



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Washington, DC 20420

Date: August 2, 2021

VBA Letter 20-21-12

Director (00)

To: All VBA Services, Staff Offices, Regional Offices and Centers

Subj: Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter

1. Purpose

Claims processors in regional offices and centers should apply this guidance when processing claims and appeals for service connection for chronic asthma, rhinitis, and sinusitis, to include rhinosinusitis, for certain Veterans.

2. Background

On September 11, 2020, the National Academies of Sciences, Engineering and Medicine (NASEM) released the report, "Respiratory Health Effects of Airborne Hazards Exposures in the Southwest Asia Theater of Military Operations." The Department of Veterans Affairs (VA) established a workgroup to extensively review the report and the literature beyond that considered by NASEM. Subsequently, on May 27, 2021, the Secretary announced that the results of VA's review support initiation of rulemaking to address the role that particulate matter pollution plays in generating chronic respiratory conditions, which may include asthma, rhinitis, and sinusitis, for Veterans who served in the Southwest Asia theater of operations during the Persian Gulf War, or in Afghanistan, Uzbekistan, Syria or Djibouti, on or after September 19, 2001. An interim final rule will be published on August 5, 2021, amending the adjudication regulations to establish a presumption of service connection for these three respiratory conditions.

3. Eligibility

For purposes of administering benefits under title 38 United States Code, Chapter 11 (Compensation) and Chapter 13 (Dependency and Indemnity Compensation), claims processors shall grant service connection for any Veteran who otherwise meets the basic entitlement requirements under such chapters and who:

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- Has manifested chronic asthma, chronic rhinitis, and/or chronic sinusitis, to include rhinosinusitis, within 10 years of separation from the last period of military service, and
- Served any length of time in the Southwest Asia theater of operations, as defined by 38 C.F.R. § 3.317(e), beginning on August 2, 1990, through the present, as well as Afghanistan, Syria, Djibouti, or Uzbekistan on or after September 19, 2001.
 - At this time, no end date for the Gulf War has been established by Congress or the President per 38 C.F.R. § 3.2(i).
 - The minimum active duty service requirement as defined in 38 C.F.R. § 3.12a applies.

Note: Under this rule, for the consideration of entitlement to the presumption of service connection for asthma, rhinitis, or sinusitis, to include rhinosinusitis, these conditions only need to manifest to a degree of 0 percent or more. A 10 percent or more compensable evaluation is not required to establish service connection under this guidance. The new guidance does not limit entitlement to service connection for the three diseases on any other basis, e.g., direct, aggravation or secondary. Claims processors should liberally consider all potential bases on which the claim could be granted in accordance with existing procedural requirements.

For survivors, claims processors should apply this guidance for any claims related to the new conditions where a:

- Survivor is claiming that the principal or contributory cause of the Veteran's death is, or is secondary to, asthma, rhinitis, or sinusitis, to include rhinosinusitis; or
- Claimant has a specific allegation of eligibility under the new policy.

This eligibility applies to new claims and appeals, pending claims, and claims pending in a VBA decision review lane (e.g. higher-level reviews (HLRs) and supplemental claims).

4. Claims Processing

Training

The creation of these presumptions will not change the general principles of claims development and evaluation of disabilities. However, to ensure that claims processors are properly addressing the new presumptive conditions, they must self-assign and complete the relevant training course(s). For those conducting development, complete the course titled "*So Here's How You Do It – Gulf War Particulate Matter Exposure Claims (Development)*." For decisionmakers, complete the course titled "*So Here's How You Do It – Gulf War Particulate Matter Exposure Claims (Rating)*."

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Claim Establishment and Data Tracking

Claims processors should complete the following steps to ensure that claims are properly established:

- Utilize end product (EP) controls per M21-4, Appendix B. There is no unique EP to control these claims.
- Add the “Gulf War Presumptive – Airborne Hazards” special issue indicator to each applicable contention.
- Develop for service records using standard procedures. Review for deployment, assigned duty station, or similar evidence to support qualifying service.
 - For more information on developing claims based on service in Southwest Asia and under 38 C.F.R. § 3.317, see M21-1, VIII.ii.1.B.
 - See M21-1, VIII.ii.2.B for information about developing claims for disabilities associated with exposure to particulate matter.
- Ensure any other required corporate flash or special issue indicator is affixed per M21-4, Appendix C.

Important: For supplemental claims, consider this guidance as both new evidence sufficient to render the supplemental claim complete and relevant evidence sufficient to trigger a duty to assist under 38 U.S.C. § 5103A, and issue a merit-based decision.

