Pension and fiduciary service

PMC VSR Intermediate Core Course
Phase 5: Proficiency Development Part 6: Award Adjustment Extension

Introduction to Apportionments

Trainee Guide

July 2024

Introduction to Apportionments

Lesson Overview

| Topic | Description |
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| Time Estimate: | 3 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 to properly identify actions required for apportionment claims. |
| Prerequisite Training Requirements: | Prior to taking the Establish a Claim lesson, trainees must complete PMC VSR Core Course Phases 1-5.5.  |
| Target Audience: | This lesson is for entry level PMC VSRs.  |
| Technical Competencies: | * VBA Applications (PMC VSR)
* Program Benefits and Eligibility (PMC VSR)
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| Lesson References: | * VAOPGCPREC 16-1994 (Apportionment of Benefits)
* 38 USC 5307 (Apportionment of Benefits)
* 38 CFR 3.450 (General)
* 38 CFR 3.451 (Special Apportionments)
* 38 CFR 3.452 (Situations When Benefits May Be Apportioned)
* 38 CFR 3.454 (Veterans Disability Pension)
* M21-1 III.ii.2.A.1.a. (Requirements that Claimants Submit a Prescribed Form
* M21-1 VII.iii.1.A.1.e. (Criteria for Granting a Claim for an Apportionment)
* M21-1 VII.iii.1.A.1.f. (Circumstances Under Which VA May Not Apportion a Veteran’s Benefits)
* M21-1 VII.iii.1.A.1.h. (Requesting an Apportionment Application from a Claimant)
* M21-1 VII.iii.1.A.1.i. (Text for Letters that Request an Apportionment Application from a Claimant)
* M21-1 VII.iii.1.A.1.k. (Restriction on the Concurrent Payment of Education Benefits and Apportioned Benefits)
* M21-1 VII.iii.1.a.2.b. (Estimating the Amount of Benefits VA Should Withhold for an Apportionment)
* M21-1 VII.iii.1.A.3.a. (Using Information VA Form 21-0788 Provides When Deciding a Claim)
* M21-1 VII.iii.1.B.1.b. (Circumstances Requiring Discontinuation of an Apportionment)
* M21-1 VII.iii.1.B.1.d. (Other Reasons and Instructions for Discontinuing an Apportionment)
* M21-1 VII.iii.1.B.3.a. (Adjusting an Apportioned Award Due to the Death of the Primary Beneficiary)
* M21-1 VII.iii.1.B.7.b. (Changes in a Child-Apportionee’s Status as a Dependent Due to His/Her Death, Marriage, Adoption, or Discontinuation of School Attendance)
* M21-1 VII.iii.1.B.7.e. (Out-of-Custody Children in Receipt of DIC that Lose Their Status as a Dependent)
* M21-1 XI.ii.2.1.e. (Determining Award When Apportionment Is Required)
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| Lesson Objectives: | By the end of this lesson, you will be able to:* Define Apportionment
* Identify the correct VA Form for apportionment
* Determine who may receive an apportionment of a beneficiary’s benefits
* Identify regulations under which VA may apportion benefits
* Identify situation where an apportionment is not appropriate
 |
| Knowledge Check: | Phase 5.6: Introduction to Apportionment Claims |
| What You Need: | * Trainee Guide
* Access to VBA Intranet
* Access to the Assessment Portal
* Pen and paper
* Access to the following systems:
	+ SHARE
	+ MAP-D
	+ VBMS
* **Access to Appendix A** – Rules for Apportionment
* **Access to Appendix B** – Apportionment Payable or Not Payable
* **Prepare the Decision Notification** job aid
* **Notification Language** job aid
* **Introduction to Apportionments** job aid
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| PowerPoint Slides | Notes |
| --- | --- |
| **Introduction to Apportionments** |  |
| **Lesson Objectives*** By the end of this lesson, you will be able to:
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 |  |
| **Why This Matters!*** The **Introduction to Apportionment** course matters because Apportionments can be used to care for estranged spouse, child or parent if it does not cause undue hardship.
 |  |
| **Definitions*** An **apportionment** is an allocation of a Veteran’s benefits (e.g., pension), among dependents when the beneficiary is unable to meet financial obligations under certain circumstances.
