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Adjudication - War Veterans Allowance Program

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This policy replaces the following VPPM 3 policies: 2.6 Adjudication; 2.6.1 Departmental Decisions; 2.6.2 Client Redress - Level Review Process; 2.6.3 Appeals to VRAB; 2.6.4 Blindness.

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Purpose

This policy explains the adjudication process as it relates to the War Veterans Allowance (WVA) Program.

Policy

Delegated Authority

1. Responsibility for the control and spending of public money is assigned to the Minister and Deputy Heads by Parliament through the *Financial Administration Act* (FAA), and regulations made under the FAA. Because the Minister and the Deputy Heads cannot personally carry out all the responsibilities assigned to them by legislation and regulation, the FAA prescribes that they may delegate authority to positions in the Portfolio, the incumbents of which may exercise financial authority on their behalf.
2. A delegation of authority instrument exists which extends the Minister's powers under the *War Veterans Allowance Act* *for* determining whether an Allowance is payable and, if so, the amount to be paid. Public service positions within Veterans Affairs Canada empowered to render such decisions are identified within the Delegated Authorities Manual.

Initial Decisions

3. The following applies to all decisions taken with respect to the *War Veterans Allowance Act*, other than a decision relating to the remission of an overpayment.

4. The relevant legislative provisions are to be liberally interpreted. Wherever possible the decision-maker shall:
    a. draw every reasonable inference from all the case circumstances and evidence presented in favour of the applicant or recipient;
    b. accept any uncontradicted evidence provided by the applicant or recipient that is considered to be credible;
    c. resolve any reasonable doubt in favour of the applicant or recipient.
5. Departmental adjudicators may encounter cases for which the Veterans Review and Appeal Board (VRAB), or its predecessors, has previously rendered a decision. If so, caution must be exercised because:
    a. If the substantive issue is the same as that ruled on previously by the Board, any departmental decision rendered would be considered "null and void". This is because the Board's ruling is always regarded as final and binding. In all instances, the matter must be referred to the Board for reconsideration and the applicant or recipient so advised.
    b. If the substantive issue is new, departmental adjudicators are empowered to render a new decision;
    c. If there is any doubt whether the Department has jurisdiction to rule on the matter, the case should be forwarded to Head Office, Program Policy Directorate, for advice.
6. The initial decision letter to the applicant or recipient must include:
    a. the decision and rationale involved - including references to the relevant legislative provisions;
    b. information regarding the applicant or recipient's right to request a review within 60 days of receipt of the initial decision; and
    c. advice that the review request is to be forwarded to the attention of the Regional Director General, including the relevant address.

Client Redress - Review

7. As part of the decision-making process, the applicant or recipient is advised of the Minister's decision, including the right to request a review of that decision within 60 days of receipt of the initial decision, if the applicant or recipient is dissatisfied.
8. The 60-day period noted above may be waived, if circumstances beyond the applicant or recipient's control cause a delay in submitting the request.
9. Where, as part of a review request, the applicant or recipient provides additional information that was not available during the initial decision-making process, the Department may regard the request as a re-adjudication. In this case, if there is no change in the original decision, the applicant or recipient still retains the right to a review.
10. The review process begins with receipt of the applicant or recipient's request. All review requests are to be formally recorded and monitored to ensure that cases are processed within the 30-day period specified in the *Veterans Allowance Regulations*. This period commences when the request is received by an officer of the Department, or the letter is date-stamped in the Regional Office. A letter of acknowledgement is required in all cases.
11. If the review cannot be processed within the 30-day period, the applicant or recipient must immediately be informed of the reason for the delay.
12. Reviews are normally processed by a new decision maker (i.e., someone not involved in the initial decision process), plus at least one additional officer (as delegated by the Regional Director General). The review decision letter is normally signed by the Regional Director General, or the Deputy Regional Director General acting on his/her behalf.
13. The review decision must include:
    a. the decision and rationale involved – including references to the relevant legislative provisions;

b. information regarding the applicant or recipient's right to appeal the review decision to the VRAB within 60 days of receipt of the review decision;
c. advice that in pursuing an appeal the client may request free assistance from the Bureau of Pension Advocates, any Veterans' Organizations, or the applicable District Office;
d. addresses of the applicable Bureau of Pension Advocates and District Office; and
e. the mailing address of the VRAB in Charlottetown, PEI.

14. After a review decision is rendered, departmental decision-makers have limited authority to further amend a decision. Situations where this would be possible include:
    a. to consider evidence previously unavailable;
    b. to correct arithmetic errors;
    c. to correct errors in wording;
    d. if directed to do so by the VRAB.

Client Redress - Appeal

15. All review decisions relating to the *War Veterans Allowance Act*, other than a decision which relates to the remission of an overpayment, are subject to appeal to the VRAB.
16. As part of the decision-making process, the applicant or recipient is advised of the Regional director's decision with respect to a departmental review, including the right to appeal that decision within 60 days of receipt of the review decision, if the applicant or recipient is dissatisfied.
17. The VRAB may waive the 60-day requirement noted above, if circumstances beyond the applicant or recipient's control cause a delay in submitting the appeal request.
18. The VRAB, upon considering an appeal request, may choose to refer the matter back to the review level for reconsideration.
19. All decisions of the VRAB are considered final and binding. Where the applicant or recipient remains dissatisfied, subsequent requests are reconsidered by the VRAB.
20. An applicant or recipient may exercise the right of appeal beyond the *Veterans Review and Appeal Board Act*. If the matter involves a question on income or a source of income, the proper avenue is the Tax Court of Canada. In all other instances, the proper avenue is with the Federal Court of Canada (Appeals Division).

Exceptions

21. Decisions made in accordance with subsection 18(2) of the *War Veterans Allowance Act* concerning the remission of Allowance overpayments are explicitly beyond the purview of the VRAB.

References

Financial Administration Act

War Veterans Allowance Act

Civilian War-related Benefits Act

Veterans Review and Appeal Board Act

Veterans Review and Appeal Board Regulations

Veterans Allowance Regulations