Processing HLRs

For HLRs, follow the table below:

If ...	Then ...
The evidence of record is sufficient to grant the maximum benefit under the new law, even if the evidentiary record closed prior to August 5, 2021.	Grant entitlement – see paragraphs below titled <i>Rating Guidance</i> and <i>Effective Dates</i> .
The evidence of record suggests there may be entitlement, but additional development is needed.	Return the issue as a Difference of Opinion for development. Note: If an actual Duty-to-Assist (DTA) error exists for any issue under review, return it as a DTA error under normal HLR procedures.
No eligibility exists, despite the change in law (for example, VA	Deny service connection under normal HLR procedures.

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completed all appropriate development, but VA still cannot confirm a qualifying location of service).	
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Development Guidance

VA's current section 5103 notice is sufficient to provide guidance regarding what is necessary to substantiate claims for these conditions. When a claim for asthma, rhinitis, or sinusitis, to include rhinosinusitis, is received, claims processors should:

- Review the Veteran's record and verify qualifying service. Initiate claim development to verify service or deployment, as needed. For additional general information about claims for particulate matter, see M21-1, VIII.ii.2.A.
- Identify potential eligibility when possible. The claimant is not required to specifically distinguish the condition as being related or attributed to a deployment to one of the specified locations to be afforded presumptive consideration.
- Apply liberal consideration. If symptoms of a general medical condition, such as "shortness of breath" or "respiratory issues" is claimed and the Veteran has qualifying service, consider the claim under the presumptive policy. However, this policy would not apply if the claimant does not specify a condition that could be reasonably related to particulate matter. The claimant must identify the disability(ies) that resulted from the exposure. If the claimant only lists "deployment exposures" without identifying a condition on the claim form, see M21-1, II.iii.1.C.2.c for notification requirements for an incomplete application based on exposure allegation.

Until the Veterans Benefits Management System (VBMS) is updated, claims processors may need to edit the development letter to ensure that appropriate information is requested from the claimant.

If evidence is needed showing the Veteran deployed to a qualifying location, use the following language:

- Send evidence showing service in the Southwest Asia theater of operations, Afghanistan, Djibouti, Syria and/or Uzbekistan (i.e., official order, travel vouchers, performance evaluations or receipts from purchases made).
- The Southwest Asia theater of operations refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations. For purposes of the three new presumptive conditions, qualifying service also includes a period of active military, naval or air service on or after September

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19, 2001, in Afghanistan, Djibouti, Syria and Uzbekistan. You may be eligible for disability compensation benefits if your military service meets the above criteria and you have been diagnosed with asthma, rhinitis and/or sinusitis, to include rhinosinusitis, within 10 years of separation from the last period of military service.

If the claimant did not identify a specific condition related to an environmental hazard, use the following language:

- You claimed exposure to an environmental hazard based on your service during the Gulf War. Please note that exposure, in and of itself, is not a disability. We are unable to take action since you did not identify a disability. Tell us the specific disability that resulted from your exposure during service so we can process your claim.

Note: Once these new development paragraphs are available in VBMS, notification will be sent to discontinue use of this workaround.

Examinations and Opinions

After review of the Veteran's record, determine if the evidence of record is sufficient to grant the claim. Only schedule an examination to confirm the diagnosis and/or determine the severity of the condition if the qualifying criterion is met and if there is a likelihood of one of these conditions. Refer to M21-1, VIII.ii.2.B.2 for more information about examinations for qualifying disabilities under 38 C.F.R. § 3.320.

- For presumptive conditions, a medical opinion is not typically required to establish a nexus. However, if the evidence of record is unclear, claims processors should request a medical opinion when there is a question as to whether the condition manifested within the 10-year period after separation from the last period of military service.
- In cases of aggravation, when evidence shows the condition existed prior to enlistment, consider that the deployment may have aggravated the condition. However, do not concede aggravation where the condition underwent no increase in severity per 38 C.F.R. § 3.306. Solicit a medical opinion when needed to substantiate the claim.

General Rating Guidance

As noted above, the creation of these presumptions will not change the general principles of claims development and evaluation of disabilities. Regular rating principles apply when evaluating these new conditions. The conditions must meet the requirements of chronicity and continuity as provided in 38 C.F.R. § 3.303(b). The

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conditions must not be seasonal or an acute allergic manifestation in nature, as pursuant to 38 C.F.R. § 3.380. See M21-1, VIII.ii.2.C for additional information regarding rating claims based on particulate matter exposure.

In establishing a presumption of service connection for conditions related to exposure to particulate matter, presume that the condition is related to military service. However, do not consider a disease to be service connected on a presumptive basis if there is affirmative evidence to the contrary. Such contrary evidence could include/show:

- The condition was not incurred during a qualifying period of service, or
- The condition was caused by a supervening condition or event that happened between the most recent separation from a qualifying period of service and the onset of the disease, or
- The condition was due to the Veterans' own willful misconduct or alcohol or drug abuse.

