

Department of Veterans Affairs

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(5) If an eligible person withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating. Eligible persons who withdraw from a course during a drop-add period are not subject to the reporting requirement found in paragraph (d)(1)(ii) of this section.

(Authority: 38 U.S.C. 3680(a))

[31 FR 6774, May 6, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 21.4137, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 21.3133 Payment procedures.

(a) *Release of payments and payment procedures.* In determining whether payments of educational assistance allowance may be made in a lump sum, in advance, for an interval or if a certification is required from an eligible person before a payment may be made, VA will apply the provisions of § 21.4138.

(Authority: 38 U.S.C. 3680)

(b) *Payee.* (1) VA will pay an educational assistance allowance to the eligible person if he or she has attained majority and has no known legal disability.

(2) If an eligible person has not attained majority, VA will pay an educational assistance allowance directly to an eligible person, a relative, or some other person for the use and benefit of the eligible person notwithstanding a legal disability on the part of the eligible person when VA determines:

- (i) The best interest of the eligible person would be served;
- (ii) Undue delay in payment would be avoided; or
- (iii) Payment would otherwise not be feasible.

(Authority: 38 U.S.C. 3501(a)(4), 3501(c), 3531(a), 5502)

(c) *Payment of accrued benefits.* Educational assistance remaining due and unpaid at the date of the eligible per-

son's death is payable under the provisions of § 3.1000 of this chapter.

(Authority: 38 U.S.C. 5121)

(d) *Tutorial assistance.* An individual who is otherwise eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program may receive supplemental monetary assistance to provide tutorial services. In determining whether VA will pay the individual this assistance, VA will apply the provisions of § 21.4236.

(Authority: 38 U.S.C. 3492, 3533(b))

(e) *Offsets: 38 U.S.C. chapter 35, compensation, pension and dependency and indemnity compensation.* Payment of dependents' educational assistance will be subject to offset of amounts of pension, compensation or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.

(Authority: 38 U.S.C. 3562)

(f) *Final payment.* VA may withhold final payment until VA receives proof of continued enrollment and adjusts the eligible person's account.

(Authority: 38 U.S.C. 3680)

[61 FR 26111, May 24, 1996]

§ 21.3135 Reduction or discontinuance dates for awards of educational assistance allowance.

The reduction or discontinuance date of an award of educational assistance will be as stated in this section. If more than one basis for reduction or discontinuance is involved, the earliest date will control.

(a) *Ending date of course.* Educational assistance allowance will be discontinued on the ending date of the course or period of enrollment as certified by the school.

(Authority: 38 U.S.C. 3531, 3680(a))

(b) *Ending date of eligibility.* Educational assistance allowance will be discontinued on the ending date of the

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eligible person's eligibility as determined by § 21.3041, § 21.3042, § 21.3043, or § 21.3046.

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

(c) *General reduction or discontinuance dates.* Educational assistance allowance will be reduced or discontinued on the date specified in § 21.4135.

(Authority: 38 U.S.C. 3482(g), 3531, 3671(g), 3672(a), 3680, 3683, 3690, 5112, 5113, 6103, 6104, 6105)

(d) *Divorce.* If the veteran and eligible spouse divorce, the discontinuance date for the eligible spouse's award of educational assistance will be:

(1) The end of the quarter or semester if the school is operated on a quarter or semester system, and the divorce was without fault on the eligible spouse's part;

(2) The end of the course or a 12-week period, whichever is earlier, if the school does not operate on a quarter or semester system, and the divorce was without fault on the eligible spouse's part; or

(3) In all other instances, the date the divorce decree becomes final.

(Authority: 38 U.S.C. 3501(a)(1)(D), 3511(b))

(e) *Remarriage or other relationship of spouse or surviving spouse.* (1) If an eligible surviving spouse remarries, the date of discontinuance of his or her award of educational assistance allowance will be the last date of attendance before remarriage.

(2) If a spouse or surviving spouse begins a relationship by living with another person and holding himself or herself out openly to the public to be the spouse of the other person, the date of discontinuance of his or her award of educational assistance allowance will be the last date of the month before the spouse's or surviving spouse's relationship began.

(Authority: 38 U.S.C. 101(3), 3501(a)(1)(B))

(f) *Entrance on active duty (§ 21.3042).* If an eligible person enters on active duty, VA will terminate his or her educational assistance allowance on the day before the day of entrance on active duty. Brief periods of active duty for training, if the school permits such

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an absence without interruption of training, will not result in termination of the allowance under this paragraph.

