Veterans Affairs Canada | Anciens Combattants Canada

Review of Part 1, Part 1.1, Part 2 and Part 3.1 Decisions under the Veterans Well-being Act

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Purpose

The purpose of this policy is to provide guidance on the review of decisions concerning benefits and services provided under Part 1, Part 1.1, Part 2 and Part 3.1 of the *Veterans Well-being Act.*

Part 1 of the *Veterans Well-being Act* provides the authority for the provision of Career Transition Services.

Part 1.1 of the *Veterans Well-being Act* provides the authority for the provision of the Education and Training Benefit.

Part 2 of the *Veterans Well-being Act* provides the authority for the provision of Rehabilitation Services and the Vocational Assistance Program and financial benefits which include the Income Replacement Benefit and the Canadian Forces Income Support Benefit.

Part 3.1 of the *Veterans Well-being Act* provides the authority for the provision of the Caregiver Recognition Benefit.

Policy

Definitions

1. A "**review**" is an examination of evidence or information which pertains to a previous decision.

2. A review "**on application"** means that a Veteran or other Veterans Affairs Canada (VAC) client submits a request in writing to have a decision reviewed by VAC.
3. "**In writing"** means words visually represented or reproduced in any format.
4. A review "**on the Minister's own motion"** means that a review of a decision is initiated internally by Departmental staff.
5. To "**amend**" a decision means to modify or change the previous decision that is now under review.
6. To "**confirm**" a decision means to validate or to concur with the accuracy of the previous decision that is now under review.
7. To "**rescind**" a decision means to void the previous decision that is now under review.
8. An error in the "**interpretation of the law**" means:
    a. an error in the interpretation of legislation (e.g. inappropriately applying or not applying a provision of legislation to a set of circumstances);
    b. a jurisdictional error (e.g. performing an action which is not authorized by statute or a decision is made by a person who does not have the delegated authority to make the decision); and
    c. an error with respect to the requirements of natural justice and procedural fairness (e.g. loss of files or documents leading to delayed decision, or not providing notice of a decision or an opportunity to respond to evidence).
9. An error of a "**finding of fact**" means that the facts do not support a finding made by VAC.
10. "**New evidence**" means evidence that is:
    a. relevant to the applicant's case;
    b. not previously submitted to VAC; and
    c. not merely a restatement of information that was previously submitted to VAC.

General

11. A person who has received a decision made under:
    a. Part 1, Part 1.1 or Part 2 of the *Veterans Well-being Act*; or
    b. Part 3.1 of the *Veterans Well-being Act* (other than a person designated by a Veteran as the Veteran's caregiver for the purpose of section 65.1 of the *Veterans Well-being Act*), has the right to apply for two levels of review as per section 83 of the *Veterans Well-being Act*.
12. VAC may initiate a review of a decision on the Minister's own motion at anytime.
13. A decision that is subject to review may be confirmed, amended, or rescinded.
    1.
        a. A decision has been confirmed when the review decision is the same as the previous decision that is now under review, i.e., where the decision maker, having reviewed the relevant law and facts, concurs with and upholds the previous decision.
        b. A decision has been amended when the review decision is different from the previous decision that is now under review.
            i. Rationale for an amended decision may include new evidence that the previous decision was made on the basis of an error of a finding of fact or the interpretation of the law.
        c. A decision has been rescinded when the review decision voids the previous decision that is now under review. This effectively returns the person to the status he or she held before the previous decision (i.e. the one that is now under review) was made.
            i. Rationale for a rescinded decision may include that the previous decision was not authorized by statute (i.e. there was jurisdictional error).
14. An application for review must be in writing. Additionally, the application must either be signed or submitted via My VAC Account. If it is not, its legitimacy must be verified – i.e. staff must verify that it originated from the person to whom the decision applies (or his or her legal representative).

15. A review must not be conducted by the same official who made or was involved with the decision under review. Each level of review must be conducted by an official who was not involved with the previous decision(s).
16. All decisions must be communicated to the applicant in writing and must state the reason(s) for the decision and provide information regarding rights for review (where applicable), the process for exercising rights for review, and time limits for applying for a review (as described in this policy).
17. In respect of the Caregiver Recognition Benefit, where a first or second level review decision or a Minister's own motion decision results in:
    a. a favourable eligibility decision so that the benefit will begin to be payable to the person designated by a Veteran as the Veteran's informal caregiver under section 65.1 of the *Veterans Well-being Act*, or
    b. results in the Caregiver Recognition Benefit no longer being paid to the Veteran's caregiver,the Veteran is notified in writing of the decision and the Veteran is provided with his or her rights of review. The Veteran's designated informal caregiver will be notified in writing of the decision but does not have rights of review under the legislation.

