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Chapter 3
ADVISORY OPINIONS, REVIEWS, APPEALS,
AND EQUITABLE RELIEF

3.01 Introduction
(Change Date March 8, 2013)

This chapter provides the procedures and processes for when a Servicemember or Veteran or Servicemember (SM/V) disagrees with the decision made on his/her claim for Department of Veterans Affairs (VA) Vocational Rehabilitation and Employment (VR&E) Chapter 31 benefits and services.

3.02 References and Resources
(Change Date February 19, 2019)

- Laws: 38 United States Code (U.S.C.) 501
 38 U.S.C. 503
 38 U.S.C. 3107
 38 U.S.C. 5103
 38 U.S.C. 5103A
 38 U.S.C. 7105
 Public Law (Pub. L.) 115-55, Veterans Appeals
 Modernization and Improvement Act of 2017
 Pub. L. 103-446, Veterans Benefits Improvement Act of
 1994
 Pub. L. 106-475, Veterans Claims Assistance Act of 2000
 (VCAA)
- Regulations: 38 Code of Federal Regulations (CFR) 21.32
 38 CFR 21.33
 38 CFR 21.414
 38 CFR 21.416
 38 CFR 21.420
- VA Forms (VAF): VAF 8, Certification of Appeal
 VAF 10182, Decision Review Request: Board Appeal (Notice
 of Disagreement)
 VAF 20-0995, Request for Decision Review: Supplemental
 Claim
 VAF 20-0996, Request for Decision Review: Higher-Level
 Review
 VAF 20-0998, Your Rights to Seek Further Review of our
 Decision (Note – replaced all VAF 4107 on February 19,
 2019)

VAF 20-0999, Higher-Level Review Return
VAF 28-1943, Counseling Transmittal List

Website: <https://www.bva.va.gov/index.asp>

3.03 Advisory Opinion

a. Definition
(Change Date March 8, 2013)

An advisory opinion is initiated prior to a formal decision being made. It seeks to resolve doubt as to the correct interpretation and application of law, regulations, policies or procedures.

b. The Process
(Change Date March 8, 2013)

A Vocational Rehabilitation and Employment (VR&E) staff member may initiate an advisory opinion with the concurrence of the VR&E Officer (VREO). However, the request for an advisory opinion must be signed and concurred by the Regional Office (RO) Director. The request must be submitted to the Director of VR&E Service who provides the advisory opinion.

c. Guidelines for Submission of a Request for an Advisory Opinion
(Change Date March 8, 2013)

1. Format

The request must be prepared in a standard letter and must conform to the following format:

(a) Question(s)

State the question(s) clearly. Do not combine multiple issues into one question. Each issue must be stated in a separate question. Each question must be numbered if there is more than one question.

(b) Background

Provide brief statements of pertinent information regarding the SM/V's identifying data.

(c) Discussion

State the facts pertinent to the decision that is being considered. Explain the details that may impact the decision and the laws, regulations and manual guidelines supporting the proposed decision.

(d) Recommendation

The VREO must provide his/her recommendations or comments on each question presented. The recommendation(s) must be clearly supported by evidence in the SM/V's VR&E record, and by pertinent laws, regulations and manual guidelines.

2. Process

The request for the advisory opinion must be sent with the SM/V's VR&E record to the Director of VR&E Service. The case manager must ensure that VAF 28-1943, Counseling Transmittal List is completed. Send the completed form and a copy with the SM/V's VR&E record to VR&E Service and maintain another copy for the office's recordkeeping. See Appendix O, VA Forms, for information on accessing this form, as well as all forms cited in this chapter. The case manager must ensure that the temporary transfer of the SM/V's VR&E record is annotated in the Corporate WINRS (CWINRS) case management system Remarks/Notes to ensure that the case is tracked appropriately.

d. Decisions on Advisory Opinions
(Change Date February 19, 2019)

The decisions rendered from an advisory opinion conducted by the Director of VR&E Service are final and binding, unless overturned by Board of Veterans Appeals (BVA).

