

**Pension & Fiduciary Service**

**Inquiry Response Highlights**

**September 2020**

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# **Pension Management Center Related Inquiries**

# Quality Call Topic Solicitation SSA

**Target Audience**: PMC Claims Processors

**Background:** The St. Paul PMC had three questions concerning the procedures for claims establishment and the solicitation of SSA information.

**Question 1**: Is there a standard procedure for contacting the appropriate Social Security payment center and verifying the date the application may have been filed with SSA? Historically, SSA payment centers have generally refused to disclose any information to VA when contacted, and it is very difficult to get any information from them regarding our claimants. Additionally, the guidance in M21-1 IV.iii.3.A.3.d states that SSA must verify the date of application in writing, which infers that this information cannot be obtained over the phone.

**Response 1**: M21-1, Part III, Subpart iii, 3.A.6.c provides the specific instructions to ask questions specific to a Program Service Center by a local Social Security Administration field office.

If the PMC has not received the VA Form 21-4182, PMCs must submit a written request for verification of the SSA application date from the appropriate SSA Payment Center per M21-1, Part IV, Subpart iii, 3.A.3.c-d.

Additionally, if PMCs are having issues with a specific case and are unable to obtain a response from the SSA Payment Center, please contact the P&F Policy and Procedures Mailbox indicating the issue.

**Question 2**: If DIC was previously denied and is now being granted from a later date based upon new evidence (such as an amended death certificate), do these procedures apply? If the spouse filed a claim for SSA survivor’s benefits when the Veteran died, should we be granting DIC back to the Veteran’s date of death in these cases?

**Response 2**: If VA has evidence of an earlier effective date via SSA’s receipt of a VA Form 21-4182, and DIC was previously denied more than one year prior, the effective date would be the date of claim of the current DIC claim.

**Question 3**: Regarding the chart in M21-1 IV.iii.3.A.3.d (Stage 2), should this evidence be requested from the claimant in a development letter prior to granting benefits, or is this information that should be included in the decision notice once benefits are granted (but the possibility of earlier entitlement exists)?

**Response 3**: This should be requested from the claimant in the decision notice.  M21-1, Part IV, Subpart iii, 3.A.3.d will be updated accordingly.

**Result:** Clarification provided and M21-1, Part IV, Subpart iii, 3.A.3.d will be updated.

# EP Clarifications Based on Receipt of New VA Form 21-2680

**Target Audience**: PMC Claims Processors

**Background:** The Milwaukee PMC had two questions concerning clarification of the new VA Form 21-2680.

**Scenario 1:**

A claimant is in receipt of a running award with entitlement to special monthly pension (SMP) or special monthly dependency and indemnity compensation (SMDIC) at the Aid and Attendance level.  We receive a new (non-duplicate) stand-alone VA Form 21-2680.  No change in entitlement to SMP/SMDIC or competency is shown.  What EP is appropriate to use?

* Is an EP 120/020 appropriate since SMP/SMDIC is being claimed with the submission of a new VA Form 2680? The thought process to using an EP 120/020 is that we are reviewing entitlement to SMP/SMDIC while reviewing new medical evidence in the form of the VA Form 21-2680, in order to verify that entitlement is still warranted, as well as reviewing for any changes in competency. OR;
* Is an EP 400 appropriate since there is no change in benefits warranted based on the evidence of record (per [M21-1 III.ii.2.B.1.g.](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014119/M21-1-Part-III-Subpart-ii-Chapter-2-Section-B-Claims-for-Disability-Compensation-and-or-Pension-and-Claims-for-Survivors-Benefits#1))?

**Response 1**: In the first scenario, per M21-1 III.ii.2.B.1.g., if a claimant is in receipt of a running award with entitlement to special monthly pension (SMP) or special monthly dependency and indemnity compensation (SMDIC) at the Aid and Attendance level, and VA receives a new (non-duplicate) stand-alone VA Form 21-2680 with no change in entitlement to SMP/SMDIC or competency is shown, an EP 400 is appropriate since there is no change in benefits warranted based on the evidence of record.

**Scenario 2:** A claimant is in receipt of a running award with entitlement to special monthly pension (SMP) at the Aid and Attendance level.  We receive a new (non-duplicate) VA Form 21-2680 accompanied by new income and/or medical expense information (e.g. VA Form 21-0516-1, VA Form 21-0518-1, VA Form 21-8416).  No change in entitlement to SMP or competency is shown.  What EP is appropriate to use?

