

Department of Veterans Affairs

§ 21.3047

provided in paragraph (d) of this section and § 21.3047.

(2) If eligibility arises before October 24, 1972, educational assistance based on a course of apprentice or other on-job training or correspondence approved under the provisions §§ 21.4256, 21.4261, and 21.4262 of this part will not be afforded later than October 23, 1982, unless the eligible spouse or surviving spouse qualifies for the extended period of eligibility provided in paragraph (d) of this section.

(Authority: 38 U.S.C. 3512)

(d) *Extension to ending date.* (1) The ending date of a spouse's period of eligibility may be extended when the spouse is enrolled and eligibility ceases for one of the following reasons:

(i) The veteran is no longer rated permanently and totally disabled;

(ii) The spouse is divorced from the veteran without fault on the spouse's part; or

(iii) The spouse no longer is listed in any of the categories of § 21.3021(a)(3)(ii) of this part.

(2) If the spouse is enrolled in a school operating on a quarter or semester system, VA will extend the period of eligibility to the end of the quarter or semester, regardless of whether the spouse has reached the midpoint of the quarter, semester or term.

(3) If the spouse is enrolled in a school not operating on a quarter or semester system, VA will extend the period of eligibility to the earlier of the following:

(i) The end of the course, or

(ii) 12 weeks.

(4) If the spouse is enrolled in a course pursued exclusively by correspondence, VA will extend the period of eligibility to whichever of the following will result in the lesser expenditure:

(i) The end of the course, or

(ii) The total additional amount of instruction that \$1,131 will provide.

(Authority: 38 U.S.C. 3511(b))

(5) VA will not extend the period of eligibility when the spouse is pursuing training in a training establishment as defined in § 21.4200(c) of this part.

(6) An extension may not—

(i) Exceed maximum entitlement, or

(ii) Extend beyond the delimiting date specified in paragraph (a) of this section or § 21.3047, as appropriate.

(Authority: 38 U.S.C. 3511(b), 3512(b), 3532, 3586)

[54 FR 33886, Aug. 17, 1989, as amended at 57 FR 29799, July 7, 1992; 57 FR 60735, Dec. 22, 1992; 62 FR 51784, Oct. 3, 1997; 62 FR 59579, Nov. 4, 1997]

§ 21.3047 Extended period of eligibility due to physical or mental disability.

(a) *General.* (1) An eligible spouse or surviving spouse shall be granted an extension of the applicable period of eligibility as otherwise determined by § 21.3046 provided the eligible spouse or surviving spouse:

(i) Applies for the extension within the appropriate time limit;

(ii) Was prevented from initiating or completing the chosen program of education within the otherwise applicable period of eligibility because of a physical or mental disability that did not result from the willful misconduct of the eligible spouse or surviving spouse;

(iii) Provides VA with any requested evidence tending to show that the requirement of paragraph (a)(1)(ii) of this section has been met; and

(iv) Is otherwise eligible for payment of educational assistance for the training pursuant to 38 U.S.C. chapter 35.

(2) In determining whether the eligible spouse or surviving spouse was prevented from initiating or completing the chosen program of education because of a physical or mental disability, VA will consider the following:

(i) It must be clearly established by medical evidence that such a program of education was medically infeasible.

(ii) An eligible spouse or surviving spouse who is disabled for a period of 30 days or less will not be considered as having been prevented from initiating or completing a chosen program, unless the evidence establishes that the eligible spouse or surviving spouse was prevented from enrolling or reenrolling in the chosen program of education, or was forced to discontinue attendance, because of the short disability.

(iii) VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct and

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will consider those disabling effects as physical or mental disabilities.

(b) *Commencing date.* The eligible spouse or surviving spouse shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by §21.3046(c); and

(2) Must be on or before the ninetieth day following the date on which the eligible spouse's or surviving spouse's application for an extension was approved by VA, if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course not organized on a term, quarter, or semester basis; or

(3) Must be on or before the first ordinary term, quarter, or semester following the ninetieth day after the eligible spouse's or surviving spouse's application for an extension was approved by VA if the eligible spouse or surviving spouse is training during the extended period of eligibility in a course organized on a term, quarter, or semester basis.

(Authority: 38 U.S.C. 3512(b))

(c) *Length of extended periods of eligibility.* An eligible spouse's or surviving spouse's extended period of eligibility shall be for the length of time that the individual was prevented from initiating or completing his or her chosen program of education. This shall be determined as follows:

(1) If the eligible spouse or surviving spouse is in training in a course organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter, or semester following the day the eligible spouse's or surviving spouse's training became medically feasible;

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by §21.3046(c); or

(iii) The date the eligible spouse or surviving spouse resumed training.

(2) If the eligible spouse or surviving spouse is training in a course not organized on a term, quarter, or semester basis, his or her extended period of eligibility shall contain the same number of days from the date during the eligible spouse's or surviving spouse's original period of eligibility that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the eligible spouse's or surviving spouse's training became medically feasible; or

(ii) The ending date of the eligible spouse's or surviving spouse's period of eligibility as determined by §21.3046.

(Paperwork requirements were approved by the Office of Management and Budget under control number 2900-0573)

(Authority: 38 U.S.C. 3512(b))

[62 FR 51784, Oct. 3, 1997]

COUNSELING

SOURCE: 61 FR 26109, May 24, 1996, unless otherwise noted.

§21.3100 Counseling.

(a) *Purpose of counseling.* The purpose of counseling is to assist:

(1) In selecting an educational or training objective;

(Authority: 38 U.S.C. 3520)

(2) In developing a suitable program of education or training;

(Authority: 38 U.S.C. 3520)

(3) In selecting an educational institution or training establishment appropriate for the attainment of the educational or training objective;

(Authority: 38 U.S.C. 3561(a))

(4) In resolving any personal problems which are likely to interfere with successful pursuit of a program;

(Authority: 38 U.S.C. 3561(a))

(5) In selecting an employment objective for the eligible person that would be likely to provide the eligible person