* Pension and fiduciary service

PMC VSR Core Course

Determine Substitution Eligibility

Job Aid

May 2024

Determine Substitution Eligibility

Although not all inclusive, this job aid serves as a quick reference for granting or denying a request for Substitution claim. Refer to the Appendix for more information on references and VA Forms used. Use and upload a copy of the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html) to the claims folder when determining a substitute claimant’s timeline to complete any actions by law or regulation.

Determine Substitution Eligibility

| Step | Timelines for Substitute Claimant to Take Action |
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| 1 | Determine the number of days which had elapsed between the day after a decision notice is sent to the original claimant and date of their death by using the COUNT DAYS tab in the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html) and checking the box that says include the end date in calculation |
| 2 | Calculate the total number of days in the original claimant’s decision review period (365 or 366 if the decision review period included February 29) minus the elapsed days calculated from Step 1 to determine the remaining days for the substitute claimant to file a disagreement. |
| 3 | Since the substitute claimant has the remainder of one year from when the decision notification letter was sent to the original claimant to complete the required actions, add the difference to the date VA sent the notice of approval for substitution by using the ADD DAYS tab in the [**Time and Date online calculator**](https://www.timeanddate.com/date/durationresult.html). |
| 4 | The calculated new date will reflect the date VA must receive the final actions to be considered timely.  If the new date for final action is a Saturday, Sunday, or holiday extend the time limit to the next succeeding workday. |

Example

### *In the following scenario the**original claim was decided at time of death, and the time has not expired, and there the decision review period has 366 Days.*

### **Scenario**: On 03/01/2020 VA sent John Veteran notification of an award decision with decision review rights. On 05/29/2020 the Veteran died. On 07/01/2020 an accrued claim and VA Form 21P-0847, is received. On 07/01/2020 the claimant is notified of an approved substitution.

***Result***: Since 89 days have elapsed between the day after notification was sent and the date of death, VA would notify the substitution claimant that they have until 04/03/2021 to request review of the decision on the proper form.  The substitute claimant has 277 (366-89) remaining days to file a decision review election from 07/01/2020, the date they were notified of an approved substitution.

Definitions: Substitution

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| Substitution in Case of Death of Claimant | ***Substitution***is the right of a living person to submit additional evidence in support of the deceased claimant’s pending claim, request for decision review, or appeal of decision.  **The monetary benefit sought in the request for substitution is accrued benefits** |
| Original Claimant | An **original claimant**is the deceased claimant whose claim, decision review request, or appeal of an adverse decision on the claim was pending when he or she died. |
| Substitute Claimant | A **substitute claimant** is an individual whom the Department of Veterans Affairs (VA) has recognized to replace the original claimant in a pending claim, decision review request, or pending appeal (i.e., a preferred eligible survivor).  **Eligible survivors submitting a claim for accrued benefits will automatically be considered as requesting to substitute.** |
| Joint Class | ***Joint class*** is a group of two or more individuals in which each individual is an eligible substitute of the same preference such as two or more surviving children, **or** persons who bore the expense of last sickness or burial, **or** two surviving parents. |
| Categories of Eligible Persons | The ***categories of eligible persons***apply to a person eligible for accrued payment based on relationship. |
| **Evidence Needed to Complete the Request to Substitute** | ***Evidence needed to complete the request to substitute*** means information necessary to establish the claimant is in the categories of eligible persons, and first in priority order, and proof of payment, if the claim is based on reimbursement. |
| Claim Pending at the Date of Death | A **claim pending at the date of death** means a claim that had not been finally adjudicated on or before the date of death. |
| Evidence in the File at the Date of Death | **Evidence in the file at date of death** means evidence in VA’s possession on or before the date of the beneficiary’s death, even if the evidence was not physically located in the VA claims folder on or before the date of death. |
| Evidence in VA’s Possession | **Evidence in VA’s possession**means evidence physically located at any VA facility. |