* Is an EP 120 appropriate since SMP is being claimed with the submission of a VA Form 2680? The thought process to using an EP 120 is that we are reviewing entitlement to SMP when reviewing new medical evidence in the form of the VA Form 21-2680, in order to verify that entitlement is still warranted (as well as reviewing for any changes in competency) along with reviewing for any income and/or medical expense changes. OR;
* Is an EP 150 appropriate since there is no change to SMP, or competency and the only changes warranted would be based on income or medical expense adjustments?

**Response 2**: In the second scenario, since there was no change to SMP or competency, and the only changes warranted would be based on income or medical expense adjustments, an EP 150 is appropriate.

**Result:** Clarification provided.

# Question Concerning State Plot Processing Guidance

**Target Audience**: PMC Claims Processors

**Background:** The Philadelphia PMC had questions concerning the State Plot processing procedures.

**Question 1:** The Philadelphia PMC would like to request clarification/assistance in regards to the section highlighted in yellow. We attempted to establish a State Plot EP 930, but the attached error message was received.

We did pchange it to an EP 160 in order to process.

**Use of EP 930 for error correction -** As noted within [M21-4 Appendix B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000011474/Appendix%20B.%20End%20Product%20%28EP%29%20Codes), EP 930 applies to reviews and issues where no other EP is applicable and where the appropriate EP credit has already been taken to include the following:

* missed issues or prematurely cleared EPs, and
* correction of previous erroneous actions identified during quality review.

Historically, it was not been possible to process a burial award under an EP 930.   However, the system issue has been resolved and EP 930 should be used to control for error corrections associated with burial claims.

**Response 1:** The State Plot Processing Guidance sent on August 19, 2020 should have clarified that end product (EP) 160 still needs to be used for corrections or secondary award action to an organization claimant. Please see the correction below:

Use of EP 930 for error correction - As noted within M21-4 Appendix B, EP 930 applies to reviews and issues where no other EP is applicable and where the appropriate EP credit has already been taken to include the following:

· missed issues or prematurely cleared EPs, and

· correction of previous erroneous actions identified during quality review

Historically, it was not possible to process a burial award under an EP 930. However, the system issue has been resolved and EP 930 should be used to control for error corrections of a burial award to a claimant who is an individual (such as a spouse or child).

Anytime correction of a prior award action to an organization is required, including correction of a prior state plot allowance or secondary award action for a state plot, an EP 160 must be established. Due to system limitations in VBMS, an EP 930 does not allow for revised award decisions to be recorded for a state cemetery or any organization as the claimant.

We will also update M21-4 Appendix B, Topic 2, EP 160 and 930.

**Result:** Clarification provided and M21-4 Appendix B, Topic 2, EP 160 and 930 will be updated.

# DIC Eligibility Based on Decision From Substitution Appeal

**Target Audience**: PMC Claims Processors

**Background:** The Milwaukee PMC had the following question concerning DIC eligibility based on a decision from a substitution appeal.

**Question:** We have identified a concern with grants of appealed issues that would result in an overturn of previously denied decisions for Dependency and Indemnity Compensation (DIC). Due to a lack of defined guidance, we are requesting this issue be taken into consideration for updates to both M21-1 and M21-5. When DIC may be granted after the resolution of an appealed issue, we request to have entitlement to DIC either: identified as a downstream issue within the jurisdiction of Appeals, where the Decision Review Officer (DRO) would assume responsibility of DIC after the appealed issue is granted and where no action would be required on behalf of the claimant (i.e. the claimant would not need to submit a formal application for DIC); or identified as an issue where the claimant would be required to submit a formal application to claim DIC (e.g. VA Form 21-534EZ). A detailed explanation with applicable references, along with an example scenario, is below.

In situations where DIC is at issue and there is an appeal for service connection for the disability causing the death of the Veteran, it would seem to be most efficient and claimant-centric that Appeals would address DIC (service connection for the cause of death) after deciding whether the underlying disability was service connected (SC). However, in reviewing applicable references, such as M21-1 III.iv.6.B.2.b., it seems clear that a claim for survivor’s benefits is needed in order to consider DIC a subordinate or ancillary issue. There is no specificity as to whether a current DIC claim is needed or whether the receipt of a past DIC claim would suffice. DIC is not considered an ancillary benefit, nor a subordinate issue as shown directly in the table for M21-1 III.iv.6.B.2.b.