3.04 Notification of Decision and Appellate Rights
(Change Date February 19, 2019)

A SM/V, and his/her designated representative if applicable, must receive notification whenever a decision is made on a VR&E claim that grants, denies, reduces, or terminates VA benefits. The notification letter, titled "Decision Letter - VR-58", must include the following documentation:

- Issue(s) adjudicated.
- Evidence considered.
- Statutes and regulations considered.
- Identification of findings favorable to the beneficiary.

- Findings as to which elements have not been satisfied, leading to the denial, reduction, or termination.
- Notice of how to obtain a copy or access of the evidence used to make the decision.
- Notice of the criteria that must be satisfied to grant the claim.
- Notice of appellate rights and all procedures to seek further review, via VAF 20-0998.

It is important to note that the SM/V may obtain representation as soon as he/she receives a decision letter from VR&E. All final decisions on claims involving benefits that VA administers may be subject to BVA review. As such, the information in this letter will assist the SM/V, and his/her representative if applicable, to develop the information needed to request an appeal at BVA.

3.05 Veterans Appeals Improvement and Modernization Act of 2017

a. Overview

(Change Date February 19, 2019)

The Veterans Appeals Improvement and Modernization Act of 2017, Public Law 115-55, was signed into law on August 23, 2017 and was effective on February 19, 2019. This law modernized the current VA claims and appeals process by developing three new review options, or lanes, for disagreements with decisions made on a VA claim.

b. New Options for Review or Appeal

(Change Date February 19, 2019)

It is important to note a SM/V may only pursue one issue in one of these lanes at one time. For example, a SM/V may not request a higher-level review for a denial of entitlement to VR&E benefits and services while he/she has an appeal on this issue with BVA. In these instances, the SM/V must elect the lane in which he/she wishes to have the claim addressed. The three review options, or lanes, are discussed below.

1. Higher-Level Review

(a) Higher-Level Review Overview

(Change Date February 19, 2019)

A higher-level review (HLR) is a review of a decision that is completed by a more experienced VRC than the individual who made the decision. For VR&E, this duty may be assigned to lead or Supervisory VRC; the Assistant VR&E Officer; or the VR&E Officer. The higher-level

reviewer must be someone that was not involved in the original decision-making process. The review is a *de novo* review, meaning the higher-level reviewer only reviews the information in the record at the time the decision was made; no new evidence is reviewed. A HLR is very similar to VR&E's previous process for administrative reviews, with the exception that the HLR is completed by VR&E field staff; Central Office staff have no role in the HLR process.

(b) Higher-Level Review Process
(Change Date February 19, 2019)

To request a HLR, the SM/V must complete VAF 20-0996 and submit to the RO of jurisdiction within one year of the date listed on the decision letter. If more than one year has elapsed, the VR&E staff member must inform the SM/V in writing that he/she is outside the time limit to request a HLR, but may submit new evidence, if available, for a supplemental claim review (SCR).

As soon as VAF 20-0996 is received it must be date stamped and the information must be entered into Caseflow, which is the tracking system that replaced the Veterans Appeals Control and Locator System (VACOLS). If the issue for which the SM/V has requested a HLR is also under review at another RO or under appeal at BVA, the VR&E staff member must stop all action on the HLR; notify the SM/V that he/she must elect which lane they wish to have the issue addressed; and update Caseflow. Please see section 3.06 for additional guidance on Caseflow, and Appendix DE for instructions on how to use Caseflow.

All HLRs must be completed; a decision rendered; and the SM/V informed of the decision in writing within 90 days from the receipt of VAF 20-0996.

