



DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF INSPECTOR GENERAL

Office of Audits and Evaluations

VETERANS BENEFITS ADMINISTRATION

Accuracy of Claims
Involving Service-Connected
Amyotrophic Lateral
Sclerosis

REVIEW

REPORT # 18-00031-05

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Executive Summary

Why the OIG Did This Review

Amyotrophic Lateral Sclerosis (ALS), commonly referred to as Lou Gehrig's disease, is a rapidly progressive neurological disease often causing death within three to five years from the onset of symptoms. The VA Office of Inspector General (OIG) conducted this review to determine whether Veterans Benefits Administration (VBA) staff accurately decided veterans' claims involving service-connected ALS. Because a statistical correlation was found between military service activities and the development of ALS, VA established a presumption of service connection in 2008. As a result, veterans who develop the disease during service or any time after separation from military service receive benefits, as long as the veteran had active, continuous service of 90 days or more.¹ Initial data testing for this review identified ALS cases as a high-risk area for improper payments. Assisting VBA to improve processing of these types of claims helps ensure veterans diagnosed with ALS receive proper benefit payments.

What the Review Found

A High Percentage of ALS Claims Had Significant Errors

The review team found that VBA staff made 71 errors in 45 of the examined 100 veterans' ALS claims completed from April through September 2017. Based on this sample, the team projected that 430 of the 960 total ALS veterans' cases (45 percent) completed during that six-month period had erroneous decisions. For those 430 cases, improper payments were made to about 230 veterans through September 2017, resulting in underpayments of approximately \$750,000 and overpayments of approximately \$649,000. The review team further estimated that if VBA staff continue to make errors at the rate identified in this review over a period of five years, VBA would make \$7.5 million in underpayments and \$6.5 million in overpayments for a total of \$14 million in improper payments based on payment rates in effect at the time of this review. However, if VBA implements the review team's recommendations, it could improve the accuracy of these decisions and reduce payment errors. The review team also estimated that errors in the remaining 200 cases had not resulted in improper payments; however, generally those errors have the potential to affect veterans' benefits, such as failing to obtain sufficient medical evidence needed to make accurate decisions on claims.

¹ 38 CFR § 3.318, Presumptive service connection for amyotrophic lateral sclerosis.

The review team determined that rating personnel incorrectly decided ALS claims in one or more of the following categories:²

- Special monthly compensation (SMC) benefits³
- Evaluations of medical complications of ALS⁴
- Effective dates
- Additional benefits related to adapted housing or automobiles
- Inaccurate or conflicting information in decisions
- Proposal to discontinue service connection

VBA quality assurance management and staff agreed that these were errors identified by the OIG review team and on the resulting effects in 42 of 45 veterans' cases. In one of the remaining three cases VBA agreed with the errors, but not with the impact of a delayed payment. In the other two cases, VBA disagreed with the errors.⁵

ALS Claims Are Complex and VBA Staff Did Not Decide Them Often

In 2012, VA increased the minimum disability evaluation for veterans with service-connected ALS to 100 percent. The inaccuracies the review team found in ALS claims generally occurred because several factors make ALS decisions complex despite this simplification. For example, VBA staff must identify and grant certain benefits even if veterans do not specifically claim them. ALS determinations also still involve a wide range of medical complications, evaluations, and assessments of special monthly compensation levels (SMC levels) that may be higher than compensation at the 100 percent rate alone. Some examples of medical complications include impaired speech, difficulty swallowing and breathing, and weakness in the arms and legs. Staff must decide the proper evaluation for all medical complications of ALS to determine whether to assign a single 100 percent evaluation or separately evaluate each of the complications.⁶ These determinations can affect a veteran's level of entitlement to SMC, which is significant because

² Rating personnel include VBA staff positions of Rating Veterans Service Representative (RVSR), Decision Review Officer (DRO), and Rating Quality Review Specialist (RQRS).

³ SMC recognizes the severity of certain disabilities by adding additional compensation to the basic rate of payment. Different levels of SMC can be assigned depending on a veteran's disabilities, designated by the letter of the corresponding section of law establishing the payment rates for each level.

⁴ A medical complication is a secondary disease or condition developing during a primary disease or condition.

⁵ See Appendix B for a more detailed discussion of VBA quality assurance responses to errors the OIG identified.

⁶ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 4, Section G, Topic 6, Amyotrophic Lateral Sclerosis (ALS).

SMC levels recognize that for certain types of disabilities, the basic rate of compensation is insufficient. In effect, SMC levels dictate what additional compensation veterans with service-connected ALS are eligible to receive above the 100 percent rate. The SMC levels are generally referred to by letters corresponding to sections in the pertinent law.

Most rating personnel the OIG review team interviewed indicated that they did not often decide claims involving ALS or higher levels of SMC.⁷ They reported that infrequently deciding these claims made them more difficult to evaluate because of the numerous factors involved. Specifically, rating personnel said that higher-level SMC decisions can be complicated, requiring frequent exposure to these cases to gain and maintain needed proficiency.

VBA policy requires a second review of decisions involving higher levels of SMC.⁸ The OIG review team identified errors in 25 ALS decisions despite having additional reviews by rating personnel or VA Regional Office managers. Generally, the managers and staff interviewed stated the second reviewers may not have conducted thorough reviews, or may not have had the expertise to accurately review these complex claims.

VBA requires rating personnel to use an SMC Calculator and include the results in the claims folder whenever a decision addresses SMC.⁹ In addition, VBA required rating personnel to complete higher-level SMC training in both FY 2016 and FY 2017. However, the OIG review team found SMC errors were still common in ALS decisions. Generally, the managers and staff interviewed stated rating personnel must be knowledgeable in SMC to correctly input information in the SMC Calculator and obtain accurate results. They reiterated that SMC decisions can be complicated, and they also said frequent exposure is needed for proficiency.

Unclear Notice Regarding Additional SMC Benefits

Although ALS is always evaluated at 100 percent, when the criteria for SMC are met, VBA may increase the veteran's compensation. VA is generally required to notify the veteran of the conditions that must be met to grant the next higher level of compensation.¹⁰ However, VBA policy does not require staff to notify veterans specifically about the availability of SMC. A representative from VBA's Compensation Service stated this policy is based on an interpretation of a 1993 U.S. Court of Veterans Appeals decision regarding VA's responsibility to notify veterans of their eligibility for different disability evaluations.¹¹ VBA took the position that the

⁷ Appendix A shows the general hierarchy of SMC levels. The term "higher levels of SMC" used in this report refers to levels greater than SMC L.

