

VAC Backlog/Wait-Time Crisis

Recommendation

NCVA strongly recommends that VAC recognize that fundamental systemic change is required, and that the department needs to accelerate the adoption of fast-tracking protocols/automatic entitlement for outstanding veterans' claims in order to alleviate the backlog and wait times that have only been compounded by the COVID-19 crisis.

Recommendation

NCVA proposes that VAC utilize presumptions in the departmental adjudicative system as outlined for many years in NCVA's Legislative Program. The adoption of evidentiary presumptions to deal with common disabilities and consequential claims will create administrative efficiencies and have a significant impact on turnaround times for veterans' claims currently in the backlog.

Recommendation

NCVA supports the adoption of the Standing Committee on Veterans Affairs report dated December 11, 2020, titled "Clearing the Jam: Addressing the Backlog of Disability Benefit Claims at Veterans Affairs Canada," which accepted the majority of NCVA's recommendations in alleviating the backlog/wait-time crisis.

Recommendation

NCVA urges VAC to fully recognize the substantive findings and criticisms of the Auditor General's report of May 2022 and implement with the highest priority the statutory, regulatory and policy changes proposed in the report to realistically address the backlog/wait-time conundrum confronting Canada's disabled veterans.

Recommendation

NCVA strongly recommends that the Government expand the implementation of the proposals contained in Budget 2021, insofar as the immediate granting of treatment

benefits prior to the formal adjudication of the veteran's disability claim so as to include all forms of disability suffered by the veterans of Canada.

Recommendation

NCVA recommends that VAC provide substantial financial funding to bolster the Veterans Emergency Fund to increase the maximum benefits per claim and to prioritize these applications during these challenging times. VAC should consider the utilization of the Veterans Emergency Fund as a stopgap measure for veterans awaiting disability pension claim decisions that have been inordinately held up by the current backlog conundrum.

Recommendation

NCVA proposes that VAC expedite the department's current study to simplify veterans legislation and regulations, including the Table of Disabilities, so as to provide a more "user-friendly" process and, in so doing, eliminate the complexities and legalistic provisions currently confronting veterans in making disability/health-care claims.

Recommendation

NCVA takes the position that, to ease the transition from DND to VAC, disabled veterans should be fully apprised of benefits and entitlements, rehabilitation options and job alternatives well before their medical discharge from the CAF.

Notwithstanding slight improvements made by the department in recent months, the overriding concern in the veterans' community today still remains the ongoing crisis as to the intolerable backlog and wait times confronting veterans in making applications for disability pensions and health-care benefits. The NCVA has consistently argued that systemic change is absolutely essential. It is self-evident that the departmental measures to increase staffing and digital resources will not be sufficient on their

own to resolve this deplorable state of affairs as underlined by not only the Auditor General's report, but by the Parliamentary Budget Officer (PBO)'s report of September 2020.

From NCVA's perspective, it is incumbent upon the Liberal government, in concert with the official Opposition parties, to enunciate bold and creative measures to accelerate the establishment of fast-tracking protocols/ automatic entitlement for outstanding

veterans' claims in order to alleviate this backlog and wait-time dilemma that has only been compounded by the COVID-19 crisis.

The following represents the crux of NCVA's position in relation to this ongoing administrative crisis:



- (i) The department should adopt the position that veterans' claims be considered at face value and be based on the reasonable evidence provided by the veteran and their family, with the proviso that individual files could be monitored over time and "spot audits" carried out to address any potential abuses. The clear reality that medical reports usually required by VAC to support these applications continue to be extremely difficult to obtain at this time must be recognized in assessing this present dilemma.
- (ii) In this context, it must be recognized that more than 80 per cent of veterans' claims and over 94 per cent of PTSD claims at the first level of VAC adjudication are approved and more than 90 per cent of appeals are granted by VAC or the Veterans Review and Appeal Board (VRAB), which reality supports our contention that veterans' claims should be granted automatically at first level.
- (iii) Even though medical offices and therapists' clinics have re-opened, these individual health professionals are simply overwhelmed with their own backlog and rescheduling delayed appointments. In our experience, the preparation of medical reports

to support veterans' claims is still not a priority at this time for these beleaguered physicians and therapists.