Rating Guidance: Diagnostic Codes

All the following diagnostic codes (DC) may be used to service connect presumptive conditions under the guidance contained in this VBA Letter:

- Sinusitis, to include rhinosinusitis, depending on the diagnosis:
 - Sinusitis, pansinusitis, chronic: 6510
 - Sinusitis, ethmoid, chronic: 6511
 - Sinusitis, frontal, chronic: 6512
 - Sinusitis, maxillary, chronic: 6513
 - Sinusitis, sphenoid, chronic: 6514
 - Rhinosinusitis should be rated analogous to sinusitis (6599-65XX) per 38 C.F.R. § 4.20, using the general rating formula with one of the above DCs. Select the corresponding DC (pan-, ethmoid, frontal, maxillary or sphenoid) that most closely matches the location of the rhinosinusitis.
- Rhinitis, depending on the diagnosis:
 - Allergic or vasomotor rhinitis: 6522
 - Bacterial rhinitis: 6523
 - Granulomatous rhinitis: 6524
- Asthma, bronchial: 6602
 - *Reminder:* Claims processors must consider 38 C.F.R. § 4.96, when granting entitlement to service connected compensation for asthma.

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Rating Guidance: VBMS-R

When needed, claims processors should properly edit the analysis language. New Rating Glossary fragments addressing this guidance are available to use, but the special issue, *Gulf War Particulate Matter*, will appear in the Special Issue and Examination Information screen after a future VBMS-R update. In the interim, the following workaround should be used in VBMS-R:

- When granting presumptive entitlement under this guidance for chronic asthma, sinusitis, or rhinitis, to include rhinosinusitis, on the Disability Decision Information screen, select: **Presumptive** as the Decision Basis.
- Follow standard procedures for entering information in the Diagnosis Information screen.
- On the Special Issue and Examination Information screen, assign **Environmental Hazard in Gulf War** as the Special Issue.
- Select **Diagnosed-Environmental** for the Special Issue Basis.
- In the Issue Management screen, delete the text, **Service connection may be granted for specific disease or conditions which are presumed to have been caused by service if manifested to a compensable degree following military discharge. Although not shown in service, service connection for [DISABILITY NAME] has been granted on the basis of presumption. (38 C.F.R 3.303, 38 C.F.R. 3.307, 38 C.F.R. 3.309)** that populates into the Generated Text field.
- Replace the deleted text with the appropriate Rating Glossary fragment.

Note: Once the *Gulf War Particulate Matter* Special Issue and the new conditions are added as a Special Issue Basis, notification will be sent to discontinue use of this workaround. For more information on how to input Special Issues in VBMS-R, please see page 81 of the [VBMS Ratings User Guide](#).

Promulgation

Decisions rendered under this new guidance will not require any specific adjustments. For more information on decision authorization, decision notices, general authorization, and claimant notification issues, see M21-1.

The language that populates the notification letter is sufficient. No updates or workarounds are needed.

Effective Dates

Guidance contained in this VBA Letter is effective August 5, 2021, the date of the publication of the interim final rule. The effective date for service connected death or

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service connection of these conditions based on exposure to particulate matter cannot be granted earlier than the effective date of the act or administrative issue, in accordance with 38 C.F.R. § 3.114. Apply the effective date provisions under 38 U.S.C. § 5110(g) and 38 C.F.R. § 3.400, and further discussed in M21-1. As the interim final rule will be published on August 5, 2021, the effective date cannot be prior to that date when granting benefits on a presumptive basis.

Note: Service connection under this presumption does not automatically warrant entitlement to special home adaptation (SHA) grants under 38 U.S.C. § 2101(b). Residuals of an inhalation injury under 38 C.F.R. § 3.809a would only apply to cases where Veterans could also be exposed to possible severe burn injury. With regards to inhalational injuries due to particulate matter, the sources of the particulate matter would not immediately put Veterans in danger of suffering severe burn injury. To support entitlement to SHA under this guidance, the diagnosis must result from an inhalational injury caused by breathing steam or toxic inhalants, such as fumes, gases and mists present in a fire environment. This guidance does not change existing practice when determining eligibility to SHA. See M21-1, XIII.i.2.B.1.d for additional information.

5. Contact for Help/Questions

Submit questions on Compensation Service procedures, which includes supplemental claims, to: 211_Policy.vbavaco@va.gov.

Submit questions on Pension and Fiduciary Service procedures to: PFPOLPROC.VBACO@va.gov.

Submit questions on Legacy Appeals and Higher-level Reviews to: OARADMIN.VBAWAS@va.gov.

A handwritten signature in black ink, appearing to read 'TJ Murphy'.

Thomas J. Murphy
Acting Under Secretary for Benefits