

Chapter 7. A Child's Permanent Incapacity for Self-Support

1. General Information on Proof of Permanent Incapacity for Self-Support

Introduction	<p>This topic contains general information on proof of permanent incapacity for self-support. It includes</p> <ul style="list-style-type: none"> • considering claims under 38 CFR 3.315(a) • the information necessary to establish the extent of the disability • reporting facts based on personal observation • when not to refer a claim to the rating activity • handling evidence received more than three months prior to child's 18th birthday, and • determining when a Department of Veterans Affairs (VA) examination is required.
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Change Date	August 13, 2007
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a. Considering Claims Under 38 CFR 3.315 (a)	Consider any communication indicating permanent incapacity for self-support of a child of a veteran as a claim under 38 CFR 3.315(a).
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b. Information Necessary to Establish the Extent of the Disability	<p>The information necessary to establish the extent of the disability includes</p> <ul style="list-style-type: none"> • the extent to which the child is physically or mentally deficient, such as the <ul style="list-style-type: none"> – ability of the child to perform self-care functions, and – ordinary tasks expected of a child of that age • whether or not the child attended school and the maximum grade attended • if any material improvement in the child's condition has occurred • if the child has ever been employed and, if so, the <ul style="list-style-type: none"> – nature and dates of such employment, and – amount of pay received • whether or not the child has ever married, and
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- a description of the child's present condition.

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1. General Information on Proof of Permanent Incapacity for Self-Support, Continued

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- c. Reporting Facts Based on Personal Observation** The persons making statements pertaining to the child's incapacity for self-support should give detailed information of the facts known to them personally in regard to the child's
- mental and physical condition when the child attained the age of 18 years, and
 - present condition.
- Important:** All statements should indicate the basis of the knowledge of the facts reported and include the name and signature of the person making the statement.
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- d. When Not to Refer a Claim to the Rating Activity** Do *not* request evidence or refer the claim to the rating activity more than three months prior to the child's 18th birthday.
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- e. Handling Evidence Received More Than Three Months Prior to Child's 18th Birth** If evidence is received from a claimant more than three months before the child's 18th birthday
- inform the claimant that consideration will be deferred, and
 - use diary code 30 to establish control for referral to the rating activity approximately three months prior to the child's 18th birthday.
- Note:** At the time when the rating activity reviews the case, if the child's disability is considered permanent in nature, the rating activity may order an examination without requiring any other medical evidence.

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**f. Determining
When a
VA
Examina-
tion
Is
Required**

A VA examination is *not* routinely required to determine a child's incapacity for self-support. However, a VA examination may be necessary if the rating activity determines an examination is necessary to resolve

- insufficient evidence of record, or
 - conflicting evidence.
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2. Developing for Permanent Incapacity for Self-Support

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- Introduction** This topic contains information on developing for permanent incapacity for self-support. It includes
- the procedure for developing for permanent incapacity for self-support
 - the considerations of the rating activity in any claim for permanent incapacity for self-support, and
 - rating activity action for a claim for which evidence has not been received.
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- a. Procedure for Developing Incapacity for Self-support** Follow the steps in the table below to develop for evidence of permanent incapacity for self-support of a child.

Status of Claim	Action To Be Taken
Requesting evidence from the claimant	<p>Ask the claimant to submit</p> <ul style="list-style-type: none"> • medical or psychiatric examination reports • vocational or educational assessment reports • a summary of employment history, and • statements from <ul style="list-style-type: none"> – persons having knowledge of facts and who have observed the child’s condition, such as teachers, tutors, or social workers, or – institutions where the child may have been maintained, and <p>Inform the claimant that</p> <ul style="list-style-type: none"> • the requested evidence should be furnished within 30 days from the date of the request • the statements should describe the child’s condition

	<p>as of age 18, in detail, and</p> <ul style="list-style-type: none">• the statement should include<ul style="list-style-type: none">– the extent of the disability, and– whether the facts are based on personal observation.
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2. Developing for Permanent Incapacity for Self-Support, Continued

a. Procedure for Developing Incapacity for Self-support (continued)

Status of Claim	Action To Be Taken
Development letter sent	Set a control date 30 days in the future under EP 020 for compensation or EP 120 for pension
Development complete or 30-day period expired	<p>Refer the case to the rating activity on the earlier of</p> <ul style="list-style-type: none"> • the date requested evidence is received, or • the end of the 30-day period whether or not the evidence has been received. <p><i>Note:</i> Do <i>not</i> undertake further development unless the rating activity makes a request.</p> <p><i>References:</i> For more information on the rating activity</p> <ul style="list-style-type: none"> • considerations in all claims for permanent incapacity for self-support, see M21-1MR, Part III, Subpart iii, 7.2.b, and • action in claims in which the requested evidence has <i>not</i> been received within the 30-day period, see M21-1MR, Part III, Subpart iii, 7.2.c.