⁸ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section D, Topic 7, Signature.

⁹ The SMC Calculator determines the total SMC award based on disabilities entered by the decision maker, as well as the answers to applicable follow-up questions.

¹⁰ 38 United States Code §5104, *Decisions and notices of decisions*.

¹¹ See *AB v. Brown*, 6 Vet.App. 35 (1993).

notification requirement under this decision applied to evaluations under the Schedule for Rating Disabilities, but not to SMC.

For the reasons outlined in the report, the OIG disagrees with VBA's reliance on this decision to support its policy. In addition, VA's FY 2018–2024 Strategic Plan includes a goal that veterans choose VA for clear information to make informed decisions.¹² The associated strategic objectives include veterans being informed of, understanding, and being able to avail themselves of the benefits they choose. VA's strategy to achieve this includes ensuring veterans know about and understand the full range of benefits available to them through VA.

The review team asked VBA about the inconsistency between the current notification approach for additional SMC benefits and the Strategic Plan. VBA believes the information provided on SMC through all resources such as official forms, websites, outreach, veterans service organization information, and the language provided in rating decisions and notification letters, helps achieve this goal. The review team concluded, however, that VBA could improve its service to veterans with ALS by ensuring they receive notice regarding additional SMC benefits that may be available. Without information about SMC, veterans with ALS may not know about and understand the benefits available to them and may mistakenly believe there are no additional benefits available. They may also be uncertain of the accuracy of any SMC benefits they are awarded. Furthermore, they may not know when they should file a claim for increase as their condition worsens.

What the OIG Recommended

The OIG recommended the following to the Under Secretary for Benefits:

1. Implement a plan to improve the decisions and additional reviews of claims involving service-connected ALS and monitor these claims to ensure staff demonstrate proficiency.
2. Implement a plan to ensure veterans with service-connected ALS receive notice regarding additional SMC benefits that may be available.

¹² Department of Veterans Affairs FY 2018–2024 Strategic Plan, Published February 12, 2018.

Management Comments

The Under Secretary for Benefits concurred with Recommendations 1 and 2 and provided acceptable action plans for both recommendations.

The OIG will monitor VBA's progress and follow up on implementation of the recommendations until all proposed actions are completed.



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Abbreviations

A&A	aid and attendance
AL	anatomical loss
ALS	Amyotrophic Lateral Sclerosis
DRO	Decision Review Officer
FY	fiscal year
LOU	loss of use
OIG	Office of Inspector General
RQRS	Rating Quality Review Specialist
RVSR	Rating Veterans Service Representative
SMC	special monthly compensation
VA	Department of Veterans Affairs
VBA	Veterans Benefits Administration
VSCM	Veterans Service Center Manager



Introduction

Why the OIG Did This Review

VA describes Amyotrophic Lateral Sclerosis (ALS), commonly referred to as Lou Gehrig's disease, as a rapidly progressive neurological disease that attacks the nerve cells responsible for controlling voluntary muscles. Although VBA prioritizes claims for veterans with ALS, staff must also accurately decide these claims given the seriousness of the condition, which often causes death within three to five years from the onset of symptoms.¹³ Initial data testing for this review identified ALS cases as a high-risk area for improper payments. The purpose of this review was to determine whether VBA staff accurately decided veterans' claims involving service-connected ALS.

Claims Involving Service-Connected ALS

According to VA, ALS affects all muscles under voluntary control, and these veterans lose their strength and ability to move their arms, legs, and body. When the muscles of the diaphragm and chest wall fail, veterans lose their ability to breathe without ventilator support. Medical research notes the onset of symptoms may be so subtle that they are often overlooked. The earliest symptoms may include twitching, cramping, stiffness of muscles, muscle weakness affecting an arm or leg, slurred and nasal speech, or difficulty chewing or swallowing.

VA determined that although the cause of ALS was unknown, there was a statistical correlation between activities in military service and the development of ALS. Therefore, VA established a presumption of service connection for ALS effective September 23, 2008. As a result, veterans who develop the disease during service or any time after separation from military service are generally entitled to receive service-connected disability benefits, as long as they had active, continuous service of 90 days or more.¹⁴ In addition, rating personnel must recognize, develop, clarify, and/or decide all issues and claims, including ALS complications and other benefits, whether or not they are explicitly claimed.¹⁵

¹³ A "decision" means a formal determination on all questions of fact and law affecting the provision of VA benefits to a claimant. A "rating decision" is a record detailing the formal determination made regarding one or more issues of benefit entitlement. The rating decision states the judgments made and provides an explanation supporting each of them. M21-1, Adjudication Procedures Manual, Part III, Subpart iv, Chapter 6, Section C, Topic 1, Basic Information on Rating Decisions.

¹⁴ 38 CFR § 3.318, *Presumptive service connection for amyotrophic lateral sclerosis*.

¹⁵ Rating personnel include VBA staff positions of Rating Veterans Service Representative (RVSR), Decision Review Officer (DRO), and Rating Quality Review Specialist (RQRS).

Effective January 19, 2012, VA increased the minimum disability evaluation for veterans with service-connected ALS from 30 to 100 percent. However, staff must still determine the proper evaluation for all medical complications of ALS, including whether to assign a single 100 percent evaluation or separately evaluate each of the complications.¹⁶ This determination can affect a veteran's entitlement to special monthly compensation (SMC).¹⁷

SMC and Other Benefits

Staff must consider eligibility for SMC in all ALS cases, and VBA policy requires them to address the issue whenever they can grant entitlement.¹⁸ As the concept of rating disabilities evolved, SMC was established to recognize the severity of certain disabilities or combinations of disabilities, such as loss of use (LOU) of both hands or feet. SMC added compensation for these disabilities where the basic payment rate was not sufficient for the level of disability present. As a result, increased compensation above the 100 percent evaluation for ALS may be warranted based on entitlement to SMC.

