Pension and fiduciary service

PMC VSR Intermediate Core Course  
Phase 5: Proficiency Development  
Part 4: Prepare Decision Notice

Prepare the Decision Notice

Trainee Guide

November 2024

Prepare the Decision Notice

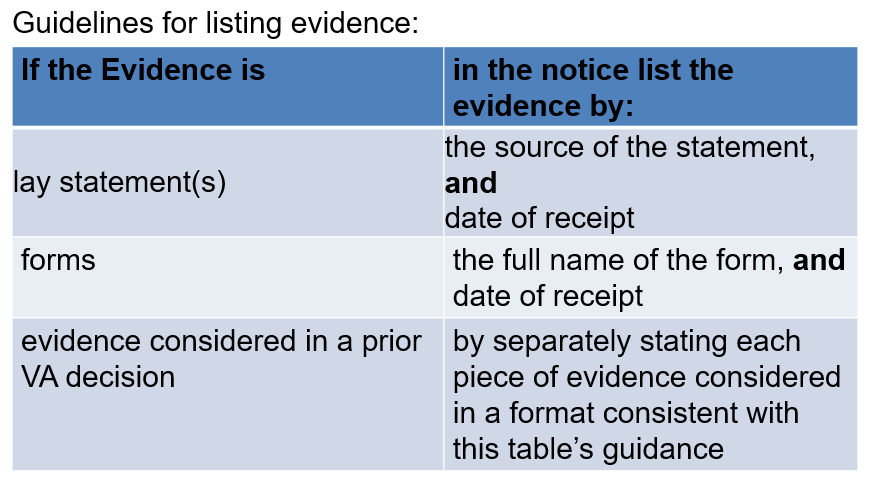
Lesson Overview

| Topic | Description |
| --- | --- |
| Time Estimate: | 4 hours |
| Purpose of the Lesson: | This lesson is part of the entry-level curriculum Advanced Core Course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs to create the decision notice informing the claimant of grant, denial, or adjustment of benefits. |
| Prerequisite Training Requirements: | Prior to taking the Prepare the Decision Notice lesson, trainees must complete PMC VSR Core Course Phases 1–4, and Phase 5, Parts 1-3. |
| Target Audience: | This lesson is for entry-level PMC VSRs. |
| Lesson References: | * 38 CFR 3.103 (Procedural Due Process and Other Rights) * 38 CFR 3.104 (Binding Nature of Decisions) * **38 CFR 3.110 (Computation of Time Limit)** * 38 CFR 3.1010 (Substitution Under 38 USC 5121 following Death of a Claimant) * 38 CFR 3.2500 (Review of Decisions) * M21-1, I.i.1.B (General Information on Due Process) * M21-1, X.ii.3.A (Notice of Proposed Adverse Action) * M21-1, X.ii.3.C (Contemporaneous Notice) * M21-1, VI.i.1.B (Decision Notices) * M21-1, VI.i.1.B.1.b. (Decision Notice Requirements) * M21-1, VI.i.1.B.1.c. (Failure to Issue a Decision Notice) * M21-1, VI.i.1.B.1.d. (Requirement to Use a Single Decision Notice) * M21-1, VI.i.1.B.1.j. (Providing Review Rights in a Decision Notice) * M21-1, VI.i.1.B.1.k. (Notifying Claimants of Potential Entitlement to Additional Benefits) * M21-1, VI.i.1.B.2 (Special Requirements for Visually Impaired Veterans) * M21-1, VI.i.1.B.1.m.  (Steps to Follow After Preparing a Decision Notice) * M21-1, VI.i.1.B.3 (Decision Notices Containing FTI) * M21-1, VI.i.1.B.5 (Exhibit: Review Rights Language for   PCGL)   * **M21-1 X.ii.3.A.2.b. (Descriptions of Elements in Notice of Proposed Adverse Actions)** * M21-1, X.v.1.C.1.a. (Issues Requiring an Administrative Decision)   + **PCGL User Guide**   + **Prepare the Decision Notice** job aid   + **Notification Language** job aid |
| Technical Competencies: | * VBA Applications (PMC VSR) * Processing Claims (PMC VSR) |
| Knowledge Check | * Prepare the Decision Notice Knowledge Check |
| Lesson Objectives: | At the end of this lesson, you should be able to:   * Identify the need for decision notices * Demonstrate how to prepare a decision notice * Understand notification requirements |
| What You Need: | * Trainee Guide * Slides * Access to VBA intranet * Access to CPKM * Access to the following:   + Access to **Sample Rating Decisions 1 and 2** for demonstration * **Prepare the Decision Notice** job aid * **Notification Language** job aid |

| PowerPoint Slides | Notes |
| --- | --- |
| **Prepare the Decision Notice** |  |
| **Lesson Objectives**  At the end of this lesson, you should be able to:   * Identify the need for decision notices * Demonstrate how to prepare a decision notice * Understand notification requirements |  |
| **Why This Matters!**   * The **Prepare the Decision Notice** course is important because if a Pension Management Center (PMC) decides a claim but fails to notify the claimant of the decision, the claim remains open, legally, even if the PMC 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. |  |
| **Definitions (1 of 2)**   * **Notification of Decision** means written notice to a claimant, beneficiary, or his/her representative of decisions affecting the payment of benefits or granting of relief. * A **decision** means a formal determination on all questions of fact and law affecting the provision of Department of Veterans Affairs (VA) benefits to a claimant. * **Third-party information** is any information that is not received from the beneficiary or from the beneficiary’s fiduciary. |  |
| **Definitions (2 of 2)**   * **Evidence** signifies all of the means by which an alleged matter of fact may be established or disproved. * A**notice of proposed adverse action** informs a beneficiary of a proposed reduction or termination of benefits. * **Contemporaneous notice** informs a beneficiary of a change in benefits that was implemented at the time the notice was sent. |  |
| **Using PCGL and ADL**   * Pension management centers (PMCs) may use Automated Decision Letters (ADLs) for burial claims   + PMCs are *not* currently authorized to use Redesigned Automated Decision Letter (RADL) or ADLs to generate decision notices for pension claims * Claims processors must use Personal Computer-Generated Letters (PCGL) to prepare a decision notice regarding a legacy appeal of a decision to deny entitlement to DIC or accrued benefits |  |
| **When Not to Use RADL (1 of 3)**   * Claims processors may *not* use RADL to generate decision notices for the following types of decisions:   + decisions associated with EPs other than those listed in [M21-1, Part VI, Subpart i, 1.B.3.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179469/M21-1-Part-VI-Subpart-i-Chapter-1-Section-B-Decision-Notices)   + decisions on claims for pension (with the exception of the administrative denials referenced in [M21-1, Part VI, Subpart i, 1.B.3.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179469/M21-1-Part-VI-Subpart-i-Chapter-1-Section-B-Decision-Notices)), to include “dual” claims (claims for both compensation *and* pension)   + *final*rating decisions to rate a beneficiary incompetent   + decisions to adjust an award based on review of an audit error worksheet (AEW) |  |