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2. Developing for Permanent Incapacity for Self-Support,

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- b. **Considerations of the Rating Activity in Any Claim for Permanent Incapacity for Self-Support**
- The question of permanent incapacity is one of fact. The rating activity makes a determination based on competent evidence of record, which may consist of private physician's statements, examinations or hospital reports.
- In any claim submitted to the rating activity for a determination as to whether or not there is a permanent incapacity for self-support under 38 CFR 3.356, the rating activity considers if the evidence of record
- establishes
 - prima facie entitlement, and/or
 - a reasonable probability of a valid claim that would warrant a request for a VA examination, such as a physical examination, a social and industrial survey, or other development, and/or
 - is sufficient to make a decision either to allow or deny benefits.
- References:** For more information on
- determining when a VA examination is required, see M21-1MR, Part III, Subpart iii, 7.1.f, and
 - consideration of incompetency of helpless children, see M21-1MR, Part III, Subpart iv, 8.A.2.b.

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- c. **Rating Activity Action When Evidence Is Received**
- The rating activity should review the evidence received and make a decision to
- grant entitlement to dependency based on incapacity for self-support if evidence is sufficient
 - deny incapacity for self-support if the evidence does not establish such incapacity, or
 - defer a decision if evidence is insufficient and further development is necessary before a decision can be made.

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2. Developing for Permanent Incapacity for Self-Support,

Continued

d. Rating

**Activity
Action for
a Claim
for
Which
Evidence
Has
Not
Been
Received**

Once the rating activity receives a claim for permanent incapacity of self-support, and the requested evidence has not been received, the rating activity

- prepares a rating establishing entitlement as incapable of self-support if there is sufficient medical or lay evidence in the file, or
- denies the claim in a rating decision, indicating that the claimant failed to prosecute the claim, if there is *no* medical or lay evidence of record on which to base the rating.

3. Awarding and Denying Benefits Based on Dependency

Introduction This topic contains information on awarding and denying benefits. It includes information on

- specific types of benefits, such as
 - disability compensation
 - disability pension
 - death compensation or pension, and
 - Dependency and Indemnity Compensation (DIC)
 - preparing an award, and
 - handling the denial of benefits.
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a. Disability Compensation If the veteran qualifies for additional compensation on behalf of dependents, add additional allowance for a child determined to be permanently incapable of self-support.

Note: Handle an apportionment for a helpless child in the same manner as for a minor child, but do *not* use a future termination date.

References: For information on

- adjustments due to addition of a dependent, see M21-1MR, Part III, Subpart iii, 5.F.35, and
 - adjusting apportionment awards, see M21-1MR, Part III, Subpart v, 3.B.5.
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b. Disability Pension A child permanently incapable of self-support is a dependent in protected pension cases when determining a veteran's statutory income limitation. In current law cases, such a child is a dependent for the purpose of determining monthly payments.

Reference: For information on establishment of a child in Improved Pension cases, see M21-1MR, Part V, Subpart iii, 1.F.37.d.

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3. Awarding and Denying Benefits Based on Dependency, Continued

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- c. Death Pension** Add the additional amount to the surviving spouse's award, if
- the surviving spouse is receiving death pension, and
 - an additional allowance is found to be payable for a child permanently incapable of self-support.
- Reference:* For information on establishment of a child in Improved Pension cases, see M21-1MR, Part V, Subpart iii, 1.F.37.d.
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- d. DIC** Make Dependency and Indemnity Compensation (DIC) payments to children over age 18 by reason of permanent incapacity for self-support by a separate award to or for the child in his/her own right, even though the surviving spouse may
- be receiving DIC benefits in his/her own right, and
 - have custody of the child.
- Reference:* For information on general authorization and notification issues of DIC, see M21-1MR, Part IV, Subpart iii, 3.A.
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- e. Preparing an Award** For information on the how to prepare an award
- to, or for, a minor or incompetent helpless child, see M21-1MR, Part III, Subpart v, 9.C.10, and
 - for child data entries, see M21-1, Part V, 6.12.
- References:* For information on
- processing awards, see M21-1MR, Part III, Subpart v, 2.A.2.a.
 - award notification, see M21-1MR, Part III, Subpart v, 2.B.9.b.

