Erroneous Payments

Trainee Handout

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Objectives

After this lesson, you will be able to:

* Define erroneous payments
* Identify multiple causes of erroneous payments and whether they are administrative errors (which require an administrative decision)
* Describe actions to correct erroneous payments
* Explain how to process cases involving an administrative error

References

All M21-1 references are found in the [Compensation and Pension Knowledge Management portal.](https://vaww.compensation.pension.km.va.gov/)

* [M21-1, Part III, Subpart v, 1.I](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014228/M21-1-Part-III-Subpart-v-Chapter-1-Section-I-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary), Correcting the Erroneous Payment of Benefits to a Beneficiary

Topic 1: Identifying Erroneous Payments

**Definition of Erroneous Payments**

Erroneous payments are defined as payments the Department of Veterans Affairs (VA) made to a beneficiary, to include duplicate payments, that are not authorized by law.

**Actions to Take for Erroneous Payments**

Claims processors must attempt to correct erroneous payments upon discovery – due process may be needed before the erroneous payment can be corrected. Additionally, if VA was at fault for the error (referred to hereafter as an administrative error), and the error involved a decision other than a rating decision, claims processors must prepare an administrative decision before correcting the error.

|  |  |
| --- | --- |
| **If the payment of excessive benefits is due to ...** | **Then...** |
| an action the beneficiary took or failed to take | follow the instructions in M21-1 III.v.1.I.4.a for adjusting the beneficiary’s award under the provisions of [38 CFR 3.500(b)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=739acb1a641592f98bdc1e89d1f2e6a5&node=se38.1.3_1500&rgn=div8). |
| an administrative error on the part of VA**Note**: Administrative errors may include errors in judgment on the part of VA employees. | follow the instructions in [M21-1 III.v.1.I.3](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014228/M21-1-Part-III-Subpart-v-Chapter-1-Section-I-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3) for adjusting the beneficiary’s award under the provisions of [38 CFR 3.500(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=739acb1a641592f98bdc1e89d1f2e6a5&node=se38.1.3_1500&rgn=div8). |
| fraud | follow the instructions in [M21-1 III.vi.5.A.2](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014296/M21-1%2C-Part-III%2C-Subpart-vi%2C-Chapter-5%2C-Section-A---Fraud) for adjusting the beneficiary’s award under the provisions of [38 CFR 3.500(k)](http://www.ecfr.gov/cgi-bin/text-idx?SID=739acb1a641592f98bdc1e89d1f2e6a5&node=se38.1.3_1500&rgn=div8). |

***Note:*** Refer to M21-1 III.v.1.I.1.c for examples of duplicate payments - M21-1 III.v.1.I.2 contains specific instructions for correcting them.

Examples of Erroneous Payments That Are Not Duplicate Payments

* Assigning an incorrect effective date for the addition of a dependent to a Veteran’s award (administrative error)
* Payment of benefits in an amount exceeding a beneficiary’s entitlement that is due to claims-processing delays (not an administrative error),
* Payment of benefits in an amount exceeding a beneficiary’s entitlement that is due to Veteran’s in/action (not an administrative error),
* A decision that resulted in payment but is later found to be clearly and unmistakably erroneous (administrative error).

Definition of Administrative Error

An administrative error occurs when VA pays benefits to a beneficiary in an amount that exceeds his/her entitlement due to actions VA took that usually, but not always, stem from misapplication of the law. Administrative errors include errors in judgment on the part of VA employees.

Before attributing the erroneous payment of benefits to administrative error, claims processors must review the available evidence of record to confirm the beneficiary was not at fault for the error, had no knowledge of the error, and did not act with fraudulent intent. If these three conditions are confirmed, the beneficiary is not responsible for the erroneous payment.

**Erroneous Payment Due to System Malfunction or Programming Error**

Systems malfunctions or programming errors are ***not*** considered administrative errors.

**Exceptions:** The following system-related errors are considered administrative errors and require an administrative decision:

* The *automated* processing of a legislative increase in benefits results in the payment of a higher rate of ***pension*** than the rate to which a beneficiary is entitled.
* The Rules-Based Processing System (RBPS) generates an incorrect rate of payment.

**Erroneous Payment Due to Claims Processing Delays**

Erroneous payments due to claims-processing delays are *not* considered an administrative errors.

**Example:**

* A Veteran notifies VA that he divorced his spouse three months ago.
* Almost one year passes before VA adjusts the Veteran’s award to remove the spouse. This creates an overpayment that the Veteran is responsible for.

**Erroneous Payment Due to Veteran Action**

The payment of benefits in an amount exceeding a beneficiary’s entitlement that is due to Veteran action is not considered an administrative error.

Example:

* Veteran failed to notify VA of their return to active duty.
* When VA eventually learned of the Veteran’s return to active duty it had to retroactively discontinue the Veteran’s VA benefits. This resulted in the creation of an overpayment in the Veteran’s account, which the Veteran is responsible for.

