### Section H. Marriage of a Child

#### Overview

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| In This Section | This section contains the following topics: |

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| Topic | Topic Name |
| 1 (old 43) | Effect of a Child’s Marriage |
| 2 (old 44) | Termination of a Child’s Marriage |

#### 1. Effect of a Child’s Marriage

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| Introduction | This topic contains information about the effect of a child’s marriage, including * definition of a child as unmarried
* when to take action on a report of a child’s marriage
* considering the inferred marriage of a child
* determining the stop date of a married child’s award, and
* adjusting benefits after the marriage of a child in death cases.
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| a. Definition of a Child as Unmarried | Under [38 CFR 3.57](http://www.ecfr.gov/cgi-bin/text-idx?SID=6cf0514ad87d67db55d9d23ddcf51c6c&node=se38.1.3_157&rgn=div8), a person must be unmarried to qualify as a child for Department of Veterans Affairs (VA) purposes. Therefore, a person of any age who marries ceases to be a child for VA purposes. |

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| b. When to Take Action on a Report of a Child’s Marriage | Take action subject to the applicable provisions of this section upon receipt of * a statement from the claimant with the *month and year* of the child’s marriage, and/or
* evidence showing the marriage of a child, to or for whom VA is paying Survivors Pension, compensation, or Dependency and Indemnity Compensation (DIC).

***Reference***: See [38 CFR 3.213](http://www.ecfr.gov/cgi-bin/text-idx?SID=3ca0eede1b9a5df15385dc71dbfeeffe&mc=true&node=se38.1.3_1213&rgn=div8) for more information regarding acceptable statements of changes in dependency status. |

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| c. Considering the Inferred Marriage of a Child | General Counsel has held that there is no basis for inferring a child’s marriage based on the child’s cohabitation with another person.However, if the child cohabits with another person in a jurisdiction recognizing common law marriage, it is possible to find that the child has entered into a common law marriage. ***Reference***: For more information on establishing a common law marriage against the claimant’s will, see M21-1*,* Part III, Subpart iii, 5.C.6. |

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| d. Determining the Stop Date of a Married Child’s Award | The table below describes how to determine the date to stop the child’s award. |

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| If the child is … | Then stop the award effective … |
| entitled* in his/her own right, or
* as an apportionee, receiving payments directly or through a fiduciary
 | the first day of the month of the marriage.***Reference***: For more information on termination of the award, see [38 CFR 3.500(n)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6cf0514ad87d67db55d9d23ddcf51c6c&node=se38.1.3_1500&rgn=div8). |
| * a dependent on another person’s award, and
* married prior to October 1, 1982
 | the first of the year following the year of marriage. |
| * a dependent on another person’s award, and
* married on or after October 1, 1982
 | the first of the month following the month during which the marriage occurred. |
| a dependent on a Veteran’s or surviving spouse’s Section 306 or Old Law Pension award | the first of the year after the year of marriage. |

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| ***Note***: For more information on procedures for award adjustments, see the [VBMS-Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp). |

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| **e. Adjusting Benefits After the Marriage of a Child in Death Cases** | Use the table below to make adjustments in benefits after the marriage of a child in death cases. |

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| If … | Then … |
| * a surviving spouse is receiving payments on account of the married child, or
* the married child is receiving an apportioned share of a surviving spouse’s award
 | reduce or discontinue the surviving spouse’s award as described in M21-1, Part III, Subpart iii, 5.F.7. |
| other children are receiving apportioned awards | make adjustments in separate awards to other children (no surviving spouse entitled) effective the date of discontinuation of the married child’s award per [38 CFR 3.651](http://www.ecfr.gov/cgi-bin/text-idx?SID=6cf0514ad87d67db55d9d23ddcf51c6c&node=se38.1.3_1651&rgn=div8), except as provided for reapportionment of awards to other apportionees per M21-1, Part III, Subpart v, 3.B.4.***Note***: The adjustment of the remaining children’s rates due to the loss of a child is one of the few occasions an increase may be made in a Section 306 or Old Law Pension rate. |

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| ***References***: For information on* the adjustment for loss of a dependent, see M21-1, Part III, Subpart iii, 5.F.7
* the loss of the only or last child in Section 306 and Old Law Pension cases, see M21-1, Part V, Subpart iii, 1.C.5, and
* procedures for award adjustments, see the [VBMS-Awards User Guide](http://vbaw.vba.va.gov/VBMS/Resources_Technical_Information.asp).
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#### 2. Termination of a Child’s Marriage

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| Introduction | This topic contains information on the termination of the child’s marriage, including * requirements regarding reestablishment of entitlement following termination of marriage
* obtaining evidence/information regarding termination of a child’s legal marriage
* determining whether a child’s marriage
* is void, or
* is annulled, and
* determining the effective date of an award based on a child’s marital status.
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| a. Requirements Regarding Reestablishment of Entitlement Following Termination of Marriage | In order to be a child of the Veteran for compensation and Survivors Pension purposes, the person *must* be unmarried. Therefore if a child marries, benefits for the child are stopped.If the marriage is later terminated, the child may reestablish entitlement, provided the marriage was terminated after November 1, 1990, and was either declared void or annulled.***Exception***: For marriages terminated prior to November 1, 1990, a child may reestablish entitlement provided that that marriage was* terminated by death, or
* dissolved by divorce decree.