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3. Awarding and Denying Benefits Based on Dependency,

Continued

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- f. Handling the Denial of Benefits** If benefits are denied, notify the claimant of the
- denial
 - evidence considered
 - reason for the determination, and
 - right to appeal.

References: For more information on

- the denial of benefits, see
 - M21-1MR, Part III, Subpart v, 2.A.2.b, and
 - M21-1, Part V, 10.03, and
 - notification of denials, see M21-1MR, Part III, Subpart v, 2.B.9.b.
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4. Reexamination Requests

Introduction This topic contains information on reexaminations, including

- when to request a reexamination, and
 - how to handle a reexamination request.
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Change Date September 25, 2008

a. When to Request a Reexamination Request a reexamination following a determination of permanent incapacity for self-support, *only* in the most unusual circumstances. Reexamination requests must be fully justified in the rating decision.

Reference: For more information on review examinations, see M21-1MR, Part III, Subpart iv, 3.B.16.

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4. Reexamination Requests, Continued

- b. Handling a Reexamination Request**
- The rating activity may request a reexamination, social survey, or other development not less than two years or more than 5 years following a finding of incapacity of self-support if a determination is made finding
- a child to be helpless, and
 - there is a reasonable possibility that the child may become capable of self-support in the future, for example, upon completion of a course of instruction.

In such a case

- establish a master record future data control by an award entry using diary code 03 (Helpless Child Review), and
- upon expiration of the control, refer the case to the rating activity for a decision as to whether or not to
 - schedule an examination, or
 - refer the case to authorization for further development of the child's current status.

References: For more information on

- establishing a diary, see the Share User's Guide.
 - review examinations, see M21-1MR, Part III. Subpart iv, 3.B.16.b and 38 CFR 3.327(b)(1), and
 - completion of a course of instruction, see M21-1MR, Part III, Subpart iii, 6.C.15.c.
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5. Reconsideration of the Status Due to Marriage of a Child Permanently Incapable of Self-Support

Introduction	<p>This topic contains information on how the marriage of a child permanently incapable of self-support affects entitlement to benefits. It includes information on</p> <ul style="list-style-type: none"> • the consequences of the marriage of a child permanently incapable of self-support, and • when and when not to terminate an award.
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<p>a.</p> <p>Consequences of the Marriage of a Child Permanently Incapable of Self-Support</p>	<p>Marriage of a child permanently incapable of self-support discontinues entitlement to benefits, <i>except</i> in the case of a child of a Spanish-American or Indian War veteran.</p> <p>Under the laws in effect prior to April 1, 1944, the marriage of children of Spanish-American or Indian War veterans</p> <ul style="list-style-type: none"> • merely creates a presumption that the child is no longer permanently incapacitated, and • under 38 CFR 3.950, positive proof of continuing incapacity can overcome the presumption. <p>Reference: For more information on developing for permanent incapacity for self-support, see M21-1MR, Part III, Subpart iii, 7.2.</p>

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5. Reconsideration of the Status Due to Marriage of a Child Permanently Incapable of Self-Support, Continued

- b. When to Terminate an Award Due to Marriage**
- Upon receipt of a notice of a helpless child's marriage, use reason code 54 (Child No Longer Helpless) to discontinue the award to, or for, the child as of the first day of the month in which the marriage occurred. It is not necessary to refer the claim to the rating activity.
- References:** For information on
- when to restore an award if a marriage is dissolved, see M21-1MR, Part III, Subpart iii, 7.5.c
 - when to apply due process, see M21-1MR, Part I, 2.A.2.a
 - reducing or discontinuing benefits for the child upon marriage of a child, see M21-1MR, Part III, Subpart iii, 5.H.43.g, and
 - an adjustment under 38 CFR 3.500(n)(2) of a surviving spouse's or consolidated award in cases of marriage of a child, see M21-1MR, Part III, Subpart iii, 5.H.43.f.
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5. Reconsideration of the Status Due to Marriage of a Child Permanently Incapable of Self-Support, Continued

- c. **When to Restore the Award If the Marriage Is Dissolved** Use the table below to determine when to restore an award if the child's marriage is dissolved.