In the case we came across that brought this concern to light, a valid substitute claimant filed for both DIC and substitution of an appeal after the Veteran’s death. The issue which was on appeal (SC claim pending at death) was listed on the death certificate. DIC was denied and the appeal was worked with the valid substitute claimant. We received no appeal for the DIC issue. Fast-forward a few years and the DIC decision is now final. BVA has now determined that the claimed condition is service connected, and the accrued rating was completed. The rating did not address DIC eligibility, to which a CVSO has questioned.

The scope of the original claim/appeal was the SC condition for which substitution was requested. {38 CFR 3.155(d)(2)} states:

\* (2) Scope of claim. Once VA receives a complete claim, VA will adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of the adjudication decision (e.g., entitlement to 38 U.S.C. Chapter 35 Dependents' Educational Assistance benefits, entitlement to special monthly compensation under 38 CFR 3.350, entitlement to adaptive automobile allowance, etc.). The claimant may, but need not, assert entitlement to ancillary benefits at the time the complete claim is filed. VA will also consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in 38 CFR Part 4, VA Schedule for Rating Disabilities. VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision. VA's decision that addresses all outstanding issues enumerated in the complete claim implies that VA has determined evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues enumerated in the complete claim.

There is confusion as there is no active claim for survivors benefits in these cases as the claim has been finally denied. However, the basis for which it was previously denied is now flawed as the conditions for which the Veteran was service connected for at death have changed. This does not fall within the definition of a Clear and Unmistakable Error (CUE) as based solely on the evidence of record as of the date of the prior decision, the decision was correct (38 CFR 3.105). Further, the manual appears to indicate that a new prescribed form would be required (M21-1 III.ii.2.B.1.b.) as it is not listed in the situations which would not require a prescribed form (M21-1 III.ii.2.B.1.c.).

One could argue that this would qualify under a Downstream issue (M21-5 7.A.1.f.), but based on the current version of the manual, this is not clear. It indicates that A downstream issue is an issue which arises as a direct result of a favorable decision on an appealed issue and must be addressed by the decision maker. The example given within M21-5 7.A.1.f. is as follows:

Example: A Veteran files an appeal for service connection (SC) for depression. When granting SC for depression, the DRO must address the following downstream issues:

\* disability evaluation

\* effective date, and

\* entitlement to any ancillary benefits that arise, based upon the evidence, such as

\* individual unemployability

\* Dependents’ Educational Assistance, and/or

\* special monthly compensation.

While we believe that it is the intent of 38 CFR 3.1010 (Substitution under 38 USC 5121A following death of a claimant) and the references to grant DIC in this instance from the date of receipt of the original VA Form 21-534EZ (or if within a year of death, the first of the month of the Veteran’s death), VA does not often leave it to personnel to make these leaps in logic. As such, we are requesting P&F/AMO to adjust their sections of the manual to specifically indicate that when a grant of a service connected condition results in DIC eligibility, it should be considered within the scope of the appeal, an inferred issue, or a downstream issue and granted without additional requirements from the claimant. If P&F/AMO believes this would not suffice, as Compensation Accrued/BVA grants are normally worked by Compensation Service, we request it be clarified that a new VA Form 21-534EZ be required along with any considerations to apply for the effective date.

Applicable References Not Cited Within the Body of the Email

7.D.2.i. Processing Issues Within Scope of the Appeal

When completing decisions on appeals, appeal decision makers must address any issue within scope of the appeal. The issue can be raised by lay statements, medical evidence, or as a logical and legal consequence of other VA decisions, such as increased evaluations. Send the appellant a VA Form 20-0998, Your Rights to Seek Further Review of Our Decision, with the decision notice on the within scope issue.

Example: The appeal decision maker is reviewing medical evidence in support of the appeal on the Veteran’s SC neurological disability and discovers that it now causes loss of use. The appeal decision must include a decision on any ancillary benefits to which the Veteran is entitled, such as SMC and auto grant.

References: For more information on

\* within scope of a claim or appeal, see

\* 38 CFR 3.155(d)(2)

\* M21-1, Part III, Subpart iv, 6.B.1.c

\* M21-5, Chapter 7, Section B.2.f-i, and

\* M21-5, Chapter 7, Section E.3.a and b

\* decision notices, see M21-1, Part III, Subpart v, 2.B

\* when to address ancillary benefits, see M21-1, Part III, Subpart iv, 6.B.2.b, and

\* considering complications of an expressly claimed issue, see M21-1, Part III, Subpart iv, 6.B.2.c.

**Response**: Ancillary benefits and/or downstream issues are benefits that can be granted without a prescribed form. Unless Dependency and Indemnity Compensation (DIC) is paid automatically based on evidence of record, DIC requires a prescribed form per 38 CFR 3.152. Therefore, DIC is not a downstream issue or ancillary benefit.

