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Chapter 2. Original Disability Pension Claims

1. General Information on Original Disability Pension Claims

Introduction	<p>This topic contains general information on eligibility and development for original disability pension claims, including</p> <ul style="list-style-type: none"> • a definition of the term <i>disability pension</i>, and • information on <ul style="list-style-type: none"> – the regulatory authority for disability pension – elements of eligibility – the requirements for the presumption of permanent and total disability – Social Security disability evidence and Share verification – determining disability effective date based on Social Security information, and – Veterans Service Representative (VSR) development guidelines.
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Change Date	March 5, 2009
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a. Definition: Disability Pension	<i>Disability pension</i> is a benefit based on need stemming from the inability to earn a livelihood because of permanent and total disability. It is restricted to veterans with wartime service.
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b. Regulatory Authority	Authority for disability pension is found in 38 U.S.C. 1521 .
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c. Elements of Eligibility	<p>Certain elements of eligibility must be established when an original disability pension claim is initially developed. Such elements of eligibility are</p> <ul style="list-style-type: none"> • service • disability • age • unemployability, and • income and net worth.

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1. General Information on Original Disability Pension Claims, Continued

d. Requirements for Presumption of Total and Permanent Disability

A veteran is presumed to be permanently and totally disabled for pension purposes and therefore meets the disability eligibility requirement if he/she is

- a patient in a nursing home for long-term care because of disability, or
- disabled, as determined by the Commissioner of Social Security (Social Security disability insurance or Supplemental Security Income).

Note: Veterans who have reached the age of 65 are eligible for nonservice-connected disability pension without regard to their level of disability. For more information about the presumption of permanent and total disability, see [M21-1MR, Part V, Subpart II, 1.A.1.a.](#)

e. Social Security Disability Evidence and Share Verification

If a veteran is age 65 or older, he or she meets the basic eligibility requirement for nonservice-connected pension without the need for a rating determination of disability.

If a veteran is younger than age 65, but the Social Security Administration (SSA) has determined he or she is disabled, the veteran may be presumed permanently and totally disabled for pension purposes from the date of disability onset.

The information provided in the Share SSA Data screen may be used to determine eligibility for VA pension. The following table provides information on handling SSA information obtained from Share.

Reference: For more information on using Share, see the [Share User Guide](#).

SS Title Status	Nature of SS Benefit
Title XVI Status has a “Y” indicator	Supplemental Security Income (SSI) is payable. SSI eligibility is based on <ul style="list-style-type: none"> • age 65 • blindness, or • total disability. <p><i>Note:</i> If a veteran is found entitled to SSI, he or she meets the basic eligibility requirement for VA pension.</p>

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1. General Information on Original Disability Pension Claims, Continued

e. Social Security Disability Evidence and Share Verification (continued)

SS Title Status	Nature of SS Benefit
Title II Status has a “Y” indicator	<p data-bbox="716 457 1373 527">Either Social Security retirement or Social Security disability is payable.</p> <ul style="list-style-type: none"> <li data-bbox="716 569 1398 638">• If the age is under 62, Social Security is based on a disability. <ul style="list-style-type: none"> <li data-bbox="737 646 1265 716">– Presume that the VA pension disability requirement is met. <li data-bbox="716 724 1406 793">• If the age is 62, 63 or 64, Social Security may be based on retirement or on disability. <ul style="list-style-type: none"> <li data-bbox="737 802 1406 871">– Accept a date in the Disability Onset Date field in Share as confirmation of disability. <li data-bbox="737 879 1398 1052">– If the Disability Onset Date is not shown or it is later than the date of claim, develop to the claimant and the Social Security Administration for a disability award letter and medical evidence of disability. <p data-bbox="716 1094 1325 1163">Note: See the following block to determine the effective date of disability.</p>

Important: Be sure the Social Security payment is not a surviving spouse benefit, which is not based upon disability, regardless of the claimant’s age.

f. Determining Disability Effective Date Based on Social Security Information

Unless VA pension eligibility is based on age, a veteran must be disabled to be eligible for VA pension. VA pension eligibility based on a SSA finding of disability should be effective from the later of the date of the VA pension application or the date of disability.

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1. General Information on Original Disability Pension Claims, Continued

f. Determining Disability Effective Date Based on Social Security Information (continued)

The Social Security information available through Share may be used to determine eligibility for VA pension.

