Administrative Decision Process

Trainee Handout

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Objectives

The purpose of this topic is to introduce the administrative decisionprocess by providing information on what an administrative decision is, when one is needed, who can prepare and approve one, how to weigh evidence, the proper format for each kind of administrative decision, and the required elements.

This lesson will ensure you are able to:

* Recall what makes an administrative decision different
* Identify issues requiring an administrative decision
* State who can prepare, and who must approve, administrative decisions
* Recall kinds of evidence used in administrative decisions and that development may be necessary
* Explain the weight of evidence and reasonable doubt rule
* Match the proper format to the kind of administrative decision
* Identify the elements required in an administrative decision

References

All M21-1 references are found in the [Compensation and Pension Knowledge Management (CPKM) Portal](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034).

* [38 U.S.C. 501, Rules and regulations](https://www.law.cornell.edu/uscode/text/38/501)
* [38 U.S.C. 5103, Notice to claimants of required information and evidence](https://www.law.cornell.edu/uscode/text/38/5103)
* [38 U.S.C. 5104, Decisions and notices of decisions](https://www.law.cornell.edu/uscode/text/38/5104)
* [38 CFR 3.100, Delegations of authority](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100#se38.1.3_1100)
* [38 CFR 3.102, Reasonable doubt](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1102)
* [38 CFR 3.103, Procedural due process and other rights](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1103)
* [38 CFR 3.104, Binding nature of decisions](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1104)
* [38 CFR 3.105, Revision of decisions](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1105)
* [38 CFR 3.109, Time limit](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1109)
* [38 CFR 3.159, Department of Veterans Affairs assistance in developing claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1159)
* [38 CFR 3.160, Status of claims](http://www.ecfr.gov/cgi-bin/text-idx?SID=ad275643432556b9dda942343fb89296&mc=true&node=pt38.1.3&rgn=div58%20-%20se38.1.3_1100%20-%20se38.1.3_1100#se38.1.3_1160)
* [M21-1, Part III, Subpart v, 1, Administrative Decisions](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/portal.html?encodedHash=%23!agent%2Fportal%2F554400000001034%2Ftopic%2F554400000003102%2FChapter-01-Administration-Decisions)

Topic 1: General Information on Administrative Decisions

**What is an Administrative Decision?**

Some issues require additional documentation in a specialized format (the administrative decision) that details how we made our decision. Depending on the issue, they may also require special development for relevant evidence.

**Issues Requiring an Administrative Decision**

[M21-1, Part III, Subpart v, 1.A.1.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information#1a):

The table below lists

* the types of issues that require a formal administrative decision, and
* references to additional information about the issues.

Unless otherwise specified, complete an administrative decision regardless of whether the decision is favorable or unfavorable.

**Important**:

* The information in this table may not be all-inclusive.
* Instructions for handling specific issues found elsewhere in the M21-1 may vary from the general guidelines in this section.  Those specific instructions override the general instructions provided here.

