

## VA Proposed Rating Changes

**Written by – Bob Kozel**

On February 15 the VA posted several proposed rating changes in the Federal Register. One group involved Ears, Nose and Throat and Audiology, another Mental Disorders.

In this document we are going to look at two specific sections of the proposed changes, Sleep Apnea and PTSD.

The proposed changes are now in a 60 day comment period. The VA will review the comments and repost the final changes to the ratings in the Federal Register. Then there will be an established date for when these changes go into effect.

When the new ratings go into effect Veterans who are currently rated for these conditions do not have to worry about their current ratings changing. They will not. Should a Veteran reopen their claim based on the changes? That is a question to discuss with a Service Officer.

### Sleep Apnea

#### The current ratings for Sleep Apnea:

6847 Sleep Apnea Syndromes (Obstructive, Central, Mixed):

- Chronic respiratory failure with carbon dioxide retention or cor pulmonale, or; requires tracheostomy 100%
- Requires use of breathing assistance device such as continuous airway pressure (CPAP) machine 50 %
- Persistent day-time hypersomnolence 30%
- Asymptomatic but with documented sleep disorder breathing 0%

#### The proposed rating change:

6847	Sleep apnea syndromes (obstructive, central, or mixed):	
	Treatment ineffective (as determined by sleep study) or unable to use treatment due to comorbid conditions; and with end-organ damage	100
	Treatment ineffective (as determined by sleep study) or unable to use treatment due to comorbid conditions; and without end-organ damage	50

Incomplete relief (as determined by sleep study) with treatment	10
Asymptomatic with or without treatment	0
<p><i>Note:</i> Qualifying comorbidities are conditions that, in the opinion of a qualified medical provider, directly impede or prevent the habitual use of a recognized form of treatment shown by sleep study to be effective in the affected veteran's case ( e.g. , contact dermatitis where the mask or interface touches the face or nares, Parkinson's disease, missing limbs, facial disfigurement, or skull fracture).</p>	

Source: The Federal Register

[www.federalregister.gov/documents/2022/02/15/2022-02049/schedule-for-rating-disabilities-ear-nose-throat-and-audiology-disabilities-special-provisions](http://www.federalregister.gov/documents/2022/02/15/2022-02049/schedule-for-rating-disabilities-ear-nose-throat-and-audiology-disabilities-special-provisions)

What follows is an excerpt of the Federal Register article addressing the rationale behind the changes:

VA proposes to extensively revise the rating criteria for sleep apnea to primarily provide compensation that is more compatible with earning impairment than the current criteria. The current criteria evaluate based upon treatment rather than actual impairment. VA currently assigns higher ratings to individuals when their physicians prescribe more intensive therapies, such as continuous airway pressure (CPAP) machines, without regard to whether individuals first tried more conservative therapies, such as weight loss or oral appliances, or what actual impairment continues following use of CPAP machines. As discussed below, VA's proposed criteria will focus on the result rather than the type of treatment. Hence, individuals whose treatments are equally effective will receive equal disability ratings, regardless of the treatments. Individuals for whom treatment similarly fails (or is only partially effective) will also receive similar ratings. These proposed changes for sleep apnea comply with [38 U.S.C. 1155](#) that the VASRD ratings reflect average losses in earning capacity.

Specifically, VA proposes to assign a 0 percent evaluation when sleep apnea syndrome is asymptomatic, with or without treatment. VA would assign a 10 percent evaluation when treatment yields "incomplete relief." VA would assign ratings above 10 percent ( e.g., 50 and 100 percent) only when treatment is either ineffective or the veteran is unable to use the prescribed treatment due to comorbid conditions. VA would assign a 100 percent evaluation only if there is also end-organ damage. VA proposes to include an informational note that defines and gives examples of qualifying comorbid conditions, *i.e.*, conditions

that, in the opinion of a qualified medical provider, directly impede or prevent the use of, or implementation of, a recognized form of treatment intervention normally shown to be effective.

## **My Opinion**

I do not have a professional opinion, I really do not have the background to intelligently comment. It sounds good, and sounds as if the changes benefit the Veteran, but in actual practice will they?

