

**§ 21.346**

**38 CFR Ch. I (7-1-03 Edition)**

(ii) Adversely affect the veteran's ability to continue in his or her rehabilitation program.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984, as amended by 56 FR 14649, Apr. 11, 1991]

**§ 21.346 Facility temporarily not offering training or rehabilitation services.**

(a) *Approval of leave of absence not required.* A veteran may receive subsistence allowance, during a period when the facility temporarily is not offering services, without the veteran's being charged with leave when:

(1) The facility is closed temporarily under an executive order of the President or due to an emergency situation;

(2) The veteran is pursuing on-job training and he or she receives holidays established by Federal or State law;

(3) The veteran is pursuing farm cooperative training and is required in the ordinary day to day conduct of farm business to be absent:

(i) From the farm; or

(ii) From that part of a farm cooperative course which is given at the educational institution.

(4) The veteran is pursuing a standard college degree; and

(i) There is an interval between consecutive semesters, terms, quarters or periods of instruction *within a certified enrollment period* which does not exceed a full calendar month;

(ii) There is an interval, which does not exceed a full calendar month between semesters, terms or quarters when the educational institution only certifies enrollment on a semester, term, or quarter basis; or

(iii) There is an interval, which does not exceed 30 days, when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and pursuing a similar program at the second institution;

(5) The veteran is pursuing a non-college-degree course and there is a period of up to 5 days per twelve-month period during which the school offering non-college-degree courses is not operating, because instructors are attending professional meetings.

(b) *Case manager responsibility.* The case manager may disapprove leave under paragraph (a)(4) of this section if:

(1) Approval would result in or lead to use of more than 48 months of entitlement under Chapter 31, alone; or

(2) Approval would require extension of the scheduled completion date of the veteran's program.

(c) *Approval of leaves of absence required.* A veteran, who wishes to receive subsistence allowance while the facility temporarily is not offering training under conditions other than those identified in paragraph (a) of this section, must seek an approved leave of absence and be charged leave.

(Authority: 38 U.S.C. 3110)

**§ 21.348 Leave following completion of a period of training or rehabilitation services.**

(a) *Leave following completion of training or rehabilitation services.* Leave may not be approved following completion of a period of rehabilitation services described in § 21.340(a).

(b) *Postponement of the date of completion of a period of rehabilitation services prohibited.* The date of completion of the veteran's program may not be extended for the purpose of allowing the veteran to use leave.

(Authority: 38 U.S.C. 3110)

**§ 21.350 Unauthorized absences.**

A veteran who is unable to obtain an authorized leave of absence in advance may seek to have the unauthorized absence excused.

(a) *Excusing unauthorized absences.* VA may excuse an unauthorized absence and make proper charges against the veteran's leave when:

(1) The veteran has absented himself or herself when advance approval from VA is impracticable; and

(2) Conditions for approval of leave are otherwise met.

(b) *Unexcused, unauthorized absences.* When an unauthorized absence is not satisfactorily explained, VA will take necessary action, including recoupment of subsistence allowance for that period of absence.

(Authority: 38 U.S.C. 3110)

## Department of Veterans Affairs

## § 21.364

### CONDUCT AND COOPERATION

#### § 21.362 Satisfactory conduct and cooperation.

(a) *General.* The successful development and implementation of a program of rehabilitation services require the full and effective participation of the veteran in the rehabilitation process.

(1) The veteran is responsible for satisfactory conduct and cooperation in developing and implementing a program of rehabilitation services under Chapter 31;

(2) The staff is responsible for insuring satisfactory conduct and cooperation on the veteran's part; and

(3) VA staff shall take required action when the veteran's conduct and cooperation are not satisfactory. (See § 21.364)

(b) *VA responsibility.* VA shall make a reasonable effort to inform the veteran and assure his or her understanding of:

(1) The services and assistance which may be provided under Chapter 31 to help the veteran maintain satisfactory cooperation and conduct and to cope with problems directly related to the rehabilitation process, especially counseling services;

(2) Other services which VR&C staff can assist the veteran in securing through non-VA programs; and

(3) The specific responsibilities of the veteran in the process of developing and implementing a program of rehabilitation services, especially the specific responsibility for satisfactory conduct and cooperation.

(c) *Veteran's responsibility.* A veteran requesting or being provided services under Chapter 31 must:

(1) Cooperate with VA staff in carrying out the initial evaluation and developing a rehabilitation plan;

(2) Arrange a schedule which allows him or her to devote the time needed to attain the goals of the rehabilitation plan;

(3) Seek the assistance of VA staff, as necessary, to resolve problems which affect attainment of the goals of the rehabilitation plan;

(4) Conform to procedures established by VA governing pursuit of a rehabilitation plan including:

(i) Enrollment and reenrollment in a course;

(ii) Changing the rate at which a course is pursued;

(iii) Requesting a leave of absence;

(iv) Requesting medical care and treatment;

(v) Securing supplies; and

(vi) Other applicable procedures.

(5) Conform to the rules and regulations of the training or rehabilitation facility at which services are being provided.

(d) *Responsibility for determining satisfactory conduct and cooperation.* VR&C staff with case management responsibility in the veteran's case will:

(1) Monitor the veteran's conduct and cooperation as necessary to assure consistency with provisions of paragraph (c) of this section.

(2) Provide assistance which may be authorized under Chapter 31, or for which arrangements may be made under other programs to enable the veteran to maintain satisfactory conduct and cooperation.

(Authority: 38 U.S.C. 3111)

#### § 21.364 Unsatisfactory conduct and cooperation.

(a) *General.* If VA determines that a veteran has failed to maintain satisfactory conduct or cooperation, VA may, after determining that all reasonable counseling efforts have been made and are found not reasonably likely to be effective, discontinue services and assistance to the veteran, unless the case manager determines that mitigating circumstances exist. In any case in which such services and assistance have been discontinued, VA may reinstitute such services and assistance only if the counseling psychologist determines that:

(1) The unsatisfactory conduct or cooperation of such veteran will not be likely to recur; and

(2) The rehabilitation program which the veteran proposes to pursue (whether the same or revised) is suitable to such veteran's abilities, aptitudes, and interests.

(b) *Unsatisfactory conduct or cooperation exists.* When the case manager determines that the veteran's conduct and/or cooperation are not in conformity with provisions of § 21.362(c), the case manager will: