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(1) An assessment of the rehabilitation needs of veterans; and

(2) A review of the programs and activities of VA designed to meet needs identified in paragraph (c)(1) of this section.

(d) *Secretary's annual report.* The findings of the committee shall be incorporated in the Secretary's annual report submitted to the Congress under 38 U.S.C. 529. In addition the Secretary shall submit, together with this annual report, a copy of all reports and recommendations of the committee submitted to the Secretary since the previous annual report was submitted to the Congress.

(Authority: 38 U.S.C. 3121(c))

ADDITIONAL ADMINISTRATIVE CONSIDERATION

§21.410 Delegation of authority.

The Secretary delegates authority to the Under Secretary for Benefits to make findings and decisions under 38 U.S.C. chapter 31 and regulations, precedents, and instructions that affect vocational rehabilitation services for disabled veterans. The Under Secretary for Benefits may further delegate this authority to supervisory and non-supervisory Vocational Rehabilitation and Employment staff members.

(Authority: 38 U.S.C. 512(a))

[62 FR 17710, Apr. 11, 1997]

§21.412 Finality of decisions.

(a) *Facility of original jurisdiction.* The decision of a VA facility in a given veteran's case:

(1) Will be final and binding upon all field stations of VA as to conclusions based on evidence on file at that time; and

(2) Will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in §§21.410 and 21.414. (See §§19.153, 19.154, and 19.155.)

(Authority: 38 U.S.C. 512(a), 7103)

(b) *Adjudicative determinations.* Current determinations of line of duty, character of discharge, relationship, and other pertinent elements affecting eligibility for training and rehabilitation services or payment of subsistence

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allowance under Chapter 31, made by an adjudicative activity by application of the same criteria and based on the same facts, are binding upon all other adjudicative activities in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 512(a))

§21.414 Revision of decision.

The revision of a decision on which an action is based is subject to the following regulations:

(a) Clear and unmistakable error, §3.105(a);

(b) Difference of opinion, §3.105(b);

(c) Character of discharge, §3.105(c);

(d) Severance of service-connection, §3.105(d);

(e) Reduction to less than compensable evaluation, §3.105(e). (See §§21.48, 21.322, and 21.324)

(Authority: 38 U.S.C. 5112)

INFORMING THE VETERAN

§21.420 Informing the veteran.

(a) *General.* VA will inform a veteran in writing of findings affecting receipt of benefits and services under Chapter 31. This includes veterans:

(1) Requesting benefits and services; or

(2) In receipt of benefits and services.

(b) *Notification.* (1) Each notification should include the decision or finding, the reasons, including fact and law, for the decision, the effective date of the decision or finding; and

(2) The veteran's appeal rights, if any.

(c) *Adverse action.* An adverse action is one, other than an interim action such as a suspension of benefits pending development, which:

(1) Denies Chapter 31 benefits, when such benefits have been requested;

(2) Reduces or otherwise diminishes benefits being received by the veteran; or

(3) Terminates receipt of benefits for reasons other than scheduled interruptions which are a part of the veteran's plan.

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to indicate his or her disagreement with an adverse action

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other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in §21.59 of this part, to:

- (1) Meet informally with a representative of VA;
- (2) Review the basis for VA decision, including any relevant written documents or material; and
- (3) Submit to VA any material which he or she may have relevant to the decision.

(Authority: 38 U.S.C. 3102)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 40872, Oct. 4, 1989]

§21.422 Reduction in subsistence allowance following the loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

- (i) VA has notified the veteran of the adverse action, and
- (ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

- (i) VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;
- (ii) VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 5112, 5113)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 5112, 5113)

(c) *Predetermination hearing.* (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 5112, 5113)

(d) *Final action.* VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and