

**2.04 CLOSING OF CLAIMS**

a.    Once a valid claim has been received, it may not be closed unless there is clear evidence establishing that the claim should be closed. Generally, it would take positive evidence, such as a request for withdrawal of claim, to dispose of the claim.

b.    If the insured does not respond indicating whether they desire to withdraw their disability claim, the claim will be denied for failure to prosecute, under applicable adjudicative procedures.

**2.05 ADJUDICATION PROCEDURES UPON RECEIPT OF MATERIAL WHICH MAY NOT**

 **BE A VALID CLAIM**

1. When evidence of potential total disability is received in the Live Claims Section, the Claims Examiner will:

1.    Determine if insurance is or was inforce; and, if so,

2.    Determine whether the evidence constitutes a valid claim.

b.    If it is determined to be a valid claim, a pending claim will be established.

c.    Additional evidence may be requested. The insured will not be requested to complete Form 29-357. However, Form 29-357 may be used in part or in its entirety to secure needed evidence.

d.    If the Live Claims Section overlooks total disability evidence received or available in VA systems resulting in an erroneous denial of total disability benefits, and the error is identified at a later date, the Live Claims Section will take all appropriate action to correct the insurance electronic record and process the potential refund back to the original application date for waiver of premiums. The Live Claims Section will send the insured written notice of both the approval for waiver of premiums and the appropriate refund amount.

**2.06 PREMATURE CLAIMS**

a.    When less than six months have elapsed since the alleged beginning date of total disability and the claim is not accompanied by sufficient medical evidence to establish a beginning date of total disability, the medical and/or industrial evidence to determine this date will be developed immediately. When evidence indicates the onset of total  disability from a date earlier than alleged, the development should include the earlier period. Both in the situations mentioned above, and in cases where the evidence is sufficient to establish a beginning date of disability and six months have not elapsed since that date, Form Letter 29-580 will be released informing the insured that action will be taken on the claim at the end of the six-month period. The appropriate input document, VA Form 29-5395c, Waiver Diary Action, should be prepared with the message PRMCL and the callup date on VA Form 29-5886b changed to the date at the end of the six-month period.

b.    When a claim is received on Service-Disabled Veterans Insurance (RH) and the evidence is not sufficient to establish that the disability has been total for six consecutive months, Form Letter 29-580 will be released informing the insured that action will be taken on the claim at the end of the six-month period. The appropriate input document, VA Form 29-5895c, Waiver Diary Action, should be prepared with the message PRMCL and the callup date on VA Form 29-5886b changed to the date at the end of the six-month period. For RH insurance, it is not necessary that the disability begin after the date of application for insurance nor must the policy be in force for six months under premium paying conditions to grant waiver of premiums. The only requirements for waiver on RH policies are that the disability be total for six consecutive months and that the disability begin prior to the insured's 65th birthday.

**2.07 RELEASE OF CLAIM FORM**

If insurance has been issued, a claim form will be sent with a cover letter containing the requirements for total disability benefits. If the correspondence requesting the claim form contains a request for additional information which is not provided in the covering letters, or if the insurance has lapsed, a letter will be prepared which gives the additional information requested and the date of lapse, when necessary.

**2.08 ESTABLISHMENT OF FORMAL CLAIM**

If the correspondence contains enough information a pending claim should be set up as provided in existing instructions.

**2.09 XC-CASE, THIRD PARTY INQUIRY**

When the correspondence indicates the insured has died and a third party is inquiring about his or her possible entitlement to disability benefits during his or her lifetime, the appropriate letter will be prepared explaining the criteria for waiver when an insured has died. (See M29-I, Part I, parts 31.16c, 31.19d, 31.20b) If the insurance lapsed prior to death, the date of lapse should be included in the letter. It is particularly important that a claimant be informed that adequate proof of total disability of at least six months' duration be of record within one year from the date of the insured's death.

**2.10 ASSOCIATION WITH PROPER RECORDS**

a.    When VA Form 29-357, Claim for Disability Insurance Benefits, is received in the Live Claims Section, the address on the claim form will be checked against insurance records and any change will be noted.

b.    If a date of birth discrepancy cannot be clarified, the date of birth recorded on the insurance records at the time the discrepancy is discovered will be retained for subsequent transactions.

c.    If the date of birth discrepancy does not change the insurance age, it will not be clarified unless the plan of insurance is Modified Life, or there is a total disability income provision involved, or there is a question of whether total disability commenced before age 65.

d.    If the date of birth discrepancy needs to be clarified, the claims examiner will release FL 29-286, and insert a diary for 60 days.

e.    When the letter is being released due to a possible older age, the difference in premium or reserve calculation required for the letter will be furnished by the Adjustment Claims Clerk. (See M29-1, Part 1, par. 22.03.)

f.     If it is necessary to correct the date of birth and the premium, the Adjustment Claims Clerk will make the necessary adjustment and correct the master record. (See M29-1, Part 1, Chapter 22.)

**2.11 DATE OF RECEIPT OF CLAIM**

The Claims Examiner will check to see that the correct date of receipt of claim is reflected on the record printout and VA Form 29-1565-3, Decision Disability Insurance Benefits. Date of receipt of claim is the date upon which the claim was first received in any VA agency. If the date of receipt of claim is not correctly shown on the insurance record printout, VA Form 29-524, Waiver Diary, should be inserted to make the correction.

**2.12 STATUS CHECK**

The status of the insurance will be reviewed and any lapses and reinstatements since the alleged beginning date of total disability will be noted on VA Form 29-1565-3, in the right side of the first "Remarks" block.