The SM/V has the right to one informal conference per issue during the higher-level review. An informal conference is defined as contact with the SM/V and his/her representative via telephone or as otherwise determined by VA for the sole purpose of allowing the SM/V and/or representative to identify any errors in law or fact in the prior decision. No new evidence may be provided during the informal conference. The higher-level reviewer leads the informal conference, and must document the completion of the informal conference in CWINRS Notes. Generally speaking, the informal conference will be comprised of the SM/V, his/her representative, and the higher-level reviewer. However, it is permissible for the VRC who made the original decision to be present if the SM/V requests the VRC's presence. It is also permissible

for VR&E management to be involved in the informal conference. The request for an informal review is made via VA Form 20-0996, which asks if the SM/V wishes to have an informal conference.

Due to the timeliness requirements for completing the HLR, rescheduling the informal conference may not be an option if the request to reschedule is not made in a timely manner. Therefore, if the SM/V does not attend the informal conference and/or requests to reschedule the conference, it must be made in a timely manner that allows sufficient time to complete the HLR. Best practice is to reschedule the conference one time to ensure that VR&E provides every opportunity for the SM/V to be heard. If the request to reschedule the informal conference is not timely and will impede the higher-level reviewer's ability to complete the HLR within the 90-day period, then the higher-level reviewer is not required to reschedule the conference.

(c) Right to Request Higher Level Review at Alternate Regional Office
(Change Date February 19, 2019)

The SM/V has the right to request that the HLR be completed at another RO. If requested, VR&E policy states the HLR must be completed only by the RO of jurisdiction's alternate RO, as identified on Appendix T. If this occurs, the VREO, or designee, at the RO of jurisdiction must follow all scanning shipping procedures to ensure the CER folder is sent to the scanning vendor for immediate scanning; and contact the VREO, or designee, of the alternate RO to arrange the completion of the HLR review. As result of this action, any new paper received or created on the SM/V's claim must be maintained in a paper file at the RO of jurisdiction. Please follow scanning procedures provided in the "Transition to eFolder" playbook, found in the Talent Management System via #4488155.

It is important to note that even if the SM/V requests the HLR be completed at an alternate RO, the timeliness requirements to complete the HLR within 90 days from receipt of the request for a HLR remain in place. The requirement to complete the HLR within the required timeframe will transfer to the RO completing the HLR. Therefore, it is imperative that the coordination between the two ROs occur as soon as possible to ensure the alternate RO has appropriate time to complete the HLR.

(d) Higher-Level Review Outcomes

There are three possible outcomes for a HLR:

(1) Uphold the Decision
(Change Date February 19, 2019)

If the reviewer agrees with the original decision, he/she will uphold the decision. When this occurs, the SM/V must be informed of the decision in writing; informed of his/her options to either file a notice of disagreement to start an appeal with BVA or provide new evidence for a SCR; and Caseflow must be updated. The higher-level reviewer may inform the SM/V, or this action may be assigned to the VRC of record.

(2) Overturn the Decision
(Change Date February 19, 2019)

If the reviewer disagrees with the original decision, he/she will overturn the decision and grant the benefit, or take the appropriate action sought. The SM/V must be informed of the decision in writing, and Caseflow must be updated. The higher-level reviewer may inform the SM/V, or this action may be assigned to the VRC of record.

(3) Identify a Duty to Assist Error or Return for Further Development
(Change Date February 19, 2019)

On November 9, 2000, Pub. L. 106-475 enacted the VCAA which states that VA has the "duty to assist" SM/Vs or any individual applying for or submitting a claim for any benefit under the laws administered by the Secretary (see 38 U.S.C. 5103A and 38 CFR 21.32-21.33).

Duty to assist includes the responsibility for taking all the necessary steps in assisting the SM/V in developing the evidence needed to support his/her claim or appeal; including providing prior notice of adverse actions. In these situations, a SM/V is notified in writing that he/she is allowed 30 days to respond and/or submit additional evidence before VA proceeds with the final determination on his/her claim.