- (iv) Unless creative steps are taken, the adjudicative delays and turnaround time dilemmas will not be relieved in the short term, given the reality of the significant challenge in obtaining these medical/therapist reports to substantiate individual veterans' applications.
- (v) There is a general consensus among major veteran stakeholders that this administrative/adjudicative measure leading to a form of fast-tracking/automatic entitlement deserves immediate attention.
- (vi) It has been the long-standing view of NCVA that this type of automatic entitlement approach should have been implemented by VAC years ago in regard to seriously disabled veterans. This desired policy change would achieve the objective of expediting these specific claims so as to circumvent governmental "red tape" and in recognition of the fact that nearly all of these cases are

- ultimately granted entitlement in the end, often following many months of adjudicative delay. It is our considered position that now is clearly the time to extend this thinking to all veterans' claims.
- (vii) It is noteworthy that a number of mandate letters received by the minister of veterans affairs from the prime minister contained a specific direction that VAC should implement a form of automatic entitlement with respect to common disabilities suffered by Canadian veterans.
- (viii) It is also extremely significant that many financial assistance programs rolled out by federal/provincial governments to address the COVID-19 pandemic were premised on the philosophy of "pay now and verify later." In regard to a number of financial initiatives, the earlier need for medical reports to substantiate entitlement to these programs was waived by the Government, given the impracticality of accessing any input from the medical profession in Canada through these troubled times.
- (ix) It is to be noted that the initial reaction of the department to this proposed form of fast-tracking/automatic entitlement was that this approach could be implemented for benefits that are paid on a monthly basis; however, given the fact in relation to disability awards that the majority of veterans are still opting for lump sums, this would represent a concern for the department.
- (x) In addressing this concern, it was our recommendation that, as an interim step in granting this form of automatic entitlement, the disability award could be paid as a monthly allowance with a preliminary assessment in the first instance. Ultimately, the department would have the ability to fully assess the extent of the veteran's disability in order to determine the veteran's final assessment, at which point the veteran could choose to convert their monthly allowance to a lump sum award with the appropriate financial adjustment to consider the monthly amounts already paid.
- (xi) The great advantage in this recommendation is that the veteran's entitlement would be established early on and the veteran's concerns surrounding financial security and access to health care and treatment benefits would be addressed in this manner.
- (xii) The old adage that "desperate times call for bold and creative measures" is particularly apt in this situation.

A. Auditor General's Report

The Auditor General of Canada, Karen Hogan, tabled a report in Parliament on May 31, 2022, concluding that Canada's disabled veterans continue to face intolerably long wait times and an unacceptable backlog in earning entitlement for deserved financial assistance and benefits from VAC: https://www.oag-bvg.gc.ca/internet/English/parl_oag_202205_02_e_44034.html.

Hogan stated at her press conference in Ottawa that she was unimpressed with the efforts made by the department over the last number of years and called for the prioritization of a “realistic plan” to finally ensure that disabled veterans are not forced to wait months or even years for the financial support and compensation they require.

“I am really left with the conclusion that the Government failed to meet a promise that it made to our veterans, that it would take care of them if they were injured in service. This has a real consequence on the well-being of our veterans and their families.

“It is time to find a more sustainable solution that will see veterans receive their benefits in a timely way. After all, it is our veterans who are here to take care of and protect our country and keep peace. The Government should do better by them.”

The Auditor General’s report made a number of significant findings in their evaluation of the VAC efforts to improve the processing time and backlog confronting the veteran community in Canada:

“2.9 Overall, we found that despite Veterans Affairs Canada’s initiatives to speed up the processing of applications for disability benefits, veterans were still waiting a long time to receive compensation for injuries sustained in their service to Canada. Veterans applying for disability benefits for the first time waited a **median** of 39 weeks for a decision, which is a long way from the

department’s service standard of 16 weeks in 80 per cent of cases.

“2.10 The department’s data on how it processes benefits applications – and the organization of this data – was poor. As a result, the department did not know if its initiatives sped up application processing or even if any of its initiatives slowed down processing. We also found that the department did not always calculate wait times consistently, which meant that veterans waited longer than the department reported publicly.

“2.11 The department lacked a long term staffing plan to help address the long wait times. The department hired term employees to help process the backlog of applications. However, some of them left the department before the end of their term to take jobs that offered more security. The department needs a stable workforce to process disability benefits. The department also needs an improved data management system to help ensure that veterans do not wait months or even years to receive benefits to support their physical and mental health.

“2.57 Veterans Affairs Canada should work with central government agencies to establish a sustainable long-term resourcing plan for processing disability benefit applications in a timely manner. This plan should consider the number of applications the department expects to receive and



the efficiency it expects to gain from its process improvement initiatives.

