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National Veterans Affairs and Rehabilitation Commission
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Recoupment When VA Fails to Withhold Attorney Fees from Past-Due Benefits

On April 11, 2011, The Department of Veterans Affairs issued Fast Letter 11-12 which amended the procedures found in M21-1MR to provide that in a case where VA must make direct payment of fees to an accredited attorney or agent out of VA funds, but fails to do so, VA may recoup the amount of the fees by establishing an overpayment debt.

The Office of General Counsel has advised the Compensation and Pension Service that VA is authorized to recoup overpayments to VA claimants if VA fails to withhold attorney or agent fees pursuant to a direct-pay fee agreement. In that instance, VA will continue its current procedure of paying attorneys or agents who are eligible for a fee. After the fee is paid, VA will recoup the overpayment from the claimant.

Current VA procedures provide that, if VA fails to withhold a portion of past-due benefits for direct payment of fees and the attorney or agent is eligible for fees, VA will pay the representative from VA funds. This new process does not replace that procedure. Rather, the new procedure provides that after VA pays an eligible attorney or agent out of VA funds, VA will then propose and, if appropriate, create a debt in accordance with the due process provisions of 38 C.F.R. § 3.103. All due process and debt collection procedures apply, including referral to the Debt Management Center.

For more information please contact Travis Murphy, Deputy Director for Claims, at 202-861-2700.

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