Rights of a Substitute Claimant

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| Submission of Evidence and Other Rights Afforded to the Substitute Claimant | A substitute claimant has the same rights that would have applied to the original claimant had they not died, including the rights regarding:   * hearings * representation * legacy appeals * decision review options for a claim ***not*** finally adjudicated, and * submission of evidence |
| Right to request a decision review of a deceased claimant’s claim | A substitute claimant has the right to request a decision review of a deceased claimant’s claim that is not yet final   * this review must be filed on the appropriate form (see  [**M21-5, Chapter 4, Topic 2.c**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000141022/M21-5,-Chapter-4---Appeals-Modernization-Act-(AMA)-Control-and-Other-Activities)) |
| Right to Waive Substitution | * A claimant may waive the right to substitute in writing   + accrued claim is processed solely based on evidence in the claims folder at the time of the original claimant’s death in these cases |
| Right to Appeal the Denial of a Request to Substitute | * A claimant has the right to appeal a denial of the request to substitute. * Decisions concerning the right to substitute made on or after February 19, 2019, claimants have the right to appeal to the Board of Veterans’ Appeals or to request a decision review.   + the decision notice should include VA Form 20-0998, Your Right to Seek Review of Our Decision. |

Pending Legacy Appeal Regarding Substitution Claims

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| If the claimant is a valid substitute claimant  M21-1 XI.ii.3.E.17 (Jurisdiction and EP Control) | The EP 170 or 070 controls the appeal. An EP 170 or 070 is required for control of the legacy appeal which may need further review by the Board after the PMC or VSC makes a decision on the request to substitute.  Use the following language for the VBMS note:  *Review of EP 290.  Claimant was notified of favorable substitution status on*[**Date**]*.  Cleared the Substitution of Claimant EP 290 on*[**Date**]*.  Appeal EP will control the substitution request.* |
| If the legacy NOD, *VA Form 9*, *Appeal to Board of Veterans’ Appeals*, or remand is still pending in the Veterans Appeals Control and Locator System (VACOLS) and an EP 170 or 070 is pending   * update the VACOLS record for substitution (name of substitute, etc.), and * transfer the VACOLS record to the DROC DC or special mission site. |
| If the claimant is not a valid substitute claimant | Use guidance identified in [**M21-1, Part XI, Subpart ii, 3.E.17.e**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000174208/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-E-Accrued-Authorization-and-Notification?query=substitution#17e) |
| Unfavorable Substitution Decisions | An EP 290 with an appropriate substitution of claimantclaim label should be established and cleared when the claimant requesting substitution is notified of an unfavorable decision pertaining to the request for substitution.  Use the following language for the VBMS note:    *“Review of EP 290.  Claimant was notified of unfavorable substitution status on*[**Date**]*.  Cleared the Substitution of Claimant EP 290 on*[**Date**]*.  No additional action required on substitution request.”*  See M21-1 XI.ii.3.E.17.e. (Disposition of the EP Control for Unfavorable Substitution Decisions), for additional information. |

Rights Not Afforded to the Substitute Claimant

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| Rights that may have applied to the claimant prior to death but which cannot practically apply to a substitute, such as the right to a medical examination, are not available to the substitute | **Example**: Medical Examinations |
| The substitute claimant may not add an issue to the claim, or expand the claim | **Exception**: Entitlement to additional compensation for dependents does not always constitute adding an issue to the claim nor expanding the claim. |

Categories of Eligible Persons (38 CFR 3.1000)