If the marriage of a helpless child was terminated by death or divorce ...	Then the benefits of the child ...
prior to November 1, 1990	<p>can be restored.</p> <p><i>Note:</i> The criteria of 38 CFR 3.356 must be</p> <ul style="list-style-type: none"> • determined to have been continued through the duration of the marriage, and • expected to continue in the future. <p><i>Reference:</i> For more information on a marriage of a helpless child terminated by death or divorce prior to November 1, 1990, see M21-1MR, Part III, Subpart iii, 5.H.44.a and 38 CFR 3.55(b)(2).</p>
on or after November 1, 1990	<p>cannot be restored after marriage unless the marriage is</p> <ul style="list-style-type: none"> • annulled, or • determined to be void. <p><i>Reference:</i> For more information about criteria necessary to restore benefits, see 38 CFR 3.55(b)(1).</p>

6. Other Reasons to Reconsider Status of a Child Permanently Incapable of Self-Support

Introduction This topic contains information on other reasons to reconsider the status of a child incapable of self-support. It includes when a

- helpless child is deemed competent
- surviving spouse's entitlement is terminated, and
- child completes restorative training.

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a. When a Helpless Child Is Deemed Competent If certification by the Veterans Service Center Manager (VSCM), or other evidence, is received showing that a helpless child formerly adjudged incompetent has been held by a court of jurisdiction to be competent, refer the case to the rating activity for consideration of the issue of continued incapacity for self-support.

References: For more information on

- considering the competence of a helpless child, see M21-1MR, Part III, Subpart iv, 8.A.2.b, and
- supervised direct payment, see M21-1MR, Part III, Subpart v, 9.B.7.

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6. Other Reasons to Reconsider Status of a Child Permanently Incapable of Self-Support, Continued

b. When a Surviving Spouse's Entitlement Is Terminated

The table below shows the action to take if an award of death compensation or pension to a surviving spouse, which includes benefits for a helpless child, is discontinued because of termination of the surviving spouse's entitlement.

If the helpless child's eligibility is based on ...	Then ...
a determination of mental impairment	<p>refer the claim to the rating activity to determine whether</p> <ul style="list-style-type: none"> • the incapacity was based on mental impairment • there is some other indication of incompetence, and • the child is still incapable of self-support. <p><i>Note:</i> If the rating activity determines the child to be competent to handle his/her own funds, benefits may be paid directly to the child.</p> <p><i>References:</i> For information on the action taken concerning the surviving spouse's award</p> <ul style="list-style-type: none"> • in death pension cases when the surviving spouse's award is terminated for excessive income, see M21-1MR, Part V, Subpart iii.1.E.31 • in death cases when the spouse's entitlement has not be resolved, see M21-1MR, Part IV, Subpart iii, 3.E, and

	<ul style="list-style-type: none">• upon the remarriage of the spouse, see M21-1MR, Part IV, Subpart iii, 3.F.
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6. Other Reasons to Reconsider Status of a Child Permanently Incapable of Self-Support, Continued

b. When a Surviving Spouse's Entitlement Is Terminated (continued)

If the helpless child's eligibility is based on ...	Then ...
a determination of physical impairment	authorize payment to or on behalf of the child, without referral to the rating activity, as described in <ul style="list-style-type: none"> • M21-1MR, Part III, Subpart iii, 7.3 (Awarding and Denying benefits Based on Dependency) • M21-1MR, Part IV, Subpart iii, 3.F (Remarriage of a Surviving Spouse, and • M21-1MR, Part III, Subpart v, 9.C.13 (Authorizing Awards Involving a Custodian Under 38 CFR 3.850(c)).

c. When a Child Completes Restorative Training

If a child receiving benefits on the basis of permanent incapacity for self-support completes special restorative training under 38 U.S.C. 3541, follow the procedure outlined in M21-1MR, Part III, Subpart iii, 6.C.15.c.

Reference: For information on requesting a review examination for a child after he or she completes a course of instruction, see M21-1MR, Part III, Subpart iii, 7.4.b.