“2.58 We concluded that although Veterans Affairs Canada implemented initiatives to improve the processing of disability benefit applications, its actions did not reduce overall wait times for eligible veterans. The department was still a long way from meeting its service standard. Implementation of initiatives was slow. Data to measure improvements was lacking. Both the funding and almost half of the employees on the team responsible to processing applications were temporary. As a result, veterans waited too long to receive benefits to support their physical and mental health and their families’ overall well-being.”

B. Report of the Standing Committee on Veterans Affairs – December 2020

The House of Commons Standing Committee on Veterans Affairs (ACVA) issued its highly material report “Clearing the Jam:

Addressing the Backlog of Disability Benefit Claims at Veterans Affairs Canada” on Friday, December 11, 2020, following many months of study and stakeholder input: <https://www.ourcommons.ca/Content/Committee/432/ACVA/Reports/RP11036287/acvarp04/acvarp04-e.pdf>.

NCVA presented our submission to the committee in November 2020 as part and parcel of its deliberations: <https://ncva-cnaac.ca/wp-content/uploads/2020/11/Submission-to-Standing-Committee-Nov2020.pdf>.

The Standing Committee findings identify quite clearly the present crisis in VAC adjudication and call for urgent and dramatic change in departmental protocols. Most importantly from our perspective, the report endorses our position that a form of automatic entitlement/pre-approval, together with fast-track protocols, needs to be adopted by the department to address the required systemic change.

We would suggest that the Standing Committee’s report, which echoes the current Auditor General’s Report 2022, reflects a comprehensive canvassing of a number of the salient issues surrounding the backlog/wait-time problem. With respect to the adjudicative initiatives we have focused on, the following represents the major recommendations made by the Standing Committee in its report to Parliament:

- (i) Recommendation 13: That Veterans Affairs Canada continue to automatically approve applications for medical conditions presumptively attributed to service in the Canadian

Armed Forces or the Royal Canadian Mounted Police, table to the Committee its list of such medical conditions and continue to expand it through research in Canada and in allied countries.

- (ii) *Recommendation 14:* That Veterans Affairs Canada conduct a study on women-specific medical conditions related to service in the Canadian Armed Forces and Royal Canadian Mounted Police, and, when applicable, add them to the list of medical conditions presumptively connected to military service.
- (iii) *Recommendation 15:* That the Minister of Veterans Affairs amend the Veterans Well-being Regulations to allow for the automatic pre-approval of disability benefit claims, and that Veterans Affairs Canada implement a pilot project to identify the risks and advantages of such automatic pre-approval of claims.
- (iv) *Recommendation 16:* That Veterans Affairs Canada conduct an in-depth review of the Veterans Emergency Fund in the context of its use to support veterans waiting in the backlog and report back to the committee with their findings.
- (v) *Conclusion:* Adopting these measures would exhibit good faith in dealing with the existing backlog and uphold the fundamental principle that has guided all Canadian veterans' compensation programs since

World War I: the benefit of the doubt. Committee members want to reaffirm this principle and reassure veterans and their families that their well-being is the sole and unique purpose of Veterans Affairs Canada.

In response to these compelling recommendations, the former Minister of Veterans Affairs, Lawrence MacAulay, had provided a formal reply to the committee setting out what constitutes, in our respectful judgment, a further statement of good intentions from the department's perspective in relation to increasing staffing, technological advances et al. We remain convinced, as set out in the Auditor General's Report 2022, that a more innovative approach is required to truly address this enduring backlog and wait-time crisis in VAC.

In this context, senior officials of the department have maintained for some time that they are ostensibly in the process of seeking legislative/regulatory authority to implement appropriate adjudicative changes required in accord with the Standing Committee conclusions and our long-standing proposals. Given the evaluation of the Auditor General's Report 2022, it is our hope that the department has recognized that there is sound rationale for incorporating the necessary adjudicative protocol amendments as the fundamental means of alleviating this unacceptable backlog/turnaround time conundrum. NCVA will continue to press the department to expedite the implementation of the necessary changes outlined by the Standing Committee report.

C. 2021 Federal Budget

NCVA has strongly recommended for many years that the immediate granting of treatment benefits for seriously disabled veterans prior to the completion of the individual VAC adjudication process is absolutely essential to meet the urgent needs of such veterans.

