

Wisconsin Department of Veterans Affairs

Policy Bulletin: Veterans Property Tax Credit Recertification

Date of Origin: February 10, 2023	Policy Bulletin No.: 23-101
Last Revision: May 15, 2023	Page: 1 of 5
Last Review: May 15, 2023	Maintained By: Office of Legal Counsel
Effective Date: May 15, 2023	Issued By: Office of the Secretary

I. Policy Statement:

Wisconsin Stat. §71.07(6e) authorizes the Veterans and Surviving Spouses Property Tax Credit, which provides a credit of 100 percent of the real and personal property taxes paid on a principal residence. The residence must be in Wisconsin, and the application filed by an eligible veteran or their spouse, or the unremarried surviving spouse of an eligible veteran.

If a veteran satisfies the requirements of Wis. Stat. §71.07(6e)(a)3., the veteran may claim the credit on subsequent Wisconsin income tax returns.

To qualify the veteran must satisfy multiple requirements. One, is the veteran, “[h]as either a service-connected disability rating of 100 percent under 38 USC 1114 or 1134 or a 100 percent disability rating based on individual unemployability.”ⁱ If the veteran’s health improves the veteran may no longer satisfy the 100 percent disability rating requirement. If this occurs, the responsibility falls on the veteran to update the Wisconsin Department of Veterans Affairs (WDVA) and not claim the veteran property tax credit in subsequent years.

II. Purpose:

The purpose of this Policy Bulletin is to provide procedures for verifying eligibility when a veteran’s 100 percent disability rating is not permanent and the veteran applies for a veteran property tax credit pursuant to Wis. Stat. §71.07(6e). This policy shall only impact applications for benefits from the effective date of this Policy Bulletin forward.

III. Related Bulletins:

This bulletin supercedes any previous WDVA legal opinions or internal procedures relating to how WDVA shall verify eligibility when a veteran applies for a veteran’s property tax credit and the 100 percent disability rating of the veteran provided by the United States Department of Veterans Affairs (USDVA) is not permanent.

IV. Issue:

The veterans property tax credit requires a 100 percent USDVA disability rating. In some cases, the rating from the USDVA is not permanent. Consequently, a veteran may qualify in a certain year but not in a subsequent year.

Should this occur, it is necessary for WDVA to determine who is responsible for ensuring the veteran does not improperly claim the credit in subsequent years.

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V. Background and Legal Rationale:

Wisconsin provides a property tax credit to eligible veterans.ⁱⁱ The Wisconsin Department of Revenue administers the property tax credit program, but the applicable statute grants WDVA the authority to certify the veteran's eligibility for the credit.ⁱⁱⁱ

With respect to eligibility, Wis. Stat. §71.07(6e)(a)3. provides:

3. "Eligible veteran" means an individual who is verified by the department of veterans affairs as meeting all of the following conditions:

a. Served on active duty under honorable conditions in the U.S. armed forces or in forces incorporated in the U.S. armed forces.

b. Was a resident of this state at the time of entry into that active service or had been a resident of this state for any consecutive 5-year period after entry into that service.

c. Is currently a resident of this state for purposes of receiving veterans benefits under ch. [45](#).

d. Has either a service-connected disability rating of 100 percent under [38 USC 1114](#) or [1134](#) or a 100 percent disability rating based on individual unemployability.^{iv}

The USDVA and applicable federal laws and regulations determine whether a veteran's disability satisfy either criteria under subdivision paragraph d.

With respect to subdivision paragraph d., WDVA requires the veteran to supply one of two documents to determine eligibility:

- WDVA 2096 titled "Service-Connected Disability Verification Form".
- USDVA paperwork verifying the USDVA has determined the veteran possesses either a service-connected disability rating of 100 percent or a 100 percent disability rating based on individual unemployability. The USDVA paperwork must be dated within the last 12 months.^v

Once WDVA certifies the veteran as eligible for the credit, the eligible veteran need not re-apply for certification in subsequent years.^{vi}

The issue is that sometimes the rating is not static and the veteran's health may improve such that the veteran no longer possesses a 100 percent disability rating.^{vii} In fact,

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federal regulations authorize the USDVA to reexamine a veteran's disability rating whenever the USDVA determines there is a need to verify either the continued existence or the current severity of a veteran's disability.^{viii}

Consequently, a veteran's rating may qualify the veteran in one year, but if the veteran's health improves per Wis. Stat. §71.07(6e)(a)3.d., the veteran no longer qualifies for the veterans property tax credit.^{ix}

Although Wis. Stat. §71.07(6e)(a)3. defines an eligible veteran as one "who is verified by the department of veterans affairs", this language fails to create an ongoing duty for WDVA to verify the veterans continued qualification for the property tax credit.

Rather, the language of the statute permits a reading that:

- If a veteran holds a 100 percent disability rating for any day within a calendar year, WDVA can certify the veteran for the property tax credit for that year.
- WDVA can certify continued eligibility for the credit, unless the USDVA has declared an official date of reduction of the veteran's disability rating.
- WDVA can require veterans to update WDVA whenever the USDVA determines the veteran's disability rating has improved such that the veteran no longer satisfies the requirements of subdivision paragraph d. to qualify for the property tax credit.