When a grant of a service connected condition results from an appeal, the appeal decision maker should solicit for a new VA Form 21-534EZ, Application for DIC, Survivors Pension, and/or Accrued Benefits to address entitlement to DIC when there is no pending claim and entitlement to DIC exist. A previously adjudicated claim would not suffice to grant benefits.

P&F Service is working with Office of Administrative Review to determine the appropriate update to the manual to incorporate this guidance.

**Result:** Clarification provided.

# $90 Medicaid Automated Due Process

**Target Audience**: PMC Claims Processors

**Background:** The Milwaukee PMC had the following question concerning the final claim actions after $90 Medicaid due process had been issued.

**Question:** The Milwaukee PMC received approximately 30 final action claims after $90 Medicaid due process had been issued.  It appears that the due process letters were automated and issued on 03/27/20, and that they propose to reduce to $90 effective 03/01/20 and create an overpayment.  All claimants appear to reside in NY.  There are no source documents of record to show that the claimants are Medicaid-approved.

Are there source documents that can be shared to show these claimants are Medicaid-approved?  Without this information, VSRs will need to verify that claimants are Medicaid-approved before reducing to the $90 Medicaid rate.  In addition, should the reduction be made Date Last Paid (DLP) so that no overpayment is created?

**Response:** In an efforts to support VBA compliance with the Improper Payments and Recovery Act (IPERA), P&F Service in collaboration with the Office of Business Process Integration (OBPI), partnered with the Centers for Medicare and Medicaid Service (CMS) to identify Veterans that are residing in a Medicaid facility and receiving Medicaid-covered nursing home care. The identified Veterans are in receipt of Pension benefits at an amount greater than the $90 per month limit allowed under [38 CFR 3.551(i)](https://www.ecfr.gov/cgi-bin/text-idx?SID=02d8748e25d5c47deb9495c5e281d4cf&mc=true&node=se38.1.3_1551&rgn=div8).

Using corporate data, P&F identified Veterans whose current mailing address matches a confirmed Medicaid approved nursing facility. We also confirmed with CMS that the identified Veterans are covered by a Medicaid plan for services furnished by the nursing facility. Based on this information, 112 End Product (EP) 600s were established with a date of claim of March 27, 2020. In addition, a due process letter proposing to reduce the VA Pension award to the $90 per month Medicaid rate was mailed and inserted into the appropriate eFolders.

The due process letters proposed a reduction date of 03/01/20. This was the date of last payment (DLP) when the letter process associated with the Medicaid match was initiated. However, at the expiration of the due process period, PMCs should reduce the award on the current DLP to avoid an overpayment. Since the due process letter proposes a more adverse action than required, the PMCs should reduce DLP without reissuing due process.

The 112 identified records are only for the State of New York. As we are able to verify Veteran eligibility with CMS for other states, there will be more due process actions initiated. P&F Service will notify the PMCs of any actions to be automatically processed.

Additional questions or concerns pertaining to this information may be directed to the P&F Service Business Management mailbox, VAVBAWAS/CO/P&F BUS MGMT, at the attention of P&F Service POC Terrence Minyard.

**Result:** Clarification provided.

# **Fiduciary HUB Related Inquiries**

# Questions regarding CBI mitigation memo policy

**Target Audience**: Fiduciary Hub personnel

**Background:** The Lincoln Fiduciary Hub had two more follow-up questions concerning the Interim Guidance Memo regarding CBI Batch cases.

**Question 1:** Does the guidance listed for the four scenarios under the Cases Not Requiring Mitigation-Batch Report Errors section of the Memo also apply to non-CLEAR Batch report standard IA/SIA cases?

**P&F Response**: Yes, the above cited guidance is applicable to non-CLEAR Batch report standard IA/SIA cases.

**Question 2:** Does the guidance listed for the four scenarios under the Cases Not Requiring Mitigation-Batch Report Errors section of the Memo only apply to CLEAR Batch report cases?

**P&F Response**: No, the above cited guidance is not only applicable to CLEAR Batch report cases.

**Result:** Clarification provided.

# Questions regarding applicability of 2.D.3.c. to SIA exams

**Target Audience**: Fiduciary Hub personnel

**Background:** The Lincoln Fiduciary Hub had a follow-up questions concerning the previous guidance from P&F indicated that Field examiners (FE) must document the amount of the retroactive payment paid to a fiduciary on behalf of a beneficiary and the remaining amount of that payment of that payment in the FElux while conducting a Successor Initial Appointment (SIA) exam.