| **Issue** | **Reference** |
| --- | --- |
| Character of Discharge (COD) | [M21-1, Part III, Subpart v, 1.B](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014217/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-B---Statutory-Bars-to-Benefits-and-Character-of-Discharge-(COD)) |
| * Line of Duty * Willful Misconduct | [M21-1, Part III, Subpart v, 1.D](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014222/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-D---Willful-Misconduct-and-Line-of-Duty-(LOD)) |
| Lack of Qualifying Service | [M21-1, Part III, Subpart ii, 6.A.1](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014143/M21-1,-Part-III,-Subpart-ii,-Chapter-6,-Section-A---Establishing-Veteran-Status)  **Exception**:  There is no requirement to complete an administrative decision to deny a claim for Veterans and/or Survivors Pension for lack of qualifying service under the circumstances described in last row of the table in [M21-1, Part III, Subpart ii, 6.A.1.f](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014143/M21-1,-Part-III,-Subpart-ii,-Chapter-6,-Section-A---Establishing-Veteran-Status). |
| Former Prisoner of War Status | [M21-1, Part III, Subpart v, 1.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014220/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-C---Former-Prisoner-of-War-(FPOW)-Status) |
| Common Law Marriage | [M21-1, Part III, Subpart iii, 5.C](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015795/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-C---Establishing-Common-Law-Marriages) |
| Inference of Remarriage | [M21-1, Part IV, Subpart iii, 3.D.2](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014636/M21-1,-Part-IV,-Subpart-iii,-Chapter-3,-Section-D---Remarriage-of-a-Surviving-Spouse) |
| Deemed Valid Marriage | [M21-1, Part III, Subpart iii, 5.E.7](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015801/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-E---Establishing-Marital-Relationship-in-Survivors-Cases) |
| Continuous Cohabitation (unfavorable decisions only) | [M21-1, Part III, Subpart iii, 5.E.6](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015801/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-E---Establishing-Marital-Relationship-in-Survivors-Cases) |
| Cessation of Marital Relationship Due to a Finding of Death | [M21-1, Part III, Subpart iii, 5.B.5.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015799/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-B---Establishing-the-Validity-of-a-Marriage-for-Department-of-Veterans-Affairs-(VA)-Purposes) |
| Parental Relationship (unfavorable decisions only, unless contested)    **Note**:  Administrative decisions of this type do not require approval by a Veterans Service Center Manager (VSCM)/Pension Management Center Manager (PMCM) designee. | [M21-1, Part III, Subpart iii, 5.J.4](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015805/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-J---Establishing-Parental-Dependency) |
| Child by Adoption (unfavorable decisions only)    **Note**:  Administrative decisions of this type do not require approval by a VSCM/PMCM designee. | [M21-1, Part III, Subpart iii, 5.G.2.i](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015802/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-G---Biological-Children,-Adopted-Children,-and-Stepchildren) |
| Stepchild Relationship (unfavorable decisions only)    **Note**:  Administrative decisions of this type do not require approval by a VSCM/PMCM designee. | [M21-1, Part III, Subpart iii, 5.G.6](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000015802/M21-1,-Part-III,-Subpart-iii,-Chapter-5,-Section-G---Biological-Children,-Adopted-Children,-and-Stepchildren) |
| Child Income Hardship Exclusion    **Note**:  Administrative decisions of this type do not require approval by a VSCM/PMCM designee. | [M21-1, Part V, Subpart iii, 1.K.5](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000115811/M21-1,-Part-V,-Subpart-iii,-Chapter-1,-Section-K---Pension---Other-Deductible-Expenses) |
| Presumed Death | [M21-1, Part III, Subpart v, 1.G](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014225/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-G---Presumption-of-Death) |
| Findings of Fact and Date of Death | * [M21-1, Part III, Subpart v, 1.H](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014226/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-H---Finding-of-the-Fact-and-Date-of-Death) * [M21-1, Part III, Subpart iii, 2.A.8](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014154/M21-1,-Part-III,-Subpart-iii,-Chapter-2,-Section-A---General-Information-on-Service-Records) |
| Homicide | [M21-1, Part III, Subpart v, 1.F.1](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014224/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-F---Considering-Eligibility-When-Homicide-Is-Involved) |
| Forfeiture of Benefits Based on Fraud or Treasonable Acts | [M21-1, Part III, Subpart vi, 5.B.2.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014297/M21-1,-Part-III,-Subpart-vi,-Chapter-5,-Section-B---Forfeiture-Discontinuance-Provisions) |
| Insanity | [M21-1, Part III, Subpart v, 1.E.1](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014223/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-E---Determinations-of-Insanity)  **Note**:  The rating activity makes insanity determinations which may be used in making an administrative decision regarding eligibility for benefits. |
| Administrative Error    **Note**:  Administrative decisions of this type require approval by a VSCM/PMCM or a designee only if the amount of the erroneous payment is at least $2,000. | [M21-1, Part III, Subpart 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) |
| Apportionments    **Note**:  Administrative decisions of this type do not require approval by a VSCM/PMCM designee. | [M21-1, Part III, Subpart v, 3.A.3](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) |
| Contested Claims (other than apportionments) | [M21-1, Part III, Subpart vi, 6.C.1](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014300/M21-1,-Part-III,-Subpart-vi,-Chapter-6,-Section-C---Authorizing-and-Notifying-Claimants-of-a-Decision-on-a-Contested-Claim) |

**Who Makes, Documents, and Approves Administrative Decisions**

Per 38 CFR 3.100, authority is delegated to VBA personnel to make findings and decisions using applicable laws, regulations, precedents, instructions for entitlement, and payment of monetary benefits to Veterans and their dependents. Authority is delegated to personnel to determine whether a claimant or payee has forfeited the right to benefits.

A Veterans Service Representative (VSR) of any salary grade may prepare an administrative decision as part of assigned duties.

*Except as noted in* [*M21-1, Part III, Subpart, v.1.A.1.a*,](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information#1a) administrative decisions must be approved by a Veterans Service Center Manager (VSCM) designee.

In cases of administrative decisions affecting permanent entitlement to benefits (such as decisions on COD or willful misconduct) approval is required as follows:

* A Certified Veterans Service Representative (VSR) at General Schedule (GS) 11 (or higher), who maintains monthly quality, may be given single signature authority for grants; any denial must be concurred upon by a second equivalently-certified reviewer of at least the same GS level.
* Any lower-grade claims processor requires second-signature by a certified GS 11 (or higher) VSR.

Topic 2: Making an Administrative Decision

**Definition of Evidence**

The term evidence signifies all of the means by which an alleged matter of fact may be established or disproved. For decision-making purposes in the VA, the term generally refers to

* testimony (including statements in support of a claim)
* various kinds of documentary proof, and
* medical or field examination reports.

Evidence may be

* “positive,” meaning it supports a claimant’s position, or
* “negative,” meaning it disproves the claimant’s position.

***Important:***When there is an approximate balance between positive and negative evidence regarding any issue, the evidence is said to be “in equipoise.”