Different levels of SMC can be assigned depending on a veteran's disabilities. Each level of SMC has corresponding codes that staff must enter in the electronic system, which control the amount of compensation the veteran receives. SMC levels are generally referred to by the letters of the corresponding sections of the law establishing the rates of payment.¹⁹ For example, veterans can receive SMC L if they require regular aid and attendance (A&A).²⁰ Generally, regular A&A is warranted if the veteran requires the help of another person to perform everyday functions such as dressing, bathing, and eating. However, SMC based on the need for A&A is generally reduced if the veteran is hospitalized at government expense such as inpatient care at a VA Medical Center.²¹ Appendix A shows the general hierarchy of SMC levels and their payment rates.

In addition, service connection for ALS results in automatic entitlement to additional benefits related to adapted housing, automobiles, and dependents' educational assistance. As a result, staff must address entitlement to these benefits when granting service connection for ALS even if a veteran does not specifically claim them.

¹⁶ A medical complication is a secondary disease or condition developing during a primary disease or condition.

¹⁷ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 4, Section G, Topic 6, Amyotrophic Lateral Sclerosis (ALS).

¹⁸ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 4, Section G, Topic 6, Amyotrophic Lateral Sclerosis (ALS); M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section B, Topic 2, Considering Issues Within Scope of a Claim.

¹⁹ 38 United States Code §1114, *Rates of wartime disability compensation*.

²⁰ 38 CFR § 3.352, *Criteria for determining need for aid and attendance and "permanently bedridden."*

²¹ 38 CFR § 3.552, *Adjustment of allowance for aid and attendance*.

Timeline of Regulatory Changes Associated with ALS

Figure 1 illustrates the timeline of regulatory changes involving ALS as VA recognized the rapid progression and severity of the disease and added entitlement to additional benefits.

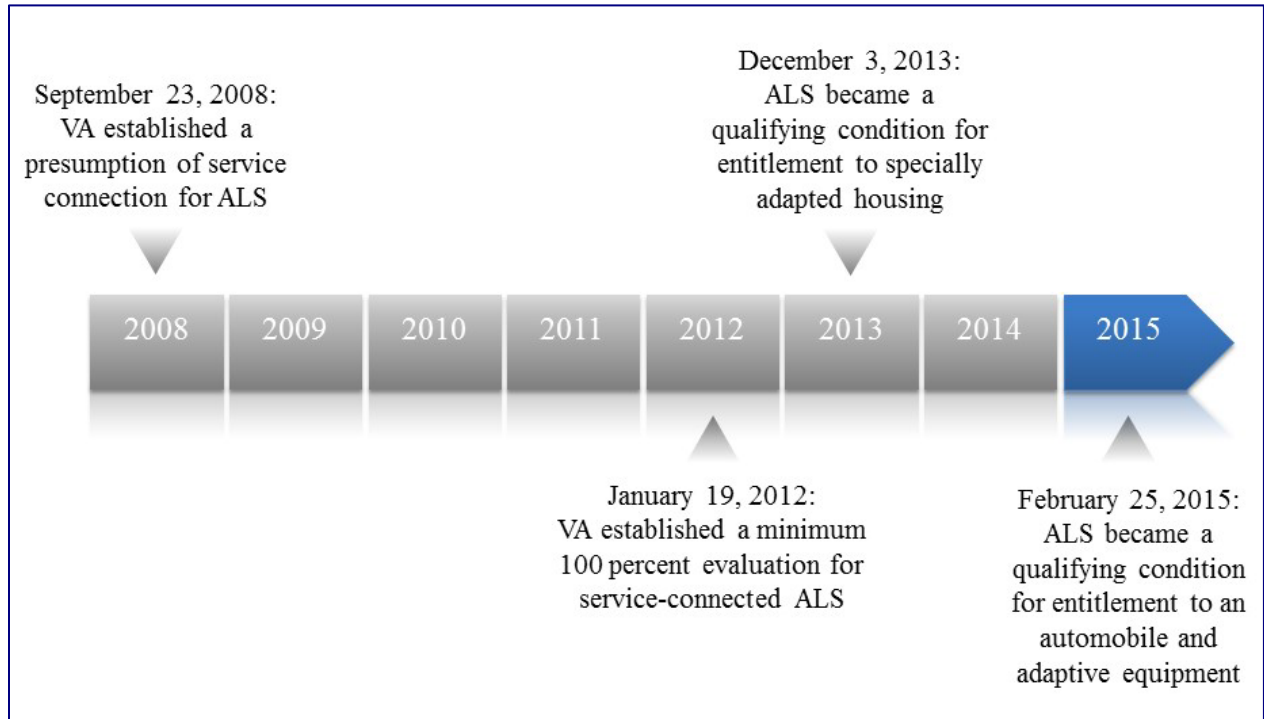


Figure 1. *ALS Regulatory Changes Timeline*
(Source: VA OIG presentation of VA regulations involving ALS.)

Results and Recommendations

Finding 1: VBA's Processing of Claims Involving Service-Connected ALS Needs Improvement

The review team projected that about 45 percent of veterans with ALS claims completed in April through September 2017 had erroneous decisions. These errors resulted in underpayments of approximately \$750,000 and overpayments of approximately \$649,000 to 230 veterans. For an additional 200 veterans' cases, VBA staff made errors that could potentially affect the veterans' benefits. The review team determined that errors were due to the complexity of these claims. ALS worsens quickly and can involve a wide range of medical complications that require consideration for evaluations and SMC levels. Most rating personnel indicated that they do not often receive claims involving ALS or higher levels of SMC, which can make these claims more difficult to evaluate.²²

Although VBA is typically required to notify veterans of the conditions that must be met to grant the next higher level of compensation, the OIG review team determined that VBA staff generally did not tell veterans about additional SMC benefits that may be available. Based on an interpretation of a United States Court of Veterans Appeals decision, representatives from VBA's Compensation Service stated this requirement to notify applies to evaluations under the Schedule for Rating Disabilities, but not to SMC.²³

What the OIG Did

This review covered about 960 veterans who had one or more decisions associated with service-connected ALS in an initial or subsequent disability compensation claim completed from April 1, 2017, through September 30, 2017. The OIG review team reviewed a random sample of 100 of those veterans who had decisions associated with service-connected ALS and determined whether VBA staff accurately decided the claims. The team used VBA's electronic systems, including the Veterans Benefits Management System, to review the sample veteran claims folders and relevant documentation required to assess whether staff accurately decided the veterans' claims involving service-connected ALS. The review team discussed the findings with VBA officials and included their comments in the report as appropriate. The OIG review team performed site visits at the Houston, Texas; Montgomery, Alabama; Phoenix, Arizona; and St. Louis, Missouri, VA Regional Offices (VAROs) in February 2018.

