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

(v) Shop fees for consumable materials used as part of classroom or laboratory instruction.

(2) Educational expenses may not exceed those normally incurred by students at the same educational institution who are not eligible for benefits from the educational assistance test program.

(Authority: 10 U.S.C. 2143(a))

(b) *Amount of educational assistance.*

(1) The amount of educational assistance will be adjusted annually by regulation. For the 2001-02 standard academic year the amount of this assistance may not exceed \$3,690.

(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an enrollment period will be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 2001-02 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by \$410.00 for a full-time student or by \$205.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by \$13.67 for a full-time student or by \$6.83 for a part-time student; and

(C) Adding the two results.

(3) The amount of educational assistance payable to each surviving spouse or dependent child of a deceased servicemember or veteran for an enrollment period will be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 2001-02 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by \$410.00 for a full-time student or by \$205.00 for a part-time student;

(B) Multiplying any additional days in the enrollment period by \$13.67 for a full-time student or by \$6.83 for a part-time student; and

(C) Adding the two results; and

(D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section

by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

(Authority: 10 U.S.C. 2143, 2145)

(c) *Time of educational assistance payments.* VA will make payments of educational assistance at the end of the first month of each semester, quarter or term in which the individual is entitled to such a payment, provided VA receives a timely enrollment certification. If VA receives the enrollment certification so late that payment cannot be made at the end of the month in which the individual is enrolled, VA will make payment as soon as practicable.

(Authority: 10 U.S.C. 2143)

[51 FR 27026, July 29, 1986, as amended at 52 FR 35241, Sept. 18, 1987; 53 FR 50521, Dec. 16, 1988; 55 FR 31181, Aug. 1, 1990; 56 FR 44008, Sept. 6, 1991; 58 FR 50845, Sept. 29, 1993; 61 FR 28754, June 6, 1996; 62 FR 10455, Mar. 7, 1997; 62 FR 63848, Dec. 3, 1997; 64 FR 44661, Aug. 17, 1999; 65 FR 13693, Mar. 14, 2000; 65 FR 18151, Apr. 6, 2000; 66 FR 32226, June 14, 2001; 67 FR 34405, May 14, 2002]

**§ 21.5822 Subsistence allowance.**

(a) *Subsistence allowance.* Except as provided in paragraph (a)(2) of this section, VA will pay subsistence allowance to a veteran, spouse, surviving spouse or dependent child during any period for which he or she is entitled to educational assistance. No subsistence allowance is payable to:

(1) A servicemember, even if he or she is entitled to educational assistance, or

(2) A spouse or dependent child of a servicemember, even if the spouse or dependent child is entitled to educational assistance.

(Authority: 10 U.S.C. 2144(a))

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(b) *Amount of subsistence allowance.* (1) The following rules govern the amount of subsistence allowance payable to veterans and to spouses and dependent children of veterans who are alive during the period for which subsistence allowance is payable. As stated in paragraph (a) of this section, these amounts are payable only for periods during which the veterans, spouses or dependent children are entitled to educational assistance.

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is \$919 per month for training pursued during the 2001-02 academic year.

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance is \$459.50 per month for training pursued during the 2001-02 academic year.

(iii) If a person does not pursue a course of instruction for a complete month VA will prorate the subsistence allowance for that month on the basis of 1/30th of the monthly rate for each day the person is pursuing the course.

(2) The following rules govern the amount of subsistence allowance payable to surviving spouses and dependent children of deceased veterans and servicemembers.

(i) VA will determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time during the 2001-02 academic year by dividing \$919 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(ii) VA will determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis during the 2001-02 academic year by dividing \$459.50 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day.

(Authority: 10 U.S.C. 2144, 2145)

(iii) The total amount of subsistence allowance payable to a person for a month is the sum of the person's daily rates for the month.

(c) *Time of subsistence allowance payments.* VA will make payments of subsistence allowance on the first day of the month following the month for which subsistence allowance is due, provided that VA receives a timely enrollment certification. If VA receives the enrollment certification so late that payment cannot be made on the first day of the month following the month for which subsistence allowance is due, VA will make payment as soon as practicable.

(Authority: 10 U.S.C. 2144)

[51 FR 27026, July 29, 1986, as amended at 52 FR 35241, Sept. 18, 1987; 53 FR 50521, Dec. 16, 1988; 55 FR 31181, Aug. 1, 1990; 56 FR 44008, Sept. 6, 1991; 58 FR 50845, Sept. 29, 1993; 61 FR 28754, June 6, 1996; 62 FR 10455, Mar. 7, 1997; 62 FR 63848, Dec. 3, 1997; 64 FR 44661, Aug. 17, 1999; 64 FR 46974, Aug. 27, 1999; 65 FR 13694, Mar. 14, 2000; 66 FR 32226, June 14, 2001; 67 FR 34405, May 14, 2002]

§ 21.5824 Nonduplication: Federal programs.

(a) *Duplication of some benefits prohibited.* An individual who is receiving educational assistance under programs authorized by 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 may not receive concurrently either educational assistance or subsistence allowance under the §§ 21.5700, 21.5800 and 21.5900 series of regulations for the same program of education, but may receive them sequentially.

(b) *Debts may result from duplication.* (1) If an individual receives benefits under 38 U.S.C. Chapters 30, 31, 32, 34, 35 or 36 for training, and he or she has previously received educational assistance or subsistence allowance (or both) under §§ 21.5700, 21.5800, 21.5900 series of regulations the amount of the benefits received under 38 U.S.C. Chapters 30, 31, 32, 34 or 35 shall not constitute a debt due the United States.

(2) If an individual receives benefits under 38 U.S.C. Chapter 34, and had signed an agreement with the Department of Defense to waive those benefits in return for receiving benefits under the educational assistance test program:

(i) Any benefits already paid under the educational assistance test program will constitute a debt due the United States, and