The amendments to the Veterans Health Care Regulations implemented in April 2022 by the department will allow veterans who apply for disability benefits for mental health conditions to automatically qualify for treatment benefit/health-care coverage. As a matter of background, it is noteworthy that the 2021 federal budget, brought down by Finance Minister Chrystia Freeland, recognized that:

“... [v]eterans are three to four times as likely to suffer from depressive or anxiety

disorders, and over 15 times more likely to experience post-traumatic stress disorder (PTSD), than the general population. Veterans are entitled to financial support for mental health-care through the Treatment Benefit Program, but they can wait up to two years to receive mental health-care while waiting for their disability benefit application to be confirmed. ...

“Budget 2021 proposes to provide \$140 million over five years starting in 2021-22, and \$6 million ongoing, to Veterans Affairs Canada for a program that would cover the mental health-care costs of veterans with PTSD, depressive, or anxiety disorders while their disability benefit application is being processed.”

Although this budgetary proposal did not fully adopt our favoured concept of automatic



entitlement/pre-approval for all physical and mental disabilities, it does provide a significant step forward in recognizing that treatment benefits should be granted immediately and not be dependent on the disability application process, which can indeed take up to two years. Thus, this provision is hopefully a springboard to expanding this principle so that veterans are not left in a precarious situation for many months or even years before health care/treatment benefits are available to them. The Government, through the budget, has determined that mental health care (PTSD, depressive or anxiety disorders) should be given priority. It will be our continuing position that this approach should be applied to all physical disabilities so that veterans in serious need of health care or treatment benefits are granted the same sense of priority.

Without doubt, this stopgap initiative has triggered much-needed treatment benefits for those veterans suffering urgent mental health issues. However, it still begs the larger question as to whether VAC is prepared in relation to the overall adjudication of disability benefits to fully operationalize the requisite systemic measures needed to ameliorate the pervasive administrative and bureaucratic delays currently confronting Canadian veterans and their families.

In this context, it is to be noted that over 95 per cent of PTSD claims are approved by the department. Therefore, automatic entitlement just makes good administrative sense and would accelerate the necessary disability and treatment benefits for the disabled veteran so as to obviate any further involvement of the bureaucracy of government.

As we have said all along with respect to the backlog/wait-time crisis, veterans deserve nothing less during these challenging times where financial and health concerns had been intensified by COVID-19!

D. Transitional Provisions/ Complexity of Legislation

It is not without significance that, due to the complexity and confusion surrounding a number of new benefits that have been promulgated over the last couple of years, the VAC adjudicative process has been further backlogged, resulting in many veterans being unable to access these new benefits and, as significantly, struggling to understand the criteria for application. In effect, the Government, in our judgment, has created a legislative “monster” insofar as the nature and scope of the VAC benefit grid that currently exists.

With the introduction of the new Pension for Life provision, statutory eligibility and policy guidelines have been dramatically complicated to the point where both the applicant veteran and the corresponding VAC adjudicator are confronted with many legalistic and interpretative obstacles with respect to achieving speedy decision-making and satisfactory entitlement results.

Although the department has initiated significant policy revisions to provide for an early intervention well in advance of the ultimate medical release of the disabled veteran, there remains much more work to be done to ensure that this transitional process is improved. It is extremely noteworthy that, in the past five years, both the Veterans Ombud

and the DND Ombudsman have made substantive proposals to the minister and the Standing Committee on Veterans Affairs in relation to improving the transitional protocols in this context.

Quite clearly, one of the most significant priorities with reference to this transitional phase is to ensure that disabled veterans are fully apprised of benefits and entitlements, rehabilitation options and job alternatives well before their medical discharge from the CAF.

In this regard, it remains the strong opinion of NCVA that VAC should be able to identify those benefits a veteran is entitled to and implement these benefits on the veteran's behalf. In general terms, the utilization of a knowledgeable case manager, together with administrative aids such as an enhanced "My VAC" account at an early point in the transitional process, should expedite this procedure, as opposed to the current protocol where a veteran is often asked to describe their needs and the precise benefits that the veteran is seeking.

It has been our recommendation that the case manager must be in a position in nearly all cases to identify these benefits and entitlements to the individual veteran under the various VAC programs, and that this should occur in collaborative partnership with DND prior to the discharge of the disabled veteran in question. With particular reference to seriously disabled veterans, the onus should be removed from the veteran and the VAC administrative function should be fine-tuned and more proactive in establishing entitlements for such veterans.

It should be noted that NCVA emphasized this important topic in our submission to the Standing Committee on Veterans Affairs in March 2024, with regard to their study on veterans' transition to civilian life.