²² Appendix A shows the general hierarchy of SMC levels. The term "higher levels of SMC" used in this report refers to levels greater than SMC L.

²³ See *AB v. Brown*, 6 Vet.App. 35 (1993).

This finding on the need for improvement is based on the following considerations, which are detailed below:

- The high percentage of ALS claims with significant errors
- The impact of erroneous ALS claims decisions
- The infrequency of VBA staff deciding complex ALS claims
- The unclear notice regarding additional SMC benefits

A High Percentage of ALS Claims Had Significant Errors

The review team examined a statistical sample of 100 veterans' cases involving service-connected ALS claims and found that VBA staff made 71 errors involving 45 veterans' ALS claims:

- In 32 errors, rating personnel incorrectly processed decisions involving SMC ranging from the lowest level to the highest. These errors included SMC benefits that were missed or incorrectly denied, granted or continued at the wrong level, or granted prematurely without sufficient evidence.
- In 21 errors, rating personnel improperly evaluated medical complications of ALS. These errors included complications that were missed or incorrectly denied, granted or continued at the wrong level, or evaluated prematurely without sufficient evidence.
- In nine errors, rating personnel assigned effective dates either before or after the dates they should have used. These errors included effective dates for service connection of ALS, evaluations of ALS complications, and SMC.
- In four errors, rating personnel failed to grant additional benefits related to adapted housing or automobiles, or included an incorrect determination of a veteran's entitlement to a lower adapted housing benefit.
- In three errors, rating personnel included inaccurate or conflicting information in decisions about the benefits awarded or effective dates assigned.
- In one case with two errors, rating personnel proposed to stop service connection for ALS due to a lack of qualifying service; however, they failed to keep the veteran's claim for increase pending. Then, in a subsequent decision that established qualifying service, rating personnel failed to also grant increased SMC for ALS.

The following example illustrates the three largest categories of errors—incorrect effective dates, incorrect evaluations, and incorrect SMC—and the complexity associated with processing service-connected ALS claims. This veteran's case had three errors in two decisions that resulted

in an underpayment, an overpayment, and the potential to further underpay the veteran in the future.

Example 1 – Rating personnel assigned incorrect effective dates, incorrectly evaluated ALS complications, and failed to grant SMC

In this example, a Decision Review Officer (DRO) assigned incorrect effective dates in a rating decision when granting service connection for ALS and SMC. The DRO did not grant service connection on the original date VA received the claim for ALS and did not award SMC when medical evidence showed it was warranted. VA therefore underpaid the veteran approximately \$52,500 over a period of 15 months.

In a subsequent rating decision, an RQRS incorrectly evaluated each of the veteran's ALS complications separately—impaired speech, difficulty swallowing, and weakness in his arms and legs—resulting in an incorrect increase to the veteran's SMC benefits. However, separately evaluating the complications is not allowed unless there is a single complication that warrants a 100 percent evaluation. None of the veteran's ALS complications warranted a 100 percent evaluation. Because of the incorrect evaluations, staff incorrectly increased SMC benefits and VA overpaid the veteran approximately \$750 over a period of four months.

Finally, as an example of incorrect SMC benefits, in the same rating decision the RQRS established service connection for loss of use of the left arm, but failed to grant the associated SMC level. Granting service connection indicated staff determined the criteria for SMC based on loss of use had been met. Granting the SMC was needed to receive accurate SMC benefits in the event the veteran is hospitalized at government expense. Because the veteran had not been hospitalized, no underpayment had occurred at the time of our review. However, if not corrected, the VA could have underpaid him in the future if hospitalized.

After the OIG review team identified these errors, VBA staff paid the veteran approximately \$52,500 for the underpayments. However, VA may not create an overpayment when correcting an administrative error.

VBA quality assurance management and staff agreed with the classification of these and other actions identified by the OIG review team as errors and their resulting effects (described in the following section) in 42 of 45 veterans' claims. Appendix B provides details on the remaining three veterans' claims.

Impact of Erroneous ALS Claims Decisions

Based on the sample results, the review team estimated that 430 of 960 veterans' claims (45 percent) had erroneous decisions. The review team further estimated these errors resulted in improper compensation over- and/or underpayments to approximately 230 veterans through September 2017. The review team estimated that errors in the remaining 200 veterans' cases had not resulted in improper payments through September 2017; however, these errors have the potential to affect veterans' benefits. For example, in some cases, improper payments would occur after the start of the OIG team's review. Since some SMC awards are reduced if the veteran is hospitalized at government expense, improper payments could also occur in some cases if these veterans were hospitalized in the future and their SMC was reduced to the wrong rate. Other errors delayed veterans receiving additional compensation or benefits including adapted housing and automobiles. In addition, some cases contained insufficient medical evidence to accurately decide the claims, or resulted in inaccurate notices regarding the benefits to which veterans were entitled.

Table 1 summarizes the estimated amount of improper payments.

Table 1. Estimated Improper Payments for Claims Completed in a Six-Month Period

Type of improper payment	Estimated amount
Underpayments	\$750,000
Overpayments	\$649,000 ²⁴
Total	\$1,399,000

Source: VA OIG statisticians' projection of estimated improper payments involving service-connected ALS claims completed from April 1, 2017, through September 30, 2017

The review team estimated from this six-month sample that if VBA staff continue to make errors at the rate identified and at payment rates in effect at the time of this review, VBA could make an estimated \$14 million in improper payments over a five-year period. Improper payments would consist of \$7.5 million in underpayments and \$6.5 million in overpayments. However, if VBA implements the review team's recommendations, it could improve the accuracy of these decisions.

²⁴ The estimated overpayments of \$649,000 include payments that were either improper or unsupported. However, results for these subcategories were not precise enough to be included in this report due to the small sample size.