If during a HLR, the reviewer identifies a duty to assist error, meaning that the reviewer determined by a review of the case that additional information is available that may likely impact the decision that was not considered in the original decision, he/she

will return the case to the assigned VRC. The VRC must immediately contact the SM/V to initiate the process to obtain the new evidence. The VRC has 30 days from the time the reviewer returns the case to obtain the new information and readjudicate the claim. Also, during the HLR, the reviewer may require further development of the case before a decision can be made. In either of these instances, the reviewer documents his/her findings on VAF 20-0999 and returns to the case to the VRC of record to take the action noted.

It is important to note that the identification of a duty to assist error automatically triggers a SCR. Therefore, as soon as the duty to assist error is identified, Caseflow must be updated.

Please see Appendix DB for detailed procedural guidance on how to complete a higher-level review. Please see 38 CFR 21.416 for regulatory guidance on this issue.

2. Supplemental Claim Review

(a) Supplemental Claim Review Overview (Change Date February 19, 2019)

A SCR is a review of a decision in which the SM/V has new and relevant evidence, defined as evidence that tends to prove or disprove a matter in issue, that was not considered when the original decision was made. A SCR will most likely be completed by the same VRC that provided the original decision.

(b) Supplemental Claim Review Process (Change Date February 19, 2019)

To request a SCR, the SM/V must complete VAF 20-0995 and submit to the RO of jurisdiction. As soon as VAF 20-0995 is received, it must be date stamped and entered into Caseflow. If the issue for which the SM/V has requested a SCR is also under review at another RO or under appeal at BVA, the VR&E staff member must stop all action on the SCR; notify the SM/V that he/she must elect which lane they wish to have the issue addressed; and update Caseflow. All supplemental claim reviews must be completed; a decision rendered; and the SM/V informed of the decision in writing within 125 days from the receipt of VAF 20-0995.

(c) Supplemental Claim Review Outcomes

There are two possible outcomes for a SCR:

(1) Uphold the Decision
(Change Date February 19, 2019)

If the reviewer agrees with the original decision, he/she will uphold the decision. When this occurs, the SM/V must be informed of the decision in writing; informed of his/her options to either file a notice of disagreement to start an appeal with BVA, provide additional new evidence, or request a HLR; and Caseflow must be updated.

(2) Overturn the Decision
(Change Date February 19, 2019)

If the reviewer disagrees with the original decision, he/she will overturn the decision and grant the benefit, or take the appropriate action sought. The SM/V must be informed of the decision in writing, and Caseflow must be updated.

Please see Appendix DC for detailed procedural guidance on how to complete a supplemental claim review. Please see 38 CFR 21.416 for regulatory guidance on this issue.

3. Board of Veterans' Appeal

(a) BVA Overview
(Change Date February 19, 2019)

An appeal is a request for review of a VA determination on a claim for benefits rendered by VA. The BVA, also known as "The Board," is part of VA and located in Washington, D.C. BVA reviews determinations for benefit claims made by local VA offices and makes decisions on appeals on behalf of the Secretary. The Board consists of law judges and attorneys experienced in Veterans law.

A SM/V has one year from the date of the notification of a VA decision to file an appeal. The SM/V must file a written notice of disagreement (NOD) indicating he/she disagrees with the VR&E decision directly to BVA, as well as a VAF 10182. The SM/V must elect which type of review he/she would like BVA to complete. The BVA may provide either a direct review, meaning no new evidence or hearing is

provided; evidence submission, meaning he/she has new evidence, but does not want a hearing; or a hearing, meaning that he/she has new evidence and wants a hearing before a Veterans' Law Judge.

(b) BVA Process
(Change Date February 19, 2019)

As of February 19, 2019, VR&E is no longer involved in the BVA process. As a result, the SM/V files the NOD directly to BVA. See <https://www.bva.va.gov/index.asp> for more information on BVA processes.

