PENSION AND FIDUCIARY Service

PMC VSR Intermediate Core Course

Phase 5: Proficiency Development

Part 6: Award Adjustments Extension

Introduction to Contested Claims

Trainee Guide

July 2024

Introduction to Contested Claims

Lesson Overview

| Topic | Description |
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| Time Estimate: | 3 hours  |
| Purpose of the Lesson: | This lesson is part of the entry-level course for PMC VSRs. Although positioned within the Intermediate Phase, this course remains an entry-level course and its purpose is to introduce PMC VSRs to contested claims.  |
| Prerequisite Training Requirements: | Prior to taking the **Introduction to Contested Claims** lesson, trainees must complete the entry-level courses: * Phases 1–5.5.
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| Target Audience: | This lesson is for entry-level PMC VSRs. |
| Lesson References: | * 38 CFR 3.31 (Commencement of the Period of Payment)
* 38 CFR 3.53 (Continuous Cohabitation)
* 38 CFR 3.109 (Time Limit)
* 38 CFR 3.159 (Department of Veterans Affairs in Developing Claims)
* 38 CFR 3.451 (Special Apportionments)
* 38 CFR 3.500 (General)
* 38 CFR 3.657 (Surviving Spouse Becomes Entitled, or Entitlement Terminates)
* 38 CFR 3.660 (Dependency, Income and Estate)
* 38 CFR 20.402, (Time Limits for Filing Notice of Disagreement in Simultaneously Contested Claims)
* M21-1 VII.i.2.D.9.b. (When More Than One Person Files a Claim as a Surviving Spouse)
* M21-1 VII.i.2.D.10.a. (How a Legal Surviving Spouse’s Non-Entitlement Impacts Multiple-Claimant Cases)
* M21-1 VII.i.2.D.10.b. (Actions to Take When a Legal Surviving Spouse’s Income Exceeds Pension Limits)
* M21-1 VI.iii.3.A (General Information on Contested Claims
* M21-1 VI.iii.3.B (Contested Claims Development)
	+ M21-1 VI.iii.3.B.2.a. (Determining Entitlement at the Earliest Date)
* M21-1 VI.iii.3.C (Authorizing and Notifying Claimants of a Decision on a Contested Claim)
	+ M21-1 VI.iii.3.C.2.a. (Deferring Award Action on a Contested Claim)
	+ M21-1 VI.iii.3.C.2.b. (Sending Notice to a Successful Claimant)
	+ M21-1 VI.iii.3.C.3.a. (Notifying Unsuccessful Claimants)
	+ M21-1 VI.iii.3.C.4.c. (Reducing or Discontinuing a Running Award as a Result of a Contested Claim)
* M21-1 X.v.1.C (Administrative Decisions)
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| Technical Competencies: | * Program Benefits and Eligibility (PMC VSR)
* VBA Applications (PMC VSR)
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| Lesson Objectives: | By the end of this lesson, you should be able to:* Define types of contested claims
* Identify indicators of contested claims
* Determine if evidence is sufficient to process contested claims and apply the correct development actions for the information/evidence missing from claims
* Determine entitlement to contested claims
* Decide the award actions for contested claims
* Identify notification requirements
 |
| What You Need: | * Trainee Guide
* **Access to the following job aids**
	+ **Processing a Contested Claim Checklist** job aid
	+ **Notification Language job aid**
	+ **PMC Decision Notice** tip sheet
	+ **Prepare the Decision Notification** job aid
 |