**2.13 INITIAL REVIEW OF CLAIM FORM**

If the claim is not accompanied by evidence or if the evidence is not sufficient to establish total disability for the period alleged, the Claims Examiner will request the appropriate evidence.

**2.14 UNSIGNED CLAIM**

If a claim is unsigned, the Claims Examiner will send an employment report to the insured. By this procedure a current employment report is obtained as well as the signature of the insured. The unsigned claim form will be considered an informal claim for purposes of extension of time for those persons who may file a valid claim for disability insurance benefits (See M29-1, Part 1, paragraph 31.19a). If a claim form is unsigned and is accompanied by correspondence signed by or on behalf of the insured, it will not be necessary to obtain a signed VA Form 29-357. When a signed claim form is requested, it will be assumed that it will be received, and the Claims Examiner will initiate the preliminary development immediately.

**2.15 CLAIMS THAT APPEAR READY FOR DECISION**

If the claim form contains sufficient evidence to prepare an award, the Claims Examiner will prepare the award or refer to a Senior Claims Examiner (See M29-1, Part III, Chapter 4).

**2.16 REQUIREMENTS TO ESTABLISH**

In order to establish total disability, it will be necessary to obtain evidence which will show:

a.    That the insured is prevented from following a substantially gainful occupation by a physical or mental condition.

b.    That the insured has a statutory condition (Refer to M29-1, Part 1, 31.02)

1. The period of the time during which this condition prevented him or her from following such occupation.

***NOTE****:  For additional detail see M29-1, Part 1, Chapter 31.*

**2.17 AVOID DUPLICATION OF EVIDENCE**

While both the medical and industrial aspects of the case should be developed simultaneously, an attempt should be made to avoid duplicating evidence that was submitted with the claim.

**2.18 CORRESPONDENCE**

When sending correspondence to obtain additional evidence, use VA Insurance systems.  All outgoing correspondence is required to be in Reader Focused Writing (RFW).

**2.19 AMOUNT NEEDED**

The medical evidence should be sufficient to show the existence of a disabling condition from the time total disability is alleged to have commenced through the present time or, if total disability is ended, through the period of total disability. It is not necessary to document the entire period of disability if the veteran is suffering from a chronic severe condition.

**2.20 VA AND CIVILIAN MEDICAL REPORTS**

Whenever possible, evidence of medical treatment in VA systems should be obtained first. The request for medical records should be made in writing. They should specify the period for which evidence is desired. In obtaining medical information, the primary purpose is to ascertain objective medical findings.

**2.21 PRIVATE MEDICAL REPORTS-NOTIFICATION OF CONTACTS TO VETERAN**

If there are no medical records in any VA system, evidence may be requested from private doctors or hospitals. The requests for this information should specify the period of treatment necessary. A request to a private doctor or hospital should contain a notation that the claim form signed by the insured authorized the release of information.  If information is being sought from private doctors, hospitals or employers, a form letter should be sent to the insured, listing those contacted. The letter should also ask the insured to urge a prompt reply from the concerned parties.

**2.22 REQUEST FOR EXAMINATION**

A VA examination should ordinarily not be requested at the time of the initial development. An examination should not be requested to determine current total disability until reports of all pertinent medical treatment have been obtained and reviewed. If, on the basis of these reports, a determination cannot be made as to whether the insured is currently totally disabled, an examination may be requested.

**2.23 DEVELOPMENT OF BEGINNING DATE OF TOTAL DISABILITY**

In some cases, an insured will allege total disability from a date which had no relevance for purposes of making a finding of total disability, such as the commencing date of his pension or compensation award. In such cases where the evidence indicates that total disability may have commenced prior to the date alleged, the initial development should cover the entire period of apparent disability.

**2.24 DETERMINING THE NEED FOR ADDITIONAL INFORMATION**

The question of whether additional employment evidence should be obtained to verify the last day of substantially gainful employment is dependent upon the facts in each individual case. If the evidence on the claims form indicates a disability which appears to be severe and continuous from the date alleged and such disability is documented by medical evidence of record or can be documented by obtaining reports of treatment shown on the claim form, it is not necessary to obtain additional employment evidence. When the ending date of employment is not given, is unclear, or when it appears that disability may have commenced before the last date of employment, clarifying information should be obtained. When it appears that gainful employment may have been engaged in after the alleged date of disability, the nature of this employment should be developed.

**2.25 SELF EMPLOYMENT**

When the evidence indicates self-employment, part time employment or when there is an indication that the employment may not have been competitive, additional evidence must be obtained. In this regard see M29-1, Part 1, paragraphs 31.12 through 31.15.

**2.26 TOTAL DISABILITY ALLEGED NEAR 65TH BIRTHDAY**

When total disability is alleged from a period within several days of the insured's 65th birthday, it will be necessary to obtain precise information as to the last day the insured worked in a substantial and gainful capacity and whether his physical condition prior to his or her 65th birthday prevented him or her from carrying out any substantially gainful occupation.

**2.27 DEVELOPMENT FOR FRAUD**

The Claims Examiner will have the responsibility for reviewing the insurance record at the time of initial development for any indication of possible fraud. If, in his or her opinion, the possibility of fraud exists, the case will be referred to the Authorizer or Senior Authorizer.

**2.28 PREPARATION OF INPUTS**

Electronic Form 1565 will be used to either approve, disapprove, or set up a premature claim for waiver.  Data entry screens will be prepared from Form 1565 to update the record in the VA Insurance system.