This is analogous to the fact that WDVA does not verify on an ongoing basis that a previously determined eligible veteran remains a resident of the state in order to still satisfy subdivision paragraph c. of Wis. Stat. §71.07(6e)(a)3.

WDVA should require that a certified veteran:

- Update WDVA, if the USDVA ever determines that the veteran's health condition has improved such that the veteran no longer has a 100 percent disability rating.
- Understands that the veteran only remains authorized to apply for the veterans property tax credit if the veteran had a 100 percent disability rating at any point during the year for which the veteran is claiming the credit on the veteran's Wisconsin income tax return.

Absent the veteran complying with these requirements, the veteran may improperly receive a veterans property tax credit and the veteran would be subject to the appropriate tax penalties.^x

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These two requirements should be clearly stated in the determination letter that indicates WDVA verified the veteran's eligibility for the property tax credit.

VI. Determination:

Once WDVA certifies a veteran eligible for the veterans property tax credit, the certification remains valid, unless the USDVA has declared an official date of reduction of the veteran's rating.

If the USDVA changes the veteran's disability rating, such that the veteran no longer has a 100 percent disability rating, the veteran is responsible to update WDVA. The veteran also cannot claim the veteran property tax credit in subsequent years.

VII. Endnotes:

ⁱ [Wis. Stat. §71.07\(6e\)\(a\)3.d.](#)

ⁱⁱ Wisconsin Stat. §71.07(6e) also controls eligibility for the derivative benefit of the veterans property tax credit for an unremarried surviving spouse of a deceased veteran. This policy bulletin does not control or deal with eligibility issues associated with an unremarried surviving spouse claiming eligibility for this derivative benefit.

ⁱⁱⁱ Wisconsin Stat. §71.07(6e) authorizes the Wisconsin Department of Veterans Affairs to determine eligibility for the benefit as shown by the language of subdivision 3, "means an individual **who is verified by the department [WDVA]** as meeting all of the following conditions: . . ." (emphasis added).

^{iv} Wisconsin Stat. §71.07(6e)(a)3. The USDVA determination controls whether the veteran has a service-connected disability rating of 100%. With respect to whether a disability is service-connected, [38 CFR §3.303\(a\)](#) provides, "[s]ervice connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein." Federal regulations also enumerate several conditions that presumptively are service-connected disabilities. [38 CFR §§3.307 – 3.309; 3.316 – 3.320; 3.371; 3.379.](#)

^v There is other paperwork necessary for an applicant to satisfy the requirements contained in the other subdivision paragraphs of Wis. Stat. §71.07(6e)(a)3. necessary for the servicemember to be deemed an "eligible veteran" for the veterans property tax credit. See [Legislative Fiscal Bureau, Veterans and Surviving Spouses Property Tax Credit Informational Paper #14 at 1 \(January 2023\).](#)

^{vi} See *id.*

^{vii} [38 CFR §3.105\(e\)](#). Subdivision paragraphs a. & b. are determined based on prior actions of the veteran, whereas subdivision paragraphs c. & d. can change in the future.

When a veteran makes a disability claim to the USDVA, the USDVA assigns a disability rating to the veteran's claim. This rating is based on how much the disability impairs the veteran's ability to work in a

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civil occupation so that the disability compensation can make up for lost wages. If they are unemployable, the compensation would need to cover the earning capacity of the veteran. [38 CFR §3.321](#). Yet, if a veteran's health improves along with the veteran's ability to earn wages, the USDVA can adjust the veteran's disability rating.

In some cases, a veteran has a disability that qualifies for a 100 percent disability rating. [38 CFR §3.340\(a\)](#). "Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation." *Id.*

At the same time, even though the veteran possesses a 100 percent disability rating, it does not always mean that this 100 percent disability rating is permanent. [38 CFR §3.340\(b\)](#). "Permanent total disability. Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. . . Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote." *Id.*

Ultimately, it is USDVA officials who determine both whether the service-connected disability rating results in a 100 percent disability rating and whether the service-connected disability is permanent.

^{viii} [38 CFR §3.327 \(2023\)](#). As an example, this may occur because the USDVA has a rule known as the USDVA disability 5-year rule. The following USDVA [website](#) explains the USDVA disability 5-year rule. Under the USDVA disability 5-year rule, the USDVA can reevaluate a veteran's existing USDVA disability rating within 5 years of the veteran's initial examination, if the veteran's disability condition is expected to show material improvement over time.

^{ix} If the USDVA determines that the veteran's health has improved such that the veteran's combined schedular rating decreases below the 100 percent rating, the veteran would not qualify for the credit in a subsequent year. The only way that the veteran would still qualify would be if the veteran satisfied all requirements of Wis. Stat. §71.07(6e)(a)3. and during that subsequent year the veteran had a "100 percent disability rating based on individual unemployability."

^x See [Legislative Fiscal Bureau, Veterans and Surviving Spouses Property Tax Credit Informational Paper #14 at 3 \(January 2023\)](#).