Apportionments for Compensation

Trainee Handout

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Objectives

Upon completion of this lesson, you will be able to:

* Locate and review the regulations that dictate how VA decides apportionment claims
* Accurately establish a claim for an apportionment in the system
* Interpret and follow proper notification and development procedures in order to obtain all information and evidence needed to decide an apportionment claim
* Evaluate evidence received and of record to determine a claimant’s entitlement to an apportionment in accordance with laws and regulations
* Prepare and implement the process of granting, adjusting, and discontinuing an apportionment in VA awards systems

References

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

* [38 U.S.C. 5307](https://www.law.cornell.edu/uscode/text/38/5307), Apportionment of benefits
* [38 U.S.C. 5502(d)](https://www.law.cornell.edu/uscode/text/38/5502), Payments to and supervision of fiduciaries
* [38 U.S.C. 5503](https://www.law.cornell.edu/uscode/text/38/5503), Hospitalized Veterans and estates of incompetent institutionalized Veterans
* [38 U.S.C 6103](https://www.law.cornell.edu/uscode/text/38/6103), Forfeiture for fraud
* [38 U.S.C 6104](https://www.law.cornell.edu/uscode/text/38/6104), Forfeiture for treason
* [38 CFR 3.450](http://www.ecfr.gov/cgi-bin/text-idx?SID=b3f4352d460d2655b7b9f6f5d35a3974&mc=true&node=se38.1.3_1450&rgn=div8), Apportionment – General
* [38 CFR 3.451](http://www.ecfr.gov/cgi-bin/text-idx?SID=b3f4352d460d2655b7b9f6f5d35a3974&mc=true&node=se38.1.3_1451&rgn=div8), Special Apportionments
* [38 CFR 3.452](http://www.ecfr.gov/cgi-bin/text-idx?SID=b3f4352d460d2655b7b9f6f5d35a3974&mc=true&node=se38.1.3_1452&rgn=div8), Situations when benefits may be apportioned
* [38 CFR 3.453](http://www.ecfr.gov/cgi-bin/text-idx?SID=b3f4352d460d2655b7b9f6f5d35a3974&mc=true&node=se38.1.3_1453&rgn=div8), Veterans compensation or service pension or retirement pay
* [38 CFR 3.458](http://www.ecfr.gov/cgi-bin/text-idx?SID=b3f4352d460d2655b7b9f6f5d35a3974&mc=true&node=se38.1.3_1458&rgn=div8), Veteran’s benefits not apportionable
* [M21-1, Part III, Subpart ii, 5.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014136%2FM21-1-Part-III-Subpart-ii-Chapter-5-Section-A-Jurisdiction-Over-Claims-Folders),Jurisdiction Over Claims Folders
* [M21-1, Part III, Subpart v, 3.A](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014232%2FM21-1-Part-III-Subpart-v-Chapter-3-Section-A-Apportionment-Process), Apportionment Process
* [M21-1, Part III, Subpart v, 3. B](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Farticle%2F554400000014233%2FM21-1-Part-III-Subpart-v-Chapter-3-Section-B-Adjusting-Apportioned-Awards), Adjusting Apportioned Awards
* [VSR Assistant Resources](http://epss.vba.va.gov/vsr_assistant/resource_index.html) – Adverse Action Calculator
* [VBMS-A User Guide](https://www.vbms.vba.va.gov/awards/webapp/secure/home?executeTime=0) (Log in, then click on Awards Help)

Topic 1: Basic Principles of Apportionments

**Claims for an Apportionment of a Veteran’s Benefits**

38 U.S.C. 5307 permits the VA to apportion all or any part of a Veteran’s compensation benefits to their dependent(s) under certain circumstances.

In compensation claims, a claim for apportionment must be submitted by a dependent of the Veteran, or on the dependent’s behalf, such as in the case of a minor child. VA will not apportion benefits to a dependent as a convenience to the Veteran as 38 CFR 3.106 specifically prohibits the Veteran from renouncing a portion of their benefits so that VA may allocate them to another person.

