Effective Dates - Dependency Refresher Training

Trainee Handout

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Objectives

The **VSR** will be able to:

* define terms associated with effective and payment dates
* apply regulations concerning effective and payment dates for establishing dependents
* understand the effect of the Sharp v. Shinseki decision
* apply regulations concerning effective and payment dates for removing dependents from a Veteran’s award

References

All M21-1 references are found in the [**Knowledge Management (KM) Portal**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/topic/554400000003061/M21-1-Adjudication-Procedures-Manual).

* [**38 CFR 3.1, Definitions**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_11)
* [**38 CFR 3.114, Change of law or Department of Veterans Affairs issue**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1114)
* [**38 CFR 3.31, Commencement of the period of payment**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_131)
* [**38 CFR 3.400, Effective Dates: General**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1400)
* [**38 CFR 3.401, Effective Dates: Veterans**](https://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58#se38.1.3_1401)
* [**M21-1, Part III, Subpart iii, 5.L, Adjusting Awards for Dependents**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000032212/M21-1-Part-III-Subpart-iii-Chapter-5-Section-L-Adjusting-Awards-for-Dependents?articleViewContext=article_view&isFeatured=undefined&topic=undefined)
* [**M21-1, Part III, Subpart iii, 6.B, Awards and Adjustments Based Upon School Attendance**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014181/M21-1-Part-III-Subpart-iii-Chapter-6-Section-B-Awards-and-Adjustments-Based-Upon-School-Attendance?articleViewContext=article_view&isFeatured=undefined&topic=undefined)
* [**M21-1, Part III, Subpart iii, 6.C, Department of Veterans Affairs (VA) Education Benefits Under 38 U.S.C. Chapter 35**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014182/M21-1-Part-III-Subpart-iii-Chapter-6-Section-C-Department-of-Veterans-Affairs-VA-Education-Benefits-Under-38-USC-Chapter-35?articleViewContext=article_view&isFeatured=undefined&topic=undefined)

# Topic 1: Effective Dates – Terminology

Definitions

Understanding the following terms is vital to assigning the correct effective date when processing claims for additional benefits for dependents:

* Date of Receipt
* Date of Claim
* Date Entitlement Arose
* Effective Date of Entitlement
* Effective Date of Payment
* Informal Claims

The ***date of receipt*** is the earliest date on which a claim, information, or evidence was actually received by any Department of Veterans Affairs facility. A Department of Veterans Affairs facility can be a:

* Centralized Mail Facility
* VA Regional Office
* Pension Management Center
* VA Medical Center or Outpatient Clinic

The ***date of claim*** is generally the same as the ***date of receipt***.

**Exception:** A pre-discharge claim is filed while the servicemember is still on active duty. Since the claim cannot be processed until after the servicemember is discharged, the date of claim is not the day VA received the claim but the day after the Veteran’s discharge from active duty.

The ***date entitlement arose*** is the earliest date on which it is factually ascertainable that entitlement to VA benefits arose.

**Example:** VA received the Veteran’s claim within one year of the Veteran’s release from active duty. The date entitlement arose is the day after the Veteran’s release from active duty.

The ***effective date*** ***of entitlement*** is the specific date, selected in accordance with regulations, upon which benefit entitlement is deemed to have commenced, changed, or terminated. This could be the:

* date of receipt **or**
* date entitlement arose

**Example:** The Veteran and his spouse get married on December 15, 2015. VA receives the Veteran’s claim to add his spouse to his award on November 12, 2016. The spouse is added to the Veteran’s award effective the date of the marriage (December 15, 2015).

The ***effective date of payment*** is the date on which the VA will pay the Veteran. This is generally the first day of the month following the effective date.

**Example:** Using the example above where VA added the spouse to award effective
December 15, 2015, the payment date would be January 1, 2016.

**Exception:**

If the Veteran returns to active duty and then is subsequently discharged, the effective date of payment for the resumption of service connection is the day after the Veteran’s release from active duty.

An **informal claim** is any communication or action (that is not considered a formal claim) that shows an intent to apply for benefits.

***As of March 24, 2015, informal claims are no longer used.***

**Example:**

On July 27, 2014, the Veteran notifies VA by telephone that his first child was just born on July 25, 2014. The Veteran requests that the child be added to his award. The Veteran is currently evaluated at 50% disabled.

Before March 24, 2015, VA could use an informal claim to preserve an earlier effective date. There was no requirement to submit a claim for additional benefits for a dependent on a prescribed form.

After March 24, 2015, the Veteran must submit a claim for additional benefits for a dependent on an approved form. Any other communication or action **CANNOT** be used to preserve an earlier effective date. Remember, that a VA employee may complete an application for additional benefits for a dependent based on information the employee obtains from a Veteran by telephone. A VA Form, 21-0966, Intent to File (ITF), **CANNOT** be used to preserve an earlier effective date for a claim for additional benefits for a dependent.

Who Determines Effective Dates?