(Authority: 38 U.S.C. 3501(d))

(g) *Eligible stepchild ceases to be a stepchild or stepchild ceases to be a member of the veteran's household.* (1) If the child ceases to be the veteran's stepchild because the veteran and the stepchild's natural or adoptive parent divorce, the eligibility ending date is as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's period of eligibility is the date on which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is training in a school organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the last day of the term, semester, or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is training in a school not organized on a term, semester, or quarter basis, the ending date of the child's eligibility is the end of the course, or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier.

(2) If the stepchild ceases to be a member of the veteran's household, he or she is no longer eligible. For purposes of this paragraph, VA considers a stepchild a member of the veteran's household even when the stepchild is temporarily not living with the veteran, so long as the actions and intentions of the stepchild and veteran establish that normal family ties have been maintained during the temporary absence. VA will determine the stepchild's eligibility ending date as follows:

(i) If the stepchild ceases to be a member of the veteran's household while the stepchild is not in training, the eligibility ending date is the date on which the stepchild ceases to be a member of the veteran's household.

(ii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school organized on a term, semester,

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or quarter basis, the ending date of the stepchild's eligibility is the last day of the term, semester, or quarter during which the stepchild ceases to be a member of the veteran's household.

(iii) If the stepchild ceases to be a member of the veteran's household while the stepchild is training in a school not organized on a term, semester, or quarter basis, the ending date of the stepchild's eligibility is the end of the course, or 12 weeks from the date on which the stepchild ceases to be a member of the veteran's household. See §21.3041(f).

(Authority: 38 U.S.C. 101(4)(a), 3501)

(h) *Veteran no longer rated permanently and totally disabled.* (1) If the veteran on whose service an eligible person's eligibility is based is no longer permanently and totally disabled, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which VA rated the veteran as no longer permanently and totally disabled if the eligible person's educational institution is organized on a quarter or semester basis; or

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date VA rated the veteran as being no longer permanently and totally disabled.

(Authority: 38 U.S.C. 3511(b), 3512(a)(6)(A))

(i) Serviceperson is removed from "missing status" listing. (1) If the serviceperson on whose service an eligible person's eligibility is based is removed from the "missing status" listing, VA will discontinue the educational assistance allowance—

(i) On the last date of the quarter or semester during which the serviceperson was removed from the "missing status" listing if the eligible person's educational institution is organized on a quarter or semester basis; or

(ii) On the earlier of the following dates when the eligible person's educational institution is not organized on a quarter or semester basis:

(A) The last date of the course;

(B) The end of a 12-week period beginning on the date the serviceperson was removed from the "missing status" listing.

(Authority: 38 U.S.C. 3512(a)(6)(A))

(j) *Fugitive felons.* (1) VA will not award educational assistance allowance to an otherwise eligible person for any period after December 26, 2001, during which the—

(i) Eligible person is a fugitive felon; or

(ii) Veteran from whom eligibility is derived is a fugitive felon.

(2) The date of discontinuance of an award of educational assistance allowance to an eligible person is the later of—

(i) The date of the warrant for the arrest of the felon; or

(ii) December 27, 2001.

(Authority: 38 U.S.C. 5313B)

[61 FR 26111, May 24, 1996, as amended at 70 FR 25786, May 16, 2005; 73 FR 30491, May 28, 2008]

SPECIAL RESTORATIVE TRAINING

§ 21.3300 Special restorative training.

(a) *Purpose of special restorative training.* The Department of Veterans Affairs may prescribe special restorative training where needed to overcome or lessen the effects of a physical or mental disability for the purpose of enabling an eligible person to pursue a program of education, special vocational program or other appropriate goal. Medical care and treatment or psychiatric treatment are not included.

(Authority: 38 U.S.C. 3540 through 3543)

(b) *Eligible persons.* VA may prescribe special restorative training for an eligible person who is a child, spouse, or surviving spouse except for a spouse whose qualification as an eligible person is under §21.3021(a)(3)(ii). The special restorative training must begin after December 26, 2001, for a spouse or surviving spouse.

(Authority: 38 U.S.C. 3501, 3540, 3541, 3543; sec. 109, Pub. L. 107-103, 115 Stat. 986)