



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

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VETERANS BENEFITS ADMINISTRATION

Fiduciary Program: Some
Incompetency Decisions Not
Completed, Putting Those
Beneficiaries' Funds at Risk



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DEPARTMENT OF VETERANS AFFAIRS
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WASHINGTON, DC 20001



December 9, 2020¹

MANAGEMENT ADVISORY MEMORANDUM

TO: Paul Lawrence, Under Secretary for Benefits
Veterans Benefits Administration (20)

FROM: Larry Reinkemeyer, Assistant Inspector General
VA Office of Inspector General's Office of Audits and Evaluations (52)

SUBJECT: Fiduciary Program: Some Incompetency Decisions Not Completed,
Putting Those Beneficiaries' Funds at Risk

The VA Office of Inspector General (OIG) assessed the merits of an August 2019 hotline allegation that a deceased veteran's VA funds had been misused while he was living at a California nursing home.² As part of this assessment, the OIG discovered the Veterans Benefits Administration (VBA) had not finalized the veteran's incompetency proposal, which had been initiated three years before his death.³ This delay conflicts with VBA guidance that the decision be made and an initial fiduciary be appointed within 141 days, which includes a 65-day due process period and a 76-day target for completing the initial appointment process.⁴ The initial appointment process includes an investigation by VA personnel to verify the qualifications of and appoint the person, agency, organization, or institution that will best serve as the beneficiary's fiduciary. The OIG expanded its review to determine whether VBA had not finalized other VA beneficiaries' incompetency proposals. This memorandum shares the observations the OIG made during the review to help VBA determine whether additional actions are appropriate.

¹ This memorandum was sent to the Veterans Benefits Administration on December 9, 2020, to provide the opportunity to review and comment. Following that period, their comments were given full consideration and any requests for change supported by sufficient evidence were addressed before the report publication process was completed.

² The OIG plans to publish a separate report that addresses this hotline allegation in more detail.

³ VBA staff propose "incompetency" if they receive medical evidence that a beneficiary is incapable of managing VA benefits payments. The beneficiary is given the opportunity to provide evidence of competency. Staff consider the evidence and prepare an incompetency decision. If the beneficiary is determined to be incompetent for VA purposes, staff initiate the fiduciary appointment process. If the beneficiary is determined to be competent, the beneficiary continues to receive VA benefits payments directly.

⁴ VA Manual 21-1, part 3, subpart 5, chap. 9, sec. B. "Processing Awards to Incompetent Beneficiaries," May 24, 2018; VA, *FY2021/FY2019 Annual Performance Plan and Report*, February 2020.

VA guidance details how to proceed after VA receives clear and convincing medical evidence that a beneficiary is incapable of managing VA benefits payments.⁵ An incompetency proposal is prepared and a related workload control code, called an end product, is created for electronically tracking the case.⁶ VBA staff send the beneficiary a letter with the proposed decision. The due process period, when the beneficiary may submit additional evidence or request a hearing, starts on the date shown on this letter.⁷ After the due process period has expired, VA regional office staff consider the evidence and prepare an incompetency decision. When VA decides the beneficiary cannot manage VA benefits, VBA staff develop information as to the beneficiary's social and economic situation, appoint a fiduciary, select a method of disbursing payment, and authorize disbursement of the benefit.⁸ A fiduciary is a person or legal entity charged with managing the estate of an incompetent beneficiary. Upon appointment by VA, fiduciaries are authorized to receive direct payment of beneficiaries' VA benefits and disburse funds for the care, support, welfare, and needs of these beneficiaries.

Expanding its review beyond the hotline assessment, the OIG found VBA had not finalized incompetency proposals for 221 beneficiaries from January 1, 2016, through December 31, 2019. This number compares with approximately 180,000 completed proposals over the same four-year period, based on approximately 45,000 initial fiduciary appointments annually. Generally, the incomplete decisions occurred because VBA staff did not update the workload monitoring and management tool to show an incompetency proposal was pending a decision. In some instances, incomplete decisions occurred when staff prematurely closed an end product. Without an updated electronic end product control indicating the case is still pending, the case does not appear in the VA pending claims inventory of incompetency proposals requiring final action by VBA staff. It is important that VBA staff complete the initial appointment process promptly because VA has received medical evidence that these beneficiaries are unable to manage their own VA benefits. Without a fiduciary, these vulnerable beneficiaries' funds could be mismanaged.

The OIG conducted a comprehensive analysis and reviewed documentation available in VBA systems for 55 statistically selected records and determined that all 55 records indicated incompetency decisions had not been completed. The OIG provided VBA's Pension and Fiduciary Service with a list identifying the 55 records and asked for its assessment. A supervisory executive assistant provided a response concurring with 52 of the 55 incomplete decisions. As for the other three, the assistant director responded that two decisions were on appeal and the remaining one showed a designated end product control had been established.

