Pension and fiduciary service

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

Apply/Issue Due Process Provisions

Trainee Guide

December 2024

Apply/Issue Due Process Provisions

Lesson Overview

| Topic | Description |
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| Time Estimate: | 2 hours |
| Purpose of the Lesson: | This lesson is part of the entry-level curriculum course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs to determine when due process is required, apply due process provisions, and determine time limits for response from the claimant. |
| Prerequisite Training Requirements: | Prior to taking the Apply/Issue Due Process Provisions lesson, trainees must complete the entry-level course Phases 1–4, Phase 5, Parts 1-3. |
| Target Audience: | This lesson is for entry-level PMC VSRs. |
| Lesson References: | * VA Form 27-0820 (Report of General Information)
* M21-1 I.i.1.B (General Information on Due Process)
* M21-1 I.i.1.B.1.a. (Due Process and the U.S. Constitution)
* M21-1 I.i.1.B.1.b. (Due Process and VA)
* **M21-1 I.i.1.B.2.a. (Types of Notification Concerning Change in Benefits)**
* M21-1 X.ii.3.A.2.a. (Required Elements for Notice of Proposed Adverse Action)
* M21-1 X.ii.3.B (Adverse Action Proposal Period)
	+ **M21-1 X.ii.3.B.3 (Hearings Requested in Response to a Proposed Adverse Action)**
* M21-1 X.ii.3.C.1. (Contemporaneous Notice)
* 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)
* M21-1 VII.ii.1.B (Awards and Adjustments Based upon School Attendance)
	+ M21-1 VII.ii.1.B.6.e. (Failure to Certify School Attendance)
* M21-1 X.ii.6.A.5.a. (Decree by a Court as Notice and Hearing)
* M21-1 X.v.1.C.3.g. (Sample Format for Documenting an Administrative Decision)
* 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 VII.iii.1.B (Adjusting Apportioned Awards)
* M21-1 X.ii.3.A.3.c. (Special Procedures for Hospitalized Veterans)
* M21-1 VI.iii.1.A.2 (Benefit-Specific Effects of a Beneficiary’s Incarceration)
* M21-1 VI.iii.1.A.3.a. (Action to Take Upon Receipt of Notice of Incarceration)
* M21-1 VI.iii.1.C.2.b. Processing Notice of the Incarceration of a Surviving Spouse
* M21-1 X.ii.6.D.3 (Due Process Requirements for Incompetency Determinations)
* M21-1 VI.iii.2.A.1 (General Information About Simultaneous Award Adjustments)
* M21-1 VI.iii.2.A.2 (Processing Simultaneous Award Adjustments)
* M21-1 XIV.2.A.5.n. (Monthly Entitlement Amount is Erroneous)
* M21-1 XIV.2.B.2.h. (DMF Match Identifies Veteran’s Spouse)
* M21-1 XIV.4.D (Federal Tax Information (FTI): Income Verification Match (IVM))
* M21-1 XIV.7.2 (Processing Worksheets Data-Matching Programs Generate)
* M21-1 XIV.8.2.d. (Deciding Whether an Individual Is a Fugitive Felon and Notifying the Beneficiary of the Decision)
* 38 CFR 3.103 (Procedural Due Process and Appellate Rights)
* 38 CFR 3.551 (Reduction Because of Hospitalization)
* 38 CFR 3.552 (Adjustment of allowance for aid and attendance)
* **Due Process** job aid
* **Initial Year** job aid
* **Processing an Award Adjustment** job aid
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| Technical Competencies: | * Program Benefits and Eligibility (PMC VSR)
* Processing Claims (PMC VSR)
* Income Counting and Net Worth
* VBA Applications (PMC VSR)
* Special Monthly Pension (SMP) Processes
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| Knowledge Check | * Apply Issue Due Process Provisions Knowledge Check
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| Lesson Objectives: | By the end of this lesson, you should be able to:* Apply due process provisions to a claim
* Determine if due process is applicable to a claim
* Determine effective dates for the proposed change in benefits
* Determine if change requires contemporaneous notice or due process notification letter
* Identify due process elements for PCGL/contemporaneous notice
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| What You Need: | * Access to VBA intranet
* Pen and paper or access to electronic whiteboard
* Access to the following VBA systems:
	+ VBMS
	+ PCGL
	+ SHARE
* Access to the following job aids from VSR Assistant:
	+ **Due Process** job aid
	+ **Initial Year** job aid
	+ **Processing an Award Adjustment** job aid
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Instructor Notes

This lesson provides trainees with references, resources, and examples to apply due process provisions, determine if due process is applicable to a claim, determine the new effective date for reduction or termination of benefits, and determine whether the claim requires a due process notification or contemporaneous notice.

