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**Re:** [REDACTED]  
**File No.** [REDACTED]

**LETTER AND ADDITIONAL EVIDENCE  
IN OPPOSITION TO PROPOSED RATE REDUCTION**

To Whom It May Concern:

I am writing on behalf of my client, [REDACTED] [REDACTED] I submit this letter in support of Mr. [REDACTED] Notice of Disagreement and Opposition to Proposed Rate Reduction.

I. Mr. [REDACTED] should be given a 100% disability rating based on the totality of the medical evidence in his medical records and claims file.

There is ample evidence in Mr. [REDACTED] claims file and VA medical records for this DRO to conclude that Mr. [REDACTED] should be rated 100% disabled by the symptoms of schizoaffective disorder. Although the most recent examiner of [REDACTED] endorsed Mr. [REDACTED] level of impairment as "deficient in most areas" consistent with a 70% rating, the totality of her report supports a 100% rating. In fact, she endorsed every single symptom as actively applying to his diagnoses and wrote that during the exam in which he mentioned suicidal ideation, extensive unemployment and command auditory hallucinations, he "appeared to minimize his symptoms" and "presents as significantly impaired in most areas." See VA med record at 1115-1116, attached as Exhibit 1.

Although the most recent examination supports a 100% rating when read in its entirety, it alone is not sufficient to support a decrease in rating since the regulations anticipate that "different examiners, at different times, will not describe the same disability in the same language" and "features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described." 38 C.F.R. 4.2. When that happens, it is "the responsibility of

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the rating specialist to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present.” *Id.* In light of Mr. [REDACTED] extensive recorded history of suicide attempts, command auditory hallucinations, psychiatric hospitalizations, homelessness, and extended periods of unemployment, the only consistent picture the DRO can draw from the records is one in which Mr. [REDACTED] experiences total occupation and social impairment, requiring a 100% rating due to the following symptoms:

a. Persistent delusions or hallucinations;

Mr. [REDACTED] has consistently reported to medical providers that he hears command auditory hallucinations since the first documentation of that complaint to a military nurse in [REDACTED]. See Nursing Assessment and Care Plan, attached as Exhibit 2. He was prescribed antipsychotics at that time. *Id.* In [REDACTED], Mr. [REDACTED] reported to VA psychologist [REDACTED] that “that he was experiencing auditory and visual hallucinations including hearing voices in [REDACTED] and [REDACTED] telling him to kill himself, and that he had experienced derogatory auditory hallucinations for the past 15 years or dating back to his military service. See Progress Notes of [REDACTED] pages 1051-2, attached as Exhibit 3. Mr. [REDACTED] reported command auditory hallucinations upon checking himself in to inpatient psychiatric hospitalization at the VA in [REDACTED] on [REDACTED]. See Progress notes printed [REDACTED] page 1155, attached as Exhibit 4. At his discharge from that stay on [REDACTED], Mr. [REDACTED] Global Assessment of Functioning (GAF) score was noted as 31. *Id.* at 1142, attached as Exhibit 5. He informed the examiner on [REDACTED] of his hallucinations stating, “I hear voices telling me to kill myself. But with the shot, it’s been pretty level.” VA medical record page 1101, comp and pen exam [REDACTED], attached as Exhibit 1.

b. Persistent danger of hurting self or others;

Mr. [REDACTED] first recorded hospitalization followed a suicide attempt while surviving in the Army in [REDACTED]. Clinical Record, History- Part 1, attached as Exhibit 6. On [REDACTED], Mr. [REDACTED] was placed on the VA [REDACTED] facility’s high risk for suicide list due to command auditory hallucinations to kill himself, depressed mood and feeling hopeless. See Progress Notes [REDACTED] page 133, attached as Exhibit 7. The clinician notes that Mr. [REDACTED] has been on the high-risk list on [REDACTED], [REDACTED]. *Id.* Since receiving the notice that his rating would be reduced, Mr. [REDACTED] attempted suicide on [REDACTED] and was committed to psychiatric hospitalization for three days. See RO medical rec, attached as Exhibit 8. The doctor who filed his emergency commitment on that day wrote that Mr. [REDACTED] had “multiple serious suicide attempts (hanging, cutting, overdose) requiring medical IU admission and intubation” and that he was brought that day to the VA hospital “after being found lethargic having taken roommate’s medications.” His suicide note asked the medical staff to call his wife and tell her “her dream has come (SIC)” *Id.* at page 4. The report of the most recent comp and pen exam on [REDACTED] also supports Mr. [REDACTED] persistent threat to himself writing that he “endorsed ongoing [suicidal ideation]” and checked the box under section -3 “symptoms” for “suicidal ideation.”

- c. Intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene);

The comp and pen examiner of ██████ endorsed that Mr. ██████ experiences intermittent inability to perform activities of daily living. See VA medical record page 1115, Exhibit 1. In fact, he demonstrated a lapse of minimal personal care at the exam itself where “[n]otably, veteran’s ear was bleeding during this appointment.” The examiner also cut and pasted a portion of the VA medical records from CPRS in which Mr. ██████ employment specialist writes that she “received feedback from VA staff that on ██████ Veteran was reported waiting in the lobby of the ██████ VA and did not look good (i.e. rocking back and forth, unshaven, clothing unkempt, and appeared restless.) See VA medical records page 1102 attached as Exhibit 1.

