## Chapter 2. Substitution in Case of Death of Claimant

#### 1. General Information on Requests to Substitute

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| Introduction | This topic contains general information on eligibility to accrued benefits, including   * the definition of substitution in the case of death of claimant * the definition of original claimant * the definition of substitute claimant * the definition of joint class * right to waive substitution in case of death of claimant, and * death of a substitute claimant. |

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| a. Definition: Substitution in Case of Death of Claimant | ***Substitution*** is the right of a living person to submit additional evidence in support of the deceased claimant’s pending claim or appeal of decision.  ***Notes***:   * The monetary benefit sought in the request for substitution is accrued benefits. * Substitution applies to the same benefits for which accrued benefits are payable, i.e., periodic monetary benefits (other than insurance and Servicemember’s indemnity) such as compensation, pension, DIC, and Chapter 18 benefits.   ***References***:   * For more information on entitlement to substitution, see * [38 U.S.C. 5121A](https://www.law.cornell.edu/uscode/text/38/5121A), and * [38 CFR 3.1010](http://www.ecfr.gov/cgi-bin/text-idx?SID=2b251e5a0908a5b09ec91f698162ff95&node=se38.1.3_11010&rgn=div8). * For more information on pending claims and appeals, see M21-1, Part VIII, 1.2. |

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| b. Definition: Original Claimant | An ***original claimant*** is the deceased claimant whose claim or appeal of an adverse decision on the claim was pending when he or she died. |

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| c. Definition: Substitute Claimant | A ***substitute claimant*** is an individual whom the Department of Veterans  Affairs (VA) has recognized to replace the original claimant in a pending claim or pending appeal (i.e., a preferred eligible survivor).  Any eligible survivor submitting a claim for accrued benefits   * will automatically be considered as requesting to substitute, and * may be able to submit additional evidence in support of the claim.   ***Reference***: For more information on who is eligible to be a substitute claimant, see M21-1, VIII.1.2.A. |

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| d. Definition: Joint Class | ***Joint Class*** is a group of two or more individuals in which each individual is an eligible substitute of the same preference such as   * two or more surviving children * two surviving parents, or * two or more persons who bore the expense of last sickness or burial. |

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| e. Right to Waive Substitution | A claimant may waive, *in writing*, the right to substitute. In those instances, the accrued claim is processed solely based on evidence in the claims folder at the time of the original claimant’s death. |

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**2. Eligibility to Request Substitution**

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| **Introduction** | This topic contains information on eligibility to request substitution, including   * eligibility to substitute * definition of categories of eligible persons * substitution by subordinate members prohibited * death of a substitute claimant * evidence requirements, and * the right to appeal the denial of a request to substitute. |

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| **a. Eligibility to Substitute** | A person filing a request to substitute must provide evidence of eligibility to substitute. Evidence of eligibility means evidence demonstrating the person is   * among the categories of eligible persons, and * first in priority order.   ***References***: For more information on the categories of eligible persons in requests for substitution, see   * [38 CFR 3.1010(d)(1)](http://www.ecfr.gov/cgi-bin/text-idx?SID=2a9bb7e728b965b2294ff93159aa62d7&mc=true&node=se38.1.3_11010&rgn=div8), and * M21-1, Part VIII.2.2.b. |

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| b. Definition: Categories of Eligible Persons | The categories of eligible persons is a person eligible for accrued benefits. The following is a list of the eligible persons:   * Upon the death of a veteran to the living person first listed as follows: * his or her spouse; * his or her children (in equal shares); * his or her dependent parents (in equal shares) or the surviving parent. * Upon the death of a surviving spouse or remarried surviving spouse, to the veteran’s children. * Upon the death of a child, to the surviving children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation. * Upon the death of a child claiming benefits under chapter 18 of this title, to the surviving parents.   ***Note***: In all other cases, only so much of the accrued benefit may be paid as necessary to reimburse the person who bore the expense of last sickness or burial.    ***References***:   * For more information on categories of eligible persons in accrued claims see * [38 CFR 3.1000(a)(1) through (a)(5)](http://www.ecfr.gov/cgi-bin/text-idx?SID=2a9bb7e728b965b2294ff93159aa62d7&mc=true&node=se38.1.3_11000&rgn=div8), and * M21-1, Part VIII.1.5 * For more information on categories of eligible persons in requests for substitution, see [38 CFR 3.1010(a)](http://www.ecfr.gov/cgi-bin/text-idx?SID=2a9bb7e728b965b2294ff93159aa62d7&mc=true&node=se38.1.3_11010&rgn=div8). |

