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BEFORE THE
COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON
EXAMINING THE VA APPEALS PROCESS: ENSURING HIGH QUALITY DECISION-MAKING FOR VETERANS' CLAIMS ON APPEAL
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Good afternoon, Chairman Luttrell, Ranking Member Pappas and Members of the Subcommittee. I appreciate the invitation to appear before you today on behalf of the Department of Veterans Affairs (VA) to discuss how VA strives to achieve final resolution of Veteran appeals regarding claims and eligibility for service-connected disability compensation ratings and benefits, VA health care access or services and VA cemetery or burial benefits. Accompanying me today is Timothy Sirhal, Executive Director, Office of Administrative Review, Veterans Benefits Administration (VBA) and Mary Flynn from the Office of General Counsel (OGC).

We have made incredible strides within VA to execute the Veterans Appeals Improvement and Modernization Act of 2017 (AMA), which was implemented on February 19, 2019. Increased choice for Veterans and setting reasonable time constraints on adding additional evidence under each choice during the appeals process under AMA has led to much faster resolution of appeals, with higher grant rates and significantly lower remand rates between the Board and VBA.

Providing Veterans with the opportunity to "appeal first" to VBA after an initial denial of claims under AMA has been a game-changer, resulting in ever-increasing numbers of Veterans choosing that option each year to have their denials turned into grants without the need to seek an appeal from the Board of Veterans' Appeals (Board). Under the AMA, Veterans can choose to have initial claims decisions reviewed within VBA by a more experienced claims adjudicator through the higher-level review process (i.e., a review of the same evidence presented to the prior decision-maker) or Veterans can file a supplemental claim with VBA if there is new and relevant evidence to support the claim. These new choices available to Veterans to "appeal first" to VBA has reduced the number of appeals to the Board. In fiscal year (FY) 2021, only 17% of Veterans who received an initial "no" from VBA under AMA chose to challenge the decision by appealing to the Board. In FY 2023, merely 2 years later, that rate dropped to single digits—just below 10%.

Even though we know we still have a long way to go to achieve the full impact of those historic changes in law, and improvements can be made, I am pleased to report to you that the most notable improvement in AMA appeals processing is the significant reduction in the time it takes to fully resolve Veteran appeals, both at VBA and at the

Board. Since implementation of the AMA, VBA has consistently met its timeliness (125-day average days to complete) and quality (93 percent) goals under the AMA decision review program. In FY 2023, under the AMA system, VBA completed over 429,000 supplemental claims in an average of 122 days and decided over 140,000 higher-level reviews in an average of 77 days.

Last year, the Board decided over 30,000 AMA appeals. On average, AMA appeals at the Board are fully resolved (meaning no remaining remands) approximately 4 years faster than it takes to fully resolve Legacy system appeals, *i.e.*, those appeals remaining in the appellate system that the AMA replaced. At the same time, those faster AMA decisions reflect 20% fewer remanded cases and 10% higher grant rates when compared to the Legacy system remand and grant rates. These are consistent trends over the past 4 years. In FY 2023 alone, VBA implemented over 10,000 full grants of benefits awarded by the Board…averaging less than 30 days to process those granted benefits. In short, Veterans are using the different options available to them under the AMA and this increased Veteran choice is also enabling Veterans to get full and final answers from VA much faster than under the Legacy system of appeals.

Honestly, the older Legacy system of appeals has been holding us back from achieving even greater success under AMA. Veterans Service Organizations (VSO) and other accredited representatives have expressed frustration on behalf of the Veterans they represent, noting that the promises of faster resolution under AMA is not happening with so many Legacy system appeals still pending. When Congress passed AMA in 2017, a widely held assumption was VA could successfully operate both systems at the same time, even though the House Report noted it would take an average of 10 years for a final appeals decision under the Legacy system. It was expected that the older Legacy appeals system cases would decrease to the point that the system would effectively sunset and almost all appeals would be processed more swiftly and effectively under the newer AMA system.