⁵ VA Manual 21-1, part 3, subpart 4, chap. 8, sec. A. "Evaluating Competency," July 17, 2019.

⁶ VA Manual 21-4, app. B, "End Product Codes," August 22, 2019. The end product system is VBA's primary workload monitoring and management tool. An end product code is established for electronically tracking claims to ensure that all claims receive proper attention and timely processing.

⁷ The minimum due process period is 60 days, unless waived by the beneficiary. When a waiver is not received, finalization of the decision occurs after the 65th day to allow time for evidence to reach VA.

⁸ 38 C.F.R. § 3.353.

After considering the responses from the Pension and Fiduciary Service, the OIG agreed that the three cases should not be considered incomplete decisions. The OIG presented VBA with the remaining 166 of the 221 records found to have incomplete decisions.

On average, the 52 incompetency proposals had not been finalized for 1,040 days and ranged from 163 days to 1,544 days (more than four years)—far exceeding the 141-day timeline. Approximately \$4.6 million in VA disability benefits were distributed to the 52 beneficiaries. As a result of VA not finalizing the proposals, some beneficiaries continued to receive benefits for years after VA received medical evidence showing the beneficiaries were unable to manage their own financial affairs and a fiduciary should have been appointed.

The OIG found the 52 confirmed incomplete decisions and 166 potentially incomplete decisions were a small percentage of the incompetency proposals that supported the approximately 180,000 initial fiduciary appointments VA completed over the four-year period. The team attributed this low rate of incomplete decisions to action taken in response to a targeted program review by the Pension and Fiduciary Service.⁹ The program review's summary findings showed that 9,439 incompetency proposals did not have a designated end product pending in 2015. The Pension and Fiduciary Service made six recommendations. Two required VA to develop a plan to review, take appropriate action, and monitor proposed incompetency decisions without a designated end product pending. As a result of the substantial decrease in the number of incomplete incompetency decisions, the OIG is not initiating a full audit or investigation into these decisions. This management advisory memorandum, based on information gleaned from OIG data analyses, is meant to convey the information VBA needs to determine whether to take additional steps to ensure incompetency proposals are finalized. The appendix explains how the OIG team analyzed VBA data to identify incomplete incompetency decisions.

The OIG issues management advisory memorandums when exigent circumstances or areas of concern are identified by OIG hotline allegations or in the course of its oversight work, particularly when immediate action by VA can help reduce further risk of harm to veterans or significant financial losses. Memorandums are published unless otherwise prohibited from release or to safeguard protected information.

VBA Response

VBA responded that it took no issue with the content of the OIG's Management Advisory Memorandum and would review, research, and evaluate the cases to determine whether they warrant further action.

⁹ Pension and Fiduciary Service, Targeted Program Review: Fiduciary Finalization of Incompetency and Release of Retroactive Benefits, September 2015.

Appendix: Methodology

The OIG analyzed VBA data to identify incompetency decisions that had not been completed—specifically, records where incompetency had been proposed, the incompetency decision had not been completed, and a designated electronic control (end product) was not pending. The population of incomplete decisions on incompetency included 221 records from January 1, 2016, through December 31, 2019.

Table A.1 lists the steps in the team’s analysis to determine which incompetency decisions were incomplete.

Table A.1. Steps to Identify Incomplete Incompetency Decisions

Action by team	Description	Removed observations	Remaining observations
Step 1 Pulled records with incompetency proposals	Chose living veterans receiving compensation or pension benefits with a status showing incompetency proposed (COMPETENCY_DECISION_TYP_CD of PIC)	N/A	2,840
Step 2 Removed records with certain pending electronic controls	Removed records with a designated electronic control pending (see table A.2 for designated electronic controls)	2,163	677
Step 3 Limited date range	Limited records to those with a journal date (JRN_DT) of January 1, 2016, through December 31, 2019	188	490
Step 4 Removed out-of-scope records	Determined records were out of scope if incompetency decisions were completed before the OIG’s review or the electronic records explained why the proposal was not finalized—for example, a beneficiary passed away during due process period, thereby ending the incompetency proposal and not requiring an incompetency decision	269	221

Source: VA OIG.

Table A.2 lists designated electronic controls used for pending incompetency decisions.

Table A.2. Electronic Controls for Incompetency Decisions

End product	Claim label
590 series	Due process for incompetency
600 series	Competency issue
600 series	Pension Management Center incompetency determination

Source: VA OIG analysis of the Fiduciary Program Manual.

OIG Contact and Staff Acknowledgments

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