



**DEPARTMENT OF VETERANS AFFAIRS**  
**Veterans Benefits Administration**  
**Washington, D.C. 20420**

September 8, 2011

Director (00/21)  
All VA Regional Offices and Centers

In Reply Refer to: 212B  
Fast Letter 11-22

SUBJ: Examinations for Incarcerated Veterans and Veterans Health Administration (VHA) Fact Sheet DMA-11-001, *Examinations for Incarcerated Veterans*

## **Purpose**

This letter defines the Department of Veterans Affairs' (VA's) duty to assist incarcerated Veterans as it pertains to obtaining compensation examinations. It also explains the responsibilities assumed by the VHA Disability Examination Management Office (DEMO) in the enclosed Fact Sheet DMA-11-001, *Examinations for Incarcerated Veterans*, and provides insight into the court-generated reasoning behind DMA-11-001.

## **Background**

Courts have ruled that VA's duty to assist extends to providing incarcerated Veterans with examinations when one is required. Courts have interpreted VA's duty to assist to include substantial efforts to obtain both:

- an examination of the incarcerated Veteran, and
- the incarcerated Veteran's medical records, whether at the prison facility or elsewhere.

As stated in the itemized list below, VA must clearly document all such efforts to avoid remand should either of these tasks prove futile. See:

- *Wood v. Derwinski*, 1 Vet.App.190 (1991)(noting incarcerated Veterans be afforded the same treatment as non-incarcerated Veterans in pursuing disability compensation claims);
- *Bolton v. Brown*, 8 Vet. App. 185 (1995) (noting that if VBA cannot arrange for an examination, it must document efforts to do so in the claims file and concluding that the Court could not "lightly infer that the duty to assist a Veteran in developing his [sic] claim applies any less to an incarcerated Veteran than to a non-incarcerated veteran"); see also

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- *Belton v. West*, 13 Vet. App. 200 (1999)(unpublished) (addressing VA's duty to assist incarcerated Veterans in light of the Veterans' Claims Assistance Act (VCAA), 38 U.S.C. 5103A); *see also*
- *Mercurio v. Nicholson*, No. 01-1299, 2006 WL 3200829 (Vet.App. Aug. 31, 2006)(though neither precedential nor binding, *Mercurio* provides valuable insight into how the U.S. Court of Appeals for Veterans Claims currently interprets VA's duty to assist incarcerated Veterans in light of VCAA).

VHA internal guidance mandates VHA must provide necessary examinations to all Veterans, including those currently incarcerated. See 38 U.S.C. 5103A and 38 C.F.R. 3.159. See also VHA Handbook 1601E.01, Compensation and Pension (C&P) Examinations, October 13, 2009, Corrected Copy February 25, 2010, at paragraph 5.b.1(1), at [http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub\\_ID=2094](http://vaww1.va.gov/vhapublications/ViewPublication.asp?pub_ID=2094).

VHA must either:

- examine incarcerated Veterans, or
- provide evidence of substantial efforts to conduct a scheduled compensation examination.

The Veterans Benefits Administration (VBA) must assist incarcerated Veterans by:

- working with prison officials in obtaining prison facility medical records or other relevant medical records, and
- scheduling examinations when warranted.

VBA must document all efforts to obtain records and schedule examinations.

## **Procedures**

When ordering examinations for incarcerated Veterans, Veterans Service Representatives (VSRs) must follow current development guidance for:

- original claims;
- claims for increased evaluation; and
- review examinations.

VSRs must document all efforts to obtain medical evidence from prison and other sources. VSRs must document all efforts to schedule examinations for incarcerated Veterans, including identifying and requesting the assistance of the appropriate prison officials.

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Rating Veterans Service Representatives (RVSRs) must assess all medical examinations for sufficiency prior to using them for rating purposes. Mental health examinations must meet all current VBA mental health examination requirements.

VSRs and RVSRs are cautioned that requests for examination for individual unemployability (IU) are to be treated as claims for increased evaluation of the underlying disability(ies). Examinations for claims for IU are to be scheduled even though there may be no grant of IU while the Veteran is incarcerated. See 38 U.S.C. 5313; VAOPGCPREC 59-91 (O.G.C. Prec. 59-91), and VAOGCPREC 5-2006.

VHA compensation clinics will be responsible for:

- conducting examinations of incarcerated Veterans with the assistance of the appropriate prison officials; or
- providing VBA with documented evidence of substantial efforts to do so.

If the VHA compensation clinic is unable to schedule an examination of a Veteran due to unavailability of the Veteran or non-cooperation of prison officials, the clinic must provide documented evidence of substantial efforts to schedule and conduct the compensation examination. For example, compensation clinics must document that they have made multiple attempts and exhausted all possible avenues for obtaining access to the incarcerated Veteran for the examination.

For more information on:

- requesting medical opinions, see [M21-1MR III.iv.3.A.1](#), and [M21-1MR, Part II, Subpart iv, 3.A.9](#);
- ordering specialist examinations, see [M21-1MR, Part III, Subpart iv, 3A.8](#); and for
- requesting initial posttraumatic stress disorder examinations, see [M21-1MR III.iv.4.H.31.b](#).

## Questions

Questions regarding DMA-11-001 should be addressed to the DEMO forum at <http://demoforum.hec.med.va.gov/>, or e-mailed to the DEMO corporate mailbox at [CorporateMailbox.DEMO@va.gov](mailto:CorporateMailbox.DEMO@va.gov).

/S/

Thomas J. Murphy  
Director  
Compensation Service

Enclosure