Pension and fiduciary service

PMC VSR Intermediate Core Course
Phase 5: Proficiency Development
Part 1(d): Beyond Basic Eligibility

Determine Substitution Eligibility

Trainee Guide

May 2024

Determine Substitution Eligibility

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 Core Course for PMC VSRs. The purpose of this lesson is to prepare PMC VSRs on processing a claimant’s request for substitution. |
| Prerequisite Training Requirements: | Prior to taking the Determine Substitution Eligibility lesson, trainees must complete PMC VSR Core Course Phases 1–4 and Phase 5, Part 1.a-c.  |
| Target Audience: | This lesson is for entry-level PMC VSRs.  |
| Lesson References: | * **VA Form 21P-601, Application for Accrued Amounts Due A Deceased Beneficiary**
* VA Form 21P-534EZ, Application for DIC, Survivors Pension, and/or Accrued Benefits
* VA Form 21P-0847, Request for Substitution of Claimant Upon Death of Claimant
* VA Form 21-4142, Authorization to Disclose Information to the Department of Veterans Affairs
* 38 USC 5121A, Substitution in Case of Death of Claimant
* 38 CFR 3.1000 (Entitlement under 38 U.S.C. 5121 to benefits due and unpaid upon death of a beneficiary)
* M21-1 XI ii.3 (Definition: Accrued Benefits)
* M21-1 XI.ii.3.A.2.a. (Definition: Claim Pending 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.b. (Definition: Original 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.C.3.b. (Definition: Evidence Needed to Complete the Request to Substitute)
* M21-1 XI.ii.3.A.4.b. Definition: (Evidence in the File at the Date of Death)
* M21-1 XI.ii.3.A.4.c. (Definition: Evidence in VA’s Possession)
* M21-1 XI.ii.3.A.5.f. (Evidence Requirements)
* M21-1 XI.ii.3.C.1.b. (Applications for a Request to Substitute)
* M21-1 XI.ii.3.C.4.a. (When Development, Including the 5103 Notice, Is Required)
* M21-1 XI.ii.3.C.4.b. (When Development, Including the Section 5103 Notice, Is Not Required)
* M21-1 XI.ii.3.E.17.c (EP Control for Substitution and Accrued Claims)
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| Technical Competencies: | * Program Benefits and Eligibility (PMC VSR)
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| Lesson Objectives: | By the end of this lesson, you will be able to:* Define key terms relating to a request to substitute
* Establish control of a request to substitute
* Determine eligibility to request substitution
* Explain the rights of the substitute claimant
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| Knowledge Check:  | Phase 5.1(d) Determine Substitution Eligibility Knowledge Check |
| What You Need: | * Trainee Guide
* Pen and paper or access to an electronic whiteboard
* Access to VBA intranet
* Access to the following systems:
	+ SHARE
	+ VBMS
	+ CPKM
	+ VSR Assistant
* Access to the **Determine Substitution Eligibility** job aid **Prepare the Decision Notice** job aid, **Notification Language** job aid, and **PMC Decision Notice Tip Sheet** job aid
* Access to Appendix A – Practice Exercise: Review Activity Worksheet
* [**Time and Date Online Calculator**](https://www.timeanddate.com/date/durationresult.html)
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| PowerPoint Slides | Notes |
| --- | --- |
| **Determine Substitution Eligibility** |  |
| **Lesson Objectives****By the end of this lesson, you will be able to:*** Define key terms relating to a request to substitute
* Establish control of a request to substitute
* Determine eligibility to request substitution
* Explain the rights of the substitute claimant
 |  |
| **Why This Matters!*** **Determining Substitution Eligibility** is important because it offers an eligible living claimant the ability to submit evidence in support of a claim that was pending at the time death of an original claimant
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| **Definitions (1 of 2)*** ***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.
* 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.
* A ***substitute claimant*** is an individual whom the VA has recognized to replace the original claimant in a pending claim, decision review request, or pending appeal
 |  |
| **Definitions (2 of 2)*** ***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
* The **categories of eligible persons** apply to a person eligible for accrued payment based on relationship
	+ In the event of the Veteran’s passing, priority will be given to the following in the listed order:
		- spouse
		- children (in equal shares), or
		- dependent parents (in equal shares) or surviving parent
 |  |
| **Definitions (3 of 3)*** 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.
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| **Applications for a Request to Substitute*** A standard application is not required to request to substitute.
* A request to substitute, from eligible persons, is deemed to be included when VA receives a
	+ claim for accrued benefits, Survivors Pension, or Dependency and Indemnity Compensation (DIC)
	+ a written request containing intent, name of substitute and the name, claim number, social security number or appeal number of the deceased claimant
	+ filed no later than one year after the claimant's death
 |  |
| **Request for Substitution Forms** |  |
| **Scenario – When to Clear EP 290****Scenario:**An adult child submits a VA Form 21P-0847 with proof they paid last expenses. The Veteran had a claim pending at time of death. **Based on the information received, what would be your next step and why?** |  |
| **Scenario – When to Clear EP 290****Based on the information received, what would be your next step and why?** |  |
| **Assisting the Substitute*** VA has a duty to assist claimants in obtaining evidence as required by the Veterans Claims Assistance Act of 2000, *Public Law 106-475*, which includes sending the claimant a Section 5103 notice letter.
* For substitution claims, a Section 5103 notice letter may be required for several reasons:
	+ if development is needed in support of a claim that was pending at the time of the original claimant’s death
	+ a supplemental claim that originates from a Section 5103 error discovered upon an HLR, or
	+ if development is needed in support of the accrued claim after eligibility is established for proof of death
 |  |
| **Incomplete Requests for Substitution*** If a request to substitute does not include evidence of eligibility when it is originally submitted, and the person may be an eligible person the claim is considered incomplete.
	+ VA is not required to send a Section 5103 notice letter.
* When a request for substitution is considered incomplete, change the established EP 165 or EP 290, as applicable to an EP 400 with an Incomplete Application claim label.
	+ notify the claimant of the evidence required to complete the request and that VA will take no further actionuntil the evidence is received, and
	+ that VA must receive the evidence of eligibility no later than 60 days after the date of notification or one year after the claimant’s death, whichever is later, or VA will deny the request to substitute
	+ clear the EP400
 |  |
| **Substitution: Development Requirements*** If development was necessary, review the claim again when the development control period has expired, or the necessary evidence is received, *whichever is earlier*, and take the following actions:
	+ if there is a rating issue, forward the claim to the rating activity before adjudicating the claim, or
	+ if there is not a rating issue, adjudicate the claim
 |  |
| **Timelines: Action(s) Required (1 of 3)*** If substitution is granted, the substitute claimant must complete any action required by law or regulation within the time period remainingfor the original claimant to take such action on the date of their death.
* If the original claim *was* *not decided at time of death*, the time period remaining for a substitute claimant to provide evidence depends on whether a Section 5103 notice was sent to the original claimant prior to death and if thetime period for a response had expired.
* If the original claim *was* *decided* *at time of death*, the time period remaining for a substitute claimant to request a review of the decision depends on the decision review period and the number of days which had elapsed between the day after a decisionnotice was sent and the original claimant’s date of death.
 |  |
| **Timeliness: Action(s) Required (2 of 3)*** To calculate the remaining time to complete any action when the original claim was decided at time of death and the decision review period has not expired.
	+ 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.
	+ 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 to determine the remaining days for the substitute claimant to file a disagreement.
 |  |
| **Timeliness: Action(s) Required (3 of 3)*** To calculate the remaining time to complete any action when the original claim was decided at time of death and the decision review period has not expired.
	+ Since the substitute claimant has the remainder of one year from when the decision notificationletter was sent to the original claimant to complete therequired 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)***.***
	+ 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 nextsucceeding workday.
 |  |
| **Eliminating Persons with Higher Status*** Evidence is required to eliminate persons who have a higher status of preference only if the record indicates that a person survived the deceased beneficiary.
* Evidence received on or with an accrued benefits claim, such as a death certificate or information provided on[***VA Form 21P-601, Application for Accrued Amounts Due a Deceased Beneficiary***](https://www.vba.va.gov/pubs/forms/VBA-21P-601-ARE.pdf), may be used to disqualify persons who would have had the same or higher status of preference.
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| **Scenario: Request for Substitution**Scenario:April, the surviving spouse of deceased Willie Veteran, submits a claim for survivor benefits in VA Form 21P-534EZ, *Application for DIC, Survivors Pension, and/or Accrued Benefits*. TheVeteran had a claim pending at time of death.**Based on the information received, what would be your next step and why?** |  |
| **Scenario: Request for Substitution Answer****Based on the information received, what would be your next step and why?** |  |
| **Substitution: Federal Tax Information (FTI)*** FTI should be considered in substitution 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 following applies:
	+ 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
 |  |
| **Substitution: Appealing VA’s Decision*** PMCs must provide written notification of the granting or denial of a request to substitute to the person who filed the request, together with notice.
* The denial of a request to substitute may be appealed to the Board of Veterans' Appeals.
* For 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***](https://www.vba.va.gov/pubs/forms/VBA-20-0998-ARE.pdf)
 |  |
| **Request for Waiver*** Use the following language following a substitution waiver:
	+ “*The right to substitute may be waived by submitting the request in writing.  We have enclosed VA Form 21-10210, Lay/Witness Statement, for this purpose.  If the right to substitute is waived, VA will still render a decision on the accrued claim, if applicable, but based only on the evidence contained in the claims folder at the time of the original claimant’s death.”*
 |  |
| **Developing and Denying Substitution*** It is not required to issue **development** when
	+ accrued benefits do not exist
	+ there is a lack of legal eligibility
	+ the claim lacks merit, or
	+ the claimant is not entitled to the benefit as a matter of law
* There are only three findings potentially relevant to a **denial** of a request to substitute, which include:
	+ there was a claim, request for decision review, or appeal pending at the time of the deceased claimant’s death
	+ evidence of eligibility hasbeenreceived, or
	+ the request was submitted timely