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| If a claimant dies on or after October 10, 2008, a person eligible for accrued benefits under [38 CFR 3.1000(a)(1)](https://www.ecfr.gov/current/title-38/section-3.1000#p-3.1000(a)(1)) through [(5)](https://www.ecfr.gov/current/title-38/section-3.1000#p-3.1000(a)(5)) may, in priority order, request to substitute for the deceased claimant in a claim for periodic monetary benefits | | Upon the death of a Veteran to the living person first listed as follows:   * his or her spouse * his or her children (in equal shares), or * his or her dependent parents (in equal shares) or the surviving parent |
| When a person having preferred entitlement dies, forfeits entitlement or otherwise becomes disqualified before receiving and negotiating the check for his/her share of the accrued benefit, pay the next person entitled based on relationship or reimbursement, if a claim is timely filed. | | Failure to timely file a request to substitute, or a waiver of the right to request substitution, by a person of a preferred category of eligible person will not serve to vest the right to request substitution in a person in a lower category or a person who bore the expense of last sickness and burial; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to other persons in the class. |
| **Upon the death of a preferred category person:** | Death of a surviving spouse or remarried surviving spouse | Upon the death of a surviving spouse or remarried surviving spouse, to the Veteran’s children |
| Death of a child, to the surviving children | Upon the death of a child, to the surviving children of the Veteran entitled to death pension, compensation, or DIC |
|  | Death of a child claiming benefits under Chapter 18 | Upon the death of a child claiming benefits under Chapter 18 of this title, to the surviving parents |

PACT Act - Substitution

An individual seeking accrued benefits or substitution could elect to have an original claim reevaluated, even if the original claimant had not made such an election, as long as a relevant DIC claim was pending at the time of the original claimant’s death. The PACT Act does not exclude substitute claimants from electing reevaluation, nor does it require that the election come from the original claimant.

FTI

Federal tax information (FTI) should be considered in substitution and accrued claims that have a valid substitute claimant when a claim for pension was pending at the time of the original claimant’s death and the FTI is available, sum of the total income reported by the Internal Revenue Service (IRS)/Social Security Administration (SSA) is higher than the sum of the total income reported on the original application, and FTI income is considered countable for VA purposes.

A valid substitute claimant has the same rights as would have applied to the original claimant as described in [**M21-1, Part XI, Subpart ii, 3.B.3.b**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000174205/M21-1-Part-XI-Subpart-ii-Chapter-3-Section-B-Substitution-in-Case-of-Death-of-Claimant).

Appendix

References

| Reference | Title |
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| 38 USC 5121A | Substitution in Case of Death of Claimant |
| 38 CFR 3.1000 | Entitlement under 38 U.S.C. 5121A to benefits due and unpaid upon death of a beneficiary |
| 38 CFR 3.1010 | Substitution Under 38 USC 5121A following death of a claimant |
| M21-1 XI.ii.3.A.2.a. | Definition: Claim Pending at the Date of Death |
| M21-1 XI.ii.3.A.4.b. | Definition: Evidence in the File at the Date of Death |
| M21-1 XI.ii.3.B.1.a. | Definition: Substitution in Case of Death of Claimant |
| M21-1 XI.ii.3.B.1.c. | Definition: Substitute Claimant |
| M21-1 XI.ii.3.B.2.b. | Definition: Categories of Eligible Persons |
| M21-1 XI.ii.3.B.3.a. | Timelines for Substitute Claimant to Take Action |
| M21-1 XI.ii.3.C.1.b. | Applications for a Request to Substitute |
| M21-1 XI.ii.3.C.3.b. | Definition: Evidence Needed to Complete the Request to Substitute |
| M21-1 XI.ii.3.E.17.c. | EP Control for Substitution and Accrued Claims |

VA Forms

| VA Form | Title |
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| [VA Form 21P-601](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-601-ARE.pdf) | Application for Accrued Amounts Due A Deceased Beneficiary |
| [VA Form 21P-534EZ](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-534EZ-ARE.pdf) | Application for DIC, Death Pension, and/or Accrued Benefits |
| [VA Form 21P-0847](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-0847-ARE.pdf) | Request for Substitution of Claimant Upon Death of Claimant |
| [VA Form 20-0998](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-20-0998-ARE.pdf) | Your Right to Seek Review of Our Decision |