Pension and Fiduciary Service

PMC VSR Intermediate Core Course Phase 5: Proficiency Development Part 3: Promulgation

Overview of Election Claims

Trainee Guide

December 2023

Overview of Election Claims

Lesson Overview

| Topic | Description |
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| Time Estimate: | 2 hours |
| Purpose of the Lesson: | This lesson is part of the entry-level course for PMC VSRs. The purpose of this lesson is to introduce PMC VSRs to processing election claims through demonstration, practice, and feedback.  |
| Prerequisite Training Requirements: | Prior to taking the Overview of Election Claims lesson, trainees must complete the entry-level course Phases 1–5.2.  |
| Target Audience: | This lesson is for entry-level PMC VSRs. |
| Knowledge Check | Phase 5.3 Overview of Election Claims Knowledge Check |
| Lesson References: | * 38 CFR 3.701 (Elections of Pension or Compensation)
* 38 CFR 3.702 (Dependency and Indemnity Compensation)
* 38 CFR 3.703 (Two parents in the Same Parental Line)
* 38 CFR 3.704 (Elections Within Class of Dependents)
* 38 CFR 21.3023 (Nonduplication; Pension, Compensation, and Dependency and Indemnity Compensation)
* M21-1 III.i.2.D.1.a. (Written Requests for Evidence)
* M21-1 III.i.2.D.2.b. (Next Steps After Sending a Request for Evidence)
* M21-1 III.i.2.D.2.c.  (Incomplete Responses That Justify Award Action)
* M21-1 VI.i.1.A (Decision Authorization)
* M21-1 VI.ii.1 (General Information on Elections)
* M21-1 VI.ii.1.A.1.a.  (Definition: Election)
* M21-1 VI.ii.1.A.1.b.  (Definition: Initial Election)
* M21-1 VI.ii.1.A.1.c. (Definition: Conditional Election)
* M21-1 VI.ii.1.A.1.d. (Definition: Reelection)
* M21-1 VI.ii.1.A.2.a. (Elections Between Compensation and Pension)
* M21-1 VI.ii.1.A.2.b. (Elections Between Other VA Benefits)
* M21-1 VI.ii.1.A.3.a. (Acceptable Forms of Election)
* M21-1 IX.iii.1.F.3.a.  (Removing a Veteran’s Spouse Due to Death, Divorce, or Annulment)
* M21-1 IX.iii.2.A.9. (Elections Involving Pension Entitlement)
* M21-1 IX.iii.2.C.1 (General Information on Entitlement to Old-Law or Section 306 Pension and Current-Law Pension)
* M21-1 IX.iii.2.C.2.a. (Applicability of a Veteran's Exercise of Right of Election)
* M21-1 IX.iii.2.C.2.b.  (Action to Take When an Election is Not in the Claimant's Interest)
* M21-1 IX.iii.2.C.2.c.  (Example: Deferring an Election Until a Future Beneficial Effective Date)
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| Lesson Objectives: | By the end of this lesson, you will be able to:* Define types of elections
* Determine change in eligibility based on an election
* Determine whether the elected benefit is advantageous to the claimant
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| What You Need: | * Trainee Guide
* Pencil and Paper
* Access to the Assessment Portal
* **Access to** from VSR Assistant for access to the following job aids:
	+ **Processing Elections Claims Checklist** job aid
	+ **Prepare the Decision Notice** job aid
	+ **Notification Language** job aid
	+ **PMC Decision Notice Tip Sheet** job aid
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| PowerPoint Slides | Notes |
| --- | --- |
| Overview of Election Claims |  |
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| Why It Matters!The Overview of Elections course matters because it is important to understand a claimant’s right to elect any benefit regardless of whether the greater or lesser benefit is chosen, even though the election results in reducing the benefit payable to dependents. |  |
| Definitions* An ***election*** is the exercise of a choice of one benefit or type of benefit over another to the total exclusion of the benefit not chosen.
* An ***initial election*** is the first election made by a claimant after being informed there is a choice between two or more benefits.
* A ***conditional election*** is an inferred election when a claimant who is receiving Old Law or Section 306 Pension indicates an increased disability, which may warrant special monthly pension under current-law pension.
* A ***reelection***, is the subsequent change from one benefit to another, and must be in writing and specify the benefit the claimant wishes to receive.
 |  |
| Definitions* **Death Compensation** is a monthly payment made to a surviving spouse, child, or parent because of a service-connected (SC) death occurring before January 1, 1957, or an in-service waiver of National Service Life Insurance (NSLI) or United States Government Life Insurance (USGLI) under [**38 U.S.C. 1924**](https://www.law.cornell.edu/uscode/text/38/1924) was in effect at the time of death, and death occurred
	+ on or after May 1, 1957, but
	+ prior to January 1, 1972
* **Increased award** means an award which is increased because of an added dependent, increase in disability or disability rating, or reduction in income.
 |  |
| Understanding Elections* Elections are divided into the following two categories:
	+ initial elections, and reelections
* An election may be final and irrevocable, *or* the claimant may elect and reelect as often as desired depending on what the pertinent legislation authorizes.
* An election must be in writing and must specify the benefit the person wishes to receive.
 |  |
| Forms of Election* Accept any statement on a formal claim or in correspondence that indicates an intent to apply for a particular benefit and is signed by the claimant or their fiduciary as an election.
* When an election is filed on behalf of the claimant, any evidence needed to support the election or any claim accompanying an election must be received within one year from the date of VA’s request for that evidence.
 |  |
| Initial Elections* When a claim is timely filed and the election is timely received, pay the elected benefit retroactive to the date entitlement is shown (less any necessary withholding or offset).
 |  |
| **Conditional Elections*** If a payee confirms an election within one year of notification of entitlement to a potential increase under current-law pension, the following situations may be considered elections to establish effective dates of increase:
	+ an Old Law or Section 306 Pension payee reports an increased disability, or
	+ an Old Law or Section 306 Pension payee reports nursing home status
 |  |
| **Reelection*** If a claimant elects to receive current-law pension instead of Section 306 Pension or Old-Law Pension or elects to receive Dependency and Indemnity Compensation (DIC) instead of death compensation, it is generally not permissible to go back and reelect the previous benefit unless certain exceptions apply.
	+ Prior to March 24, 2015, an informal claim for benefits may be accepted as an election under [**38 CFR 3.701(b)**](http://www.ecfr.gov/cgi-bin/text-idx?SID=18d63f1caca2f68ec86bb8a4646fe519&node=se38.1.3_1701&rgn=div8).
 |  |
| **Elections: Surviving Spouse (1 of 3)*** If a surviving spouse is eligible for DIC and resides in a Medicaid-covered nursing home, he/she may wish to elect Survivors Pension to take advantage of the $90 Medicaid.
* If, a surviving spouse having no child is in a Medicaid-approved nursing facility and covered by a Medicaid plan, election of the lesser $90 nursing facility/Medicaid pension benefit would ensure that the beneficiary is allowed to keep $90 each month for personal use.
* When an election is received from a surviving spouse eligible for the $90 nursing facility/Medicaid rate, take action to award $90 per month Survivors Pension from the date last paid.
 |  |
| **Elections: Surviving Spouse (2 of 3)*** Defer award action if the $90 per month nursing facility/Medicaid rate is less than the current monthly rate under the prior pension law, when an election of current-law pension is received from a Medicaid beneficiary who is a Veteran or surviving spouse currently receiving Section 306 Pension or Old-Law Pension
 |  |
| **Elections: Surviving Spouse (3 of 3)*** If award action must be deferred when an election of current-lawpension is received from a prior pension law beneficiary eligible for the $90 nursing facility/Medicaid rate as the lesser benefit, inform the Section 306 or Old-Law Pension Medicaid beneficiary by a locally-generated letter
	+ the exact monthly rates payable under each law for the periods indicated, and
	+ that further action on the election will not be taken unless they furnish a signed statement expressing a desire to receive the lesser benefit
 |  |
| Elections Between Compensation and Pension (1 of 2)* An election by a Veteran controls the rights of all dependents in that case.
* An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse.
* The election of improved pension by a surviving spouse, however, shall not prejudice the rights of any child receiving an apportionment on December 31, 1978.
 |  |
| Elections Between Compensation and Pension (2 of 2)* When a claimant is entitled to both compensation and pension,
	+ assume election of the greater benefit, unless the claimant provides information to the contrary, and
	+ routinely award the greater benefit at any time *without* requiring a formal election or reelection.
	+ **NOTE**: If a claimant is entitled to both compensation and pension and pension would pay the $90 Medicaid nursing home rate, assume the claimant elects the $90 rate as the greater benefit, and inform the claimant in the corresponding decision notice of the right to elect compensation.
 |  |
| Electing DIC in Lieu of Death Compensation* If the amount of DIC that is payable greater than the amount of Death Compensation that is payable
* Assume the claimant/beneficiary is electing DIC in lieu of Death Compensation and award DIC from the date of receipt of election.
* In the decision notice, inform the claimant/beneficiary
* that VA awarded DIC as the greater benefit, and
* about the right to elect Death Compensation until the election becomes final