***Important:*** A request for garnishment of compensation for a Veteran entitled to military retirement pay is not a request for an apportionment of compensation benefits – there is no prescribed form for a request for garnishment. Refer to [M21-1 III.v.3.D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000020136/M21-1-Part-III-Subpart-v-Chapter-3-Section-D-Garnishment-of-Disability-Compensation-in-Lieu-of-Military-Retired-Pay-MRP-to-Pay-Alimony-or-Child-Support#1) for more information on garnishment requests and how to process them.

**Who May Receive an Apportionment of a Veteran’s Benefits?**

An apportionment may be paid to or for a Veteran’s

* estranged spouse
* child that is in an estranged or former spouse’s custody
* child that is not living with the Veteran or the Veteran’s surviving spouse, or
* dependent parent.

An apportionment can be paid to a dependent even if that dependent is not on the Veteran’s award, as long as the dependent’s relationship to the Veteran is properly established. In order to establish that dependent on the Veteran’s award, VA must first receive a claim from the Veteran on the proper form.

**Criteria for Granting a Claim for an Apportionment**

38 CFR 3.450(a)(1)(ii) permits apportionment of compensation to a Veteran’s dependent spouse and/or children provided:

* The claimant does not reside with the Veteran, and
* The Veteran is not providing a reasonable level of support to the claimant.

38 CFR 3.451 permits the special apportionment of compensation to a Veteran’s dependents provided:

* The claimant does not reside with the Veteran,
* Financial hardship on the part of the claimant is shown, and
* Apportionment will not cause undue hardship on the Veteran and their other dependents.

38 CFR 3.450 and 3.451 are not mutually exclusive - consider whether an apportionment is authorized under either of these regulations and differentiate between the criteria associated with the regulation authorizing the apportionment in the case.

For example, an apportionment may be authorized under 3.450 because the Veteran is not providing reasonable support for the claimant regardless of whether the claimant has financial hardship, or need of the apportionment, or whether it will cause undue hardship to the Veteran or their other dependents.  Conversely, if an apportionment may not be authorized under 3.450 because the Veteran is providing reasonable support for the claimant, a special apportionment may still be warranted under 3.451 if the claimant shows financial hardship, or need of one, and it would not cause an undue hardship to the Veteran or their dependents.