The immediate question is for a Veteran rated 50% now – could they possibly be rated 100% in the new system? That is a question to be discussed with a Service Officer. Even they might be scratching their head at this point and waiting to see how all of this really works.

Some of you might be wondering why in the old system there is a 100% rating in the current system? Go back and read the criteria and see how severe it is, they reference a tracheostomy. If you are unfamiliar the definition is below:

Tracheostomy (tray-key-OS-tuh-me) is a hole that surgeons make through the front of the neck and into the windpipe (trachea). A tracheostomy tube is placed into the hole to keep it open for breathing. The term for the surgical procedure to create this opening is tracheotomy.

In the new ratings they do not mention tracheostomy, but they do talk about “end organ damage.” That certainly sounds serious. And if you Google Sleep Apnea + end organ damage, you get a lot of articles talking about blood pressure and potential damage to kidneys, the heart and other organs.

If you have Sleep Apnea discuss this aspect of the condition with your Primary Care Provider. This will help you get insight if you might qualify for a higher rating.

Finally, if you are contemplating reopening your claim, consider going to a Service Organization and discussing your case, to see if you have a viable reason to reopen your claim.

## **PTSD**

PTSD does not have a special standalone rating, it is evaluated using the same rating system as other Mental Disorders conditions. This will be true in the new ratings also.

## **Current Mental Disorders Ratings**

When you look at these the rating criteria really focuses on work and the ability to work. The new ratings have a different focus.

## General Rating Formula for Mental Disorders

	<b>Rating</b>
Total occupational and social impairment, due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.	100
Occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships.	70
Occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships.	50
Occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks (although generally functioning satisfactorily, with routine behavior, self-care, and conversation normal), due to such symptoms as: depressed mood, anxiety, suspiciousness, panic attacks (weekly or less often), chronic sleep impairment, mild memory loss (such as forgetting names, directions, recent events).	30
Occupational and social impairment due to mild or transient symptoms which decrease work efficiency and ability to perform occupational tasks only during periods of significant stress, or symptoms controlled by continuous medication.	10
A mental condition has been formally diagnosed, but symptoms are not severe enough either to interfere with occupational and social functioning or to require continuous medication.	0

### The new proposed ratings:

The proposed changes are substantially different. There are five domains or rating areas with a rating of 0 to 4. A 4 is the highest rate of impairment. A 4 in one area translates to a 100% rating. A 3 in two domains also equates to a 100% rating.

**The five domains:**

1. *Cognition*: May include, but is not limited to, memory, concentration, attention, goal setting, speed of processing information, planning, organizing, prioritizing, problem solving, judgment, making decisions, or flexibility in adapting when appropriate.

2. *Interpersonal interactions and relationships*: Includes both informal (social, associational, etc.) and formal (coworkers, supervisors, etc.).

3. *Task completion and life activities*: May include, but are not limited to, the following types of activities: Vocational, educational, domestic, social, or caregiving.

4. *Navigating environments*: May include, but is not limited to, the following: Leaving the home, being in confined or crowded spaces, independently moving in surroundings, navigating new environments, driving, or using public transportation.

5. *Self-care*: May include, but is not limited to, the following types of activities: Hygiene, dressing appropriately, or taking nourishment.

I am providing the actual rating guide and then the explanation of each domain and the rating criteria.

Disability rating	Score	
	Level of impairment (0-4)	Number of affected domains
100	4	in 1 or more domains.
	3	in 2 or more domains.
70	3	in 1 domain.
	2	in 2 or more domains.
50	2	in 1 domain.
30	1	in 2 or more domains.
10	Minimum rating.	