**NOTE**: If a Veteran is entitled to Veterans Pension and is also entitled to receive Survivors Pension based on another person’s service, pay only the greater benefit unless the Veteran elects the lesser benefit. |  |
| ****Election: Surviving Child**** (1 of 3)* With Survivors Pension, DIC, and Survivors’ and Dependents’ Educational Assistance (DEA), two or more children may be eligible to receive the same type of VA benefit based on the service of a Veteran, while at least one child may be eligible for a different type of benefit based on the service of the same Veteran.
* When a child elects to receive a benefit that is different from the type of benefit the remaining child(ren) is receiving, VA cannot
	+ increase the rate of payment to the remaining child(ren), or
	+ pay a rate to each remaining child that is greater than the rate payable if all children were receiving the same type of VA benefit
 |  |
| Election: Surviving Child (2 of 3)* When a child elects DEA benefits, the rates payable to the remaining beneficiaries receiving Survivors Pension or DIC will be determined as though the child electing DEA benefits did not exist, provided that the child electing DEA benefits is
	+ over the age of 18, or
	+ became permanently incapable of self-support before reaching the age of 18
 |  |
| Election: Surviving Child (3 of 3)* A surviving child or dependent’s fiduciary may elect to receive benefits based on the service of either Veteran.
* An election of pension, compensation or DIC based on the death of one parent places the right to such benefits based on the death of another parent in suspension.
	+ The suspension may be lifted at any time by making another election.
 |  |
| Practice Exercise: Election References * Instructions:
	+ Divide into groups of four.
	+ Access Appendix A – Election References.
	+ 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
 |  |
| ****Elections: Effective Dates**** * If a beneficiary to whom VA is already paying benefits elects a different VA benefit (and concurrent receipt of both benefits is prohibited), adjust the beneficiary’s award effective the date VA received the election.
* Apply the provisions of [**38 CFR 3.31**](http://www.ecfr.gov/cgi-bin/text-idx?SID=f351169ab8292fee4e58c673327083ec&mc=true&node=se38.1.3_131&rgn=div8) (paying the elected benefit from the first of the month following the date of receipt of the election) if the election will result in an *increase* in the amount of benefits VA pays the beneficiary.

**NOTE**: If a beneficiary to whom VA is already paying benefits elects to receive pension at the $90 rate (as doing so might ultimately give the beneficiary more money for personal use), adjust the beneficiary’s award effective the date in the LAST PAID DATE field on the AWARD INFORMATION tab in SHARE.  |  |
| ****Knowledge Check: Lesson Summary Review********Time Allowed: 10 minutes**** |  |
| ****What’s Next******Complete the **Overview of Election Claims** course evaluation: **TMS ID: TBD**** |  |