**Circumstances Under Which VA May Not Apportion a Veteran’s Benefits**

38 CFR 3.458 prohibits the apportioning of a Veteran’s benefits in the following situations:

| **Circumstance** | **Additional Information** |
| --- | --- |
| The total benefit payable to the Veteran is so small that it does not allow payment of a reasonable amount to any apportionee. | An apportionment so small that it would do little or nothing to mitigate an apportionee’s need is ***not*** considered reasonable. ***Important***:  Do not automatically discount as too small to apportion the amount of disability compensation a Veteran receives if he/she has a combined disability rating that is *less* than 30 percent. |
| The Veteran’s spouse, who is requesting an apportionment, has been found guilty of conjugal infidelity by a court having proper jurisdiction. | --- |
| The Veteran’s spouse, who is requesting an apportionment, has lived with another person and held himself/herself out openly to the public to be the spouse of another person. ***Exception***:  The spouse entered into the relationship with the other person in good faith, believing that the marriage to the Veteran had been legally terminated.  Under this set of circumstances, however, VA may apportion benefits to the spouse *only if** there has been a reconciliation between the Veteran and his/her spouse, and
* later the Veteran and his/her spouse become estranged.
 | * A Veteran entitled to *disability compensation*, who is estranged but not divorced from his/her spouse, remains entitled to benefits as a married Veteran.
* A Veteran entitled to *pension*, who is estranged but not divorced from his/her spouse, remains entitled to benefits as a married Veteran as long as he/she is contributing to the spouse’s support.
* Special attention must be paid to claims for an apportionment from an estranged spouse or a spouse for whom a Veteran entitled to Veterans Pension is not receiving additional benefits, as it could adversely affect the rate of the Veteran’s benefits, as explained in [M21-1, Part V, Subpart iii, 1.F.2.n](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014425/M21-1%2C-Part-V%2C-Subpart-iii%2C-Chapter-1%2C-Section-F---Dependents-for-Current-Law-Pension-Purposes).
 |
| The Veteran has given up for adoption the child for whom the apportionment claim is pending. ***Exception***:  In certain limited situations, VA may apportion *Veterans Pension* to a child whom a Veteran has given up for adoption. | * [38 CFR 3.458(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=cbdb3f6a0183779ee5e0fa4d7c4f8119&node=se38.1.3_1458&rgn=div8) prohibits the apportioning of a Veteran’s benefits for a child the Veteran has given up for adoption.
* See [M21-1, Part III, Subpart iii, 5.G.5.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015802/M21-1%2C-Part-III%2C-Subpart-iii%2C-Chapter-5%2C-Section-G---Biological-Children%2C-Adopted-Children%2C-and-Stepchildren) regarding the effect of the adoption of a Veteran’s child on the Veteran’s entitlement to Veterans Pension.
* [VAOPGCPREC 16-1994](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000043538/VAOPGCPREC-16-94%2C-Jul-1%2C-1994%2C-Apportionment-of-Benefits) describes conditions that may warrant an apportionment of Veterans Pension to a child that a Veteran has given up for adoption.
* [38 CFR 3.58](http://www.ecfr.gov/cgi-bin/text-idx?SID=bd97caea18a2a60deaa3d6dd5d0f9100&mc=true&node=se38.1.3_158&rgn=div8) prohibits the payment of additional disability compensation for a child that a Veteran has given up for adoption.
* See [M21-1, Part III, Subpart iii, 5.G.5](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015802/M21-1%2C-Part-III%2C-Subpart-iii%2C-Chapter-5%2C-Section-G---Biological-Children%2C-Adopted-Children%2C-and-Stepchildren) for more information about cases involving a child that has been given up for adoption.
 |

Note: Refer to M21-1 III.v.3.A.1.k regarding restrictions on concurrent payments of certain education benefits and apportioned benefits.

Topic 2: Actions That Precede a Decision on an Apportionment Claim

**Required Form in Claims for Apportionment**

As of March 24, 2015, a claim for an apportionment must be submitted on VA Form 21-0788, *Information Regarding Apportionment of Veteran’s Award*. Claims received on anything other than this form must be treated as a request for application.

VA Form 21-0788 provides decision makers with:

* the amount of monetary support the Veteran is providing to the claimant, if any, and
* information about the net worth and monthly income and expenses of the
	+ Veteran
	+ claimant, and
	+ claimant’s custodian, if applicable.

**Initial Steps in Processing an Apportionment Claim**

When the Department of Veterans Affairs (VA) receives a claim for an apportionment of a Veteran's benefits, VA must:

* Place the claim under end product (EP) control (refer to M21-1 III.ii.3.D.3.b/c and M21-4 Appendix A, Topic 2 – *Payee Codes*)
	+ EP 130 - *Apportionment* with the appropriate payee code for the claimant
* Determine whether a bar to the claimed apportionment exists under 38 CFR 3.458 – if so, deny the claim without undertaking further development and notify the claimant.
* If no bar to the apportionment exists, consider whether due process is necessary in the case. If due process is needed:
	+ Establish EP 600 - *Apportionment Due Process* with payee code 00 (Veteran) and a suspense date that expires 65 days in the future,
	+ Estimate the amount of benefits VA should apportion to the claimant, and
	+ Send the Veteran a notice of proposed adverse action.

***Note:*** Do not immediately deny a claim for apportionment solely because the Veteran has only a 10- or 20-percent disability rating. The income and expenses of the claimant and the Veteran must be considered to determine whether or not an apportionment might be in order.

Refer to Step 6 of the table in M21-1 III.v.3.A.2.a regarding apportionment claims for which there is no requirement to provide due process to the Veteran.

Estimating the Amount of Benefits VA Should Withhold for an Apportionment

Before sending the notice of proposed adverse action, estimate the amount of benefits VA should apportion to the claimant. Make the estimation absent any additional evidence or information from the claimant and/or Veteran.