ALS Claims Are Complex and VBA Staff Did Not Decide Them Often

As discussed earlier, VA established a presumption of service connection for ALS in 2008, and in 2012 VA increased the minimum disability evaluation for veterans with service-connected ALS to 100 percent. Despite these simplifications, ALS decisions remain complex. Managers and staff that the OIG review team interviewed generally agreed with the team's assessment that ALS claims were complicated due to several factors. ALS worsens quickly and can involve a wide range of medical complications that require consideration for evaluations and assessments of SMC levels. Some examples of medical complications include impaired speech, difficulty swallowing and breathing, and weakness in the arms and legs. In addition, staff must determine the proper evaluation for all these medical complications of ALS, including whether to assign a single 100 percent evaluation or separately evaluate each of the complications. These determinations can affect a veteran's level of entitlement to SMC.²⁵

Furthermore, managers and staff stated they must identify and grant benefits associated with ALS even if veterans do not specifically claim them, including new and worsening medical complications, SMC, and entitlement to adapted housing and automobiles. Most rating personnel indicated that they do not often receive claims involving ALS, or higher levels of SMC, which can make these claims more difficult to evaluate because of the numerous factors involved. Specifically, rating personnel said that higher-level SMC decisions can be complicated, and they also said they needed frequent exposure to gain and maintain proficiency in this area.

VBA policy requires a second reviewer on decisions involving higher levels of SMC.²⁶ The OIG review team identified errors in 25 ALS decisions that received additional reviews by rating personnel or VARO management. Generally, managers and staff interviewed by the OIG review team stated the second reviewers may not have conducted thorough reviews or may not have had the expertise to accurately review these complex claims. Two supervisors who certified the accuracy of decisions with errors stated they did not review the decisions and instead relied on other rating personnel to perform the second reviews. In addition, one of the supervisors had no experience deciding disability claims. One RQRS acknowledged that he overlooked medical evidence in a case he reviewed that contained an error. Another RQRS indicated that he missed an error when reviewing a decision, as he focused on the specifically claimed SMC benefit as opposed to the overall SMC warranted. He reiterated that certain aspects of SMC can be troubling or confusing.

²⁵ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 4, Section G, Topic 6, Amyotrophic Lateral Sclerosis (ALS).

²⁶ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section D, Topic 7, Signature.

VBA requires rating personnel to use an SMC Calculator, and include the results in the claims folder whenever a decision addresses SMC.²⁷ In addition, VBA's Compensation Service required all rating personnel to complete SMC training in both FY 2016 and FY 2017. However, the OIG review team found SMC errors were still common in ALS decisions. Managers and staff interviewed by the review team generally stated that rating personnel must be knowledgeable in SMC to correctly input information into the SMC Calculator to obtain accurate results. They also confirmed that SMC decisions can be complicated, and they also said they needed frequent exposure to gain and maintain proficiency. For example, managers at the Houston and Phoenix VAROs typically assigned ALS claims to dedicated subject matter experts. The review team identified high accuracy rates at these VAROs, and managers and staff felt that having specialized rating personnel decide these claims was a key factor. Managers and staff whom the OIG review team interviewed at VAROs and the VA Central Office typically felt that ensuring ALS claims were decided by a group of specialized staff who regularly evaluated these claims would improve accuracy.

The OIG's first recommendation for corrective action addresses the need for VBA to implement a plan for improving the decisions and additional reviews of claims involving service-connected ALS, and to monitor these claims to ensure VBA staff demonstrate proficiency in processing them properly.

Unclear Notice Regarding Additional SMC Benefits

VBA could improve its service to veterans with ALS by ensuring they receive notice regarding additional SMC benefits for which they may be eligible. Although ALS is always evaluated at 100 percent, increased compensation is granted when the criteria for SMC are met. When reaching a decision about benefits, VA is generally required to notify veterans of the conditions that must be met to grant them the next higher level of compensation.²⁸ In fact, VBA policy requires staff to include the requirements for the next higher evaluation in their compensation rating decisions.²⁹

In the cases the OIG review team examined, rating personnel generally did not tell veterans about additional SMC benefits that may be available. For example, when rating personnel assigned a single 100 percent evaluation for ALS including complications, they generally notified the veteran that this was the highest disability evaluation allowed under the law for ALS and did not address SMC. In addition, when rating personnel evaluated the complications

²⁷ The SMC Calculator is an electronic job aid that determines the total SMC award and corresponding codes based on disabilities entered by the decision maker as well as the answers to applicable follow-up questions; M21-1, *Adjudication Procedures Manual*, Part IV, Subpart ii, Chapter 2, Section H, Topic 1, General Information on SMC.

²⁸ 38 United States Code §5104, Decisions and notices of decisions.

²⁹ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section C, Topic 5, Basic Information on Reasons for Decision.

separately, they generally notified the veteran of the next higher evaluation for the specific medical complications but did not address SMC. Finally, when granting SMC benefits, these personnel generally did not explain the basis for potential entitlement to higher levels. VBA policy does not, however, require staff to inform veterans specifically about the availability of SMC. A representative from VBA's Compensation Service stated the absence of SMC notifications in policy is based on an interpretation of a 1993 U.S. Court of Veterans Appeals decision regarding VA's responsibility to notify veterans of their eligibility for different disability evaluations.³⁰ VBA stated that this requirement applies to *evaluations* under the Schedule for Rating Disabilities, but not SMC.

The OIG disagrees with VBA's reliance on this decision to support its lack of required notification of SMC to veterans in its policy. Although the court discussed VA's practice with respect to affirmatively informing veterans of the eligibility requirements for different disability evaluations, this was done in the context of a discussion of the court's jurisdiction. The court ultimately dismissed the case for lack of jurisdiction and therefore rendered no decision as to which notifications are required. Moreover, the case involved only veterans' disability evaluations and the court never discussed SMC. VBA told the OIG that because the court never discussed SMC, it therefore never intended to require notification by VBA to veterans about the eligibility requirements for the different levels of SMC. The OIG believes VBA's reliance on that decision is misplaced.

Managers and staff from the VA Central Office and VAROs interviewed by the review team agreed, nonetheless, that without additional information about SMC, veterans may mistakenly believe there are no additional benefits available. They also agreed veterans may be uncertain of the accuracy of any SMC benefit payments they are awarded. Lastly, they acknowledged these veterans may not know when they should file a claim for increase as their condition worsens.