An RVSR or DRO determines the effective date for the following issues:

* service-connection
* evaluations of service-connected conditions
* other rating issues

A VSR determines the effective date for the following issues:

* adding and removing dependents
* award adjustments
* other non-rating issues

# Topic 2: Effective Dates – Adding a Dependent

**Adding a Dependent**

If a Veteran responds to a request for evidence/information required to add a dependent to his/her award within one year of our request, grant entitlement to additional compensation for the dependent effective the **later** of the following dates:

* effective date of the evaluation awarded in the rating decision referenced in our decision notice, or
* the date shown in the table below.

| **Type of Dependent** | **Date** |
| --- | --- |
| spouse | date the Veteran married his/her spouse |
| stepchild | date the Veteran married the stepchild’s biological or adoptive parent |
| biological child | child’s birthdate |
| adopted child | date the Veteran adopted the child |
| parent | date dependency arose (date the parent became  financially dependent on the Veteran) |

When processing a claim involving a school child, the effective date of entitlement can also be affected by other factors:

* Was the child in school on his/her 18th birthday?
* Did the child attend school continuously?
* Did the child turn 18 during a school holiday?
* When did the child start attending school?

The effective date of payment is the first of the month following the effective date of entitlement.

**Example 1:**

The Veteran has a disability rating of 50%. He was last notified that he was entitled to additional compensation for dependents on August 13, 2014. VA receives a VA Form 21-686c, Declaration of Status of Dependents, on October 1, 2017. On the form, the Veteran states he was married on July 7, 2017. All other necessary information is provided.

The effective date of entitlement is July 7, 2017, the date of the marriage. The effective date of payment is August 1, 2017.

**Example 2:**

The Veteran has a disability rating of 70%. She was last notified that she was entitled to additional compensation for dependents on May 24, 2013. VA receives a VA Form 21-686c on August 23, 2017. On the form, the Veteran states her son turned 18 on July 21, 2017. He graduated from high school on June 2, 2017, and began attending college on August 21, 2017.

The effective date of entitlement to additional benefits for a school child is July 21, 2017, the 18th birthday of the child. The child must first be added back onto the award as a minor child on his 18th birthday, July 21, 2017. The the effective date of payment for additional benefits as a school child is August 1, 2017.

**Sharp v. Shinseki**

The *Sharp v Shinseki* decision allows VA to use evidence that is already of record to grant entitlement to additional benefits for dependents when processing any rating decision that assigns a combined disability evaluation of at least 30%.

***When determining whether entitlement to the additional benefits exists, VSRs may rely on evidence that is less than eight years old as of the day they reviews the claims folder.***

**Example:**

While processing a rating decision that increases the Veteran’s disability evaluation from 10% to 50%, the VSR notes VA received a completed VA Form 21-526, including dependent information, on January 10, 2010. The effective date of entitlement to the increase is March 7, 2013. The VA Form 21-526 shows the Veteran has been married since June 3, 2014, and contains enough information to add the spouse to the Veteran’s award.

The VSR may add the spouse to the Veteran’s award because VA possesses the information required to take this action and the information is less than eight years old. The effective date of entitlement to additional benefits for the spouse is June 3, 2014, the date of the marriage. The rating decision established a potential earliest effective date of March 7, 2013; however, entitlement to additional benefits for the spouse did not arise until the Veteran was married on June 3, 2014.

In addition to allowing VA to establish entitlement to additional benefits for dependents based on older information, the court decision also requires VA to notify the Veteran of potential entitlement to additional benefits for dependents every time VA makes a decision that assigns a combined disability evaluation of at least 30%.

**Time Limits**

The Veteran has one year from the date VA notified the Veteran of his/her eligibility for additional benefits for dependents to submit a claim.

If the claim is received within one year of the date of the notification letter, VA may grant entitlement to the additional benefits from an effective date that is as early as the effective date of the combined disability evaluation referenced in the letter.

If the claim is received one year or more after the date of the notification letter, VA may grant entitlement to the additional benefits, but the effective date may be no earlier than the date of claim (remember the definition of date of claim mentioned above).

# Topic 3: Effective Dates – Removing a Dependent

**Removing a Dependent**

In most scenarios in which a dependent must be removed from a Veteran’s award, the end-of-month rule applies. This means that the effective date for removal of a dependent is the last day of the month in which the event that resulted in loss of the dependent occurred.

The payment date for the removal of a dependent in these scenarios is the first of the month. The term payment date may seem misleading since we are not paying the Veteran but lowering the monthly payment.

The end-of-month rule applies to the following scenarios:

* loss of a spouse because of
	+ divorce
	+ a voided or annulled marriage
	+ death
* loss of a child because of
	+ marriage
	+ adoption\*
	+ death
	+ discontinuance of school attendance

***\*If the child was adopted out of the Veteran’s household before September 14, 2015, the effective date for removal is September 14, 2015. If the child was adopted out of the Veteran’s household on or after September 14, 2015, the end of month rule applies.\****

**Example:**

The Veteran notifies us that he and his spouse were divorced on September 28, 2017. The effective date for removal of the spouse is September 30, 2017. The payment date for the removal is October 1, 2017.

The end-of-month rule does not apply to all situations in which the removal of a dependent from a Veteran’s award is required. Different rules apply to different situations. Refer to M21-1 if you have any questions about effective dates. The following are examples of situations in which the end-of-month rule does not apply (not all inclusive):

* the Veteran’s child turns 18
* the Veteran’s child turns 23
* the Veteran’s child begins receiving DEA benefits
* the Veteran’s stepchild is no longer a member of the Veteran’s household

**Example:**

The Veteran has a spouse and one school child on his award. VA receives notification that the Veteran’s child began receiving DEA benefits on August 21, 2017. The effective date for removal of the school child is August 20, 2017. The payment date for removal is August 21, 2017.