When making the estimate, consider the following:

* The additional amount VA pays the Veteran for dependents
* VA “ordinarily” apportions between 20 to 50 percent of the Veteran’s disability compensation
* When making a final decision on an apportionment claim, only an amount that is *equal to or less than* the estimated amount may be apportioned without
	+ issuing another notice of proposed adverse action to the Veteran, and
	+ allowing the Veteran an additional 65 days to respond.
* the amount should be rounded to an even dollar amount (no cents)

Issuing Notice of a Proposed Adverse Action

Use the Letter Creator tool to prepare the notice of proposed adverse action for the Veteran. The notice should inform the Veteran of the following:

* the pending claim for an apportionment of their benefits
* the proposed amount and effective date of any interim withholding
* of the statutory authority for granting an apportionment (38 U.S.C. 5307)
* the effective date from which VA proposes to commence the apportionment (this will be discussed later), and
* that their award will be reduced by the monthly amount of the apportionment VA authorizes.

The notice of proposed adverse action should also ask the Veteran to:

* complete and return VA Form 21-0788, and
* respond within 60 days, after which time VA will decide the apportionment claim unless the Veteran provides good cause for extending the time limit for a response.

*Note:* If the provisions 38 CFR 3.450 are for consideration in determining the claimant’s entitlement to an apportionment, also inform the Veteran that if they are not contributing to the claimant’s support, they must provide VA with an explanation for not doing so.

Undertaking Development to the Claimant

Most of the information required to make determinations in claims for apportionments is contained on the prescribed form, VA Form 21-0788. However, there may be specific situations when additional evidence or information is needed from a claimant to make an equitable decision.

In these situations, prepare and send to the claimant a development letter that:

* asks the claimant to provide the missing evidence or information within 30 days, and
* informs the claimant VA will decide based on the evidence of record after the 30-day response period has passed, unless he/she provides good cause for extending the time limit for a response.

Development to the claimant should be completed simultaneously with the notice of proposed adverse action to the Veteran.

Establish the Estimated Withholding

After preparing a notice of proposed adverse action, claims processors must also amend the Veteran’s award by establishing an interim withholding of the estimated amount of the apportionment beginning the first of the month following the expiration of due process. This action will help reduce the amount of the overpayment of benefits if and when the apportionment is eventually granted.

In the Veterans Benefits Management System – Awards (VBMS-A) application, proceed with the following steps and generate an award adjustment under the pending EP 600.

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Open the AWARD ADJUSTMENTS screen. |
| 2 | Click the OTHER ADJUSTMENTS tab. |
| 3 | Under the ADJUSTMENT REASON drop down, choose “Pending Apportionment Decision.” |
| 4 | Enter the interim withholding amount in the ADJUSTMENT AMOUNT box. |
| 5 | Enter the FROM DATE (payment start date). This should be the first of the month following the 60-day due process period. Leave the TO DATE field empty, as we don’t know the stop date at this point. |
| 6 | Once all necessary information is entered, click DONE to save. |
| 7 | GENERATE AWARD. |

***Important:*** The authorizer must continue the EP at authorization to continue tracking the pending due process.

Topic 3: Making an Apportionment Decision

Using Information VA Form 21-0788 Provides When Deciding a Claim

Consider the income and expenses the Veteran and claimant (and the claimant’s custodian, if applicable) individually report on VA Form 21-0788 when determining:

* whether an apportionment would create a financial hardship on the Veteran and his/her dependent(s) [38 CFR 3.451],
* whether the claimant has a financial need for the apportionment [38 CFR 3.451, 3.454(b), or 3.665(e)] and
* the amount of benefits VA should apportion.

There may be exceptions to the above rules, such as when a Veteran is incarcerated. Always follow the regulations and procedures specific to the circumstances under which the apportionment is claimed.

***Note:*** Normally VA accepts as credible and accurate the entries claimants and Veterans make on VA Form 21-0788. However, if, for example, a claimant or Veteran reports an expense that is clearly inflated, documentary proof of the expense may be requested from the claimant or Veteran.

