Decision Notice Letter Refresher Training

Trainee Handout

**Table of Contents**

[Objectives 2](#_Toc40100523)

[References 3](#_Toc40100524)

[Topic 1: Decision Notice Requirements 4](#_Toc40100525)

[Topic 2: Impact of Erroneous Notification or Failure to Notify 9](#_Toc40100526)

Objectives

After this lesson, the traineewill be able to:

* Identify decision notice requirements
* Identify special requirements for decision notices for rating/non-rating decisions
* Identify the different requirements for Redesigned Automated Decision Letter (RADL) and Personal Computer Generated Letter (PCGL) decision notices
* Understand the impact of an erroneous notification and our failure to notify

References

* [38 CFR 3.103, Procedural due process and appellate rights](https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=39c7e367a71c8efc570650851b266303&rgn=div5&view=text&node=38:1.0.1.1.4&idno=38#se38.1.3_1103)
* [M21-1, Part III, Subpart v, 2.B, Decision Notices](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014231/M21-1-Part-III-Subpart-v-Chapter-2-Section-B-Decision-Notices)

Topic 1: Decision Notice Requirements

Decision Notice Requirements

There are regulatory requirements regarding the information VA must provide to claimants in every notification letter. After making a decision on a claim, prepare a decision notice that independently, or in combination with its enclosures (such as a rating decision or administrative decision),

* informs the claimant of the issues adjudicated
* summarizes the
  + evidence VA considered
  + laws and regulations applicable to the claim, and
  + applicable review options the claimant may use to seek further review of the decision
* explains how to obtain or access evidence used in making the decision
* identifies, if applicable, the criteria required to grant SC or the next-higher level of compensation, and/or
* identifies
  + - for denied claims, the element(s) required to grant the claim that were not met, and

a listing of findings that are favorable to the claimant under 38 CFR 3.104(c), if any.

Decision Notice Requirements – Overpayments

If the enactment of a decision resulted in the creation of an overpayment in a beneficiary’s account, notify the beneficiary of the overpayment and his/her right to request:

* + - * a waiver of the overpayment, and/or
      * a repayment plan

Decision Notice Requirements – Grants

When VA grants entitlement to a benefit, or makes an adjustment to a running award, the decision notice must also notify the claimant of

* + - * the monthly rate of payment
      * the effective dates of entitlement and payment
* the amount of any benefits VA is withholding and the reason for the withholding, and
* information about any additional benefits to which the claimant may be entitled.

***When VA confirms and continues (C&C) a prior rating decision, there is no requirement to provide the information referenced in the above bullets in the corresponding decision notice.***

Use the *Additional Benefit Notification Requirements*reference to assist you in determining the correct paragraphs to include in your decision notice letter when a Veteran may be entitled to additional benefits.

When utilizing RADL, you should not need to add or modify any paragraphs discussing additional benefits. RADL should correctly add all the appropriate paragraphs to the notification letter.

**Please Note**: Entitlement to DEA and provision of the DEA paragraph when entitlement to DEA is first granted is NOT an exception to the above rule. Per M21-1.III.iii.6.C.1.b, the manual states that the DEA language in the RADL is adequate notification to the Veteran. It states:

**“Important**:  The text in the preceding paragraph is **not** an exact match of the text RADL automatically inserts; claims processors do **not** need to add the text to decision notices they generate using RADL.”

When using PCGL, any forms mentioned must be included as an attachment to the notification letter.

**Administrative Decisions**

All administrative decisions must include the following elements:

* summary of the evidence considered
* summary of the laws and regulations applicable to the claim, and
* in ***unfavorable decisions only***,
* a listing of findings that are favorable to the claimant under 38 CFR 3.104(c), if any, and
* identification of the element(s) required to grant the claim that are not met.

The establishment of benefit administratively does not trigger the regulatory requirement to discuss additional benefits in the decision notice.

***Example***: The Veteran has a 100% evaluation. We establish entitlement for a dependent (spouse). In the notice, we do not need to discuss additional benefits (i.e., commissary benefits).

**Requirement to Provide a Summary of Evidence in a Decision Notice**

Claims processors must summarize (for the benefit of the claimant) the evidence VA considered in reaching a decision in the corresponding decision notice.

Rules for Summarizing Evidence in a Decision Notice

When formulating a summarized list of relevant evidence for inclusion in the decision notice,

* + - * use descriptive identifiers, such as
  + form names
  + document types (for example, divorce decree or birth certificate), and/or
  + date of receipt, and
    - * refer to the evidentiary naming conventions discussed in M21-1, Part III, Subpart iv, 6.C.4.c.

**Note:** Do not use a form number without also providing the title of the form.

Good Examples:

* VA Form 21-686c, Declaration of Status of Dependents, received on December 24, 2016
* Marriage Certificate, for John and Susan, received on December 24, 2016

Bad Examples:

* A review of the claims folder performed on August 17, 2017
* VA Form 21-4138

**Note:** If a decision notice was preceded by a notice of proposed adverse action, as described in M21-1, Part III, Subpart v, 2.B.1.a, there is no need to re-summarize in that decision notice any evidence referenced in the notice of proposed adverse action.

Other Scenarios

If the VSR is processing multiple decisions at the same time, one notification letter should be used in most situations.