| PowerPoint Slides | Notes |
| --- | --- |
| **Apply/Issue Due Process Provisions**  |  |
| **Lesson Objectives*** Apply due process provisions to a claim.
* Determine if due process is applicable to a claim
* Determine effective dates for the proposed change in benefits
* Determine if the change in benefits requires contemporaneous notice or due process notification letter
* Identify elements for due process letter or contemporaneous notice
 |  |
| **Why It Matters!*** The **Apply/Issue Due Process Provisions** course is important because the Fifth Amendment to the *U.S. Constitution* ensures that citizens have the right of due process. Thus, every claimant has the right to written notice of the decision made on his or her claim, the right to a hearing, and the right of representation. Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief.
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| **Definitions*** ***Due process*** - informs beneficiary of proposed reduction or termination of benefits
* ***Contemporaneous notice*** - informs beneficiary of a change in benefits that was implemented at the time the notice was sent
* ***Third party information*** is any information that is not received from the beneficiary or from the beneficiary’s fiduciary.  Written correspondence is considered third party when received without the beneficiary’s signature or the signature of his/her fiduciary.
* The ***adverse action proposal period*** is the control period between the date the notice of proposed adverse action is mailed to the beneficiary and the date that the final decision notice is sent
	+ minimum period for the proposed adverse action is 60 days.
 |  |
| **Common Reasons for Due Process*** Due Process required for (not all-inclusive list):
	+ Special Monthly Pension (SMP) reduction
	+ Excess net worth
	+ Hospital adjustments
	+ Apportionments
	+ Incarceration/fugitive felon
	+ Removal of administrative Aid and Attendance (A&A)
	+ Incompetency
 |  |
| **Reasons for Contemporaneous Notice*** A contemporaneous notice is given when the beneficiary or his/her fiduciary provides factual, unambiguous information or statements regarding:
	+ income
	+ net worth
	+ marital status, or
	+ dependency
* The information is used by VA to reduce, suspend, or discontinue the beneficiary’s award
 |  |
| **Required Elements for a 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
 |  |
| **Contemporaneous Notice: Report of Death*** A contemporaneous notice is generally required when evidence is received that reasonably indicates that the beneficiary is deceased.
* Notices and reports from third party sources (Veterans Service Representatives, field examiners, estate analysts, or other sources such as the Social Security Death Match) that reasonably demonstrate that a beneficiary is deceased may be used to discontinue benefits.

**Note**:  Do *not* enclose [***VA Form 20-0998, Your Right to Seek Review of Our Decision***](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 |  |
| **Contemporaneous Notice: Information Received by Phone (1 of 2)*** When information that would reduce or discontinue benefits is received from the beneficiary or his/her fiduciary by telephone, a contemporaneous notice is appropriate if properly documented and verified:
	+ identified himself/herself to the caller as an employee who is authorized to receive the information or statement
	+ established the identity of the caller as either the beneficiary or his/her fiduciary by asking the caller to provide specific information about the beneficiary that is contained in VA records
	+ informed the caller VA will use the information he/she provides for the purpose of calculating benefits
 |  |
| **Contemporaneous Notice: Information Received by Phone (2 of 2)*** Inform the caller VA will use the information he/she provides for the purpose of calculating benefits
* Save the form in the claims folder and send a copy of it to the beneficiary’s power of attorney, to include the following:
	+ specific information or statement the caller provided
	+ date of the call
	+ identity of the caller
	+ steps taken to verify the caller’s identity as either the beneficiary or his/her fiduciary
	+ confirmation the caller was informed that VA would use the information provided to calculate benefits, and
	+ clear identification of the employee executing the [*VA Form 27-0820*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-27-0820-ARE.pdf), including a signature
 |  |
| **Contemporaneous Notice: Nursing Home**A beneficiary’s report that they are no longer a nursing home patient, or a resident of another care facility may be accepted as a report that the beneficiary is no longer paying nursing home fees or custodial care fees and the award may be reduced with contemporaneous notice.  Some cases may require an immediate reduction in pension on the end product (EP) 150, and a proposal to reduce retroactively under EP 600.  If there is missing information that cannot be readily obtained via telephone contact, take immediate award action, as appropriate, and send a notice of proposed adverse action. |  |
| **65-Day Limit Rule*** Take no adverse action until the ***65th day*** unless the beneficiary asks that the award be reduced or suspended to minimize any possible overpayment, or submits evidence confirming the proposed adverse action