	+ Ensures benefits are distributed to support the needs of the dependent(s)
 |  |
| **Apportionments Prescribed Form**The Department of Veterans Affairs (VA) will consider a claim for an apportionment of a beneficiary’s VA benefits only upon receipt of[***VA Form 21-0788, Information Regarding Apportionment of Beneficiary’s Award***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf)**.****NOTE:** The requirement that a claimant file a claim for apportionment on [*VA Form 21-0788*](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf) went into effect on March 24, 2015.   |  |
| **Who Can Receive an Apportionment*** An apportionment may be paid to or for a Veteran’s
	+ estranged spouse
	+ child that is in an estranged or former spouse’s custody
	+ child that is not living with the Veteran or the Veteran’s surviving spouse, or
	+ dependent parent
 |  |
| **Apportionment Provisions (1 of 2)*** When processing an apportionment claim, claims processors must first determine whether an apportionment is payable under the provisions of [38 CFR 3.450](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1450&rgn=div8).
	+ The evidence of record must show the following to justify the apportionment of a Veteran’s benefits to an estranged spouse under the provisions [38 CFR 3.450](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1450&rgn=div8):
		- spouse does not reside with the Veteran, and
		- Veteran is not providing a reasonable level of support to the spouse
 |  |
| **Apportionment Provisions (2 of 2)*** If benefits are not apportionable under [38 CFR 3.450](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1450&rgn=div8), claims processors must determine whether a special apportionment under the provisions of [38 CFR 3.451](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8) is in order.
* The evidence of record must show thefollowing to justify the apportionment of a Veteran’s benefits to his/her/their child (who is in the custody of a former spouse) under the provisions of [38 CFR 3.451](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8):
	+ child does not reside with the Veteran
	+ child and former spouse are experiencing financial hardship, and
	+ apportioning the Veteran’s benefits will not cause undue hardship on the Veteran and his/her/their other dependent(s)
 |  |
| **Determining Eligibility for Apportionment (1 of 2)*** After estimating the amount of benefits VA should withhold for an apportionment, prepare a notice of proposed adverse action that informs the beneficiary
	+ of the pending claim for an apportionment of benefits
	+ of the proposed amount and effective date of any interim withholding
	+ of the statutory authority for granting an apportionment ([38 U.S.C. 5307](https://www.law.cornell.edu/uscode/text/38/5307))
	+ of the effective date from which VA proposes to commence the apportionment, and
	+ that the award will be reduced by the monthly amount of the apportionment VA authorizes
 |  |
| **Determining Eligibility for Apportionment (2 of 2)*** After estimating the amount of benefits VA should withhold for an apportionment, prepare a notice that asks the beneficiary to
	+ complete and return [***VA Form 21-0788***](https://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf), and
	+ respond within 60 days, after which time VA will decide the apportionment claim unless the beneficiary provides good cause for extending the time limit for a response
 |  |
| **What the Evidence Must Show: Granting an Apportionment (1 of 2)*** Before VA may grant a claim for an apportionment, the evidence must show:
	+ The claimant does not reside with the beneficiary
	+ Beneficiary is not providing a reasonable level of support to the claimant
	+ Financial hardship on the part of the claimant
	+ Apportionment will not cause undue hardship on the beneficiary and his/her/their other dependent(s)
	+ Financial hardship on the part of the spouse
	+ Individual need on the part ofthe claimant
 |  |
| **What the Evidence Must Show: Granting an Apportionment (2 of 2)*** When determining entitlement to an apportionment under [38 CFR 3.451](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8), claims processors must consider such factors as
