Pension and fiduciary service

PMC VSR Core Course

Due Process

Job Aid

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Description

This job aid provides the most commons reasons to apply due process provisions, along with how to determine the adjusted amount and effective date.

Below are the most common reasons you would apply due process provisions:

* Net Worth
* Write-outs
* $90 Medicaid Rate
* Excessive Payment or Administrative Error
* Apportionments
* Dependency
* Hospitalization
* Incarceration
* Incompetency
* Matching Program Reductions
* No Response to Development
* Change Received from Third Party
* Contemporaneous Notice

Refer to the specific reason for how to determine the adjusted amount and effective date.

**IMPORTANT: Review all evidence received during the due process period to determine whether the proposed decision should be changed.**

Net Worth

The table below provide the details for determining the effective date and adjusted amount if the reason for due process is net worth.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Net worth proposed to be a bar.* The effective date is the first of the year following the bar or the start of a claimant's benefit, depending on when the net worth was acquired.
* An earlier date of discontinuance may be appropriate if there is excessive income or other reasons.
 | N/A | Benefits will never be reduced due to a net worth change. They will either be terminated or continue running at the current rate.  | M21-1 IX.iii.1.J.1.q. (Evaluating Net Worth on Benefit Eligibility for Claims Received on or After October 18, 2018)M21-1 IX.iii.1.J.1.r. (Discontinuance for Excessive Net Worth) |

6311: Return of Dependency Questionnaire (VA Form 21P-0537)

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Benefits will be suspended from the date the last payment went out to the beneficiary. VA will propose to terminate benefits if a signed and completed VA Form 21P-0537, Marital Status Questionnaire, is not received within six months following the notification letter advising of the suspension. | Varies based on the information received | This notice is generated 60 days after the system automatically sends the surviving spouse a VA Form 21P-0537, Marital Status Questionnaire, to complete and return. Every eight years, DIC surviving spouses are required to report whether they have remarried since the death of the Veteran. If the form was not received by VA and you could not reach the beneficiary by phone, a due process letter is sent out. | M21-1 VII.i.1.B.4 (Failure to Return VA Form 21-0538 or VA Form 21P-0537) |

$90 Medicaid Rate

The table below provide the details for determining the effective date and adjusted amount if the reason for due process is $90 Medicaid rate.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| The first of the month after the due process period expires | $90 | This notice is generated when claimant is receiving benefits and VA receives information indicating that claimant is receiving Medicaid, is in a Medicaid-approved nursing home, and has no dependents. You would send a due process notice to propose that the claimant be moved to the $90 Medicaid rate. | M21-1 IX.iii.2.A.1.a(Provisions for Pension Reductions for Medicaid Covered Nursing Facility Care)M21-1 IX.iii.2.A.6.c. (Determining the Effective Date of Reductions Based on Nursing Facility/Medicaid Status) |

Excessive Payment or Administrative Error

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is excessive payment or administrative error.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| The first of the month after the due process period expires | Varies depending on the error | * The purpose of this notice is to reduce the amount at the earliest possible date without creating an adjustment that will cause an overpayment.
* The claimant is receiving excessive payment or there was an administrative error; this resulted in the claimant receiving a greater payment than what he/she was entitled.
* VA will not attempt to recover the funds, only to reduce the benefit to the correct amount.
* Adjustments that should have been made in the past due to the error will be written off.

**NOTE**: If the administrative error permanently affects the beneficiary's entitlement to benefits, an administrative decision is required to reverse the error. | * M21-1. VI.i.2.B.1 (Overview of Erroneous Payments)
* M21-1 VI.i.2.B.2 (Handling Cases That Involve the Duplicate Payment of Benefits)
* M21-1 VI.i.2.B.3 (Handling Cases Involving Administrative Errors)
* M21-1 VI.i.2.B.3.g (Requirement for an Administrative Error Memorandum and Advance Notice of Adverse Action)
 |