***I do like the fact that there is no 0% rating. If you are diagnosed, then the minimum rating should be 10%.***

## General Rating Formula for Mental Disorders

Expand Table

Domain	Level of impairment	Criteria
<p>1. <i>Cognition</i>: May include, but is not limited to, memory, concentration, attention, goal setting, speed of processing information, planning, organizing, prioritizing, problem solving, judgment, making decisions, or flexibility in adapting when appropriate.</p>		
	<p>0 = None</p> <p>1 = Mild impairment at any frequency; or moderate impairment that occurs less than 25% of the time</p> <p>2 = Moderate impairment that occurs 25% or more of the time; or severe impairment that occurs less than 25% of the time</p> <p>3 = Severe impairment that occurs 25% or more of the time; or total impairment that occurs less than 25% of the time</p> <p>4 = Total impairment that occurs 25% or more of the time</p>	<p>No difficulties: Cognitive functioning intact.</p> <p>Mild: Slight difficulties in one or more aspects of cognitive functioning that do not interfere with tasks, activities, or relationships.</p> <p>Moderate: Clinically significant difficulties in one or more aspects of cognitive functioning that interfere with tasks, activities, or relationships.</p> <p>Severe: Serious difficulties in one or more aspects of cognitive functioning that interfere with tasks, activities, or relationships.</p> <p>Total: Profound difficulties in one or more aspects of cognitive functioning that cannot be managed or remediated; incapable of even the most basic tasks within one or more aspects of cognitive functioning; difficulties that completely interfere with tasks, activities, or relationships.</p>
<p>2. <i>Interpersonal interactions and relationships</i>: Includes both informal (social, associational, etc.) and formal (coworkers, supervisors, etc.).</p>		
	<p>0 = None.</p>	<p>No difficulties: Individual able to have relationships and interact with others at work, school, and other contexts.</p>

Domain	Level of impairment	Criteria
	<p>1 = Mild impairment at any frequency; or moderate impairment that occurs less than 25% of the time</p> <p>2 = Moderate impairment that occurs 25% or more of the time; or severe impairment that occurs less than 25% of the time</p> <p>3 = Severe impairment that occurs 25% or more of the time; or total impairment that occurs less than 25% of the time</p> <p>4 = Total impairment that occurs 25% or more of the time</p>	<p>Mild: Slight difficulties in one or more aspects of interpersonal functioning that do not interfere with tasks, activities, or relationships.</p> <p>Moderate: Clinically significant difficulties in one or more aspects of interpersonal functioning that interfere with tasks, activities, or relationships.</p> <p>Severe: Serious difficulties in one or more aspects of interpersonal functioning that interfere with tasks, activities, or relationships, even with accommodations or assistance.</p> <p>Total: Profound difficulties in one or more aspects of interpersonal functioning that cannot be managed or remediated; incapable of even the most basic tasks within one or more aspects of relationships; difficulties that completely interfere with tasks, activities, or relationships.</p>

3. *Task completion and life activities*: May include, but are not limited to, the following types of activities: Vocational, educational, domestic, social, or caregiving.

	<p>0 = None</p> <p>1 = Mild impairment at any frequency; or moderate impairment that occurs less than 25% of the time</p> <p>2 = Moderate impairment that occurs 25% or more of the time; or severe impairment that occurs less than 25% of the time</p>	<p>No difficulties: Individual able to perform tasks and participate in life activities; needs no accommodations or assistance.</p> <p>Mild: Slight difficulties in one or more aspects of task completion or life activities that were completed with minor stress or minor accommodations.</p> <p>Moderate: Clinically significant difficulties in one or more aspects of task completion or life activities that were completed with significant stress or accommodations.</p>
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Domain	Level of impairment	Criteria
	<p>3 = Severe impairment that occurs 25% or more of the time; or total impairment that occurs less than 25% of the time</p> <p>4 = Total impairment that occurs 25% or more of the time</p>	<p>Severe: Serious difficulties in two or more aspects of task completion or life activities that were completed with significant stress and accommodations.</p> <p>Total: Profound difficulties in two or more aspects of task completion or life activities, one of which must be vocational, that were not completed even with considerable accommodations due to overwhelming stress; incapable of even the most basic tasks within one or more aspects of task completion or life activities.</p>

4. *Navigating environments*: May include, but is not limited to, the following: Leaving the home, being in confined or crowded spaces, independently moving in surroundings, navigating new environments, driving, or using public transportation.