Although representatives from VBA's Compensation Service indicated their notification requirement does not apply to SMC, VA's FY 2018–2024 Strategic Plan includes a goal that veterans choose VA for clear information to make informed decisions.³¹ The associated strategic objectives include veterans being informed of, understanding, and being able to avail themselves of the benefits they choose. VA's strategy to achieve this includes ensuring veterans know about and understand the full range of benefits available to them through VA.

The review team asked VBA about the inconsistency between the lack of notification required for additional SMC benefits and the Strategic Plan. VBA replied that veterans should be provided relevant information that helps them make appropriate decisions in applying for the benefits to which they are entitled. In addition, VBA indicated that language provided in rating decisions and notification letters is intended to support this goal. Similarly, VBA stated that the

³⁰ See *AB v. Brown*, 6 Vet.App. 35 (1993).

³¹ Department of Veterans Affairs FY 2018–2024 Strategic Plan, Published February 12, 2018.

information provided on SMC through all resources such as official forms, websites, outreach, veterans service organization information, in addition to the decisions and notification letters, also advances this goal. The review team concluded that VBA could improve its service to veterans with ALS by requiring that they receive notice regarding additional SMC benefits which may be available.

ALS is a rapidly progressive disease where increased compensation may be granted based on disabilities warranting SMC. Without information about SMC, veterans with ALS may not know about and understand the benefits available to them. Representatives from VBA's Compensation Service noted that it would be difficult to explain various possible increases in SMC and would likely confuse the veteran. Although representatives from VBA's Compensation Service stated that VBA staff were following VBA's interpretation of the court decision, they agreed that additional information could be helpful. Despite the challenges, a Compensation Service Lead Consultant stated that not providing the veteran information regarding SMC is not the best option.

The OIG's second recommendation addresses how VBA could improve its service to veterans with service-connected ALS by ensuring they receive notice regarding additional SMC benefits that may be available.

Conclusion

ALS is a devastating and rapidly progressive disease that swiftly claims lives and has been associated with military service activities. In response, VBA provides a wide range of benefits above the 100 percent rate, including SMC at varying levels, adapted housing and automobiles, as well as educational assistance for affected veterans' dependents. Although VBA prioritizes claims for veterans with ALS, it needs to improve the processing of these complex claims and ensure staff are proficient in order to decrease improper payments and provide these veterans all of the benefits to which they are entitled. In addition, VBA could improve its service to veterans with service-connected ALS and decrease uncertainty by implementing a plan to provide these veterans with notice regarding additional SMC benefits they may receive.

Recommendations 1 and 2

1. The Under Secretary for Benefits implements a plan to improve the decisions and additional reviews of claims involving service-connected Amyotrophic Lateral Sclerosis, and monitors these claims to ensure staff demonstrate proficiency.
2. The Under Secretary for Benefits implements a plan to ensure veterans with service-connected Amyotrophic Lateral Sclerosis receive notice regarding additional special monthly compensation benefits that may be available.

Management Comments and OIG Response

The Under Secretary for Benefits concurred with both recommendations and provided acceptable action plans for these recommendations.

To address Recommendation 1, the Under Secretary for Benefits stated VBA will designate specialized groups of trained Veterans Service Representatives and Rating Veterans Service Representatives at regional offices to process ALS-related claims. The Under Secretary reported the current process is for Quality Review Teams and Systematic Technical Accuracy Review consultants to review ALS claims through a random review process. Furthermore, there is the requirement for a second signature on higher level SMC. Finally, the Compensation Service will conduct a special focus review during the first quarter of FY 2019 for claims involving SMC housebound, which will include ALS claims. The target completion date is February 28, 2019.

To address Recommendation 2, the Under Secretary for Benefits stated VBA is submitting business requirements for functionality to the Veterans Benefits Management System. This enhancement will automatically generate specific SMC language to inform ALS veterans of any additional benefits to which they may be entitled. VBA anticipates this functionality in FY 2019.

The OIG will monitor VBA's progress and follow up on implementation of both recommendations until all proposed actions are completed.

Appendix A: SMC Hierarchy and Payment Rates



Figure 2. SMC Hierarchy and Payments Rates

(Source: VA OIG presentation of hierarchy of SMC and payment rates effective December 1, 2017.)

Note: Figure 2 summarizes SMC benefits (with the highest levels at the top) but is not all-inclusive, and there are other SMC levels not displayed. For more information regarding SMC and payment rates see 38 United States Code §1114, Rates of wartime disability compensation; 38 CFR §3.350, Special monthly compensation ratings; and VA website: <https://www.benefits.va.gov/COMPENSATION/rates-index.asp>

Appendix B: VBA Quality Assurance Responses to Errors the OIG Identified

VBA quality assurance management and staff agreed with the types of errors identified by the review team and their resulting effects in 42 of 45 veterans' cases. In one of the remaining three cases, they agreed with the errors identified by the team, but not with the effect.

Case 1 – Rating Personnel Delayed Granting Increased Benefits

A Rating Veterans Service Representative (RVSR) failed to timely grant increased SMC for ALS. After a veteran submitted a claim for compensation increase for ALS, an RVSR's decision proposed to discontinue service connection due to a lack of qualifying service. The claim was closed although the decision did not address the veteran's claim for increase. A subsequent decision established qualifying service, but a second RVSR did not grant increased SMC as shown by the medical evidence. Ultimately, a third decision granted the increased SMC. Therefore, the OIG determined the second RVSR delayed paying the veteran around \$10,100 over a period of about one month.

VBA's quality assurance agreed the veteran's claim for increase was uncontrolled for about two months; however, they disagreed that the RVSR delayed awarding increased benefits. They stated it would have been premature to address the claim for increase until after the decision establishing qualifying service was finalized.

A representative from VBA's Compensation Service Policy staff indicated that no policy precluded staff from addressing the claim for increase at the same time as the decision that established qualifying service. Since VA is obligated to grant every benefit that can be supported in law, the OIG upheld the error of the delay in awarding increased SMC.³²

In the remaining two cases, VBA quality assurance management and staff disagreed with errors identified by the OIG review team.

Case 2 – Rating Personnel Did Not Propose to Discontinue Service Connection

In two decisions, RVSRs increased SMC rather than proposing to discontinue service connection for ALS, which had been granted incorrectly in the past.