**Actions to Take Following Expiration of the Claimant’s 30-Day Response Period**

If the claimant was sent a development letter that requested additional evidence or information, follow the instructions in the table below after the claimant’s 30-day response period expires.

| **If …** | **Then …** |
| --- | --- |
| the claimant responded, but the evidence of record fails to justify the granting of an apportionment | * deny the pending claim
* document the denial on [VA Form 21-441](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf)
* clear the pending EPs, and
* send notification of the decision to the claimant and Veteran.

**Exception**:  There is no requirement to document on [VA Form 21-441](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf) decisions to grant or deny entitlement to an apportionment under the provisions of* [38 CFR 3.452(c)(1)](https://www.ecfr.gov/cgi-bin/text-idx?SID=159393d8bafb21565d7e2c66e269e648&mc=true&node=se38.1.3_1452&rgn=div8), or
* [38 CFR 3.454(a)](https://www.ecfr.gov/cgi-bin/text-idx?SID=159393d8bafb21565d7e2c66e269e648&mc=true&node=se38.1.3_1454&rgn=div8).
 |
| the claimant did not respond, and the evidence of record fails to justify the granting of an apportionment |
| evidence of record justifies the granting of an apportionment, but* the suspense date of the EP 600 has not passed, and
* the Veteran has not yet responded to the corresponding notice of proposed adverse action
 | * adjust the suspense date of the EP 130 so it matches the suspense date of the EP 600, and
* take no further action until the earlier of the following events:
	+ the Veteran responds to the notice of proposed adverse action, or
	+ the suspense date of the EP 600 passes.
 |
| * VA is determining entitlement to an apportionment **under** [**38 CFR 3.451**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8)
* the claimant provided evidence of financial hardship, and
* payment of an apportionment would create a hardship for the Veteran (Veteran or surviving spouse) and his/her dependent(s)
 | * deny the apportionment claim based on
	+ the evidence received (if both parties respond within 65 days), or
	+ the evidence of record (if only one or neither party responds within 65 days)
* document the denial on [VA Form 21-441](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf)
* clear the pending EPs, and
* send notification of the decision to the claimant and Veteran.

**Important**:  Do **not** deny an apportionment claim on the basis that granting the claim would create a hardship for the Veteran unless the Veteran completed and returned [VA Form 21-0788](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf). |
| * VA is determining entitlement to an apportionment **under** [**38 CFR 3.451**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8)
* the claimant provided evidence of financial hardship, and
* payment of an apportionment would **not** create a hardship on the part of the Veteran (Veteran or surviving spouse) and his/her dependent(s)
 | * grant the apportionment claim based on
	+ the evidence received (if both parties respond within 65 days), or
	+ the evidence of record (if only one or neither party responds within 65 days)
* document the decision on [VA Form 21-441](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf)
* clear the pending EPs, and
* send notification of the decision to the claimant and Veteran.
 |

**Determining the Amount of the Apportionment**

If entitlement to the apportionment was granted under the provisions of 38 CFR 3.450 or 3.451, determine the amount of disability compensation to apportion under the provisions of 38 CFR 3.451. Consider the following factors:

* The amount of VA benefits payable to the Veteran
* Other resources and income of the Veteran and the dependent/claimant
* Special needs of the Veteran and/or his/her dependents
* The amount apportioned should generally be consistent with the total number of dependents involved
* Ordinarily, apportion between 20 and 50 percent of the Veteran’s benefits

As previously mentioned, choose an even dollar amount (no cents) when determining the overall amount of the apportionment.

Refer to 38 CFR 3.665(e)(1) when determining entitlement to an apportionment for dependents of an incarcerated Veteran or 38 CFR 3.452(c)(1) of an incompetent Veteran institutionalized at government expense and a fiduciary has not been appointed.

**VA Form 21-441, *Special Apportionment Decision***

Document both favorable and unfavorable decisions on claims for apportionment using [VA Form 21-441](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf).