(c) BVA Outcomes

There are three possible outcomes on BVA decisions:

(1) Uphold the Decision
(Change Date February 19, 2019)

BVA may agree with the original decision, and uphold the decision. In these instances, the SM/V will be informed of the action in writing by the BVA.

(2) Overturn the Decision
(Change Date February 19, 2019)

BVA may overturn the decision and grant the benefit either in whole or part. In these instances, BVA will inform the SM/V, as well as the VR&E office of jurisdiction so appropriate action can be taken.

(3) Remand the Case to the RO
(Change Date February 19, 2019)

A remand is when BVA finds that additional development, due process, or reconsideration is required and returns the case for appeal to the RO of jurisdiction. The VREO must ensure that there is strict control in the maintenance of the remanded cases. Additionally, the VREO must ensure that the following steps are taken:

- Date-stamp the BVA Remand letter immediately upon receipt.
- Review the case and all pertinent documents immediately.

- Update Caseflow within seven days of receipt in the RO.
- Complete all development actions expeditiously and sequentially as ordered.
- Return the case to BVA with the documentation of completed actions as required and update Caseflow of the resubmission of the appeal to BVA.
- If the BVA decision is to grant the benefit sought, VR&E must take the appropriate actions to grant the benefit; notify the SM/V and designated representative in writing; and update Caseflow.

VA must comply with the decisions made by BVA. ROs do not have the authority to overturn a BVA decision. If the BVA remands the case to the RO for further action, the VREO must address the actions noted in the remand immediately. If the claimant is not satisfied with BVA's decision, he/she can ask BVA to reconsider or vacate (cancel or annul) their decision. BVA rarely grants reconsideration, but if it does, the BVA decision is withdrawn and a new decision is issued. In this instance, the VREO must review and annotate the original decision to reflect how it is impacted by BVA's decision and must include the date of the BVA decision. All BVA decisions are final unless overruled by the Court of Appeals for Veterans Claims (CAVC).

If the BVA decision upholds the decision to deny benefits made previously by the RO and/or denies the claim sought, the effective date of the decision is the date of the vacated or original decision made by the RO. If the decision is based on a difference of opinion between BVA and VR&E, the effective date is the original claim date, as long as the SM/V has pursued the case in a timely manner. If the decision grants benefits based on new or additional records received, the effective date is the same as the original claim date.

Note: If clarification is needed on a BVA remand, the RO must go through the respective Area Director to the Office of Field Operations (OFO) representative who handles such requests through the Appeals Management Office (AMO).

- c. Opt-In Option
(Change Date February 19, 2019)

Cases in which the SM/V filed a NOD to the RO on a decision made prior to the effective date of the Veterans Appeals Improvement and Modernization Act of 2017 on February 19, 2019, but have not yet been certified and/or activated to BVA for an official appeal, must be granted the opportunity to opt-in to the new higher-level or supplement claim review process. Therefore, it will be imperative that each of the claims in which a NOD has been filed be identified and the SM/V notified of his/her options as soon as possible. The SM/V may elect to remain in the old, or legacy, appeals system, meaning that he/she wishes to continue with a request to file a formal appeal to BVA. If so, then VR&E staff will be required to complete a Statement of the Case (SOC) or Supplemental Statement of Case (SSOC), as necessary. It is important to note that these are the only instances in which a SOC or SSOC will be required after February 19, 2019. Please see Appendix DD, Opt-In Process, for detailed procedural guidance on the opt-in process, to include information on how to develop a SOC or SSOC.

- d. Protection of Effective Date
(Change Date February 19, 2019)

A SM/V who chooses one lane for review, but does not receive a favorable result has one year from the date he/she is informed of the outcome of the review to pursue another lane without losing the connection to the filing date of the original claim, as long as the claim is continuously pursued in a timely manner.