VA still has nearly 60,000 pending Legacy system appeal cases, and over 20% of those Legacy system appeals have not had an initial review or adjudication by a Board judge because so many remanded cases keep returning to the head of the line, essentially cutting in front of those Veterans. While we have made great strides reducing the pending Legacy system appeals from nearly 475,000 pending cases in 2017 to the current 60,000 pending cases, we are seeing a very high percentage of these remaining appeals being remanded over and over. When we look at those pending Legacy system appeals in the Board inventory on any given month, we have seen half of them previously, as VBA is recertifying Legacy remands back to the Board upon completing the directed case development. In fact, 15% of the Board's pending Legacy appeals are being adjudicated for the 5th time or more. The root cause is what Congress previously found in 2017 – the Legacy system allowed for and incentivized "repeated revisions" to add new evidence in the claims file during the appeals process that necessitated successive remands.

Reports accompanying the 2017 AMA legislation estimated the average time to fully resolve Legacy system appeals though both VBA and the Board to be 5 years, not counting additional time for Court-appeal cases. Legacy system appeals are now taking approximately 6 years for final resolution by the Board, and that does not count the time the case was at VBA or the fact that over 60% of Legacy system adjudications by the Board continue to be remanded. It also does not account for the extra time to re-adjudicate the 6,800-7,700 appeals remanded by the Court every year. Projections show that by the end of FY 2025, the remaining Legacy appeals inventory will be approximately 10,000 cases in the Department overall, split evenly between the Board and VBA.

As noted earlier, the rate of cases remanded from the Board has been substantially lower under the new AMA appeals system compared to the Legacy appeals system. To build on this progress, partnership between VBA and the Board offers an opportunity to enhance the quality and effectiveness of VBA training programs for the dedicated VBA claims processors who serve the Nation's Veterans. Ultimately, VBA seeks to ensure that Veterans and claimants receive the benefits they have earned at the earliest point possible during the claims process and to minimize avoidable delays—while also guarding against the overdevelopment of cases. Remand data from the Board are used to both validate VBA's current areas of training focus and potentially present new opportunities to refine training as data analytics capabilities in this area evolve.

While full resolution of the vast majority of the 30,000 AMA appeals decided by the Board last year took an average of less than 2 years, that is still too long for Veterans to wait. A major cause is the fact that the Legacy system cases consistently move to the head of the line because they have been waiting longer, and the number of those cases pending is far higher than anyone anticipated when AMA was passed. Those remaining Legacy system appeals are being repeatedly remanded without a final resolution and closure for Veterans because the underlying system still suffers the same flaws that led to passage of the AMA over 6years ago. We must do better. The Courts, VSOs, private attorneys and other accredited representatives, VBA, the Office of General Counsel and the Board must come together, again, to solve this challenge together through a holistic review of the Veteran's disability system.

To know there are still over 200,000 pending appeals, with most filed under the newer AMA system that promised faster resolutions, this is difficult to accept as a Veteran myself. We have been making aggressive changes to address that challenge, while increasing our staffing so as to not burn out those we rely on to serve Veterans at the Board.

First, thanks to continued support from Congress, we added additional budgetary resources that allowed us to hire and retain more talent. The Board hired 50 new Veterans Law Judges (VLJ) during the past 2 years. This is the largest and most diverse increase in judges in the Board's 90-year history. However, because the VLJs can only be as productive as the attorneys who prepare draft decisions, the Board

focused on attorney hiring last year, which resulted in a 16% increase in FY 2023, with the addition of over 200 new attorneys and law clerks. The Board is currently prioritizing two rounds of attorney hiring during FY 2024 (fall 2023 and Spring 2024) to fully staff the current VLJ teams and maximize the number of decisions that can be issued. Board culture for how we operate also has changed, and we are retaining talent as a result. Attorney attrition is down from 13.9% in FY 2018 to 7.4% in FY 2023.

Second, the Board is adjudicating exponentially more AMA appeals, even though older Legacy system appeals continued to dominate the Board's docket in recent years since the passage of AMA. The distribution of appeals cases in October 2022 at the start of FY 2023 was 25% AMA to 75% Legacy. By the end of the FY, 42% of our decision output was under the AMA. This year, we anticipate more than 50% of all output will be under the AMA rather than the Legacy system.