***Exceptions:*** VA Form 21-441 is not required in decisions where

* the evidence of record shows the child for whom an apportionment has been claimed does not meet the definition of “child” under [38 CFR 3.57](http://www.ecfr.gov/cgi-bin/text-idx?SID=d9789ea05df0b943f14e6129f4f94085&node=se38.1.3_157&rgn=div8).
* a legal bar to the apportionment exists, or
* the Veteran is incompetent, has no VA-assigned fiduciary, and is institutionalized at the Government’s expense.

***Important:*** Do not attach a copy of the VA Form 21-441 to decision notices for the Veteran and claimant.

Refer to M21-1 III.v.3.A.3.g – *Preparing VA Form 21-411 for a Favorable or Unfavorable Apportionment Decision* for more specific instructions regarding decision documentation.

**Determining the Effective Date of an Apportionment**

After deciding to grant an apportionment, use the table below to determine the

* effective date of the apportionment, and
* appropriate award action to take.

| **If the apportionment is …** | **Then …** |
| --- | --- |
| granted, and the Veteran’s award was running at the time the apportionment claim was received | * retroactively adjust the award of the Veteran effective the first day of the month after the date the apportionment claim was received, creating any resulting overpayment against the Veteran, and
* make the apportionee award effective the first day of the month after the date the apportionment claim was received.

**Exception**:  Follow the instructions in [M21-1, Part III, Subpart v, 3.A.3.j](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014232/M21-1-Part-III-Subpart-v-Chapter-3-Section-A-Apportionment-Process#3j) if * the apportionment is to a child for whom VA was previously apportioning benefits until the child turned 18, and
* VA received the child’s apportionment claim within one year of the child’s 18th birthday.

**Reference**:  For more information on the actions described in the bullets above, see* [38 CFR 3.400(e)](http://www.ecfr.gov/cgi-bin/text-idx?SID=48f97b240e806ed8bbd55c7e6c515550&node=se38.1.3_1400&rgn=div8), and
* [38 CFR 3.650](http://www.ecfr.gov/cgi-bin/text-idx?SID=48f97b240e806ed8bbd55c7e6c515550&node=se38.1.3_1650&rgn=div8).
 |
| granted, and the apportionment claim was received with or before the Veteran’s original claim | pay the apportionment on the basis of the facts found.**Note**:  Payment of the apportionment may be from the same effective date as the effective date of the Veteran’s award. |
| granted and the apportioned amount is greater than the withheld amount | * pay the apportionment for the amount previously withheld
* determine the additional amount to be apportioned, as well as the effective date, and
* send the Veteran a notice of proposed adverse action covering the additional amount.
 |
| denied | restore to the Veteran all funds that were withheld in anticipation of an apportionment. |

***Note:***  An apportionment award for a child that is under the age of 18 must reflect termination of the apportionment on the date the child turns 18.

**Effect of an Offset or Withholding of a Veteran’s Award on a Claim for Apportionment**

In in some cases, a Veteran’s award must be totally or partially offset under [38 U.S.C. 1151](http://www.law.cornell.edu/uscode/text/38/1151) or withheld to recoup separation benefits the Veteran received.

Entire award is offset or withheld:

* Veteran’s award not subject to an apportionment until offset or withholding ends
* Establish a diary that expires 90 days prior to completion of the offset/recoupment of the separation benefit and inform claimants of the reason for deferral of the claim and anticipated length of delay (M21-1 III.v.3.A.4.b).

Part of the award is offset or withheld:

* Determine the amount to apportion based on the *balance* of compensation payable to the Veteran, not the total award, and
* Do not make an apportionment if the balance does not permit payment of a reasonable amount to any apportionee.