**NOTE:** See[***Substitution Denial Letter Template***](https://vbaw.vba.va.gov/PENSIONANDFIDUCIARY/pension/Substitution_Denial_Template.docx)**.**  |  |
| Practice Exercise: Review Activity* Instructions:
	+ Divide into groups of three.
	+ Use Appendix A worksheet Practice Exercise: Review Activity
	+ Use the CPKM to use the eCFR and M21-1 to complete the exercise.
	+ Locate each reference and provide the name for each

**Time allowed: 15 min.** |  |
| PACT Act – Request for Substitution* There is no language in the PACT Act that supersedes 38 CFR 3.1010(g), so a substitute claimant can only pursue claims and appeals that were pending, and such an individual could not pursue a new claim that was not filed by the deceased DIC claimant.
* For a PACT Act-related claim use EP 165 for accrued, including when substitution is at issue
	+ Apply either the PACT or PACT ACT DIC Reevaluation special issue
* For a PACT Act-related claim use EP 290 for request for substitution, without an accompanying accrued claim
	+ Appy either the PACT or PACT ACT DIC Reevaluation special issue
 |  |
| Knowledge Check: Lesson Summary Review**Time Allowed: 15 minutes** |  |
| **What’s Next*** TMS Evaluation Determine Substitution Eligibility: **TMS ID# 4646322**
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