3.06 Caseflow

- a. Definition
(Change Date February 19, 2019)

Caseflow is a VA system used for recording, updating and locating cases for a SM/V's appeals. It replaced the Veterans Appeals Control and Locator System (VACOLS) for all decisions made on or after February 19, 2019 for VR&E claims.

- b. Use of Caseflow
(Change Date February 19, 2019)

All data must be entered accurately in each field in Caseflow, as some entries cannot be corrected. The BVA Administrative Manager must be notified if any error occurs. See Appendix DE for instructions on how to use Caseflow.

- c. Caseflow Coordinator
(Change Date February 19, 2019)

Each VREO, or designee, must appoint a VR&E employee(s) to serve as the Caseflow Coordinator. The role of the Caseflow Coordinator is to establish a record or update a record in Caseflow for each stage in the process and to keep a log of all HLR and SCR in progress at the RO level.

- d. Updating Caseflow
(Change Date February 19, 2019)

Caseflow must be updated by VR&E staff when the following instances occur:

- VAF 20-0995 or VAF 20-0996 is received.
- Withdrawal of request for a HLR or SCR.
- HLR or SCR is completed.
- BVA decision is received and required actions are taken.

When updating Caseflow, include the SM/V name; claim number; date of notification of the decision; a brief description of the SM/V's disagreement; and the outcome of the HLR or SCR.

3.07 Processing Appeals to Court of Appeals for Veterans Claims (CAVC)

- a. Definition
(Change Date March 8, 2013)

Effective November 18, 1988, Congress established judicial review of final decisions of VA by creating the United States Court of Veterans Appeals (COVA). However, COVA became known as the CAVC effective March 1, 1999.

- b. The Process
(Change Date March 8, 2013)

If BVA denies a SM/V's appeal, the SM/V may appeal the BVA decision to CAVC within 120 days of the date of the decision.

CAVC can affirm, reverse or remand BVA's final decision. Decisions of a three-member panel of CAVC are binding precedent for VA unless reversed by the U.S. Court of Appeals for the Federal Circuit of the U.S. Supreme Court.

c. Informing the SM/V
(Change Date March 8, 2013)

When BVA denies a claim, the SM/V is informed of the decision and the right of appeal to CAVC. VR&E is not required to notify the SM/V of the BVA decision. The SM/V has 120 days from the date of notification to appeal a BVA decision to CAVC.

d. Remands from CAVC
(Change Date March 8, 2013)

CAVC may return remanded appeals to VR&E for further action. In some cases, CAVC may issue orders that require VR&E to make a decision, complete some other action by a certain date, or provide status reports at certain intervals. The status reports must show that required procedures are being followed without excessive delay.

All ROs must handle all remanded appeals to VA from either BVA or CAVC expeditiously as required by law. See Section 302 of Pub. L. 103-466, the Veterans Benefits Improvement Act of 1994, for additional information on this issue.

3.08 Equitable Relief

a. General Information
(Change Date March 8, 2013)

38 U.S.C. 501(a) and (b) grant the Secretary authority to make rules and regulations needed to administer VA benefits. Occasionally, mistakes are made in applying rules and regulations, which deprive SM/Vs of benefits or cause them to suffer a loss because they relied on an erroneous VA decision. For this reason, Section 503 also provides a means for the Secretary to remedy an injustice to a SM/V, which cannot otherwise be justified within the scope of the law. This remedy is called equitable relief. It is governed by either one of the two provisions described below:

- Section 503(a) gives the Secretary authority to provide whatever relief is determined equitable if the Federal government or any of its employees denies a SM/V VA benefits because of an administrative error.
- Section 503(b) gives the Secretary authority to provide equitable relief if a SM/V suffered loss as a result of relying on an erroneous determination by VA.

b. Requirements for Issuing Equitable Relief
(Change Date March 8, 2013)

The following factors must be examined prior to initiating a request for equitable relief:

- VA made an erroneous decision concerning benefit eligibility and entitlement.
- The Veteran or Servicemember acted to his/her detriment based on that erroneous determination.
- At the time the Veteran or Servicemember acted to his/her detriment, he/she did not know the VA determination is in error.

