

**Department of
Veterans Affairs**

Memorandum

Date: August 6, 2018

VAOPGCPREC 1-2018

From: General Counsel (022)

Subj: Fee Agreements and the Rapid Appeals Modernization Program

To: Director, Appeals Management Office, Veterans Benefits Administration (397)

QUESTION PRESENTED:

How does a claimant's opt-in to the Rapid Appeals Modernization Program (RAMP) affect an existing fee agreement?

HELD:

If a claimant, who is represented by a claims agent or attorney, withdraws his or her notice of disagreement (NOD) to opt-in to RAMP, that withdrawal does not obstruct the representative's eligibility for fees. The Department of Veterans Affairs (VA) does not construe the RAMP election as returning the claimant and representative to a period in the VA administrative process for which fees may not be charged or as otherwise affecting a legal existing fee agreement.

DISCUSSION:

1. RAMP is a VA initiative testing the feasibility and advisability of facets of the new statutory appeals process prior to full implementation. See Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, §§ 4(a), 6(3). According to Appeals Management Office (AMO) Policy Letter (PL) 18-01, to participate in RAMP, a claimant must (1) have already filed a notice of disagreement and (2) submit a written RAMP opt-in election to VA. PL 18-01, at 2-3. RAMP opt-in involves "withdrawing his or her pending eligible compensation appeal(s) and substituting the review options set forth in Public Law 115-55." *Id.* at 3. The RAMP election form sent to thousands of claimants requires the claimant to affirm that "I am withdrawing all eligible pending compensation appeals in their entirety . . . to participate in VA's RAMP initiative and have my eligible appeals proceed under the new process described in the Appeals Modernization Act."

2. Because current law prohibits a fee from being charged for services provided by an attorney or claims agent "before the date on which [an NOD] is filed with respect to the case," 38 U.S.C. § 5904(c)(1) (2017), the AMO wants to confirm that VA's position—that "withdrawing" an appeal for purposes of a RAMP election will not return the claimant and representative to the "pre-NOD" period in which a fee may not be charged—is not in conflict with the law. For the reasons discussed below, we believe that the law supports VA's position; the "withdrawal" of an appeal in a RAMP election is solely for the purpose of entering the new

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appeals process, as noted in both the AMO's Policy Letter and the RAMP election form.

3. First, the new appeals process will permit a fee to be charged for services provided by an attorney or claims agent after "a claimant is provided notice of the agency of original jurisdiction's initial decision"—a circumstance that is met for all RAMP participants. Pub. L. No. 115-55, § 2(n) (revising 38 U.S.C. § 5904(c)(1)). If a RAMP participant's existing fee agreement conforms with current 38 U.S.C. § 5904(c)(1), it will necessarily conform with Public Law 115-55's revision of that section, such that a claimant's opt-in to the new appeals process, and the laws that govern it, will not return the claimant and representative to any period in which a fee may not be charged. Although the revision of section 5904(c)(1) is not currently effective, it provides strong evidence that Congress did not intend participation in the modernized appeals system to have any restrictive, much less preclusive, effect on eligibility for attorney fees. It is, therefore, reasonable to conclude that, in authorizing a testing program under section 4(a) of Public Law 115-55, Congress did not intend such program to defeat existing eligibility for attorney fees.

4. Second, both the AMO's Policy Letter and the RAMP election form are clear that RAMP opt-in is not a pure appeal "withdrawal," but a substitution of one appeals process for another. Because Congress has permitted, since 2006, fees to be charged for services once the appeals process is initiated, *see* 38 U.S.C. § 5904(c)(1) (2017); Pub. L. 109-461, tit. I, § 101(c)(1) (2006); *see also* 38 U.S.C. § 7105(a) (2017), the substitution of appeals processes after initiation would not raise any section 5904(c)(1) concerns. In fact, any interpretation of RAMP election that would cause claims agents and attorneys to discourage claimants from opting in to the new appeals process—based on concerns that a RAMP election will adversely affect their own fees—would defeat Congress's specific intent to provide various opportunities for opting in to the new appeals process, *see* Pub. L. No. 115-55, §§ 2(x)(3), 2(x)(5), 4(a), 6(3), not to mention create conflicts of interest for attorneys and claims agents in numerous cases.

5. Third, claimants and representatives entered into their existing fee agreements with the understanding—since the NODs had already been filed—that there would be a payment for services provided; the technicalities required for RAMP election should not disrupt that settled expectation. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994) ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."); *Cline v. Shinseki*, 26 Vet. App. 18, 26-27 (2012). As noted above, there is ample reason to conclude that Congress intended not to disrupt such settled expectations in enacting the provisions of Public Law 115-55, including those authorizing a test program such as RAMP. To the extent fee

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agreements in particular cases do not explicitly address RAMP, such agreements nonetheless would most logically be construed to apply to election of RAMP in the same manner as they would apply to traditional appeals. Courts have previously examined the context of veterans' benefits fee agreements to find implicit provisions therein, *see, e.g., Scates v. Principi*, 282 F.3d 1362, 1365 (Fed. Cir. 2002), and we see no reason why a court would disrupt settled expectations between a claimant and representative based on an isolated focus on the word "withdrawal" on the RAMP election form.



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