Social Security Benefit	Effective Date of Disability for Pension Purposes
<p>Supplemental Security Income (SSI) under Title XVI</p>	<ul style="list-style-type: none"> • If Share confirms payment of SSI, presume the veteran was disabled from the date of receipt of the application for VA pension unless the Disability Onset Date that is more than one year from the date of receipt the VA pension application. • If Share confirms payment of SSI, but shows a Disability Onset Date more than one year after the date of receipt of the VA pension application, initially establish entitlement from the onset date and develop for an earlier effective date. <p><i>Note:</i> SSA pays SSI from a date no earlier than the first month eligibility is established following receipt of the application. Disability may exist for several months prior to the date SSI is paid.</p>

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1. General Information on Original Disability Pension Claims, Continued

f. Determining Disability Effective Date Based on Social Security Information (continued)

Social Security Benefit	Effective Date of Disability for Pension Purposes
Disability Insurance Benefits (DIB) under Title II	<ul style="list-style-type: none"> • If the Disability Onset Date field in Share contains a date, use that date as the effective date of disability. <ul style="list-style-type: none"> – If the Disability Onset Date is on or before the first day of the month following the date of receipt of the VA pension application, establish eligibility from the date of claim. – If the Disability Onset Date is later than the first day of the month following the date of receipt of the VA pension application, initially establish eligibility from the onset date and develop for an earlier effective date. • If the Disability Onset Date field does not contain a date, develop to the veteran and SSA for evidence of a disability and the effective date of disability. <p><i>Note:</i> If evidence indicates payment of SSI, see the procedures in the previous block in this table.</p>

g. VSR Development Guidelines

It is the responsibility of the Veterans Service Representative (VSR) to develop the evidence needed to establish entitlement to disability pension benefits. If a claim does not meet one or more of the eligibility requirements, deny the claim.

Use the table below to find information on developing for each eligibility element listed in [M21-1MR, Part V, Subpart i, 2.1.c](#).

For procedures for developing for ...	See M21-1MR...
service	Part III, Subpart ii, 6.
medical evidence of probable disability	Part V, Subpart i, 2.2.
unemployability	Part V, Subpart i, 2.3.
income and net worth	Part V, Subpart i, 2.4.
a veteran's age	Part V, Subpart i, 2.5.
the willful misconduct aspect of an injury	Part V, Subpart i, 2.6.
Social Security disability	Part III, Subpart iii, 3.A.2

2. Developing for Medical Evidence of Probable Disability

Introduction This topic contains information on developing for medical evidence of probable disability for pension purposes, including

- acceptable medical evidence
 - obtaining evidence before referring a claim to the rating activity, and
 - action to take when necessary evidence is not received.
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Change Date March 5, 2009

a. Acceptable Medical Evidence The following types of medical evidence may be accepted for rating purposes if they are adequate:

- a private physician's statement, or
- a hospital or examination report from any government or private institution.

Per [38 CFR 3.326\(a\)](#), if the submitted medical evidence is not adequate for rating purposes, a VA examination will be authorized.

b. Obtaining Evidence Before Referring a Claim to the Rating Activity If medical evidence of current disability is not already of record, it must be obtained before

- the claim is referred to the rating activity, or
- a VA physical examination is ordered.

Follow the procedures in [M21-1MR, Part I, 1.B](#), to fulfill VA's duty to assist the claimant.

c. Action to Take When Necessary Evidence Is Not Received If private medical evidence necessary to decide the claim has not been received

- deny the claim, and
- notify the veteran that the evidence must be provided in order to reopen the claim.

Note: Do not deny the claim if medical evidence necessary to decide the claim is located at a Federal facility.

3. Developing for Unemployability

Introduction This topic contains information on developing for unemployability, including

- action to take when evidence of current disability is of record, and
- forms used to obtain additional work history and income information.

Change Date March 5, 2009

a. Action to Take When Evidence of Current Disability Is of Record Evidence of current disability may be contained in reports from a VA or a non-VA medical facility, or in evidence already of record showing the existence of a chronic condition likely to interfere with employability.

If such evidence is obtained, or is already of record, submit the claim to the rating activity.

b. Forms Used to Obtain Additional Work History and Income Information If properly completed, the employment section of *VA Form 21-526, Veteran's Application for Compensation and/or Pension* provides a sufficient work history to support a claim for total disability.

Use the table below to determine which form to send the claimant when additional information is needed or *VA Form 21-526* is incomplete.