| **When Not to Use RADL (2 of 3)**   * Claims processors may *not* use RADL to generate decision notices for the following types of decisions:   + rare ancillary decisions, such as those involving     - civil service preference     - discharge of an education loan     - extension of delimiting dates for education benefits under 38 U.S.C. Chapter [30](https://www.law.cornell.edu/uscode/text/38/part-III/chapter-30), [31](https://www.law.cornell.edu/uscode/text/38/part-III/chapter-31), [32](https://www.law.cornell.edu/uscode/text/38/part-III/chapter-32), or [1606](https://www.law.cornell.edu/uscode/text/10/subtitle-E/part-IV/chapter-1606)     - gratuitous insurance     - loan guaranty benefits, or     - Restored Entitlement for Survivors |  |
| **When Not to Use RADL (3 of 3)**   * Claims processors may *not* use RADL to generate decision notices for the following types of decisions:   + decisions regarding the eligibility of a Veteran’s child for an appointment to a service academy, as explained in [M21-1, Part XIII, Subpart ii, 5.A](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000173817/M21-1-Part-XIII-Subpart-ii-Chapter-5-Section-A-Certification-for-Service-Academy-Appointment), and   + decisions on contested claims |  |
| **Steps for Preparing the Decision Notice (1 of 3)**   * When preparing a decision notice use   + clear and concise wording, and   + a customer-friendly and compassionate tone * Provide complete and accurate information concerning the issue(s) addressed, and * Avoid using VA jargon, to include abbreviations with no accompanying definition, and phrases such as   + service connection not found   + disability not due to service, or   + wanton and reckless disregard of the probable consequences |  |
| **Steps for Preparing the Decision Notice (2 of 3)**  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 |  |
| **Steps for Preparing the Decision Notice (3 of 3)**  Prepare a decision notice that   * explains how to obtain or access evidence used in making the decision, 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)](https://www.ecfr.gov/cgi-bin/text-idx?SID=ff00394d750193f98af021aba4ea7659&mc=true&node=se38.1.3_1104&rgn=div8), if any   **NOTE:** Adjustments of benefits, such as for receipt of drill pay or incarceration, unassociated with an active claim for disability compensation, pension, death benefits, or dependency, does not require a listing of findings that are favorable to the claimant under[38 CFR 3.104(c)](https://www.ecfr.gov/cgi-bin/text-idx?SID=ff00394d750193f98af021aba4ea7659&mc=true&node=se38.1.3_1104&rgn=div8). |  |
| **Summarizing Evidence in the Notice (1 of 2)**   * Claims processors must summarize the evidence VA considered in reaching a decision in the corresponding decision notice. * The list of evidence provided in the decision notice must identify individual documents deemed relevant to the determination at hand and may *not* rely solely on general references to *review of the claims folder*. * As long as the claimant will receive a copy of the rating decision, there is no need to summarize this same evidence in the decision notice. |  |
| **Summarizing Evidence in the Notice (2 of 2)**   * 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 |  |
| **Examples of Summarizing Evidence** |  |
| **Providing the Reasons for a Decision (1 of 2)**   * To meet the requirement of providing the reason for a determination, the authorization activity must explain the reasons and bases for the decision within the body of the administrative decision if the determination made by authorization requires an administrative decision   + An attachment of a copy of the administrative decision to the corresponding decision notice satisfies the requirement for providing the applicable elements. |  |
| **Providing the Reasons for a Decision (2 of 2)**   * If the decision made by the authorization activity that ***does not*** ***require*** an administrative decision   + the authorization activity must provide in the decision notice sufficient detail regarding the rationale used in reaching the decision to ensure the claimant will understand its basis |  |
| **Providing Review Rights**   * 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 they disagree with the decision   + ensure that the decision notice contains the language found in [M21-1, Part VI, Subpart i, 1.B.4](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179469/M21-1-Part-VI-Subpart-i-Chapter-1-Section-B-Decision-Notices), if it notifies the claimant of a decision regarding a contested claim, and   + attach [*VA Form 20-0998, Your Right to Seek Review of Our Decision*](http://www.vba.va.gov/pubs/forms/VBA-20-0998-ARE.pdf), to the decision notice |  |
| **Entitlement to Additional Benefits** |  |