VBA's quality assurance agreed that the veteran did not have sufficient service to

³² 38 CFR § 3.103, *Procedural due process and appellate rights*.

qualify for service connection and that increasing the benefits compounded the original error. Furthermore, they agreed that the correct outcome considering all of the available facts was to propose to discontinue service connection. However, they disagreed with the OIG that errors were made for not checking qualifying service. VBA stated that basic determinations such as checking service are not routinely reexamined with each subsequent claim, and that the RVSRs were not required to scrutinize the veteran's service since they only increased benefits.

The OIG noted that VBA policy requires staff to check service dates for accuracy when generating a rating decision.³³ Furthermore, verifying service periods is included on VBA's Quality Review Checklist.³⁴ Therefore, the OIG upheld the errors.

Case 3 – Rating Personnel Did Not Grant Loss of Use of a Hand or an Increase in SMC

An RVSR failed to grant loss of use of a hand with SMC designation of "K." A veteran has loss of use of a hand when the actual remaining function, such as grasping or manipulation, could be accomplished equally well by an amputation with prosthesis.³⁵ VBA policy states rating personnel are responsible for determining whether there is loss of use and this decision cannot be delegated to the examining physician.³⁶ Therefore, VBA staff should not ask the examiner to determine or express an opinion regarding loss of use, but rather give a description of remaining function, strength, and pain that affects use.³⁷

Medical evidence described the veteran's right-hand strength as allowing no joint movement for grip and pinch. Although VBA's quality assurance agreed they would have granted loss of use in this case, they disagreed with the error. They stated the RVSR could have weighed the evidence differently. However, the medical evidence they cited described weakness in upper extremity that was not specific to the hand. They also cited medical evidence which they agreed asked the provider to determine loss of use. In addition, they stated the decision involved judgment on the part of the RVSR, and that differences of opinion are not

³³ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section C, Topic 2, Introduction.

³⁴ M21-4, *Manual*, Chapter 6, Appendix B, RVSR Task Based Quality Review Checklist.

³⁵ 38 CFR § 3.350, *Special monthly compensation ratings*.

³⁶ M21-1, *Adjudication Procedures Manual*, Part IV, Subpart ii, Chapter 2, Section H, Topic 1, General Information on SMC.

³⁷ M21-1, *Adjudication Procedures Manual*, Part IV, Subpart ii, Chapter 2, Section H, Topic 1, General Information on SMC.

the basis for errors. Ultimately, they stated even if there was no joint movement in the hand to grip or pinch, they still could not say the RVSR was wrong.

The medical evidence in this case specifically indicated the veteran's right hand was so weak that he could not move the joints to grip or pinch. Since this evidence showed the veteran could not move the joints of his right hand, any remaining function, including grasping and manipulation, could be accomplished equally well by an amputation with prosthesis. Therefore, the OIG upheld the error.

In the same case, the RVSR failed to increase SMC by a half level for additional disabilities in two decisions. Although VBA's quality assurance agreed with the error in the first decision, they disagreed that the second decision was also incorrect. They stated each new claim was not a bottom-to-top review of prior decisions, and rating personnel were not required to identify all prior errors.

The OIG noted that the issue of increased SMC remained pending because the first decision did not address it.³⁸ Since the issue remained pending and VBA policy requires rating personnel to recognize, develop, clarify, and/or decide all issues and claims, the second decision should have addressed the issue.³⁹ Therefore, the OIG upheld the error.

³⁸ *Ingram v. Nicholson*, 21 Vet.App. 232 (2007).

³⁹ M21-1, *Adjudication Procedures Manual*, Part III, Subpart iv, Chapter 6, Section B, Topic 1, Types of Issues and Claims.

Appendix C: Scope and Methodology

Scope

The review team conducted its work from October 2017 through September 2018. The review covered an estimated population of about 960 veterans who had one or more decisions associated with service-connected ALS in an initial or subsequent disability compensation claim completed from April 1, 2017, through September 30, 2017.

Methodology

To accomplish the review objective, the review team identified and reviewed applicable laws, regulations, VA policies, operating procedures, and guidelines related to service-connected ALS claims. The review team performed site visits at the Houston, Texas; Montgomery, Alabama; Phoenix, Arizona; and St. Louis, Missouri, VAROs in February 2018. The review team interviewed and obtained testimonial information related to work processes associated with ALS claims from VARO managers and staff. The review team also interviewed and obtained relevant testimonial information associated with ALS claims from managers and staff with VBA's Central Office, including the Compensation Service and the Office of Field Operations.

In coordination with VA OIG statisticians, the team reviewed a random sample of 100 veterans who had decisions associated with service-connected ALS in claims completed from April 1, 2017, through September 30, 2017, and determined whether VBA staff accurately decided the claims. Appendix D provides more details on the statistical sampling methodology.

The review team used VBA's electronic systems, including the Veterans Benefits Management System, to review the sampled veteran claims folders and relevant documentation required to assess whether staff accurately decided the veterans' claims involving service-connected ALS. The review team discussed the findings with VBA officials and included their comments where appropriate in this report.

Fraud Assessment

The OIG assessed the risk that fraud, violations of legal and regulatory requirements, and abuse could occur during this review. The OIG exercised due diligence in staying alert to any fraud indicators by taking actions such as the following:

- Reviewing OIG Hotline complaints and concerns for indicators
- Completing Fraud Indicators and Assessment Checklist

The OIG did not identify any instances of fraud or potential fraud during this review.

Data Reliability

The review team used computer-processed data from VBA's Corporate Data Warehouse. To test for reliability, the review team determined whether any data were missing from key fields, included any calculation errors, or were outside the time frame requested. The review team also assessed whether the data contained obvious duplication of records, alphabetic or numeric characters in incorrect fields, or illogical relationships among data elements. Furthermore, the review team compared veterans' names, file numbers, Social Security numbers, VARO numbers, dates of claims, and decision dates as provided in the data received in the 100 claims folders reviewed.

Testing of the data disclosed that they were sufficiently reliable for the review objectives. Comparison of the data with information contained in the veterans' claims folders reviewed did not disclose any problems with data reliability.

Government Standards

The VA OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's Quality Standards for Inspection and Evaluation.