Furthermore there is no evidence of improvement in Mr. ██████ condition that would warrant a decrease in rating since his last rating in ██████. In fact, since that rating Mr. ██████ has experienced two more inpatient psychiatric hospitalizations and one suicide attempt by overdose.

- II. Mr. ██████ should be found totally and permanently disabled by the symptoms of his service-connected schizoaffective disorder.

A service-connected disability is considered “total” when “there is present any impairment of mind or body, which is sufficient to render it impossible for the average person to follow a substantially gainful occupation.” 38. C.F.R. 3.340 (a)(1). A total disability is considered permanent when “such impairment is reasonably certain to continue throughout the life of the disabled person.” 38 C.F.R. 3.340(b). A disease of long standing will be regarded as permanently and totally disabling when “the probability of permanent improvement under treatment is remote.” *Id.* A condition can be found to be totally disabling despite periods of intermittent improvement as long as

“(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;

(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself or herself in a substantially gainful occupation.

38 C.F.R. 3.340(3).

The disabling nature of Mr. [REDACTED] schizoaffective disorder meets all of these criteria to be determined a totally and permanently disabling condition. First, Mr. [REDACTED] has been unable to follow any substantially gainful employment for any meaningful period of time since the onset of schizoaffective disorder during his military service in [REDACTED]. He reports working on and off through a temp agency in the [REDACTED], being incarcerated for seven years, and then living on social security insurance starting in [REDACTED]. See TDIU application simultaneously filed with this letter brief. Mr. [REDACTED] has made three attempts at employment since [REDACTED], a two-year placement at [REDACTED] from [REDACTED], a job at [REDACTED], and a recent appointment in VA housekeeping. Both placements were made with the help of VA supportive employment. See Exhibits 9, 10, and 11.

Second, Mr. [REDACTED] meets the criteria for permanent disability because it is reasonably certain that Mr. [REDACTED] will continue to experience symptoms of schizoaffective disorder, which make it impossible for him to maintain gainful employment. Although he has experienced intermittent periods of improvement, his symptoms meet the criteria above because 1) his disability has been on several occasions totally disabling (see discussion above regarding multiple psychiatric hospitalizations, suicide attempts, ongoing suicidal ideation and command auditory hallucinations); 2) he has required intermittent hospitalizations and recurring, severe and frequent exacerbations of his condition (see discussion above regarding multiple psychiatric hospitalizations, suicide attempts, ongoing suicidal ideation and command auditory hallucinations); and 3) the nature of these exacerbations is such that the average person could not reestablish himself in a substantially gainful occupation while navigating suicide attempts and hospitalizations of the frequency and severity Mr. [REDACTED] has experienced.

III. In the alternative, Mr. [REDACTED] should receive Total Disability based on Individual Unemployability

Mr. [REDACTED] should be found totally and permanently disabled due to symptoms of his schizoaffective disorder. However, if the decision maker reduces his rating to 70%, Mr. [REDACTED] should be found totally disabled based on individual unemployability. Total disability rating for a schedular rating less than total may be assigned when the disabled person is “unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.” 38 C.F.R. 4.16(a). Mr. [REDACTED] attached application for TDIU documents his inability to maintain gainful employment. In the event that his rating is reduced, he requests an examination for the sole purpose of establishing his ability to maintain gainful employment.

IV. There is insufficient evidence in the record to assign Mr. [REDACTED] a trustee at this time

The rating agency may not make a determination of incompetency “without a definite expression regarding the question by the responsible medical authorities” unless “the medical evidence is clear, convincing and leaves no doubt as to the person’s incompetency.” 38 C.F.R. 3.353 (c). Where a reasonable doubt exists as to the veteran’s competency to handle his own affairs “such doubt will be resolved in favor of competency.” *Id.*

At this time, the record leaves reasonable doubt as to Mr. [REDACTED] competency to manage his funds. Although Nurse [REDACTED] and Dr. [REDACTED] write that “[i]n our opinion, Mr. [REDACTED] is not capable of handling his funds,” they leave the question to be decided by someone else when they write that they “will refer to the National Public Contact Team for rating him incompetent of funds.” See VA medical record page 1134, attached as Exhibit 12, progress note dated [REDACTED], [REDACTED]. The comp and pen examiner who evaluated Mr. [REDACTED] on [REDACTED] writes, “it is unclear whether he is able to manage his symptoms. The CPRS records show that there has been discussion of a conservator/payee.” See VA medical record page 1116, comp and pen exam dated [REDACTED], item 6, at Exhibit 1. Frustratingly for Mr. [REDACTED] the examiner failed to answer the only question that should have been before her since the exam was triggered not by any perceived change in his level of disability but by the question of his competence. With only these two inconclusive notes, the rater must resolve the doubt in favor of Mr. [REDACTED] competence.

Sincerely,

[REDACTED]

[REDACTED]

Connecticut Veterans Legal Center

Encs.