

Department of Justice

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be for prospective assistance, for retroactive benefits pursuant to § 32.35 (if applicable), or both.

(d)(1) A request for prospective assistance must be accompanied by a certified copy of the official letter of acceptance from the eligible educational institution (on official letterhead) to the dependent, accepting the applicant into an educational program.

(2) The applicant also shall submit to the Bureau, when it is available, the schedule of classes in which the applicant is enrolled, and which must be consistent with the educational, professional, or vocational objectives stated in the application.

(e) An applicant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the applicant pursuant to §§ 32.19 and 32.22.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49953, Sept. 14, 1999]

§ 32.35 Retroactive benefits.

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart, for each month in which the dependent had pursued a program of education at an eligible educational institution.

(b) To be eligible for retroactive benefits, the applicant must submit a certified copy of transcripts from the educational institution covering the relevant time period. No application will be accepted more than five years from the last date the applicant pursued such program of education.

(c) Subject to applicable limitations, retroactive benefits shall be in addition to prospective assistance provided under this subpart. A dependent eligible for retroactive benefits may choose to waive such assistance and apply only for prospective assistance under the provisions of this subpart.

[62 FR 37716, July 15, 1997, as amended at 62 FR 39120, July 22, 1997; 64 FR 49953, Sept. 14, 1999]

§ 32.36 Action on applications for assistance.

(a) After examining the application for prospective or retroactive assistance under the provisions and limitations of this subpart, and any additional relevant information, the Bureau shall notify the dependent in writing of the approval or disapproval of the application.

(b) If the application is denied, in whole or part, the Bureau shall explain the reasons for the denial. A copy of the decision, together with information as to the right to an appeal, shall be mailed to the applicant's last known address.

§ 32.37 Determination of benefits.

(a)(1) Financial assistance under this subpart shall consist of direct payments to an eligible dependent and shall be computed on the basis set forth in 38 U.S.C. 3532.

(2) The dependent's status as a full-time, three-quarter-time, half-time, or less-than-half-time student will be determined in accordance with the requirements of, and must be certified by, the eligible educational institution.

(b) In applying the limitations under this subpart with respect to prospective assistance, the Bureau shall consider any retroactive benefits provided to the dependent pursuant to § 32.35.

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEIA assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are entitled,

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and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

[62 FR 37716, July 15, 1997, as amended at 64 FR 49954, Sept. 14, 1999]

§ 32.38 Denial of benefits.

(a) No benefit shall be paid under this subpart if the Bureau determines that the dependent is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made. Without limitation, this will include circumstances in which—

(1) The benefits would exceed the applicable durational limits;

(2) A dependent child has exceeded the age limit for benefits;

(3) The dependent has failed to maintain satisfactory progress in the selected program of education as defined in § 32.32(i);

(4) The dependent is in default on any student loan obtained through Title IV of the Higher Education Act of 1965, unless the assistance under this subpart is used for repayment of the defaulted loans and the applicant provides evidence of this fact to the Bureau in the form of an approved repayment plan; or

(5) The dependent is subject to a denial of federal benefits under 21 U.S.C. 862.

(b) The Bureau shall deny benefits under this subpart if—

(1) The educational institution attended by the dependent fails to meet a requirement for eligibility described in § 32.32(h);

(2) The dependent's enrollment in or pursuit of the selected program of education would fail to meet the criteria established in § 32.32(g); or

(3) The dependent already is qualified by previous education or training for the educational, professional or vocational objective for which the program of education is offered.

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§ 32.39 Appeals.

An applicant may, within 30 days after notification of denial, submit a written appeal request to the Bureau. Appeals will be handled consistent with § 32.24 and the appendix to this part, except that such appeals shall not be handled by oral hearing but will be conducted through a record review by an administrative hearing officer. Provisions in § 32.24 and the appendix to this part relating to oral hearings shall not be applicable to appeals under this subpart.

§ 32.40 Repayment.

In the event that the recipient of financial assistance under this subpart fails to maintain satisfactory progress, as defined in § 32.32(i), or otherwise become ineligible for assistance (other than as a result of age or the expiration of the time limit for assistance), the dependent is liable for repayment of funds awarded for prospective assistance. The Director of the Bureau may waive all or part of such repayment, based on a consideration of the circumstances and the hardship that would result from such repayment.

APPENDIX TO PART 32—PSOB HEARING AND APPEAL PROCEDURES

a. Notification to Claimant of Denial

These appeal procedures apply to a claimant's¹ request for reconsideration of a denial made by the Public Safety Officers' Benefits (PSOB) Office. The denial letter will advise the claimant of the findings of fact and conclusions of law supporting the PSOB Office's determination, and of the appeal procedures available under § 32.24 of the PSOB regulations. A copy of every document in the case file that (1) contributed to the determination, and (2) was not provided by the claimant shall also be attached to the denial letter, except where disclosure of the material would result in a clearly unwarranted invasion of a third party's privacy. The attached material might typically include medical opinions offered by the Armed Forces Institute of Pathology or other medical experts, legal memoranda from the Office of General Counsel of the Office of Justice Programs, or

¹As used in this procedure, the word, "claimant" means a claimant for benefits or, where appropriate, the claimant's designated representative.