| **Notification to the Visually Impaired (1 of 2)**   * All communications generated by a claims processor for a visually impaired claimant must include the enlarged 18-point font, such as when sending   + development letters   + rating decisions, and   + decision notices * Once a development letter or decision notice is finalized and submitted for mailing, a claims processor must make a minimum of three attempts to contact the visually impaired claimant by telephone to explain the substance of the letter. |  |
| **Notification to the Visually Impaired (2 of 2)**   * If generating a development letter or decision notice in any other system, such as Personal Computer-Generated Letter (PCGL), manually enlarge the font to the required size * If generating a rating decision, the VISUALLY IMPAIRED field on the DOCUMENTS tab in VBMS-R must be manually selected to generate a rating narrative with enlarged font. |  |
| **After Preparing the Decision Notice (1 of 2)**   * After preparing a decision notice,   + review it for completeness and accuracy,   + make corrections as needed   + ensure the notice date reflects the expected date of mailing   + ensure that the notice is addressed to the     - claimant or beneficiary at the most recent address of record, or claimant’s or beneficiary’s fiduciary |  |
| **After Preparing the Decision Notice (2 of 2)**   * After preparing a decision notice   + ensure that the notice and any other associated documents that must be provided to the claimant or beneficiary are     - included in a package,     - created in VBMS Package Manager     - are transmitted for centralized printing and mailing, and     - confirm that a copy of the decision notice has been included in the eFolder * When preparing a decision notice, ensure that the decision notice is copied to   + a claimant’s or beneficiary’s authorized power of attorney (POA), and   + the claimant or beneficiary if VA has appointed a fiduciary |  |
| **Issuing Decision Notices and Rating Decisions**   * Draft rating decisions and decision notices are *not* intended to be binding on VA and must *not* be shared with or transmitted to VA claimants or beneficiaries. * ROs and call centers must ensure that decisions and notices that have *not* yet been finalized are *not* provided or communicated to claimants. * Do not prepare or release a decision notice or rating decision that is generated solely for the purpose of   + backfilling converted rating data, or   + updating the beneficiary’s corporate record without substantively altering it |  |
| **Issuing Advance Notices**   * VA must give claimants or beneficiaries advance notice of a decision that might adversely affect them.  The legal term for this is “due process.” * Decisions that may require advance notice include, but are not limited to, those involving the   + character of a former service member’s discharge,   + competency of a claimant or beneficiary to manage their financial affairs, an   + reduction or discontinuation of a VA benefit |  |
| **Overview: Steps When Granting Entitlement (1 of 2)**   * 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 |  |
| **Overview: Steps When Granting Entitlement (2 of 2)**   * A decision notice need only specify monthly rates of payment and effective dates of payment if it is intended to communicate a(n)   + initial award of monetary benefits, or   + subsequent award of benefits that     - modifies the affected Veteran’s combined disability rating, or     - otherwise alters the current rate of payment |  |
| **Types of Decision Notices and Sample Language**  **Letters in shelves** |  |
| **What’s in the Notice?: Income Exceeds MAPR**   * In cases where pension or Parents’ DIC is denied because income exceeds the maximum annual pension rate (MAPR) or income limit, advise the claimant of the   + evidence considered in reaching the decision   + reason for the denial   + favorable findings related to the claim   + right to request a review of the decision by submitting amended income information along with a supplemental claim request   + appropriate time limits for submission of the amended income information, and   + right to seek a review of the decision |  |
| **What’s in the Notice?: Preparing Parents’ DIC Notices**   * When preparing a decision notice regarding a pension or Parents’ Dependency and Indemnity Compensation (DIC) claim, claims processors must include in the notice   + rate tables, and   + information about the claimant’s income and medical expenses |  |
| **Notices Regarding Medical Expenses**   * When recurring medical expenses are first allowed, send a notice   + informing the claimant of the basis of the award, and   + advising that failure to report a reduction in unreimbursed expenses or an increase in income will result in an overpayment * When recurring medical expenses are disallowed, send a notice   + informing the claimant of the basis of the disallowance, and   + advising that VA will consider all reported actual medical expenses at the end of the reporting period if the claimant submits [*VA Form 21P-8416*](http://www.vba.va.gov/pubs/forms/VBA-21P-8416-ARE.pdf) verifying that the expenses have been paid |  |