| PowerPoint Slides | Notes |
| --- | --- |
| Introduction to Contested Claims  |   |
| Lesson Objectives (1 of 2)By the end of this lesson, you should be able to:* Define types of contested claims
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 |  |
| Why It Matters!* The Introduction to Contested Claims course is important because it outlines actions required when one claimant contests another’s entitlement to VA benefits or payment of that benefit to the other claimant.
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| Definitions* A *contested claim* exists when a favorable decision on one claim requires the denial of a claim from a separate claimant, or payment of a lesser benefit to a separate claimant, and one claimant may contest the other claimant's entitlement to that benefit, or payment of that benefit to the other claimant.
* All claims where entitlement is based on a relationship and two persons allege to be the legal surviving spouse, mother, or father, file a formal claim for the same benefit, is an *automatic contested claim*.
* *Contested claims involving attorney fee withholdings* is a claim that involves two parties, the claimant and the representative.
 |  |
| Elements of a Contested Claim* If two claims from two persons claim entitlement to the same benefit, then it should be considered a contested claim.
* To consider a claim contested, there must be a:
	+ Formal claim
	+ Protest against payment to the other claimant
 |  |
| Types of Contested Claims (1 of 2)* Consider a claim contested if VA receives formal claims for entitlement to the same benefit from two claimants, and one of the claimants protests the payment of benefits to the other claimant.
* A protest against payment must be based on the claimant’s assertion of their own entitlement.
	+ One claimant's assertion that another claimant does not deserve a benefit is *not*a valid protest.
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| Types of Contested Claim (2 of 2)The intention to contest a claim manifests itself as:* Pending claim
* Awards in running status
* Both claimants submitting claims at the same time
 |  |
| Developing Contested Claims (1 of 2)When developing contested claims, remember the following: * Develop the claims of all contesting parties simultaneously
* Each claimant has the same rights and responsibilities
* All interested parties have the greatest opportunity to submit all available evidence
 |  |
| Developing Contested Claims (2 of 2)* To assist a claimant furnish him/her with the substance of the allegations of contesting claimants and any information in VA records that may help him/her obtain the evidence required to complete the claim
* advise him/her of possible sources where the evidence may be obtained, and
* ask him/her to tell VA if he/she cannot furnish the required evidence and the reason why
 |  |
| **Variables in Contested Claims Development**Development procedures can vary with each case, depending on:* Whether the case is original or reopened, running award or pending claim
* Whether there is a duty to assist
* Due process
* Nature of the contest
* Evidence of record and availability of evidence
* Other factors
 |  |
| Duty to AssistDuring development of a contested claim, there is a duty to assist the claimant by:* Furnishing the substance of the allegations of contesting claimants and any information in VA records that may help them obtain the evidence required to complete the claim
* Advising of possible sources where the evidence may be obtained
* Asking them to tell the VA if they cannot furnish the required evidence and the reason why
 |  |
| Contested Claims Involving Attorney Fees Withholding* Failure to withhold 20% of past due benefits and the denial of payment of such claims are appealable issues. This type of claim involves the following parties:
	+ Claimant
	+ Representative