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| **c. Substitution by Subordinate Members Prohibited** | Failure to timely file a request to substitute, or a waiver of the right to request substitution, by a person of preferred category of eligible person will not serve to vest the right to request substitution in a person   * in a lower category, or * who bore the expense of last sickness or burial.   ***Note***: A failure to timely file or request waiver by a person(s) in a joint class will not serve to increase the amount payable to other persons in the class.  ***Reference***: For more information on the prohibition of substitution by subordinate members, see [38 CFR 3.1010(g)(4)](http://www.ecfr.gov/cgi-bin/text-idx?SID=2a9bb7e728b965b2294ff93159aa62d7&mc=true&node=se38.1.3_11010&rgn=div8). |

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| **d. Death of a Substitute Claimant** | If a substitute claimant dies while a claim or appeal is pending, a request to continue the original claimant’s claim may be granted to   * another member of the same joint class, or * a member of the next preferred member.   ***Note***: The request to substitute must be received no later than one year after the date of the substitute’s death (not the original claimant’s death). |

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| e. Evidence Requirements | Evidence is required to eliminate persons who would have a higher status of preference only if the record indicates that a person survived the deceased beneficiary. Otherwise, statements of record received by VA prior to the death of the veteran or primary beneficiary are adequate. |

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| f. The Right to Appeal the Denial of a Request to Substitute | A claimant has the right to appeal a denial of the request to substitute. |

**3. Rights of the Substitute Claimant Following the Grant of Substitution**

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| **Introduction** | This topic contains information on rights of the substitute claimant, including   * timelines for substitute claimant to take action * submission of evidence and other rights afforded to the substitute claimant * rights not afforded to the substitute claimant * expansion of the claim, and * an example of calculating the time limit when a Section 5103 Notice * was not sent to the original claimant, and * when a Section 5103 notice sent to the original claimant * has not expired, and * has expired. |

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| **a. Timelines for Substitute Claimant to Take Action** | Once a substitution request is granted, the substitute claimant must complete any action required by law or regulation within the time period remaining for the claimant to take such action on the date of his or her death.  ***Note***: The time remaining to take such action will start to run on the date of the mailing of the decision granting the substitution request. |

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| **b. Submission of Evidence and Other Rights Afforded to the Substitute Claimant** | A substitute claimant has the same rights as would have applied to the original claimant had he or she not died, including the rights regarding   * hearings * representation * appeals, and * submission of evidence. |

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| c. Rights Not Afforded to the Substitute Claimant | Rights that may have applied to the claimant prior to death but which cannot practically apply to a substitute are not available to the substitute.  ***Example***: Medical examinations. |

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| d. Expansion of the Claim | The substitute claimant may not   * add an issue to the claim, or * expand the claim.   ***Note***: The substitute claimant may raise new theories of entitlement in support of the claim. |

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| e. Example: Calculating the Time Limit When a Section 5103 Notice Was Not Sent to the Original Claimant | ***Situation 1:***   * On 04/01/2015, VA received a claim for service connection for a right hip condition. * On 04/23/2015, the Veteran died. VA was unable to send the Section 5103 notice to the Veteran before he died.   ***Result***:  Since the 5103 notice was not sent to the original claimant, allow the substitute claimant 30 days to submit evidence when providing the Section 5103 notice. |

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| f. Example: Calculating the Time Limit When a Section 5103 Notice Sent to the Original Claimant Has Not Expired | ***Situation 2***:   * On 04/01/2015, VA received a claim for service connection for a right hip condition. * On 04/15/2015, the Veteran was sent an adequate Section 5103 notice on a pending claim for right hip condition. * On 04/23/2015, the Veteran died and prior to his death, no additional evidence was submitted that required development.   ***Result***:  Since only 8 days have passed, at the time of the deceased claimant’s death, since the 5103 notice, allow the substitute claimant 22 days to submit evidence when providing a notice to the substitute claimant that the request for substitution has been granted. |

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| g. Example: Calculating the Time Limit When a Section 5103 Notice Sent to the Original Claimant Has Expired | ***Situation***:   * On 04/01/2015, VA received a claim for service connection for a right hip condition. * On 04/15/2015, the Veteran was sent an adequate Section 5103 notice on a pending claim for right hip condition. * On 06/23/2015, the Veteran died and prior to his death, no additional evidence was submitted that required development.   ***Result***:  Since the full 30 days for the Section 5103 notice had passed, no additional time is required. The substitute claimant will receive the same rights as the Veteran would have received, but for his death, to appeal the decision of the right hip condition. |