7. Termination of Benefits When Child Is No Longer Helpless

Introduction This topic contains information on termination of benefits because a child is no longer helpless. It includes information on

- Protection of disability ratings under 38 U.S.C. 110
- considering qualification under school attendance provisions, and
- the procedure for reducing or terminating benefits.

Change Date September 25, 2008

a. Protection of Disability Ratings Under 38 U.S.C. 110 Disability ratings are provided some protection from reduction under 38 U.S.C. 110. This protection does not apply to a rating of permanent incapacity for self-support.

b. Considering Qualification Under School Attendance Provisions Take care to determine whether the child may be enrolled in school and so qualify for benefits as a schoolchild before terminating payments, based on helpless child status.

Reference: For more information on

- helpless children receiving training under Dependents' Educational Assistance (DEA), see M21-1MR, Part III, Subpart iii, 6.C.15, and
- adjusting children's awards for receipt of DEA, see M21-1MR, Part III, Subpart iii, 6.C.16.

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7. Termination of Benefits When Child Is No Longer Helpless, Continued

- c. **Reducing or Terminating Benefits** Follow the steps in the table below if information is received that the child has obtained employment or otherwise regained capacity for self-support.

Step	Action
1	Develop to determine the facts by contacting the beneficiary to determine information such as <ul style="list-style-type: none"> • the nature of employment and income, and • whether or not the employment is <ul style="list-style-type: none"> – full time – permanent – temporary, or – therapeutic, and • establish a 60 day control under EP 020 for compensation or EP 120 for pension.
2	Has the requested evidence been received within the control period? <ul style="list-style-type: none"> • If <i>yes</i> <ul style="list-style-type: none"> – refer the claim to the rating activity for consideration of continued helpless child entitlement based on the evidence of record, and – go to Step 4. • If <i>no</i>, go to Step 3.
3	Has the control period matured and the requested evidence <i>not</i> been received? <ul style="list-style-type: none"> • If <i>yes</i> <ul style="list-style-type: none"> – refer the claim to the rating activity for consideration of continued helpless child entitlement, and – go to Step 4. • If <i>no</i>, go to Step 5.

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7. Termination of Benefits When Child Is No Longer Helpless, Continued

c. Reducing or Terminating Benefits (continued)

Step	Action
4	<p>Has the rating activity made a decision to</p> <ul style="list-style-type: none"> • confirm the incapacity for self-support, or • propose to discontinue benefits due to permanent incapacity for self-support? <ul style="list-style-type: none"> • If there is a proposal to discontinue, send the beneficiary notice of the proposed adverse action stating <ul style="list-style-type: none"> – the evidence considered – the reason for the determination – procedural rights, and – that the beneficiary must reply within 60 days. • If there is a confirmation of incapacity for self-support, send a letter advising of the rating decision to continue the helpless rating.
5	<p>Refer the case to the rating activity for reconsideration after the 60-day notice of the proposed adverse action period expires, or all development associated with a personal hearing requested within 30 days of the notice of proposed adverse action has been completed, whichever is later.</p>
6	<p>Does the formal rating decision affirm the proposal to discontinue helpless child benefits?</p> <ul style="list-style-type: none"> • If <i>yes</i>, go to Step 7. • If <i>no</i>, the child's benefits continue.
7	<p>Does the claim relate to pension?</p> <ul style="list-style-type: none"> • If <i>yes</i>, go to Step 8. • If <i>no</i>, <ul style="list-style-type: none"> – the claim relates to compensation or DIC, and – go to Step 9.

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7. Termination of Benefits When Child Is No Longer Helpless, Continued

c. Reducing or Terminating Benefits (continued)

Step	Action
8	<ul style="list-style-type: none"> • Take action to reduce or discontinue the benefits effective the date of the last payment, and • provide the claimant with notification as to the action taken.
9	<ul style="list-style-type: none"> • Send a locally-generated letter to inform the payee of the final rating action stating that benefits will be reduced or discontinued effective the last day of the month in which a 60-day period from the date of the letter expires, and • when the letter is released, take award action to process the termination or reduction effective the date specified in the letter.

References: For more information on

- the date of discontinuance of an award to a child no longer helpless, see 38 CFR 3.503(a)(3), and
 - due process notification requirements, see M21-1MR, Part I, 2.B.5.
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