| **What’s in the Notice? Administrative Decisions**  A well-written decision contains the following:   * reasons and bases in easy-to-understand terms and explanation of the credibility and value of the evidence on which they are based * contentions that argue against the decision, and an explanation of why they did not dominate * relevant laws and regulations, if/as needed, to support the conclusion reached * all evidence, both favorable and unfavorable, as well as sworn oral testimony and certified statements submitted by claimants, and clearly explain why that evidence is found to be persuasive or unpersuasive * each item of evidence and each of the claimant’s contentions |  |
| **Net Worth: Administrative Decisions**   * A formal administrative net worth decision is required for claims received before October 18, 2018, if the beneficiary has net worth of $80,000 or more, whether or not net worth bars entitlement, or net worth of any amount bars entitlement * When required, prepare a formal administrative decision for approval by a senior claims processor. * Prepare the administrative decision on [*VA Form 21P-5427*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-5427-ARE.pdf). * If the information needed to fully complete [*VA Form 21P-5427*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-5427-ARE.pdf) is not of record, initiate development for a completed [*VA Form 21P-8049*](http://www.vba.va.gov/pubs/forms/VBA-21P-8049-ARE.pdf)   **NOTE:** Effective October 18, 2018, the net worth limit for pension entitlement is $123,600 for all effective dates of payment prior to December 1, 2018.  The current net worth limit for pension entitlement is listed on the [Veterans Pension Rate Table](https://www.va.gov/pension/veterans-pension-rates/). |  |
| **What’s in the Notice? Developing for Net Worth**   * If additional net worth information is needed for claims received on or after October 18, 2018, send a locally-generated letter requesting completion of   + [*VA Form 21P-0969, Income and Asset Statement in Support of Claim for Pension or*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)   + [*Parents’ Dependency and Indemnity Compensation (DIC)*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)      - [*(Attachment to VA Forms*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)        * [*21P-527,*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)       * [*21P-527EZ,*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)       * [*21P-534, and*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf)       * [*21P-534EZ)*](http://www.vba.va.gov/pubs/forms/VBA-21P-0969-ARE.pdf) |  |
| **Administrative Decisions: Continuous Cohabitation**   * If continuous cohabitation is not established prepare a two-signature administrative decision notice * If a lack of continuous cohabitation has been established, and there is a question as to the validity of the marriage, be sure the notice:   + denies the claim due to the continuous cohabitation requirement not being met without resolving the question of the legality of the marriage, and   + the statement in the denial notice: *“A determination has not been made as to whether you may be recognized as the legal surviving spouse of the Veteran*.” |  |
| **Understanding the Contemporaneous Notice**   * Contemporaneous notice is appropriate when an adverse action is based upon the beneficiary’s failure to return a required eligibility verification report (EVR). * When information that would reduce or discontinue benefits is received from the beneficiary or his/her fiduciary by telephone, a contemporaneous notice is appropriate *only if*the verification and documentation procedures have been followed. * Do *not* enclose [*VA Form 20-0998*](http://www.vba.va.gov/pubs/forms/VBA-20-0998-ARE.pdf) when sending a contemporaneous notice that benefits have been discontinued based on the reported death of the beneficiary. |  |
| **What’s in the Notice? Contemporaneous Notice**   * Every contemporaneous notice, like the notice of proposed adverse action, must include the following elements:   + identification of the issues decided (including new rates)   + summary of the evidence considered, and laws and regulations applicable to the claim   + statement of effective date(s)   + detailed reasons for decision   + overpayment information   + explanation of how to obtain or access evidence used to make the decision, and   + summary of the applicable review options provided under [38 CFR 3.2500](https://www.ecfr.gov/cgi-bin/text-idx?SID=3967d2b525436657ad0fad655ff65e9c&mc=true&node=se38.1.3_12500&rgn=div8), that allow the claimant to seek further review of the decision |  |
| **What’s in the Notice? Federal Tax Information (FTI)**  If the decision notice contains FTI,   * Ensure the notice contains a header in bold font on every page with the text *CONTAINS FTI* * Print one copy of the notice but do *not* scan the barcode * Deliver the notice *directly* to a Senior VSR (SVSR) for review and approval, and * Update the corresponding FTI security log   **NOTE: Centralized printing is not approved for decision notices that include FTI.** |  |
| **Notification of Dependents’ Educational Assistance**   * When notifying a surviving spouse of entitlement to DIC,   + include notice of eligibility for DEA in the corresponding decision notice, and   + enclose with the notice     - [*VA Form 21P-8765, Service-Connected Death Award Attachment*](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-8765-ARE.pdf), and     - [*VA Form 22-5490, Dependents’ Application for VA Education Benefits*](http://www.vba.va.gov/pubs/forms/VBA-22-5490-ARE.pdf) * **NOTE:** An award of DIC under [38 U.S.C.1151](https://www.law.cornell.edu/uscode/text/38/1151) does *not* establish eligibility for DEA |  |