Apportionments

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to an apportionment request.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Benefits withheld after due process expires | VSR discretion* This is the dependent amount, but if it causes a hardship, it may be a different amount.
* Typically, this is a round number (e.g., $150).
* The amount apportioned must be based on two factors:
	+ Cannot cause a hardship to the beneficiary (Veteran or surviving spouse)
	+ The claimant must show a financial need
 |  | M21-1. VII.iii.1.B (Adjusting Apportioned Awards) |

Dependency

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to adjustment of an award based on received or not received dependency information.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Varies based on the information received | Varies based on the allowance for that dependent | * Awards and adjustments based upon school attendance
* Failure to return:
	+ VA Form 21-8960-1, Certification of School Attendance or Termination
	+ VA Form 21-674, Request for Approval of School Attendance
	+ VA Form 21-674b, School Attendance Report
* Verification of marital status and the status of dependents
* Failure to return a dependent questionnaire
 | * M21-1. VII.ii.1.B (Awards and Adjustments Based upon School Attendance)
* M21-1 VII.ii.1.B.6.e. (Failure Certify School Attendance)
* M21-1. VII.i.1.B (Verification of Marital Status and the Status of Dependents)
* M21-1 VII.i.1.B.4 (Failure to Return VA Form 21-0538 or VA Form 21P-0537)
 |

Hospitalization

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to hospitalization of a Veteran.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Date of hospitalization provided by the VAMC, but the date on which VA proposes to reduce benefits may vary based on the situation | Varies based on the Veteran's status | You would issue due process when the Veteran has no dependents and is hospitalized at VA expense. The purpose is for the VA to not have to pay twice for care. | * M21-1(Due Process and Control Procedures for Hospitalization)
* 38 CFR 3.551 (Reduction because of hospitalization)
* 38 CFR 3.552 (Adjustment of allowance for aid and attendance)
 |

Incarceration

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to incarceration of a Veteran.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Based on the 61st day they were imprisoned, terminating the benefits the 61st day and restarting the benefits on the day the beneficiary was released | * If there is no service-connected compensation entitlement, the pension award is always terminated on the 61st day (never reduced).
* The amount of overpayment is based on the amount of time the beneficiary was incarcerated.
* If service-connected compensation entitlement is greater than 10%, then the service-connected benefits are reduced to the 10% rate (as of the 61st day of incarceration).
* If service-connected compensation entitlement is at 10%, then benefits are reduced to half of the 10% rating (as of the 61st day of incarceration).
 | You would issue due process based on incarceration if the beneficiary is incarcerated for at least 61 days.  | * M21-1 VI.iii.1.C.2.b. (Processing Notice of the Incarceration of a Surviving Spouse)
* M21-1.III.v.8.A.2 (Receiving and Sending Notification Regarding Incarceration)
* M21-1 III.v.8.A.3.f (Notifying a Beneficiary of VA’s Intent to Reduce or Discontinue Benefits Due to Incarceration)
 |

Incompetency

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to a proposed rating of incompetency.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Varies based on the appointment of a fiduciary | No impact | If a beneficiary requests a hearing at any time before VA makes a final decision on the beneficiary's competency, VA will postpone making the final decision until after it holds the hearing.  | * M21-1 X.ii.6.D.3 (Due Process Requirements for Incompetency Determinations)
* M21-1. X.ii.6.A.5.a. (Due Process Not Required When Incompetency Is Determined by a Court of Law)
 |

Matching Program Reductions

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to VA being notified based on a computer match (third party).

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| **Death Match**: First of the month after the death of the Veteran's spouse | Varies | None  | M21-1.X.5.1.j (Death Match Identifies Veteran's Spouse) |
| **Fugitive Felon**: Proposed date is the date of the warrant (if benefits were granted before the warrant cleared) or the date benefits started, depending on when VA started benefits | Results in termination (no reduction) | None | M21-1.X.16.2.a (Fugitive Felon Match) |
| **Income Verification Match**: Proposed date is February of the year for which VA received the information | Varies | VA receives information from another program (based on tax documents) that indicates that the beneficiary is receiving income that VA is not counting. | M21-1.X.9.c.13 (Income Verification Match) |
| **Social Security Prison Match:** Terminating the benefits the 61st day and restarting the benefits on the day the beneficiary was released | Varies | None | M21-1.X.15.2 (Social Security Prison Match) |
| **Social Security Verification Match:** Date based on effective date of the change that differs from Social Security. | Input the data into the awards processing system to determine the amount | VA receives information from Social Security indicating that the beneficiary is receiving an amount different from what VA is counting. | M21-1.X.2.5.n (Social Security Verification Match) |