***References***: For information on* determining whether a child’s marriage is
* void, see M21-1, Part III, Subpart iii, 5.H.2.c, and
* annulled, see M21-1, Part III, Subpart iii, 5.H.2.d.
* marriages terminated prior to November 1, 1990, see [38 CFR 3.55(b)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=79e6d5279a27069c83d2b5360e2e6905&node=se38.1.3_155&rgn=div8).
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| b. Obtaining Evidence/ Information Regarding Termination of a Child’s Legal Marriage  | If the child alleges that the legal marriage has been terminated and there is a possibility of reestablishing entitlement as a child, request the following evidence:* a statement from the child indicating where, when, and how the marriage was dissolved, to include if the marriage was considered void
* a statement of whether or not the child ever filed an application for, or received VA benefits as, the child of another Veteran, and
* a copy of the final decree of annulment as proof of termination of the marriage.

***Important***: If the child has received benefits as the child of another Veteran the statement *must* include the name of the other Veteran and the VA claim number. ***Note***: Determine the effective date per the information in M21-1, Part III, Subpart iii, 5.H.2.e. |

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| c. Determining Whether a Child’s Marriage is Void | Follow the steps in the table below to determine whether a child’s marriage is void. |

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| Step | Action |
| 1 | Fully develop the facts surrounding the alleged void marriage, including obtaining statements of parties to the “marriage.” |
| 2 | Submit the case to Regional Counsel for a legal opinion as to whether or not the marriage is void. ***Reference***: For more information on when to obtain the opinion of the Regional Counsel, see M21-1, Part III, Subpart iii, 5.A.3. |
| 3 | Has Regional Counsel declared the marriage void?* If *yes,* determine the effective date of an award or an increased award per the information in M21-1, Part III, Subpart iii, 5.H.2.e.
* If *no*, deny the claim.

***Note***: No administrative decision is required. |

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| ***Reference***: For more information on determining whether a marriage is void, see M21-1, Part III, Subpart iii, 5.B.6. |

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| d. Determining Whether a Child’s Marriage is Annulled | Follow the steps below to determine whether a child’s marriage is annulled.***Important***: A finding that an annulment was fraudulently obtained renders the annulment invalid for VA purposes. |

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| Step | Action |
| 1 | If the child alleges the marriage has been annulled* request a copy of the court decree of annulment, and
* determine whether there is any evidence indicating fraud in obtaining the annulment.
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| 2 | Is there evidence that indicates there was fraud in obtaining the annulment?* If *yes*, go to Step 3.
* If *no*
* accept the decree as evidence of termination of the marriage
* determine the effective date of an award or increased award per M21-1, Part III, Subpart iii, 5.H.2.e.
 |
| 3 | Initiate full development to include requesting* copies of the
* petition to the court for annulment
* answer to the petition, and
* a transcript of the testimony.
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| 4 | After development is complete, ask Regional Counsel for an opinion as to the legal effect of the alleged annulment.***Note***: An opinion is required from Regional Counsel because questions as to whether or not the decree was obtained through fraud are mixed questions of fact and law.***Reference***: For more information on jurisdiction with regard to questions as to whether or not the decree was obtained through fraud, see M21-1, Part III, Subpart iii, 5.A.3. |
| 5 | Did Regional Counsel determine the annulment was fraudulently obtained?* If *yes*, prepare a three-signature administrative decision using the format in M21-1, Part III, Subpart v, 1.A.3
* If *no*
* accept the decree as evidence of termination of the marriage, and
* determine the effective date of an award or increased award per M21-1, Part III, Subpart iii, 5.H.2.e.

***Note***: The Veterans Services Center Manager (VSCM) and Pension Management Center Manager (PMCM) may delegate authority to approve the administrative decision to supervisors not lower than coaches/section chiefs. |

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| e. Determining the Effective Date of an Award Based on a Child’s Marital Status | Determine the effective date of an award based on whether the marriage was determined to be void or annulled.***Voided Marriage***: If Regional Counsel determines that the marriage is void, the effective date of an award or increased award is the later of either* the date the cohabitation ceased, or
* the date of claim.

***Annulled marriage***: If a judicial decree of annulment is accepted as proof of termination of a child’s marriage, the effective date of an award or increased award is the date * the decree became final if the claim is filed within one year of that date, or
* the date of claim.

***Reference***: For more information regarding the effective date to award benefits based on* a voided marriage, see [38 CFR 3.400(u)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6cf0514ad87d67db55d9d23ddcf51c6c&node=se38.1.3_1400&rgn=div8), and
* an annulled marriage, see [38 CFR 3.400(u)(2)](http://www.ecfr.gov/cgi-bin/text-idx?SID=6cf0514ad87d67db55d9d23ddcf51c6c&node=se38.1.3_1400&rgn=div8).
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