	+ amount of VA benefits payable
	+ other resources and income of the beneficiary and claimant, and
	+ special needs of the
		- Beneficiary
		- beneficiary’s other dependent(s), and
		- claimant
 |  |
| **Is Development Required?*** Do not undertake development with a claimant that has submitted a completed [***VA Form 21-0788***](http://www.vba.va.gov/pubs/forms/VBA-21-0788-ARE.pdf).
* When additional evidence or information is needed from a claimant in order to make an equitable decision, prepare and send to the claimant a development letter that
	+ asks the claimant to provide the missing evidence or information within 30 days, and
	+ informs the claimant VA will make a decision based on the evidence of record after the 30-day response period has passed, unless he/she/they provides good cause for extending the time limit for a response
* When development is necessary, send it at the same time the notice of adverse action is prepared and sent to the beneficiary.
 |  |
| **Amount of Benefits VA May Apportion** |  |
| **Practice Exercise 1: Rules for Apportionment*** **Instructions:**
	+ Divide into groups of three.
	+ Access Appendix A – Rules for Apportionment.
	+ Use the worksheet to record answers and responses to each question.
	+ Be prepared to discuss answers and/or provide rationale when requested.
* **Time allowed:** 15 minutes
 |  |
| **Practice Exercise 1: Rules for Apportionment (Q&A)*** Debrief Activity – Review and Discuss Exercise​
	+ Answers and feedback provided by instructor.​
 |  |
| **Apportioning Benefits (1 of 2)*** If the beneficiary is an incompetent Veteran in receipt of any type of pension and VA has not appointed the Veteran a fiduciary, and benefits are subject to reduction because the Veteran is institutionalized at government expense, only consider the provisions under [3.454(a)](https://www.ecfr.gov/cgi-bin/text-idx?SID=2b1f86bf59b837cacd2fc701be8ef8a8&mc=true&node=se38.1.3_1454&rgn=div8) when determining a spouse’s or child’s entitlement to an apportionment.
* If the beneficiary is a Veteran in receipt of Section 306 Pension, or Current-law pension, and benefits are subject to reduction because the Veteran is hospitalized at VA expense, only consider the provisions under [38 CFR 3.452(c)(2)](https://www.ecfr.gov/cgi-bin/text-idx?SID=2b1f86bf59b837cacd2fc701be8ef8a8&mc=true&node=se38.1.3_1452&rgn=div8) and [3.454(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=2b1f86bf59b837cacd2fc701be8ef8a8&mc=true&node=se38.1.3_1454&rgn=div8) when determining the entitlement of the Veteran’s spouse to an apportionment.
 |  |
| **Apportioning Benefits (2 of 2)*** If the beneficiary is a surviving spouse or child in receipt ofDependency Indemnity Compensation (DIC), and benefits are subject to reduction because the surviving spouse or child was incarcerated, only consider the provisions under [38 CFR 3.665(e)(2)](https://www.ecfr.gov/cgi-bin/text-idx?SID=2b1f86bf59b837cacd2fc701be8ef8a8&mc=true&node=se38.1.3_1665&rgn=div8) when determining entitlement to an apportionment.
* If the beneficiary is receiving current-law survivors pension, only consider provisions under [38 CFR 3.451](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8) when determining a child’s entitlement to an apportionment
 |  |
| **Dependent Not on the Award*** VA may apportion benefits to a dependent, even if the dependent is not on the beneficiary’s award, as long as the dependent’s relationship to the Veteran, on whose service the award is based, is properly established.
	+ VA cannot add such a dependent to the award unless the beneficiary submits the appropriate form.
 |  |
| **When Veteran’s Benefits are NOT Apportionable (1 of 2)”**[38 CFR 3.458](http://www.ecfr.gov/cgi-bin/text-idx?SID=cbdb3f6a0183779ee5e0fa4d7c4f8119&node=se38.1.3_1458&rgn=div8) prohibits the apportioning of a *Veteran’s* benefits if* The total benefit payable to the Veteran is so small that it does not allow payment of a reasonable amount to an apportionee