Topic 4: Inputting the Award Information & Providing Notification

**Granting the Apportionment**

To establish an apportionment once it has been granted, enter the award information into VBMS-A as follows (refer to VBMS Awards User Guide):

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Open the ALLOTMENT DECISION screen. |
| 2 | Choose the ALLOTMENT RECIPIENT from the drop-down box. |
| 3 | Choose the appropriate DECISION from the drop-down box. |
| 4 | Enter the AMOUNT of the apportionment. |
| 5 | Enter the AWARD EFFECTIVE DATE (payment start date) of the apportionment. |
| 6 | \*If more than one apportionment recipient exists, add a separate line for each ALLOTMENT RECIPIENT.\*If the end date of the apportionment is already known, add a separate line to terminate the apportionment at this time, as well. |
| 7 | Once all necessary information is entered, click DONE to save. |
| 8 | GENERATE AWARD. |

**Discontinuing an Apportionment**

Discontinuing a primary beneficiary Veteran’s award automatically discontinues any apportionment associated with that award. Follow the instructions in the table below if it becomes necessary to discontinue an apportionment without discontinuing the primary beneficiary’s award.

|  |  |
| --- | --- |
| **Step** | **Action** |
| 1 | Open the ALLOTMENT DECISION screen. |
| 2 | If the apportionee is* the Veteran’s spouse, proceed to Step 7, or
* a child, proceed to the next step.
 |
| 3 | Select the decision row containing* the child’s name in the ALLOTMENT RECIPIENT field, and
* *Apportionment Terminated* in the DECISION field.
 |
| 4 | Select the EDIT button. |
| 5 | Enter the effective date for discontinuation of the apportionment in the AWARD EFF DT field. |
| 6 | Click on the ACCEPT button and proceed no further. |
| 7 | Click on the ADD button. |
| 8 | Select the spouse’s name from the drop-down box in the ALLOTMENT RECIPIENT field. |
| 9 | Select *Apportionment Terminated* from the drop-down box in the DECISION field. |
| 10 | Enter the date for discontinuation of the apportionment in the AWARD EFF DT field. |
| 11 | Click on the ACCEPT button. |

Refer to M21-1 III.v.3.B.1.d for a list of reasons and references to instructions for discontinuing apportionments.

**Notifying the Veteran and Claimant of the Apportionment Decision**

The decision notices should be generated in VBMS-A if possible. Otherwise, revert to Personal Computer-Generated Letters (PCGL).

 Decision notices to both the claimant and the Veteran must contain the following information:

* the effective date of payment, if granted
* the amount of the apportionment, if granted
* the reasons for the decision
* the evidence used to make the decision
* their rights to representation, and
* the right to appeal the decision to the Board of Veterans Appeals (BVA) within 60 days from the date of the decision notice – attach VA Form 20-0998, *Your Rights to Seek Further Review of Our Decision*.

***Exception:*** If the claim for apportionment is denied, and due process notification was not previously sent to the Veteran, then there is no requirement to notify the Veteran of the denial.

***Important:*** If the apportionment is granted for a minor child, notify the claimant that the apportionment will automatically end when the child turns 18. At that point in time, if the child wishes to continue receiving the apportionment, he/she must submit a claim using VA Form 21-0788 and certify his/her school attendance using VA Form 21-674.

Decision notices communicating the outcome of a contested claim, such as for an apportionment, need not discuss:

* findings found favorable to the claimant, or
* elements required to grant the claim that were not met.

Practical Exercise

**Directions:** Answer the questions below and provide supporting regulations or manual references.

1. What is the prescribed form for a claim for an apportionment?
2. List three bars to entitlement to an apportionment of benefits.
3. What is/are the controlling EP(s) for a claim for an apportionment?

1. True or False: When we send a notice of proposed adverse action to the Veteran, we must also generate an award with an estimated amount of withholding that will begin the first of the month following the due process period of 60 days.
2. Which form must be completed to document most favorable and unfavorable apportionment decisions?
3. The Veteran has a running award. A claim for an apportionment was received at VA and date stamped May 1, 2020. What would be the correct payment date?
4. True or False: The notification of our decision to the Veteran and/or claimant must cite the evidence used, reasons for decision, and the disabilities for which the Veteran is service connected.
5. Once an apportionment decision has been made, how much time does the Veteran or claimant have to appeal the decision?
6. Which VBMS-A screen is used to add an apportionment decision?
7. True or False: A claim for an apportionment is always granted under 38 CFR 3.451 if the claimant shows financial need, regardless if it will cause an undue hardship to the Veteran or his/her other dependent(s).