If ...	Then send ...
the employment information provided by a veteran on an original claim, <i>VA Form 21-526</i> is incomplete	<i>VA Form 21-527, Income-Net Worth and Employment Statement.</i>
<ul style="list-style-type: none"> • the veteran is self-employed as a farmer, and • a recent and adequate <i>VA Form 21-527</i> is <i>not</i> of record 	<p><i>VA Form 21-4165, Pension Claim Questionnaire for Farm Income.</i></p> <p>Note: Farm income information provided on <i>VA Form 21-526</i> is typically insufficient. In most cases, <i>VA Form 21-4165</i> will need to be sent.</p>
the veteran is self-employed	<i>VA Form 21-4185, Report of Income from Property or Business.</i>

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3. Developing for Unemployability, Continued

b. Forms Used to Obtain Additional Work History and Income Information (continued)

If ...	Then send ...
<ul style="list-style-type: none"> • the veteran is not self-employed, and • additional evidence is required to determine the issue of unemployability or income <p><i>Note:</i> Only develop for additional evidence when the veteran's employment status is unclear.</p>	<p><i>VA Form 21-4192, Request for Employment Information in Connection With Claim for Disability Benefits</i>, to employers</p> <ul style="list-style-type: none"> • for whom the veteran has worked in the past 12 months, or • from whom he/she is receiving unemployment or retirement payments. <p>If the completed form is not received from the employer within 30 days, and the evidence is still material to the claim, inform the veteran and ask him/her to obtain the completed form.</p>

Note: Use Modern Awards Processing-Development (MAP-D) for development whenever possible.

Reference: For more information on development with MAP-D, see the [MAP-D User's Guide](#).

4. Developing for Income and Net Worth

Change Date December 13, 2005

a. Requesting Necessary Evidence Do not develop in a piecemeal manner. Develop for income information at the same time as for other evidence needed to determine eligibility.

Use the table below to find information on developing for various kinds of evidence.

For information on ...	See ...
developing for evidence of income and net worth	M21-1MR, Part V, Subpart i, 3.A.
requesting information from sources such as the <ul style="list-style-type: none"> • Railroad Retirement Board (RRB) • SSA, and • Office of Personnel Management (OPM) 	M21-1MR, Part III, Subpart iii, 4.

5. Developing for the Veteran's Age

Change Date December 13, 2005

**a. Acceptable
Evidence of
Age**

Age is a factor in disability pension claims. If the date of birth as given by the veteran agrees with other dates of birth shown in the records, no further development is necessary. Otherwise, per [38 CFR 3.208](#), accept the youngest age shown in the records, pending receipt of acceptable evidence of birth as listed in [38 CFR 3.209](#).

Per [38 CFR 3.208](#), accept statements of age if they agree with those shown at enlistment by official records. In addition, comparison may be made with statements made at other times for other purposes.

Reference: For information on how to obtain acceptable evidence as listed in [38 CFR 3.209](#), see [M21-1MR, Part III, Subpart iii, 1.A.](#)

6. Developing for the Willful Misconduct Aspect of an Injury

Introduction This topic contains information on developing for the willful misconduct aspect of an injury, including

- when to develop for willful misconduct, and
 - where to find information on administrative determinations of insanity.
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Change Date March 5, 2009

a. When to Develop for Willful Misconduct Develop the willful misconduct aspect of an injury in a pension case only when the residual disability from that injury would be a material factor in the grant or denial of a claim. If there is doubt on this point, obtain advice from the rating activity.

Generally, if the facts of record are relatively clear as to the innocent incurrence of an injury, suggesting no element of willful misconduct, do not develop for this aspect of the claim.

Example: Unless there is a reasonable probability of willful misconduct, the mere fact that the injury was incurred in an automobile accident is not sufficient reason to initiate development.

b. Where to Find Information On Administrative Determinations of Insanity If there is a question as to whether the claimant was insane at the time he/she committed an act that would otherwise be considered misconduct, see [M21-1MR, Part III, Subpart v, 1.E.20.a.](#)

7. Referring Disability Pension Claims to the Rating Activity

Introduction This topic contains information on referring disability pension claims to the rating activity, including

- general information on referring claims to the rating activity, and
 - action to take in cases in which the veteran does not meet the minimum service requirement.
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Change Date December 13, 2005

a. General Information on Referring Claims to the Rating Activity Refer a claims folder to the rating activity, provided that verification of the veteran service is of record, if

- medical evidence adequate for rating has been received, or
- evidence or allegations of record are sufficient to create a rating issue.

Defer submission to the rating activity until development is completed *only* if there is an apparent bar to entitlement.

b. Action to Take in Cases in Which the Veteran Does Not Meet the Minimum Service Requirement If the veteran does not meet the minimum service requirement, refer the claims folder to the rating activity for a determination of basic eligibility only if service department records indicate that the veteran was discharged because of disability.

References: For information on,

- the minimum service requirements for pension, see [M21-1MR, Part V, i.1.2](#)
 - exceptions to the minimum service requirements, see [M21-1MR, Part III, ii.6.4.c](#)
 - calculating travel time, see [M21-1MR, Part III, ii.6.5.d](#)
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