| **Notification of Dependents’ Educational Assistance (DEA) cont.**   * If DEA eligibility is established, but the eligible surviving spouse is in receipt of Survivors Pension,   + include notice of eligibility for DEA in the decision notice only, and   + enclose [*VA Form 21-8767, Death Pension Award Attachment*](http://www.vba.va.gov/pubs/forms/VBA-21-8767-ARE.pdf), and [*VA Form 22-5490*](http://www.vba.va.gov/pubs/forms/VBA-22-5490-ARE.pdf)   **NOTE:** Do *not* enclose [*VA Form 21P-8765*](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-8765-ARE.pdf) |  |
| **Practice Exercise 1 – Sample DIC Rating Decision 1**  **Instructions:​**   * Work independently. * Access Rating Decision 1. * Using the sample rating, generate a decision notification to the surviving spouse.   + Include all notification requirements as applicable.​ * Be prepared to discuss your outcome.   **Time: 15-20 minutes​** |  |
| **Notice of Federal Employes’ Compensation (FEC) Benefits**   * If DIC is not payable because a beneficiary elected to receive Federal Employees’ Compensation (FEC) benefits, take the following actions to ensure that the notice of DEA eligibility is provided to eligible children:   + establish a future diary under reason code 30, *Regional Office Special Use*, with a due date thatwill expire 60 days *before* an eligible child reaches the age of 18, and   + enter *Potential DEA Eligibility Notice Needed* in the REMARKS field   + use a locally generated letter to notify eligible children   + if any decision notices are returned as undeliverable because of an incorrect address, obtain the current address from the appropriate district office of the Office of Workers’Compensation, Department of Labor |  |
| **Failed System-Generated Notices: School Attendance (1 of 2)**   * When system-generation of the notice referenced in this topic fails, the notice must be created using a locally generated *Age 13/16/18* letter and sent to the appropriate payee/parent.   + Ensure the enclosures discussed in [M21-1, Part VII, Subpart ii, 1.A.4.b](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176630/M21-1-Part-VII-Subpart-ii-Chapter-1-Section-A-Benefit-Entitlement-for-School-Children)-[d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176630/M21-1-Part-VII-Subpart-ii-Chapter-1-Section-A-Benefit-Entitlement-for-School-Children), corresponding with the age of the child, are attached. |  |
| **Failed System-Generated Notices: School Attendance (2 of 2)**   * If the payee is a corporate fiduciary, the fiduciary hub is responsible for handling notification.   + The appropriate fiduciary hub must be notified via e-mail when an 820 *882G, Age 18 School Letter Not Sent*, work item is received for a corporate fiduciary case. * If the child is receiving DIC or eligible for DEA based on the SC death of a Veteran, utilize the language provided in [M21-1, VII, Subpart ii, 1.B.4.g](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176630/M21-1-Part-VII-Subpart-ii-Chapter-1-Section-A-Benefit-Entitlement-for-School-Children). |  |
| **Issuing Notices Due to Incarceration**   * Prior to issuing notice of a proposal to reduce or discontinue benefits based on incarceration, obtain the following information from an official source:   + type of conviction (such as felony, misdemeanor, or infraction)   + date (month, day, year) of conviction   + date (month, day, year) of incarceration following conviction, and   + an indication that incarceration lasted for more than 60 days following the date of conviction |  |
| **Issuing Notices Due to Incarceration cont.**   * Prepare a notice of proposed adverse action and send the notice to the beneficiary. * A screenshot of the [Veterans Service Representative Assistant’s](https://epss.vba.va.gov/vsr_assistant/resource_index.html) 61-Day Rule Incarceration Calculator showing the proposed reduction date must be uploaded to the eFolder each time a notice of proposed adverse action is sent. * If the incarcerated beneficiary is an apportionee,   + disregard the remaining steps in this table, and   + follow the instructions in [M21-1, Part VI, Subpart iii, 1.C.6.a](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179495/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-C-Incarceration-of-Dependents-and-Certain-Survivors). |  |
| **Issuing Notices Due to Incarceration cont.**   * If the address of family members that are eligible for an apportionment or allotment of an incarcerated Veteran’s, surviving spouse’s, or surviving child’s (DIC only) benefits is known, send [*VA Form 21-0788, Information Regarding Apportionment of Beneficiary’s Award*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf), to them at the same time the notice of proposed adverse action is sent to the beneficiary. * A beneficiary is entitled to due process and the notice described in this cell *each time* incarceration (following conviction of a felony or misdemeanor, which ever applies) more than 60 days occurs.   + This includes re-incarceration (after VA takes the actions described in [M21-1, Part VI, Subpart iii, 1.A.5](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000179493/M21-1-Part-VI-Subpart-iii-Chapter-1-Section-A-Effects-of-an-Individuals-Incarceration-on-Department-of-Veterans-Affairs-VA-Benefits)) because of a parole violation, or dismissal from a halfway house or work-release program |  |