Change Received From Third Party

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to information received from a third party.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| The date varies based on the information received. | The amount varies based on the information received. | * Information received from sources such as VA medical facilities, field examiners, estate analysts, beneficiaries' survivors, VA computer matches, letters from friends and relatives, reports from employers, reports from other government and private agencies, Social Security's third party query system, or SHARE computer application is considered third party information
* The information could be regarding any type of change (e.g., net worth, dependency, etc.).
 | * M21-1 VI.iii.2.A.1 (General Information About Simultaneous Award Adjustments)
* M21-1 VI.iii.2.A.2 (Processing Simultaneous Award Adjustments)
 |

Burial

The table below provides the details for determining the effective date and adjusted amount if the reason for due process is due to information received from a third party after automatic burial payment.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| The date the letter is sent. | The amount varies based on the amount previously paid. | * Burial benefit and/or plot paid automatically to spouse of record
* Information received from a secondary claimant such as an application or a death certificate that shows a change to marital status
* Information received from secondary claimant showing Veteran’s remains were interred at a state or national cemetery
 | * M21-1 I.i.1.B.1.b (Due Process and VA)
* M21-1 X.ii.3.A.2.a. (Required Elements for Notice of Proposed Adverse Action)
* M21-1 X.ii.3.A.1.c. (Erroneous Awards)
 |

Contemporaneous Notice

The table below provides the details for when it is appropriate to send contemporaneous notice instead of due process.

| **Effective Date** | **Amount** | **Details** | **References** |
| --- | --- | --- | --- |
| Date letter is sent | The amount varies based on the information received and situation | * Describes a completed award action, rather than a proposed one
* Given when the beneficiary or his/her fiduciary provides factual, unambiguous information or statements regarding:
	+ Income
	+ Net worth
	+ Marital status
	+ Dependency
* Evidence reasonably indicates that a beneficiary is deceased. However, in the event that VA has received a death certificate, a terminal hospital report verifying the death of a beneficiary, or a claim for VA burial benefits, no notice of termination (contemporaneous or otherwise) will be required.
* An adverse action based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits
* An adverse action based upon a written statement provided to VA by a Veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA compensation or pension
 | * M21-1 X.ii.3.C.1 (General Information on Contemporaneous Notice)
* M21-1 X.ii.3.C.1. (Definition: Contemporaneous Notice)
* 38 CFR 3.103(b)(3) (Procedural Due Process and Appellate Rights, The Right to Notice, Exceptions)
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Due Process Steps

1. Call the claimant and get permission to reduce and/or terminate benefits without having to send a due process letter for the benefit of the claimant.
	* Calling the claimant can reduce overpayments by allowing the PMC VSR to take action immediately rather than having to wait for the claimant to receive and respond to the letter with evidence.
	* Document the call on VA Form 21-0820 (Report of General Information).
	* If you do not reach the claimant by phone proceed to step 2.
2. Create a due process letter with the information listed in M21-1 X.ii.3.A.2.a. (Required Elements for Notice of Proposed Adverse Action)
3. CEST an per local procedure.
4. Wait 65 days to receive response. Take no adverse action until the 65th day following the date of the notice of proposed adverse action, unless the beneficiary:
	* Specifically asks that the award be reduced or suspended to minimize any possible overpayment, or
	* Submits documentary evidence confirming earlier oral information, which is sufficient to justify the proposed adverse action.
5. Review the evidence received from the claimant either by phone, fax, mail, or in person and determine if the claimant requested a hearing within 30 days of the notice. After 30 days, the claimant may request a hearing; PMC VSRs should adjust the claimant's benefits as explained earlier in the notice.