	<p>0 = None.</p> <p>1 = Mild impairment at any frequency; or moderate impairment that occurs less than 25% of the time</p> <p>2 = Moderate impairment that occurs 25% or more of the time; or severe impairment that occurs less than 25% of the time</p> <p>3 = Severe impairment that occurs 25% or more of the time; or total impairment that occurs less than 25% of the time</p> <p>4 = Total impairment that occurs 25% or more of the time</p>	<p>No difficulties: Capability to navigate environments intact.</p> <p>Mild: Slight difficulties in one or more aspects of navigating environments that do not interfere with tasks, activities, or relationships.</p> <p>Moderate: Clinically significant difficulties in one or more aspects of navigating environments that interfere with tasks, activities, or relationships.</p> <p>Severe: Serious difficulties in one or more areas of navigating environments that interfere with tasks, activities, or relationships, even with accommodations or assistance.</p> <p>Total: Profound difficulties in one or more aspects of navigating environments that cannot be managed or remediated; incapable of even the most basic tasks within one or more aspects of environmental navigation; difficulties that completely interfere with tasks, activities, or relationships.</p>
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Domain	Level of impairment	Criteria
<p>5. <i>Self-care</i>: May include, but is not limited to, the following types of activities: Hygiene, dressing appropriately, or taking nourishment.</p>		
	<p>0 = None</p> <p>1 = Mild impairment at any frequency; or moderate impairment that occurs less than 25% of the time</p> <p>2 = Moderate impairment that occurs 25% or more of the time; or severe impairment that occurs less than 25% of the time</p> <p>3 = Severe impairment that occurs 25% or more of the time; or total impairment that occurs less than 25% of the time</p> <p>4 = Total impairment that occurs 25% or more of the time</p>	<p>No difficulties: Self-care capabilities intact.</p> <p>Mild: Slight difficulties in one or more aspects of self-care that do not interfere with tasks, activities, or relationships.</p> <p>Moderate: Clinically significant difficulties in one or more aspects of self-care that interfere with tasks, activities, or relationships without accommodations or assistance.</p> <p>Severe: Serious difficulties in one or more aspects of self-care that interfere with tasks, activities, or relationships, even with accommodations or assistance.</p> <p>Total: Profound difficulties in one or more aspects of self-care that cannot be managed or remediated; difficulties that completely interfere with tasks, activities, or relationships, even with accommodations or assistance.</p>

## My Comments

This approach is much more like how TBI ratings are done. The VA has become very good at performing this type of evaluations (in my opinion).

I am not a Social Worker or Psychologist, so take this with a grain of salt. The term “depression” is only used once in the current rating at the 70% level and is not used at all in the proposed ratings. Is that significant? It is just my observation.

I liked the heavy emphasis on occupational considerations in the current ratings because they related well for Individual Unemployability, IU, claims. In this new format vocational aspects are referenced primarily in the third domain. Someone skillful can use the finding of an examination and rating to make a case for IU. Do not feel that the

new rating system lessens the IU possibilities. As people study the new system, they will understand how to weave the findings effectively into an IU claim.

What about things such as a Disability Benefits Questionnaire, DBQ, for PTSD with this new system? There is no DBQ for an initial PTSD claim. There is one for a re-evaluation and this rating and the other ratings affected will lead to revisions of the existing DBQs.

What about Nexus Letters? Nexus Letters most often show links between current disabilities and conditions with a Veteran's service time or a secondary connection, such as a Veteran's service connected condition has caused or aggravated a new condition in the Veteran. That process is not going to change just because there are updates on ratings.

### **The Federal Register**

To look at the article on Mental Disorder ratings in the Federal Register on the changes go to the link below:

[www.federalregister.gov/documents/2022/02/15/2022-02051/schedule-for-rating-disabilities-mental-disorders](http://www.federalregister.gov/documents/2022/02/15/2022-02051/schedule-for-rating-disabilities-mental-disorders)

### **Will Veterans benefit from these changes?**

It is impossible to judge at this time, we will have a feel for the new ratings after they are finalized and as Veterans submit their claims and receive ratings. I am hopeful because I believe that the TBI claim process evolved and is done well by the VA. Often, I get a sense of the claim process when I read Board of Veteran Appeals rulings on cases. Since the ratings will be new there will be no appeals cases to read for quite some time, possibly more than a year out.

**What should you do?** Speak with a Service Organization and see what their opinion on your case is.