| **Issuing Notices Due to Incarceration cont.**   * Send notice of proposed adverse action to a beneficiary at the current address of record, even if the incarcerated individual is a dependent (pension cases only). * If the incarcerated beneficiary is an apportionee to whom VA is apportioning a Veteran’s disability compensation or a surviving spouse’s DIC, there is no need to send notice of proposed adverse action to the Veteran or surviving spouse. * Do *not* send notice of proposed adverse action to the address of a prison unless that address happens to be a beneficiary’s current address of record. * If the register or identification number a prison uses to identify an incarcerated beneficiary is known, include it after their name when sending correspondence to the beneficiary at the prison address. |  |
| **Overview: Notification to Dependents – Veteran in Receipt of Pension**   * When notifying a Veteran’s dependent of VA’s decision to pay pension during the Veteran’s period of incarceration, advise the dependent that   + entitlement to the benefit is temporary   + payments are subject to discontinuation without due process after incarceration ends, and   + the dependent may submit a claim for an apportionment of the Veteran’s pension if the dependent and Veteran do not reside together after incarceration ends |  |
| **Overview: Notification to Dependents - Spouse Pension**   * When notifying a child(ren) of VA’s decision to pay him/her(them) the surviving spouse’s pension during the surviving spouse’s period of incarceration, advise the child(ren) that   + entitlement to the benefit is temporary   + payments are subject to immediate discontinuance when incarceration ends, and   + the child(ren) may submit a claim for an apportionment of the surviving spouse’s pension if the child(ren) and surviving spouse do not reside together after incarceration ends. |  |
| **Example of Review Rights: Contested Claims**  **Heading:**  What You Should Do If You Disagree with Our Decision  If you do not agree with this *contested claim decision*, you have 60 days from the date of this letter to seek further review in order to preserve your earliest effective benefit date.  Please see the enclosed *VA Form 20-0998*, *Your Rights to Seek Review Of Our Decision*.  It explains your options for an additional review.  You may obtain any of the required applications by downloading them from www.va.gov/vaforms or by contacting us.  You can also learn more about the disagreement process at www.va.gov/decision-reviews.  If you would like to obtain or access evidence used in making this decision, please contact us as noted below.  Some evidence may be obtained by signing in at [http://www.va.gov](http://www.va.gov/). |  |
| **What’s in the Notice: Burial (1 of 2)**   * If verification of death while under VA care cannot be completed and the Veteran was in receipt of compensation or pension, grant NSC burial allowance and explain in the decision notice that verification of death while under VA care could not be made. * If verification of death while under VA care cannot be completed and the Veteran was not in receipt of compensation or pension deny the claim and explain in the decision notice that verification of death while under VA care could not be made. * If the transportation benefit is claimed, and the amount of expenses incurred on the application is more than the itemized receipt, pay the transportation benefit based on the charges listed on the itemized receipt and solicit for documentation of the additional transportation costs incurred in the decision notice. |  |
| **What’s in the Notice? Burial (2 of 2)**   * If the evidence shows that the Veterans remains are *not* unclaimed, then deny the funeral home or other third-party claimant using the following language:   *“We have denied your claim for VA burial benefits because there is no indication the Veteran's remains are unclaimed.  VA pays burial benefits automatically to surviving spouses upon the first notice of death, or to the first living person to file a claim of the following priority claimants: surviving spouse, survivor of a legal union, children (regardless of age), parent(s) or the executor or administrator of the estate of the deceased Veteran.  Burial benefits will not be paid to funeral directors, funeral homes, or other service providers unless the Veteran's remains are unclaimed.”* |  |
| **Notice to the Veteran’s Estate (1 of 3)**  Include the language below when notifying a deceased Veteran’s estate of benefits to which survivors and others may be entitled.  *“You may be entitled to additional VA benefits. Visit this website for benefits fact sheets: https://benefits.va.gov/BENEFITS/factsheets.asp.You may also request a copy of the fact sheet by contacting us as outlined below. The fact sheets provide information about the following benefits:*   * + *burial*   + *Survivors Pension*   + *Dependency and Indemnity Compensation (DIC)*   + *educational benefits under 38 U.S.C. Chapter 35, and*   + *accrued* |  |