c. Development for Equitable Relief
(Change Date March 8, 2013)

The requirements for issuing equitable relief must be met prior to assessing the extent of loss if the evidence indicates that a SM/V has suffered loss. The case manager must include a detailed factual determination of loss as follows:

- If financial loss is claimed, the SM/V must furnish a statement listing obligated expenses incurred because the SM/V relied on the erroneous determination.
- If the loss involves injury, damage or some other disadvantages suffered by the SM/V, he/she must furnish documentation showing the extent of loss, which is due to reliance on an erroneous determination of eligibility or determination.

The case manager must assist the SM/V in obtaining receipts to ensure that the incurred expenses are reimbursed.

d. Guidelines for Submission of Request for Equitable Relief
(Change Date March 8, 2013)

Equitable relief requests involving VR&E benefits and services are to be submitted to the Director of VR&E Service for review. The RO Director should sign the request. VR&E Service will only consider the request if the request is made by, on behalf of a SM/V, or if the RO believes the relief should be

granted. The request must be prepared in a standard letter and must conform to the following format:

- Justify the request in clear and concise terms.
- Include a brief history of events.
- Cite the VA error.
- Describe the loss.
- Discuss the recommendation(s) for the relief.

When submitting the request to VR&E Service, the case manager must ensure that the request letter is attached to the SM/V's VR&E record with the full supporting documentation.

e. Final Decision
(Change Date March 8, 2013)

After the Director of VR&E Service reviews and concurs with the granting of the request for equitable relief, the request is forwarded to the Secretary for final decision. If the Secretary concurs with the granting of the request for equitable relief, the VREO must ensure the SM/V receives all benefits he/she is entitled to, up to and including past due benefits. In some instances, this will require a direct reimbursement if the SM/V has already paid for a service that he/she has been granted equitable relief.

3.09 Clear and Unmistakable Error

a. Definition
(Change Date March 8, 2013)

A decision may be revised on the grounds of clear and unmistakable error, if the error is established by evidence after a redetermination (38 CFR 21.414).

b. Determinations
(Change Date March 8, 2013)

The following decisions may be subject to revision on the grounds for clear and unmistakable error:

- A determination for Employment Handicap (EH), Serious Employment Handicap (SEH), or eligibility for a program of employment services prior to the SM/V's induction into a program.
- A redetermination for EH, SEH or eligibility for a program of employment services after the SM/V's induction into a program.
- Determinations affecting eligibility for training and rehabilitation services or payment of subsistence allowance.

c. The Process
(Change Date March 8, 2013)

The case manager responsible for making the original decision or the SM/V may make the request for revision of decision at any time after the decision is made. If the case manager makes the request, the request must be submitted in a memo format with the evidence that establishes the error. If the SM/V makes the request, the case manager must review the request. The case manager makes the recommendations for maintaining or overturning the decision. The request must be submitted to the VREO for review and final decision.

A clear and unmistakable error may be identified through the local quality assurance review; HLR review at the RO or alternate RO, if requested for the HLR to be completed by an alternate RO; or by the Systematic Technical Accuracy Reviews (STAR). In any of these instances, the case manager must make the request for revision of decision and submit the request to the VREO, or designee, for concurrence.

d. Effective Date
(Change Date March 8, 2013)

The effective date of the revision of a decision on grounds of clear and unmistakable error is the same date as the original decision.

e. Action
(Change Date March 8, 2013)

When a clear and unmistakable error is established, the case manager must take the appropriate action to rectify the error. All associated actions must be clearly documented and filed in the SM/V's VR&E record and the Veteran or Servicemember must be notified of the decision in writing.

If the Veteran or Servicemember submits the request and the decision is unfavorable, he/she must be notified of the decision in writing and provided due process via VAF 20-0998.