**Development for Evidence**

An administrative decision may or may not require development in accordance with[38 U.S.C. 5103](https://www.law.cornell.edu/uscode/text/38/5103)to notify the claimant of any information not previously provided that is necessary to substantiate the claim and/or a predetermination notice in accordance with[38 CFR 3.103](http://www.ecfr.gov/cgi-bin/text-idx?SID=c42b54a2c1132051570c861bc207781b&node=se38.1.3_1103&rgn=div8)(b)(2). For more information on which issue requires what type of notice, see the table above for the references.

**Considering the Absence of Evidence as Negative Evidence**

According to the Federal Circuit Court in [*Maxson v. Gober*](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#!agent/portal/554400000001034/article/554400000014563/Maxson v. Gober, October 27, 2000, 99-7160), 230 F.3d 1330 (Fed. Cir. 2000) the *absence* of evidence that supports a claimant’s position is considered negative evidence that must be weighed when making a decision.

*Scenario*:  A Veteran files a claim for disability compensation for a knee disorder that was first diagnosed 40 years after his discharge from service.  He submits no lay testimony of symptoms of knee problems and no medical evidence showing treatment or complaint of knee problems during service or the 40-year period that followed.

*Analysis*:  The absence of evidence (lay or otherwise) showing the existence of a knee disorder during service or the 40-year period that followed constitutes negative evidence for decision-making purposes.

**Assigning Weight to Each Piece of Evidence**

When deciding an issue, the decision maker must first determine the “weight” of each piece of evidence, based on its probative value. Evidence has probative value if it:

* makes a matter material to the determination more or less likely, and
* has sufficient weight, either by itself or in combination with other evidence, to persuade the decision maker about a fact.

**Weighing All of the Evidence**

After collecting all of the available evidence that is relevant to a pending issue,

* weigh the positive and negative evidence as a whole, and
* determine if the weight of the positive evidence is greater than, less than, or equal to the weight of the negative evidence.

The table below shows how this activity affects the outcome of the decision-making process.

|  |  |
| --- | --- |
| **If…** | **Then…** |
| a majority of the evidence is positive | Decide in the claimant’s favor. |
| a majority of the evidence is negative | Decide against the claimant. |
| the evidence for and against the claimant’s position is in equipoise | Resolve reasonable doubt in the claimant’s favor.  ***Exception***:  For exceptions to the “reasonable-doubt rule,” see [M21-1, Part III, Subpart v, 1.A.2.e](https://vaww.compensation.pension.km.va.gov/system/templates/selfservice/va_ka/#2e). |

**Evidence Thresholds and Reasonable Doubt**

A preponderance of the evidence exists if the evidence is not in equipoise, which means it is not evenly balanced both for and against the fact or proposition at issue.  When there is a fair preponderance of the evidence, one side clearly outweighs the other.

In most cases, when the evidence for and against a claimant’s position is in equipoise, VA resolves reasonable doubt as to the claimant’s entitlement in his/her favor.

Topic 3: Documenting Administrative Decisions

**Format for Documenting Administrative Decisions**

[M21-1, Part III, Subpart v, 1.A.3.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information#3b):

Use the table below to determine the proper format for documenting an administrative decision, depending upon its subject and content.

| **If an administrative decision is needed to document a(n) ...** | **Then document the decision using ...** |
| --- | --- |
| apportionment decision | [*VA Form 21-441*, Special Apportionment Decision](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf).  ***Reference***:  For more information on preparing [*VA Form* *21-441*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf), including instructions on when not to attach the form to a decision notice, see [M21-1, Part III, Subpart v, 3.A.3.d](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). |
| net worth determination | [*VA Form 21-5427*, *Corpus of Estate Determination*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-5427-ARE.pdf). |
| COD or statutory bar determination | the approved format for such a determination, as displayed in [M21-1, Part III, Subpart v, 1.B.1.l](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014217/M21-1,-Part-III,-Subpart-v,-Chapter-1,-Section-B---Statutory-Bars-to-Benefits-and-Character-of-Discharge-(COD)). |
| determination regarding any other issue specified in [M21-1, Part III, Subpart v, 1.A.1.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information#1a) | the approved format displayed in [M21-1, Part III, Subpart v, 1.A.3.g](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014216/M21-1-Part-III-Subpart-v-Chapter-1-Section-A-General-Information#3g). |

**Required Elements of Administrative Decisions**

The elements of an administrative determination are:

* Issue - state the issue in question
* Evidence - list all documents and information considered to make the decision
* Applicable Laws and Regulations
* Decision
* Reasons and Bases
* Favorable Findings (if outcome is unfavorable)
* Identification of the elements(s) required to grant the claim that were not met (if outcome is unfavorable)

**Attach Administrative Decision to Notification Letter**

When issuing a decision notice regarding an administrative decision, claims processors must attach a copy of the administrative decision to the decision notice for the claimant’s review, unless superseded by instructions specific to the particular type of administrative decision.