| **Notice to the Veteran’s Estate (2 of 3)**  Include the language below:  *“A person eligible to receive accrued benefits may be a substitute claimant for the Veteran or other claimant to process his or her pending claim, higher-level review, or appeal to completion. You have one year from the date of death to file a claim for accrued benefits. For more information on accrued and substitution, you may visit our website at:*[*http://www.benefits.va.gov/BENEFITS/factsheets/general/Accrued.pdf*](http://www.benefits.va.gov/BENEFITS/factsheets/general/Accrued.pdf)***”*** |  |
| **Notice to the Veteran’s Estate (3 of 3)**  If evidence indicates the Veteran was on a Medal of Honor Roll, also include the following language in the notice to the estate.  *“A surviving spouse of a Veteran whose name has been entered on the Army, Navy, Air Force, or Coast Guard Medal of Honor Roll may be eligible for a Medal of Honor Pension (MOHP) if the spouse was married to the Veteran at the time of the Veteran’s death and either they were married for one year or more immediately prior to the Veteran’s death, or for any period of time, if a child was born of the marriage or was born to the Veteran and surviving spouse before the marriage. A surviving spouse of a Veteran who was on a Medal of Honor Roll should provide*[*VA Form 21-4170, Statement of Marital Relationship*](https://www.vba.va.gov/pubs/forms/VBA-21-4170-ARE.pdf)*, to verify marital and parental information which can be used to verify eligibility for MOHP.”* |  |
| **What’s in the Notice: MOHP**   * Notification should be provided as part of the Veteran First Notice of Death processing or development for a posthumous Medal of Honor award.   + This notification should include eligibility information, including marriage requirements. * A surviving spouse not already established as such by VA, should provide [*VA Form 21-4170, Statement of Marital Relationship*](https://www.vba.va.gov/pubs/forms/VBA-21-4170-ARE.pdf) to verify marital and parental information which can be used to confirm eligibility for MOHP for a surviving spouse.   + A marriage license or birth certificate is not required to confirm information provided on this form.   + The requirements for marital verification are unique to MOHP for a surviving spouse and should not be extended to other benefit types. |  |
| **What’s in the Notice: MOHP cont.**   * If payment of a retroactive lump sum is in order, inform the surviving spouse in the decision notice   + of the reason for the retroactive payment, and   + how it was calculated |  |
| **Decision Notices Involving Survivor Benefit Plan (SBP)**   * In all DIC awards involving a SBP deduction, prepare a locally-generated award letter per 38 CFR 3.103 that fully advises the claimant   + of the award, and   + that the award is subject to offset for concurrent payments of the SBP annuity * In initial or supplemental DIC awards involving SBP benefits, enclose [*VA Form 21P-8765, Service-Connected Death Award Attachment*](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21P-8765-ARE.pdf), with the locally generated award letter |  |
| **Final Notice: Proposing the Discontinue P&T/A&A/HB**   * Once a final rating decision from a proposal to discontinue P&T, aid & attendance (A&A), or housebound (HB) status   + continue, reduce, or discontinue pension, as appropriate, and   + send the beneficiary a letter that fully and clearly informs him/her of the decision reached * If the proposed “Not P&T” decision is affirmed, the letter must contain the   + information that appeared in the notice of proposed adverse action, and   + decision notice requirements |  |
| **Sample Language: Proposing the Discontinue P&T/A&A/HB**  When furnishing a locally-generated notice proposing to discontinue P&T, A&A or housebound status, advise the beneficiary of the proposed reduction or discontinuance as follows:   * “*Your present payment will continue for 60 days to allow you to submit additional evidence. At the expiration of that 60*-*day period (or after a personal hearing is held, if VA receives such a hearing request from you within 30 days), all available evidence in the file will be reviewed once more and a final decision made. If this proposed decision to discontinue your* **[pension]** *and* **[aid and attendance]** **[housebound]** *entitlement is affirmed, your payments will be* **[discontinued]** **[reduced]***when a final decision is made*.” |  |
| **Notice Requirement: Notice of Death (NOD)**   * Although VA must issue due process to a beneficiary before reducing or discontinuing benefits, the discontinuation of benefits based on receipt of an acceptable NOD is an exception; however, contemporaneous notice of the action taken is required if the NOD was obtained   + by way of telephone or personal interview   + in writing from a third party, or   + through computer matching with another Federal agency, such as SSA     - do not include VA Form 20-0998, summary of laws and regulations, nor notification to the POA * If the claimant has a VA-appointed fiduciary at the time of death, issue the contemporaneous notice to the most recent mailing address of record |  |