Treatment of New Evidence

18. A change in VAC's program policy is not considered "new evidence".
19. The timing, circumstances and events addressed in the new evidence are important factors to consider in determining whether a review proceeds or a new original decision is required.
    a. In cases where the new evidence refers to a time-frame after the date of the previous decision, the application for review is to be treated as a new application and is to be forwarded to the delegated decision maker for original decisions.
    b. In cases where the new evidence refers to a time-frame at the time of or prior to the date of the previous decision, the application for review will proceed.
20. The correction of minor typographical errors that do not affect the substance of the decision does not require a formal review process. In these cases the affected person should be provided written notification of the error identified and the correction made.

Reviews on Application — First Level Review Decisions

21. A person who is dissatisfied with an original decision may apply for a first level review of that decision. There is no requirement for the person to present the grounds or reason for the review.
22. A person who is dissatisfied with a decision made on the Minister's own motion may apply for a first level review of that decision. There is no requirement for the person to present the grounds or reason for the review.
23. An application for a first level review must be in writing and be submitted no later than:
    a. 60 days after the day on which the member is released from the Canadian Armed Forces, for a decision referred to in section 75.2 of the *Veterans Well-being Act*; or
    b. 60 days after receiving notice of the decision.
24. Applications submitted after 60 days may be considered if circumstances beyond the control of the applicant necessitate a longer period.
25. The first level review is based only on written submissions.
26. The decision under first level review may be confirmed, amended or rescinded.

Reviews on Application — Second Level Review Decisions

27. A person who is dissatisfied with a first level review decision may apply for a second level review of that decision.
28. An application for a second level review must include the grounds for review.
29. An application for a second level review must be in writing, and must be submitted within 60 days of receiving notice of the first level review decision.
30. Applications submitted after 60 days may be considered if circumstances beyond the control of the applicant necessitate a longer period.
31. The second level review is based only on written submissions.
32. The decision under second level review may be confirmed, amended or rescinded.
33. Second level review is the final level of review that may be made on application.

Reviews on the Minister's Own Motion

34. All decisions made under Part 1, Part 1.1, Part 2 and Part 3.1 of the *Veterans Well-being Act* (including original, first level review and second level review decisions) may be reviewed on the Minister's own motion.
35. A Minister's own motion review may be initiated by Departmental staff on the basis of an apparent error of a finding of fact or in the interpretation of the law. These reviews cannot be initiated on the basis of new evidence.
36. Departmental staff may initiate a Minister's own motion review at any time. There are no time limits for conducting a review on the Minister's own motion.
37. The decision under Minister's own motion review may be confirmed, amended or rescinded.
38. Prior to amending or rescinding a decision, VAC must write to the client and advise of VAC's intention to amend or rescind a decision and provide the client with an opportunity to respond in writing. The applicant must respond within 30 days of receiving notice of the intention to amend or rescind the decision.
39. After considering the response received from the client, or if no response is received within 30 days, the Minister's own motion decision must be communicated in writing to the client. Reasons for the new decision, as well as information regarding rights for review, must be provided.
40. A person who has received a decision made on the Minister's own motion has the right to apply for two levels of review of that decision.

Effective Date of Review Decisions

41. Each program and benefit uses a unique method for determining the effective date. For further guidance on how to determine the effective date, refer to the policy for the respective service or benefit.
42. In circumstances where the decision-maker is satisfied that there was administrative error, oversight or omission by the department that led to an unreasonable delay in the person accessing benefits to which they should have received earlier, the effective date may be an earlier date, having regard to the particular facts and program service standards. Each decision should be reviewed on its own merits with the advice of the departmental policy area as appropriate.

Withdrawal of Reviews

43. A review that has been commenced may be withdrawn at the request of the applicant at any time before a review decision is made. Withdrawal may also occur with the permission of the applicant, when the issue has been successfully resolved. Written notification of the withdrawal will be provided to the applicant by VAC.

44. A review requested while an applicant is alive will not be withdrawn solely due to the subsequent death of the applicant.

References

Veterans Well-being Act, sections 67, 75.2, 76, 77 and 83

Veterans Well-being Regulations, sections 4.2(2), 5.11(2), 14(2), 26(2), 35(2), 46, 46.7(2), 65.6, 68, 69, and 71

Canadian Forces Income Support Benefit - Application and Effective Date

Career Transition Services

Caregiver Recognition Benefit

Diminished Earning Capacity

Education and Training Benefit

Rehabilitation Services and Vocational Assistance – Eligibility and Application Requirements

Supplementary Retirement Benefits - General