**Question:** When conducting SIA exams, must FEs document in the FElux if a retroactive VA benefit payment was received since the last field examination and the amount?

**P&F Response**: Yes, when conducting SIA exams, FEs must document if a retroactive VA benefit payment was received since the last field examination along with the amount in FElux.

**Result:** Clarification provided.

# Interim guidance on FAST bridge

**Target Audience**: Fiduciary Hub personnel

**Background:** During the P&F Service Monthly All Hands Meeting the Lincoln Fiduciary Hub asked about providing a response to the following question.

**Question:** After an accounting is returned to the fiduciary via FAST portal for revisions, how long does the hub give the fiduciary to return the requested information or revisions?

**P&F Response**: When an accounting is returned to the fiduciary for revisions, additional documents or information, the fiduciary will be allowed up to 7 calendar days to return the information or revisions to the hub via the FAST portal. After one week, the hub will begin taking steps to disapprove the accounting as long as the accounting due date has already passed. If it has not passed, then disapproval should not occur until after the due date.

To further clarify the reasoning for the allotted timeframe, when an accounting is returned to the fiduciary for revisions, additional documents or information, FAST sends an automated email to the fiduciary advising them to provide the corrected information 3 days from the date the accounting is returned. The Fiduciary can continue to upload documents to FAST at any time. If no additional documents are uploaded within the additional 3 calendar days, another automated email will be sent via FAST to the fiduciary advising them that the information has not been received and that they have 3 additional days to provide the requested information or their accounting will be disapproved.

**Result:** Clarification provided.

# Questions regarding accounting start dates

**Target Audience**: Fiduciary Hub personnel

**Background:** The Lincoln Fiduciary Hub had a follow-up questions concerning the previous guidance from P&F Service concerning questions regarding accounting start dates.

**Question 1:** Based on the answers submitted below in the first question set (received on August 21, 2020) regarding accounting start dates, the answers outline that the accounting start dates are the date the fiduciary was appointed as VA fiduciary.

The most recent email (also in the below email string and received on September 21, 2020) states that if the court guardian is appointed as VA Fiduciary, all VA funds paid prior to the VA fiduciary appointment count as VA FUM.

It appears as though the two different email responses are at odds with each other.

Our additional questions are as follows:

If a court appointed guardian/conservator, that is also a VA appointed fiduciary, receives six VA award payments from 01/02/2020 to 07/01/2020, but was appointed as VA fiduciary on 07/15/2020, and we set the accounting start date on 07/15/2020, how do we account for and document in the Accounting Wizard the VA FUM paid to the fiduciary prior to 07/15/2020?

**P&F Response:** After review of our response on September 21, 2020, we determined that response was incorrect. FPM 2.D.3.m outlines that at the initial appointment, the FUM is the approximate amount of any retroactive payment due the Fiduciary from VA. Essentially, anything received prior to the VA Fiduciary appointment is not considered VA FUM.

As our prior response was incorrect and the funds in question regarding your email of August 24, 2020 are not considered VA FUM, we assume this question regarding the accounting and documentation of VA FUM paid within the Accounting Wizard before VA appointed a Fiduciary is no longer an issue.

**Result:** Clarification provided.

# **P&F Service Information**

# P&F Service Contact Information

Policy and Procedure questions from the PMCs or Fiduciary Hubs should be submitted to P&F Service at VAVBAWAS/CO/P&F POL & PROC by the Quality Review coach or PMC/Fiduciary HUB Division Management.

All inquiries sent to the Policy and Procedures Mailbox must include the references previously researched, key words or phrases used to search in CPKM. P&F Service is available to assist when there is confusion about a certain policy or procedure, however, PMCs and Fiduciary Hubs are required to research and attempt to resolve the issue before sending the question to the P&F Service Policy and Procedures Mailbox. Additionally, including all words used to search topics in CPKM will allow P&F Service to add those search words into CPKM if they were not already in the metadata for a certain manual reference.

Training and Quality questions can be directed to: VAVBAWAS/CO/P&F TNG QUAL OVRST.

Systems-related questions can be directed to: VAVBAWAS/CO/P&F BUS MGMT.

# Disclaimer

Please note that all responses provided are for informational purposes only. If changes to the M21-1 Adjudication Procedures Manual or Fiduciary Program Manual (FPM) are needed, they are made in conjunction with the response. The M21-1 and FPM supersede any inquiry response.