## Section I. Correcting the Payment of Excessive Benefits to a Beneficiary

#### Overview

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

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| Topic | Topic Name | See Page |
| 35 | Adjusting Awards Based on the Cause of the Payment of Excessive Benefits | 1-I-2 |
| 36 | Special Instructions for Handling Cases Involving Administrative Error | 1-I-5 |

#### 35. Adjusting Awards Based on the Cause of the Payment of Excessive Benefits

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| Introduction | This topic contains instructions for adjusting awards based on the cause of the payment of excessive benefits, including   * action to take upon discovering the payment of excessive benefits, and * payment of excessive benefits due to * claims-processing delays, or * systems malfunctions or programming errors. |

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| Change Date | January 16, 2014 |

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| a. Action to Take Upon Discovering the Payment of Excessive Benefits | Upon discovering that the Department of Veterans Affairs (VA) is paying benefits to a beneficiary in an amount that exceeds his/her entitlement,     * determine whether the payment of excessive benefits is due to * an action the beneficiary took or failed to take * an administrative error on the part of the VA, or * fraud, and * follow the instructions in the table below. |

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| If the payment of excessive benefits is due to ... | Then... |
| an action the beneficiary took or failed to take | adjust the beneficiary’s award under the provisions of [38 CFR 3.500(b)(1)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC).  ***Important***: Follow the instructions in [M21-1MR, Part I, 2.A.2](imi-internal:M21-1MRI.2.A.2) to determine whether VA must provide the beneficiary with a notice of proposed adverse action before adjusting his/her award. |

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| If the payment of excessive benefits is due to ... | Then... |
| an administrative error on the part of VA  ***Note***: Administrative errors include errors in judgment on the part of VA employees.  ***Example***:  ***Scenario***:   * On May 1, 2008, VA assigns a 50-percent disability rating to a Veteran for her service-connected disabilities. * On August 12, 2010, the Veteran has a baby. She forgets to notify VA of the birth until November 10, 2013.   ***Administrative Error***: A VA employee adds the child to the Veteran’s award effective the date of the child’s birth. | follow the instructions in [M21-1MR, Part III, Subpart v, I.36](imi-internal:M21-1MRIII.v.I.36) for adjusting the beneficiary’s award under the provisions of [38 CFR 3.500(b)(2)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC). |
| fraud | follow the instructions in [M21-1, Part III, Subpart vi, 5.A.2](imi-internal:M21-1MRIII.vi.5.A.2) for adjusting the beneficiary’s award under the provisions of [38 CFR 3.500(k)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC). |

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| ***Reference***: For information on adjusting awards in the Veterans Service Network (VETSNET), see the [*VETSNET Awards Handbook*](http://vbaw.vba.va.gov/VetsNet/Awards_Docs/Awards%20User%20Guide.pdf). |

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| b. Payment of Excessive Benefits Due to Claims-Processing Delays | The payment of benefits in an amount exceeding a beneficiary’s entitlement that is due to claims-processing delays is ***not*** considered administrative error.  ***Example***:  ***Scenario***:   * A Veteran in receipt of additional benefits based on his need for aid and attendance (A&A) is admitted to a VA hospital on April 21, 2012. * On May 1, 2012, VA notifies the Veteran of its proposal to discontinue the additional benefits effective June 1, 2012. * The Veteran remains in the hospital and does not respond to the notice of proposed adverse action. * Because of claims-processing delays, VA is unable to adjust the Veteran’s award until November 12, 2012.   ***Result***: The payment of additional benefits beyond June 1, 2012, is not considered administrative error. The Veteran remains responsible for repaying the overpayment that resulted from the delay in adjusting his award. |

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| c. Payment of Excessive Benefits Due to Systems Malfunctions or Programming Errors | The payment of excessive benefits because of a systems malfunction or programming error is ***not*** considered an administrative error under [38 CFR 3.500(b)(2)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC) and should not be treated as such.  ***Exception***: If the *automated* processing of a legislative increase in benefits results in the payment of a higher rate of *pension* to a beneficiary than the rate to which he/she is entitled,   * treat the erroneous payment as an administrative error under [38 CFR 3.500(b)(2)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC), and * adjust the beneficiary’s award according to the instructions in [M21-1MR, Part III, Subpart v, 1.I.36](imi-internal:M21-1MRIII.v.1.I.36). |