Appendix D: Statistical Sampling Methodology

Approach

To accomplish the objective, the OIG team reviewed a statistical sample of veterans who had one or more decisions associated with service-connected ALS in an initial or subsequent disability compensation claim completed from April 1, 2017, through September 30, 2017. The review team used statistical sampling to quantify the extent of cases where VBA staff did not accurately decide veterans' claims involving service-connected ALS.

Population

After the review team excluded veterans' cases determined to be outside the scope of the review, the estimated population included 958 veterans who had a decision associated with service-connected ALS in a claim completed from April 1, 2017, through September 30, 2017.

Sampling Design

The review team selected a random sample of 100 cases from the population of veterans who had decisions associated with service-connected ALS in claims completed from April 1, 2017, through September 30, 2017. All cases had the same probability of being selected.

Weights

The review team calculated estimates in this report using weighted sample data. Sampling weights are computed by taking the product of the inverse of the probabilities of selection at each stage of sampling.

Projections and Margins of Error

The review team used WesVar software to calculate the weighted universe estimates and associated sampling errors. WesVar employs replication methodology to calculate margins of error and confidence intervals that correctly account for the complexity of the sample design. The margins of error and confidence intervals are indicators of the precision of the estimates. If the review team repeated this review with multiple samples, the confidence intervals would differ for each sample, but would include the true population value 90 percent of the time.

The following table details the review team's analysis and projected results.

Table 2: Summary of Projections and Confidence Intervals for Veterans Who Had Decisions Associated with Service-Connected ALS Claims

Result	Projection	Margin of error	Lower limit 90% confidence interval	Upper limit 90% confidence interval	Sample size
Estimated population	958	31	926	989	100
Cases with errors	431	81	350	512	45
Error rate	45%	8.3%	36.7%	53.3%	45
Cases where errors resulted in improper payments	230	69	161	298	24
Cases where errors had not resulted in improper payments	201	65	136	267	21
Total improper payments	\$1,399,041	\$930,055	\$468,986	\$2,329,097	24
Underpayments	\$749,577	\$841,981	\$78,269	\$1,591,558	13
Overpayments	\$649,464	\$379,968	\$269,496	\$1,029,432	13

Source: VA OIG statistician's projection of estimated population, cases with errors, error rate, and monetary effect. Data were obtained from VBA's Corporate Data Warehouse.

Note: Projections and confidence intervals do not total precisely due to rounding.

In addition, OIG estimated that if VBA staff continue to make errors as estimated in Table 2 for a six-month period, based on payment rates in effect at the time of this review, this could lead to an estimated \$14 million in improper payments over a five-year period. The improper payments would consist of \$7.5 million in underpayments and \$6.5 million in overpayments. The five-year estimate is an extrapolation of the six-month estimates.

Appendix E: Monetary Benefits in Accordance with Inspector General Act Amendments

Recommendation	Explanation of Benefits	Better Use of Funds	Questioned Costs
1	The review team estimated errors resulted in underpayments of \$7.4 million.	\$0	\$7.4 million*
1	The review team estimated errors resulted in overpayments of \$6.4 million.	\$0	\$6.4 million*
	Total	\$0	\$13.8 million*

**The review team reduced the estimated monetary benefits included in this report to account for monetary benefits already claimed in VA OIG's Veterans Benefits Administration: Review of Processing Inaccuracies Involving Veterans' Intent to File Submissions for Benefits, Report Number 17-04919-210, August 21, 2018.*

Appendix F: Management Comments

Department of Veterans Affairs

Date: October 4, 2018

From: Under Secretary for Benefits (20)

Subj: OIG Draft Report – Accuracy of Claims Involving Service-Connected Amyotrophic Lateral Sclerosis (Project No. 2018-00031-SD-0002)

To: Assistant Inspector General for Audits and Evaluations (52)

1. Attached is VBA's response to the OIG Draft Report: Accuracy of Claims Involving Service-Connected Amyotrophic Lateral Sclerosis.
2. Questions may be referred to Renetta Johnson, Chief, Office of Program Integrity & Internal Controls at (202) 632-8699.

(Original signed by)

Paul R. Lawrence, Ph.D.

Attachment

For accessibility, the original format of this appendix has been modified to comply with Section 508 of the Rehabilitation Act of 1973, as amended.

Attachment

Veterans Benefits Administration (VBA)
Comments on OIG Draft Report
Accuracy of Claims Involving Service-Connected Amyotrophic Lateral Sclerosis

The Veterans Benefits Administration (VBA) concurs with the findings in OIG's draft report and provides the following comments in response to the recommendations.

Recommendation 1: The Under Secretary for Benefits implements a plan to improve the decisions and additional reviews of claims involving service-connected amyotrophic lateral sclerosis, and monitors these claims to ensure staff demonstrate proficiency.

VBA Response: Concur. VBA will issue guidance to designate specialized groups of amyotrophic lateral sclerosis (ALS)-trained Veterans Service Representatives (VSRs) and Rating Veterans Service Representatives (RVSRs) at regional offices to process ALS-related claims.

Currently, ALS claims are reviewed by Quality Review Teams (QRTs) and Systematic Technical Accuracy Review (STAR) consultants through a random review process. Additionally, there is a requirement for second signature on the higher level special monthly compensation (SMC) for ALS claims.

Compensation Service will conduct a special focus review of claims involving SMC housebound, which will include ALS claims involving SMC entitlement. This special focus review will be conducted in the first quarter of fiscal year (FY) 2019 and the results will be provided by February 28, 2019.

Target Completion Date: February 28, 2019

Recommendation 2: The Under Secretary for Benefits implements a plan to ensure veterans with service-connected amyotrophic lateral sclerosis receive notice regarding additional special monthly compensation benefits which may be available.

VBA Response: Concur. VBA is in the process of submitting high-level business requirements to enhance functionality in the Veterans Benefits Management System (VBMS) to automatically generate SMC specific language in notification letters for ALS cases. This enhancement will allow users to generate notification language that will better inform Veterans of any additional benefits to which they may be entitled.

VBA anticipates fully delivering the functionality in FY 2019, pending prioritization and approval of new development efforts; however, we are unable to provide a target completion date at this time.

OIG Contact and Staff Acknowledgments

Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
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