**Example:** The VSR is processing a rating decision under an EP 020. The rating decision establishes entitlement to bilateral hearing loss at 100% and denies posttraumatic stress disorder (PTSD). The VSR notices that there is also an EP 130 pending, for a spouse and two minor children. All of the information to add the spouse is of record; however, the Veteran did not provide the social security numbers for the two children.

**Analysis:** The VSR should process both decisions (the rating decision – EP 020 and the claim for the spouse – EP 130) on the same award and use one notification letter for both decisions made. The EP 130 should be continued at authorization for the pending claim for the two minor children.

However, the development for the missing SSNs for the two children should be completed in a separate VBMS development letter under the EP 130, prior to generating the award.

Pre-decisional letters (development or due process) cannot generally be combined with a notification letter.

Visually Impaired Veteran

If the Veteran is diagnosed with any visual impairment, whether service connected or not, that VA has rated at least 70% disabling, or has made a specific request that VA accommodate his/her visual impairment with modified correspondence:

* the notification letter must use 18-point font **and**
* VA must make a minimum of three attempts to contact the Veteran by telephone to explain the substance of the rating decision

The telephone contact mentioned above should be accomplished by the claims processor responsible for disposing of the associated EP (generally the authorizing VSR). Be sure to document the contact and/or attempts.

RADL v. PCGL

To utilize RADL, an award must first be generated. Even when processing a denial or a C&C, an award must be generated to trigger the creation of an RADL. VBMS-A pulls the following information from the rating and the award to draft the RADL:

* the decision VA made
* the reason(s) for the decision
* a summary of the evidence used to make the decision

Before processing a rating decision, the VSR should review the decision and all systems he/she relies on during its promulgation. Any error in the rating decision or systems will continue forward into the decision notice. The VSR should not generally use PCGL to draft a letter to compensate for an error in the rating decision or systems.

IMPORTANT: Review the RADL closely to ensure all issues from the rating decision were included in the RADL.

If the RADL is still not correct after a review of the rating decision and systems:

* attempt to correct the RADL using the auto-text function **or**
* utilize PCGL to draft the decision notice.

When using PCGL, the notification letter will just provide a short summary of the decision made and not list the evidence used from the rating decision.

The VSR should print a copy of the Rating Narrative and attach it to the notification letter. The Rating Narrative provides:

* the decision VA made
* the reason(s) for the decision
* a summary of the evidence used to make the decision

**NOTE:** *DO NOT* attach a copy of the Rating Codesheet to the claimant’s decision notice.

Providing Review Rights in a Decision Notice

To meet the requirement to provide review rights in a decision notice,

* + - * include instructions in the decision notice regarding the actions the claimant or beneficiary may take if he/she disagrees with the decision
      * ensure that the decision notice contains the appropriate language found in M21-1, Part III, Subpart v, 2.B.5, and
      * attach VA Form 20-0998, Your Rights to Seek Further Review of Our Decision, to the decision notice.

POAs (PCGL)

When generating correspondence, if the representative is a private attorney or claims agent, include the representative’s mailing address in the carbon copy (cc) line of the correspondence.

***Reference***:  For more information on adding an attorney or agent’s name and address to letters generated in various applications, see **M21-1, Part I, 3.B.1.f-i.**

The VSR must **NEVER** include a copy of the Rating Codesheet as an attachment to the claimant’s decision notice.

Notification Letter Tips

* When possible, customize the notification to fit the unique aspects of the Veteran’s claim and the decision(s) VA made.
* Spell out all dates (i.e., November 13, 2016).
* Do not use VA jargon or acronyms.
* Group similar information together in the notification letter.
* Always use correct spelling, grammar, and punctuation.
* Be clear, concise, and correct.
* Use a compassionate and customer-friendly tone.
* Write for the reader, not yourself.

Topic 2: Impact of Erroneous Notification or Failure to Notify

**Erroneous Notification**

If VA notifies a claimant that it has established SC for a claimed disability then later corrects the notice to state VA denied SC, the decision review period begins on the date VA sent the corrected decision notice.

Example: The rating decision denies service-connection for a lower back strain. The notification letter (sent on February 22, 2019) incorrectly informs the Veteran that VA has established service-connection for the lower back strain and assigned a 30% disability evaluation effective January 1, 2019. The award is correct and the Veteran is not paid any monetary compensation.

VA sends out a corrected notification letter informing the Veteran of the mistake and the correct decision on March 1, 2019. The correction should be worked under an EP 400. The Veteran’s decision review period does not start until March 1, 2019.

Since the rating is not incorrect and the Veteran has not been awarded any benefits, due process is not required before sending the corrected decision notice.

**Failure to Notify**

If a regional office (RO) decides a claim but fails to notify the claimant of the decision, the claim remains open, legally, even if the RO clears the corresponding end product (EP). Under such circumstances, if VA denied entitlement to a benefit, failed to notify the claimant of the denial, and then granted entitlement to the same benefit years later, the claimant might be entitled to benefits retroactive to the initial date of claim, because the decision on the initial claim never became binding.

In order to avoid the situation described in the preceding paragraph, claims processors must follow the

* steps provided in M21-1, Part III, Subpart v, 2.B.1.m after preparing every decision notice, and
* instructions in M21-1, Part III, Subpart ii, 1.B.6 for handling undeliverable, essential mail if a decision notice is returned as undeliverable.

If VA made a decision on a claim, but a corresponding decision notice cannot be located in the claimant’s claims folder, proceed as if the claimant was never notified of the decision.