VA may be required to attempt to collect fees paid to the attorney by the claimant. |  |
| **Practice Exercise: Identifying Contested Claims*** Instructions:
	+ Divide into groups of three or four.
	+ Access Appendix A to complete the exercise.
	+ Be prepared to explain your group’s response and provide a rationale.
* Time allowed: 10 minutes
 |  |
| Domestic Relations (1 of 2)* Follow the procedures in [**M21-1, Part VII, Subpart i, 2**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176618/M21-1-Part-VII-Subpart-i-Chapter-2-Section-A-Establishing-the-Validity-of-a-Marriage-for-Department-of-Veterans-Affairs-VA-Purposes)and [**3**](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000176623/M21-1-Part-VII-Subpart-i-Chapter-3-Section-A-Establishing-a-Childs-Age-and-Relationship) to resolve any domestic relations questions involving the validity and legal effects of
	+ marriage (ceremonial or otherwise)
	+ divorce
	+ ostensible marriage
	+ void marriage, and
	+ adoption or legitimacy of children
* **NOTE**: If there is no bar to payments to the legal surviving spouse, then do not attempt to deem as valid the marriage to the other claimant, or if there is a bar to payments to the legal surviving spouse, attempt to deem valid the Veteran’s marriage to the other claimant.
 |  |
| Deemed Valid Marriage: Multiple Claimants* Before a defective marriage may be deemed valid, it must be determined that no other claimant is entitled to VA benefits as a legal surviving spouse.
* When multiple persons file a claim as surviving spouse, take steps to:
	+ Initiate contested claim development procedures, and determine who is the legal surviving spouse
	+ Determine whether a bar to payment of the legal surviving spouse exists
	+ If there is no bar to payments to the legal surviving spouse, then do not attempt to deem as valid the marriage to the other claimant
	+ a bar to payments to the legal surviving spouse, attempt to deem as valid the Veteran's marriage to the other claimant
 |  |
| Scenario: Multiple Claimants for Survivors PensionScenario:Sally married the Veteran on January 19, 1980, but left the Veteran in 1990 due to abuse from the Veteran.  It is determined that Sally was without fault in the separation.  The Veteran married Martha on October 29, 1997.  The marriage to Sally was never dissolved.  The Veteran died on May 9, 2021.  Both Sally and Martha file claims for Survivors Pension as the surviving spouse of the Veteran.Based on the information provided, what should the outcome be? Determine if there is a bar to payment and explain why. |  |
| Multiple Claimants Income Exceeds Limit * If the legal surviving spouse is barred from payment of pension solely because their income exceeds the applicable maximum annual pension rate (MAPR) within the requisite time frames, the other claimant’s marriage may be deemed valid.
* If the legal surviving spouse’s income exceeds the applicable MAPR, and there are multiple claimants as the surviving spouse take steps to:
	+ Deny the claim filed by the legal surviving spouse and advise them that pension may be awarded if evidence is received within the same or next calendar year showing income is within limits for pension.
	+ Deny the claim filed by the other claimant but advise them that VA will reassess the claimant’s entitlement if they submit the required evidence of entitlement after expiration of the time period during which payments may be made under [38 CFR 3.660(b)(1)](https://www.ecfr.gov/cgi-bin/text-idx?SID=7c4d95670f4b883f54b5f853e37d1927&mc=true&node=se38.1.3_1660&rgn=div8)
	+ Pay the other claimant (if otherwise entitled and marriage is deemed valid) effective the original date of claim (subject to [38 CFR 3.31](https://www.ecfr.gov/cgi-bin/text-idx?SID=7c4d95670f4b883f54b5f853e37d1927&mc=true&node=se38.1.3_131&rgn=div8)) if the claimant submits another claim within 36 months of the date payment would have been made to the legal surviving spouse had entitlement not been barred by excessive income.
 |  |
| Time Frame* If additional evidence is required from a contesting claimant, notify him/her of the evidence necessary to complete the claim and advise him/her using the following language:
* “*This evidence should be submitted as promptly as possible, preferably within 30 days.  If you are unable to obtain the evidence, please state the reason and send us any proof you do have.  Failure to furnish the evidence requested within 1 year from the date of this letter may preclude the payment of any benefits on the basis of this claim.*”
 |  |
| Claimant Entitled (1 of 2)If a subsequent claimant **is entitled** to the benefit claimed* Prepare a letter that notifies the subsequent claimant of the facts of the case and informs the claimant that a claim for the same benefit from another person is currently pending, and VA is treating the claim as a contested claim.
* Notify the *other* claimant that VA has received a claim for the same benefit from another person is treating the claim as a contested claim and has given the subsequent claimant 30 days to respond to notice of the contested claim.
* Prepare a letter that notifies the subsequent claimant of the facts of the case and informs the claimant that VA is currently paying the benefit being claimed to another person and is treating the claim as a contested claim.
 |  |
| Claimant Entitled (2 of 2)If a subsequent claimant **is entitled** to the benefit claimed* Notify the *beneficiary* that VA
	+ has received a claim for the same benefit the beneficiary is receiving
	+ is treating the claim as a contested claim, and
	+ has given the subsequent claimant 30 days to respond to notice of the contested claim
* **NOTE**: While a contested claim is pending, keep all contesting parties informed of the status of the claim any processing delays, and actions VA has taken, such as development action.
 |  |
| Notice to a Successful ClaimantFurnish notice containing the following paragraphs to the successful claimant in a contested claim.“We have determined that you are entitled to **[type of benefit]** as the Veteran’s **[relationship to the Veteran]**.  **[relevant regulation(s)].** We considered the following evidence in our decision: **[evidence considered]**. We cannot release payments to you at this time because **[name of other claimant]** has also applied for this benefit and has the right to initiate an appeal by filing a notice of disagreement with our disallowance within 60 days from this date. If notice of disagreement is not filed by **[name of other claimant]** within 60 days, we will take appropriate award action.  We will notify you if a notice of disagreement is filed.”* *The attached VA Form 20-0998 describes your right to appeal our decision.*
 |  |
| Handling the Unsuccessful Claimant’s Contested Claim* To allow an unsuccessful claimant an opportunity to initiate an appeal to the Board of Veterans’ Appeals (BVA), and to provide for due process procedures in cases of running awards, defer award action for 60 days on a contested claim.
	+ send notice of proposed adverse action to any current beneficiary whose benefits the Department of Veterans Affairs (VA) might adjust or discontinue as a result of a contested claim
	+ if, within 30 days of the date of the notice of proposed adverse action, the beneficiary requests a personal hearing, VA may not make a final decision until it conducts the hearing or the beneficiary fails, without good cause, to appear.

NOTE: When an *apportionment* claim is denied, restore all funds in withholding to the primary beneficiary, or granted, release the apportioned benefits to the claimant without waiting for the 60-day appeal period to expire. |  |
| Notice to an Unsuccessful ClaimantFurnish a notice containing the following paragraphs to unsuccessful claimants in a contested claim.*“Your claim for* [type of benefit]*as the Veteran’s*[relationship to the Veteran]*has been denied because*[reason(s) for the denial]*.*[relevant regulation(s)]. *We considered the following evidence in our decision:*[evidence considered]*.We have determined that*[name of successful claimant]*is entitled to*[type of benefit]*.  Payment will be withheld, however, for a period of 60 days from the date of this letter to provide you an opportunity to file a notice of disagreement with our decision.”** *The attached VA Form 20-0998 describes your right to appeal our decision.*
 |  |
| **Reducing or Discontinuing an Award*** If it becomes necessary to reduce or discontinue a running award based on the outcome of a contested claim,
	+ reduce or discontinue the award effective the date in the **LAST PAID DATE** field on the **AWARD** **INFORMATION** tab in **SHARE**, per [**38 CFR 3.500(f)**](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=d78eb8b6d6f2808b1e667c86427a90c6&ty=HTML&h=L&r=SECTION&n=se38.1.3_1500), and
	+ award benefits to the successful claimant effective the date of entitlement
 |  |
| What’s Next?Complete the **Introduction to Contested Claims** course evaluation: **TMS ID 4649153** |  |