Example of an Administrative Error

* On May 1, 2008, VA assigns a 50 percent disability rating to a Veteran for her service-connected disabilities.
* On August 12, 2010, she gives birth to a child and doesn’t notify VA of her new dependent until November 10, 2013.
* A VA employee erroneously adds this child to the Veteran’s award effective the date of the child’s birth.
* This is considered an administrative error because a VA claims processor erroneously added the child to the Veteran’s award from the date of birth, even though more than one year had passed between the date of birth and the date VA received the claim for additional benefits for the child.

Topic 2: Handling Cases Involving Erroneous Payments

**Erroneous Payment Based on a Non-Rating Error**

If, because of an administrative error on the part of VA in a decision *other than* a rating decision, VA is paying benefits to a beneficiary in an amount that exceeds their entitlement, prepare and send a notice of proposed adverse action to the beneficiary under EP 600.

If the evidence of record, to include evidence VA received in response to the notice of proposed adverse action, shows VA paid benefits to which the beneficiary was not entitled, and VA was at fault for the error, claims processors must establish EP 960 (to track the administrative error), prepare an administrative decision and refer it for approval before taking corrective action or notifying the beneficiary.

**Approvals of Administrative Decisions Involving Administrative Error**

These types of administrative decisions may be prepared by a Veterans Service Representative (VSR). However, the level of approval depends on the amount of the overpayment that is attributable to administrative error.

Calculate the total amount of benefits VA erroneously paid to a beneficiary by multiplying the amount of benefits VA erroneously paid each month by the number of months VA had erroneously paid benefits as of the end of the 60-day period VA gave the beneficiary to respond to the notice of proposed adverse action.

Use the table below to determine who must approve administrative decisions involving an administrative error that resulted in the erroneous payment of benefits to a beneficiary.

| **If the total amount of benefits VA erroneously paid to the beneficiary is …** | **Then the decision must be approved by …** |
| --- | --- |
| less than $2,000 | a coach. |
| between $2,000 and $24,999 | a Veterans Service Center Manager (VSCM), Pension Management Center Manager (PMCM), or designee no lower than a coach. |
| $25,000 or more | Compensation Service’s Program Review Staff or P&F Service’s Quality and Oversight Staff. ***Important***:  Do ***not*** refer an administrative decision to Compensation Service or P&F Service until *after* a VSCM, PMCM, or designee no lower than a coach has approved and signed it. ***Reference***:  For more information on obtaining approval from Compensation Service’s Program Review Staff or P&F Service’s Quality and Oversight Staff, see [M21-1, Part III, Subpart v, 1.I.3.i](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014228/M21-1-Part-III-Subpart-v-Chapter-1-Section-I-Correcting-the-Erroneous-Payment-of-Benefits-to-a-Beneficiary#3i). |

**Requesting Compensation Service Approval of an Administrative Decision**

Before referring a case to Compensation Service for approval of an administrative decision involving an erroneous payment of $25,000 or more,

* verify the amount of the overpayment using the [*Administrative Error Paid/Due Calculator Over $25K*,](https://vbaw.vba.va.gov/bl/21/star/star_home.htm) and
* upload the calculator results to the beneficiary’s eFolder.
* ensure the VSCM or designee has signed the administrative decision
* extend the suspense date of the EP that was established in connection with the administrative decision to a date that is 60 days in the future, and
* add the special issue *Compensation Service Review-Over $25K* to the EP.

National Work Queue will automatically route the EP to the appropriate team within Compensation Service following addition of the special issue.

**Erroneous Payments Based on** **Fraud**

In certain areas, the local Office of Inspector General (OIG) Regional Field Office provides locally-determined guidelines to regional offices (ROs) in their jurisdiction for referring cases of suspected fraud.

For more information on processing cases of fraud, refer to [M21-1, Part III, Subpart vi, 5.A.2](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014296/M21-1%2C-Part-III%2C-Subpart-vi%2C-Chapter-5%2C-Section-A---Fraud).

Practical Exercise

**Directions:** Answer the questions below.

1. What M21-1 reference provides the definition of an erroneous payment?
2. Would you prepare an administrative decision if the excessive erroneous payment of benefits is due to claims-processing delays? Provide the M21-1 reference.
3. In a letter dated May 28, 2019, VA notifies a Veteran of a 70% disability rating that is effective February 18, 2019. On September 12, 2020 we receive a claim to add a child born August 18, 2019. A VA employee adds the child to the Veteran’s award effective the date of birth. Is this an administrative error? If so, what would your next steps be?
4. Upon your calculations for total overpayment of benefits due to an administrative error, you see the amount is over $25,000. Who needs to sign the administrative decision? Provide the M21-1 reference.