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| **Time Limit When a Hearing is Requested (1 of 2)*** Payments continue at their current rate if a beneficiary requests a hearing within 30 days of the date the notice of proposed adverse action is sent
* If the 30-day time limit expires on a Saturday, Sunday, or holiday, include the next succeeding workday in the computation
* For hearings requested in connection with proposed incompetency, a hearing requested at any time prior to the final rating must be held before final rating action is taken
 |  |
| **Time Limit When a Hearing is Requested (2 of 2)*** If the beneficiary or his or her representative requested a hearing within the applicable time period and final action was prematurely taken, then
	+ restore the beneficiary’s payments
	+ ensure the hearing is scheduled, and
	+ notify the beneficiary and his or her representative that
		- the action was in error, and
		- the proposed adverse action period will remain in effect until after the hearing is completed
 |  |
| **Extending the Proposal Period**The adverse action proposal period may be extended for* the development of evidence
* a hearing, if the hearing is requested within 30 days following the release of a notice of proposed adverse action
* a hearing for a proposal of incompetency, if requested at any time *before* the Department of Veterans Affairs (VA) makes a final decision on the beneficiary’s competency
* remailing of the proposed adverse action request when the notice is returned due to an incorrect address and a current address is subsequently identified, or
	+ to allow time for an administrative action or a rating decision
 |  |
| **Evidence Received from the Beneficiary*** If a beneficiary submits evidence that requires further development
	+ continue payments
	+ begin to develop and evaluate additional evidence
	+ advance the pending issue suspense date for the proposed adverse action period for development of the evidence, and
	+ hold all the material obtained until
		- reasonable efforts to obtain additional evidence have been exhausted, or
		- a final decision can be made
 |  |
| **Evidence Received from the Beneficiary by Phone*** If the beneficiary submits a written statement or other evidence or contacts VA by telephone in response to a notice of proposed adverse action confirming the validity of the evidence already of record and specifically asking that the proposed adverse action be implemented
	+ take adverse rating and/or award action, and
	+ send the final decision notice
 |  |
| **Final Notice*** The final decision notice must be sent to the last address of record for the beneficiary, and beneficiary’s designated representative
* Every final decision notice must include the applicable elements of a decision notice
* Adjustments of benefits, such as incarceration, pension, death benefits, do not require a listing of findings that are favorable to the claimant
* When preparing a decision notice regarding a pension or Parents’ Dependency and Indemnity Compensation (DIC) claim, include in the notice rate tables, and information about the claimant’s income and medical expenses
 |  |
| Scenario—Determine Award Amount and Effective Date for Claim Requiring Due Process * On March 19, 2022, VA received a data matching worksheet from the Federal BOP system showing that Gerald Veteran has been incarcerated since November 14, 2021, for a hit-and-run accident after he sped through an intersection sometime in September 2021. You verified the information with prison authorities. The Veteran was convicted of a misdemeanor, November 1, 2021. The Veteran’s release date is scheduled for June 14, 2022. He currently receives pension benefits but is not entitled to compensation benefits. EP 290 Bureau of Prisons Match is pending with a DOC of March 18, 2022.Review scenario for indications of adverse actions
* Determine the effective date of the proposed benefit change
* Determine the new benefit amount
* Determine if the change in benefit requires due process or contemporaneous notice
 |  |
| Determine Award Amount and Effective Date for Claim Requiring Due Process* Review scenario for indications of adverse actions
* Determine the effective date of the proposed benefit change
* Determine the new benefit amount
	+ Determine if the change in benefit requires due process or contemporaneous notice
 |  |
| **Due Process: Hospitalization (1 of 2)*** [**38 CFR 3.551**](http://www.ecfr.gov/cgi-bin/text-idx?SID=77cdd8dcef64535414e3def3cd055bfc&mc=true&node=se38.1.3_1551&rgn=div8) **require** a reduction of pension payments for a Veteran who:
	+ has not established dependents for Department of Veterans Affairs (VA) purposes, and
	+ is being furnished hospital, domiciliary or nursing home care by VA or at VA expense
* [**38 CFR 3.551**](http://www.ecfr.gov/cgi-bin/text-idx?SID=77cdd8dcef64535414e3def3cd055bfc&mc=true&node=se38.1.3_1551&rgn=div8) **prohibits** VA from reducing the following pension benefits due to hospitalization at VA expense:
	+ hospitalized for Hansen’s disease
	+ maintained in a State soldiers’ home
 |  |
| **Due Process: Hospitalization (2 of 2)**Notice of proposed adverse action is required prior to any award adjustment. In order to provide proper notification and establish proper controls:* prepare duplicate notices of proposed adverse action, sending
	+ one notice to the Veteran’s address of record, and
	+ one to the Veteran at the medical facility
* clear an end product (EP) 135 with date of admission as date of claim, and
* establish an EP 600 control to mature 65 days from the date the notice of proposed adverse action is sent
 |  |
| Claim 1 Activity—Apply Due Process Provisions* Instructions:
	+ Access Claim 1
	+ Access the following job aids:
		- **Processing an Award Adjustment** job aid
		- **Initial Year** job aid
		- **Due Process** job aid
	+ Complete Appendix A: Apply Due Process Provisions worksheet.
	+ Be prepared to answer questions about how you determined the reason for due process, the effective date, adjusted amount, and type of letter to send.
* Time allowed: 15 min.
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| Claim 1 Activity—Apply Due Process Provisions Debrief* Follow along as the instructor confirms:
	+ Reason for due process
	+ Effective date
	+ Adjusted benefit amount
	+ Specific information to include in the letter
	+ CESTs the claim per local procedures for your station
* Ask for clarification on how the effective date and adjusted amount were determined, if needed.
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| **Review Evidence Received During Due Process Period**If new evidence is received during the due process period, review the evidence to determine whether the proposed decision should be changed. |  |
| **Knowledge Check: Lesson Summary****Time Allowed: 10 minutes** |  |
| **What’s Next?*** Complete Apply/Issue Due Process Provisions evaluations: TMS ID #: **4408493**
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