#### 36. Special Instructions for Handling Cases Involving Administrative Error

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| Introduction | This topic contains special instructions for handling cases involving administrative error, including   * requirement for an administrative decision and advance notice of adverse action * approval of administrative decisions involving administrative error * requesting Compensation Service’s approval of administrative decisions * actions to take if a beneficiary does not respond to the notice of proposed adverse action * actions to take if a beneficiary provides new evidence or requests a hearing, and * substituting a Decision Review Officer (DRO) decision for a new administrative decision. |

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| a. Requirement for an Administrative Decision and Advance Notice of Adverse Action | If, because of administrative error, VA is paying benefits to a beneficiary in an amount that exceeds his/her entitlement,   * prepare an administrative decision according to the instructions in [M21-1MR, Part III, Subpart v, 1.A](imi-internal:M21-1MRIII.v.1.A) that proposes to reduce or discontinue benefits under [38 CFR 3.500(b)(2)](http://www.warms.vba.va.gov/regs/38CFR/BOOKB/PART3/S3_500.DOC) * send the beneficiary notice of the proposed adverse action according to instructions in [M21-1MR, Part I, 2.B](imi-internal:M21-1MRI.2.B), and * do not take action to reduce or discontinue benefits until 65 days after the date of the notice of proposed adverse action.   ***Important***: VA may ***not*** create an overpayment in a beneficiary’s account when adjusting his/her award to correct an administrative error. Accordingly, there is no need to include language about minimizing an overpayment in the corresponding notice of proposed adverse action. |

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36. Special Instructions for Handling Cases Involving Administrative Error, Continued

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| b. Approval of Administrative Decisions Involving Administrative Error | Use the table below to determine who must approve administrative decisions involving an administrative error that resulted in the payment of excessive benefits to a beneficiary. |

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| If the total amount of excessive benefits paid to the beneficiary is … | Then the decision must be approved by … |
| less than $2,000 | no one lower than a Coach. |
| between $2,000 and $24,999 | a Veterans Service Center Manager (VSCM) or designee no lower than a Coach. |
| $25,000 or more | Compensation Service’s Program Review Staff.  ***Reference***: For information about obtaining approval from the Program Review Staff, see [M21-1MR, Part III, Subpart v, 1.I.36.c](imi-internal:M21-1MRIII.v.1.I.36.c). |

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| ***Notes***: Calculate the total amount of excessive benefits paid to a beneficiary by multiplying the amount of excessive benefits VA paid to the beneficiary each month by the number of months VA had paid the excessive benefits as of the date the administrative decision was prepared. |

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| c. Requesting Compensation Service’s Approval of Administrative Decisions | Follow the instructions in the table below if approval of an administrative decision by Compensation Service’s Program Review Staff is necessary according to the instructions in [M21-1MR, Part III, Subpart v, 1.I.36.b](imi-internal:M21-1MRIII.v.1.I.36.b). |

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| Step | Action |
| 1 | Place a paper flash on the front of the affected beneficiary’s claims folder that briefly describes the reason for transferring the claims folder to Compensation Service.  ***Exception***: This action is *not* required if the claims folder is completely paperless. |
| 2 | Extend the suspense date of the end product that was established in connection with the administrative decision to a date that is 60 days in the future. |
| 3 | Temporarily transfer the claims folder to  Department of Veterans Affairs  Quality Assurance  Attn: Program Review Staff (214B)  3322 West End Ave, Ste 730  Nashville, TN 37203  ***Exception***: If the beneficiary’s claims folder is completely paperless, notify the Program Review Staff by e-mail (VAVBAWAS/CO/214B) that an administrative decision requiring approval is available in the beneficiary’s eFolder. |
| 4 | Did the Program Review Staff approve the administrative decision?   * If *yes*, send the beneficiary notice of the proposed adverse action according to instructions in [M21-1MR, Part I, 2.B](imi-internal:M21-1MRI.2.B). Sixty-five days after mailing the notice, take the actions described in [M21-1MR, Part III, Subpart v, 1.I.36.d](imi-internal:M21-1MRIII.v.1.I.36.d) or [e](imi-internal:M21-1MRIII.v.1.I.36.e), whichever applies. * If *no*, take the corrective action(s) prescribed by the Program Review Staff. |