* The Veteran’s spouse who is requesting anapportionment, has been found guilty of conjugal infidelity by a court having proper jurisdiction
	+ the Veteran’s spouse, has lived with another person and held himself/herself out openly to the public to be the spouse of another person
		- a Veteran entitled to *pension*, who is estranged but not divorced from his/her/their spouse**,** remains entitled tobenefits as a married Veteran as long as he/she/they is contributing to the spouse’ssupport
 |  |
| **When Veteran’s Benefits are NOT Apportionable (2 of 2)*** [38 CFR 3.458(d)](http://www.ecfr.gov/cgi-bin/text-idx?SID=cbdb3f6a0183779ee5e0fa4d7c4f8119&node=se38.1.3_1458&rgn=div8) prohibits the apportioning of a Veteran’s benefits for a child the Veteran has given up for adoption
	+ in certain limited situations, VA may apportion *Veterans Pension* to a child whom a Veteran has given up for adoption
* [VAOPGCPREC 16-1994](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000043538/VAOPGCPREC-16-94-Jul-1-1994-Apportionment-of-Benefits) describes conditions that may warrant an apportionment of Veterans Pension to a child that a Veteran has given up for adoption.
 |  |
| **Concurrent Payments: Education Benefits and Apportioned Benefits*** If a claimant is a child under age 18, or childaged 18 or older who is permanently incapable of self-support, payment of VA education benefits does not preclude the child from concurrently receiving an apportionment of disability or survivors' benefits, if the individual case warrants this action.
* If a claimant is a child aged 18 or older who is capable of self-support, payment of VA education benefits does preclude the child from concurrently receiving an apportionment of disability or survivors' benefits.
 |  |
| **Practice Activity 2: Apportionment Payable or Not Payable*** **Instructions:**
	+ Divide into groups of three.
	+ Access Appendix B – Apportionment Payable or Not Payable.
	+ Use the worksheet to record answers and responses to each question.
	+ Be prepared to discuss answers and/or provide rationale when requested.
* **Time allowed:** 15 minutes
 |  |
| **Practice Activity 2: Apportionment Payable or Not Payable (Q&A)** |  |
| **Denying Apportionment Claims*** If a claimant’s entitlement to an apportionment is considered under the provisions of both [38 CFR 3.450](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1450&rgn=div8) and [38 CFR 3.451](https://www.ecfr.gov/cgi-bin/text-idx?SID=ae4a064bca7bd1d97d0b922686fe15cb&mc=true&node=se38.1.3_1451&rgn=div8) but entitlement is ultimately denied, explain on [*VA Form 21-441, Special Apportionment Decision*](https://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf)why entitlement could not be granted under either of the regulations.
* If a decision is made to grant an apportionment for a child that is under the age of 18, indicate on [*VA Form 21-441*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf) that the apportionment for the child will end when the child turns 18.
* Do *not* attach a copy of the [*VA Form 21-441*](http://vbaw.vba.va.gov/bl/20/cio/20s5/forms/VBA-21-441-ARE.pdf) to decision notices for the primary beneficiary and claimant.
 |  |
| **Apportionment: Month of Death (MOD)**If the surviving spouse is entitled to the Veteran’s disability rate for the MOD, and the award is to be apportioned, then the* child’s apportioned share for the MOD is the same apportioned rate payable to the child for the month after the MOD, based on the recurring survivors benefit rate, and
* the surviving spouse’s apportioned share for the MOD is the difference between the Veteran’s disability rate and the child’s apportioned share
 |  |
| **Knowledge Check: Lesson Summary Review****Time Allowed: 15 minutes** |  |
| What’s NextComplete the Introduction to Apportionments course evaluation: TMS ID #: 4649658 | **DISPLAY** slide**35.** “What’s Next”**INSTRUCT trainees to** complete theIntroduction to Apportionmentcourse evaluationusing **TMS ID #: 4649658** |

Appendix