There are bright spots and cause for hope that AMA will live up to original expectations of faster and full resolution for awaiting Veterans. They deserve final answers, to include rational explanations for any claim or appeal that cannot be granted for some reason. This past year, the Board set a 90-year record, adjudicating 103,245 appeals. For the first time in 4 years, we ended the FY with a shorter line of pending appeals than where we started at the beginning of the fiscal year. The number of pending hearings at the end of FY 2023 was 72,465, and this is the second year in a row the Board has reduced the hearing inventory. The number of pending Legacy hearings was reduced by over 85%, down to just 1,054 remaining at the end of FY 2023.

The increased partnership in sharing remand information is a testament to the joint commitment of both VBA and the Board to continuously improve the services and support we provide to Veterans. VBA acknowledges that there are opportunities to improve data collection in this area and is collaborating with the Board to obtain more granular information that will better inform training needs and opportunities. Specifically, remand data from the Board validate VBA's significant investment in training around medical exam requests and medical opinions, and its robust catalogue of courses for claims processors. Following passage of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, VBA created additional courses that include information specific to exams and medical opinions related to that legislation.

In addition, VBA and the Board collaboratively exchange information through an agreed upon Board Feedback Loop process, identifying trends for AMA and Legacy Board remands. This feedback system was established to 1) ensure VBA is appropriately addressing remands issued by VLJs and 2) confirm that Board remand return reasons under the AMA system relate only to duty to assist errors that occurred prior to an initial decision on a claim, as prescribed by the AMA.

Further, VBA is actively exploring innovative training delivery methods. VBA is considering options such as microlessons, videos and other modernized training

techniques to ensure that claims processors are well-equipped to address the challenges presented by cases that often involve complex legal and medical questions.

In FY 2023, VBA made over 36,000 Legacy appeals decisions and implemented over 12,500 Legacy full grants of benefits received from the Board. Further, VBA remains on pace to have fewer than 5,000 remaining Legacy appeals by the end of FY 2025. Sunsetting the Legacy appeals system will allow VBA to focus additional resources on improving the AMA decision review process.

Our mission success is ultimately defined by what Veterans experience during the lifecycle of their cases on appeal, from the initial filing all the way until they receive a final written decision from a Board VLJ. Since 1933, the Board has been charged to apply the "benefit of the doubt" and "duty to assist" doctrines that are now enshrined by Congress in statute. In large part, it is those two factors that enable the Board to say "yes" and grant at least some relief in roughly a third of its decisions even after VA has previously said "no," sometimes on multiple occasions. Survey results show that Veterans leave the Board with higher trust levels than they had when they first filed their appeals—10-11% higher. Data show a significant percentage of Veterans report "trust" even after getting no relief from the Board. Over 50% of Veterans report they trust the Board after getting their final decisions, which is remarkable when the Board is only able to grant relief on about 25% of the issues appealed to the Board.

The new AMA system that was designed and developed through the full partnership between VA, the VSOs, private bar representatives and Congressional staff is proving that comprehensive, Veteran-centric solutions are possible when people with different perspectives work together toward a common goal. We should maintain focus on our shared goal to reduce the overall time Veterans spend patiently waiting for final VA resolution of their claims and appeals. That is why VA is planning to host an AMA Summit with all stakeholders in early 2024.

VA understands that the claims appeals process can be long and frustrating for many Veterans, but I hope that our answers to your questions today will help explain why it takes so long to process your appeal and efforts VA has taken to improve the process. We must recognize that processing these appeals will take time because each and every case represents a Veteran with a unique set of facts and circumstances that must be carefully evaluated and appropriately resolved according to governing laws and regulations.

Conclusion

VA shares Congress' goal of continuous improvements to both our program and our customer service to Veterans, their families, caregivers and survivors. We want to express our appreciation for your continued support and look forward to continued collaboration. Chairman Luttrell and Ranking Member Pappas, this concludes my testimony. My colleagues and I are happy to respond to any questions you or the Subcommittee may have.