| **Sample Language: Renouncement of the Right to Pension or Parents’ DIC (1 of 3)**  Include the following text in decision notices to beneficiaries that have renounced their right to pension or DIC:   * *On*[Enter the date VA received the request for renouncement.]*, we received notice that you want to renounce your right to*[Enter the type of benefit the beneficiary renounced.]*at this time. This letter is to inform you we have discontinued**your*[Enter the type of benefit the beneficiary renounced.]*effective*   + [Enter the effective date of the renouncement.]*, which represents*   + [Enter whichever of the following phrases applies:  *the first of the month following the date we received your request for renouncement* or *the first day of the month after the month for which we last paid benefits to you*]*.* |  |
| **Sample Language: Renouncement of the Right to Pension or Parents’ DIC (2 of 3)**  Include the following text in decision notices to beneficiaries that have renounced their right to pension or DIC:   * **[If the beneficiary is a Veteran who is renouncing his/her right to pension, add the following text:**  *For your information, Title 38, Code of Federal Regulations, Section 3.951(b), protects from reduction a rating of permanent and total disability for pension purposes that has been in effect for 20 or more years.***]**  **[If a rating of permanent and total disability has been in effect at least 20 years, add the following text:***By renouncing your right to pension, you have lost the protection this regulation provides.***]** |  |
| **Sample Language: Renouncement of the Right to Pension or Parents’ DIC (3 of 3)**   * **If a rating of permanent and total disability has been in effect fewer than 20 years, add the follow text:**   + *While your benefits are in a renounced status, time does not accrue toward entitlement to the protection this regulation provides. You may reapply for the benefit you renounced at any time by submitting a new application. We will treat the new application as an original claim unless we receive it within one year of the date we received your request for renouncement. If we receive your application within the one-year time limit, and you remain entitled to the benefit you renounced, we will award benefits as if we had never received your request for renouncement. If we receive your application after the one-year time limit, the law prohibits us from awarding benefits for any period prior to the date we receive the new application.* |  |
| **Sample Language: Granting Requests to Substitute (1 of 2)**  If granting substitution and a pending HLR at the time of the original claimant’s death use the following, and the applicant **did not** request substitution, send language stating:  “*VA has received your claim for accrued benefits and accepted your claim as a request for substitution for the purposes of processing*[insert original claimant’s name]*higher-level review pending at the time of death*. *Additional evidence cannot be considered in a higher-level review decision. However, any additional evidence submitted will remain in the evidentiary record and be considered upon timely receipt of supplemental claim or appeal to the Board of Veterans’ Appeals after the higher-level review has been processed or withdrawn. We have granted the request for substitution.”* |  |
| **Sample Language: Granting Requests to Substitute (2 of 2)**  If granting substitution and a pending HLR at the time of the original claimant’s death use the following, and the applicant **requested** substitution that is granted upon first review, send language stating:  “*We have granted the request for substitution*.  [**insert original claimant’s name**]*had a higher-level review claim pending at the time of death*. *Additional evidence cannot be considered in a higher-level review decision. However, any additional evidence submitted will remain in the evidentiary record and be considered upon timely receipt of supplemental claim or appeal to the Board of Veterans’ Appeals after the higher-level review has been processed or withdrawn.”* |  |
| **What’s in the Notice? Denying Requests to Substitute**   * When denying a request to substitute, provide the specific reason for denial in the notification * Any findings listed on a decision to deny the request to substitute should be limited to these three findings:   + there was a claim, request for decision review, or appeal pending at the time of the deceased claimant’s death   + evidence of eligibility has been received, or   + the request was submitted timely |  |
| **Practice Exercise 2 – Sample Rating Decision 2**  **Instructions:​**   * Work independently. * Access Rating Decision 2. * Using the sample rating, generate the proper decision notification.   + Include all notification requirements as applicable.​ * Be prepared to discuss your outcome.   **Time: 15-20 minutes** |  |
| **Knowledge Check: Lesson Summary Review**    **Time Allowed 10 minutes** |  |
| **Questions**  **Indicates instructor should ask a question** |  |
| **What’s Next?**  Complete TMS Evaluation **Prepare the Decision Notice** using**(TMS# 4408484)​** |  |

Appendix

**Examples of Summarizing Evidence**



**Entitlement to Additional Benefits**