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| d. Actions to Take If a Beneficiary Does Not Respond to the Notice of Proposed Adverse Action | Follow the steps in the table below if a beneficiary does *not* respond to the notice of proposed adverse action referenced in [M21-1MR, Part III, Subpart v, 1.I.36.a](imi-internal:M21-1MRIII.v.1.I.36.a) and [c](imi-internal:M21-1MRIII.v.1.I.36.c) with the submission of   * new evidence within 60 days of the date of the notice of proposed adverse action, or * a request for a hearing within 30 days of the date of the notice of proposed adverse action. |

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| Step | Action |
| 1 | Adjust the beneficiary’s award so the reduction or discontinuation takes effect the first of the month following the month for which VA last paid the beneficiary.  ***Rationale***: VA may ***not*** create an overpayment in a beneficiary’s account when adjusting his/her award to correct an administrative error.  ***Note***: The actual payment of VA benefits is always one month in arrears. For example, benefits due a beneficiary for the month of October are deposited in the beneficiary’s account at the end of October or the beginning of November. Using this example, “the first of the month following the month for which VA last paid benefits to the beneficiary” would be November 1. |
| 2 | Enter the following as “remarks” in VETSNET after generating the adjusted award:   * brief description of the error * date the error occurred * name and title of the individual who made the error * the amount of excessive benefits VA paid the beneficiary, and * the regulation under which the adjustment was made (38 CFR 3.500(b)(2)). |

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| Step | Action |
| 3 | Prepare a memorandum for the claims folder that states   * the beneficiary submitted no new evidence, and * the proposed decision is final.   ***Important***: Preparation of a second, final administrative decision is unnecessary. |
| 4 | Follow the instructions in the table below.   |  |  | | --- | --- | | If the administrative decision that preceded the final decision was approved by … | Then … | | a Coach | ensure a Coach signs the memorandum. | | the VSCM or a designee no lower than a Coach | ensure the VSCM or a designee no lower than a Coach signs the memorandum. | | Compensation Service’s Program Review Staff | ensure the VSCM signs the memorandum. | |
| 5 | * File a copy of the memorandum and corresponding administrative decision in the VSCM’s office for a period of one year from the date of the final decision. * After one year, dispose of the documents in accordance with [*Records Control Schedule VB-1, Part I, Item number 08-038.000*](http://www.benefits.va.gov/WARMS/docs/admin20/rcs/part1/sec08.doc)*.* |

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36. Special Instructions for Handling Cases Involving Administrative Error, Continued

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| e. Actions to Take If a Beneficiary Provides New Evidence or Requests a Hearing | If a beneficiary submits new evidence within 60 days of the date of the notice of proposed adverse action, or requests a hearing within 30 days of the same date, continue benefits at the same rate until a final decision is made.  ***Important***: If a beneficiary submits new evidence, preparation of a new administrative decision that considers the new evidence is required. |

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| f. Substituting a DRO Decision for a New Administrative Decision | If a beneficiary requests a hearing in connection with a proposal to reduce or discontinue his/her award to correct an administrative error, the Decision Review Officer (DRO) that conducts the hearing will prepare a decision that satisfies the requirement in [M21-1MR, Part III, Subpart v, 1.I.36.e](imi-internal:M21-1MRIII.v.1.I.36.e) for a new administrative decision.  Use the table below to determine whether approval of the DRO decision by a member of management is required. |

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| If the administrative decision that preceded the DRO decision was approved by … | Then … |
| a Coach | approval of the DRO decision by a member of management is ***not*** necessary. |
| the VSCM or a designee no lower than a Coach | the VSCM or a designee no lower than a Coach must approve the DRO decision. |
| Compensation Service’s Program Review Staff | the VSCM must approve the DRO decision. |