

Department of Veterans Affairs

§21.78

may be made within this extended period. The concurrence of the VR&C Officer is also required for this extension.

(Authority: 38 U.S.C. 3105(a), 3106(b); Pub. L. 99-576)

[49 FR 40814, Oct. 18, 1984, as amended at 53 FR 50957, Dec. 19, 1988; 54 FR 37332, Sept. 8, 1989; 62 FR 17707, Apr. 11, 1997]

§21.76 Independent living.

(a) *General.* A program of independent living services may be authorized to enable the veteran to:

(1) Reach the goals of the program, and

(2) Maintain the newly achieved level of independence in daily living.

(Authority: 38 U.S.C. 3101(4), 3104(b))

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 3105(d))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 37332, Sept. 8, 1989]

§21.78 Approving more than 48 months of rehabilitation.

(a) *General.* Neither the basic period of entitlement which may be authorized for a program of rehabilitation under Chapter 31 alone, nor a combination of entitlement of Chapter 31 and other programs listed in §21.4020 shall exceed 48 months except as indicated in paragraphs (b) and (c) of this section.

(Authority: 38 U.S.C. 3695)

(b) *Employment handicap.* A rehabilitation program for a veteran with an employment handicap may only be extended beyond 48 months when:

(1) The veteran previously completed training for a suitable occupation but the veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which train-

ing had been provided, and a period of training in the same or a different field is required. An extension beyond 48 months under Chapter 31 alone shall be authorized for this purpose.

(Authority: 38 U.S.C. 3105(c)(1)(A))

(2) The occupation in which the veteran previously completed training is found to be unsuitable because of the veteran's abilities and employment handicap. An extension beyond 48 months under Chapter 31 alone shall be approved for this purpose.

(Authority: 38 U.S.C. 3105(c)(1)(B))

(3) The veteran previously used education benefit entitlement under other programs administered by VA, and the additional period of assistance to be provided under Chapter 31 which the veteran needs to become employable will result in more than 48 months being used under all VA education programs, under these conditions the number of months necessary to complete the program may be authorized under Chapter 31, provided that the length of the extension will not result in authorization of more than 48 months under Chapter 31 alone.

(Authority: 38 U.S.C. 3695)

(4) A veteran in an approved Chapter 31 program has elected payment of benefits at the Chapter 30 educational assistance rate. The 48 month limitation may be exceeded only:

(i) To the extent that the entitlement in excess of 48 months does not exceed the entitlement previously used by the veteran in a course at the secondary school level under §21.4235 before December 31, 1989, or

(ii) If the veteran is in a course on a term, quarter, or semester basis which began before the 36 month limitation on Chapter 30 entitlement was reached, and completion of the course will be possible by permitting the veteran to complete the training under Chapter 31.

(Authority: 38 U.S.C. 3013, 3695; Pub. L. 98-525)

(5) The assistance to be provided in excess of 48 months consists only of a

§ 21.79

period of employment assistance (see § 21.73).

(Authority: 38 U.S.C. 3105(b))

(c) *Serious employment handicap.* The duration of a rehabilitation program for a veteran with a serious employment handicap may be extended beyond 48 months under Chapter 31 for the number of months necessary to complete a rehabilitation program under the following conditions:

(1) To enable the veteran to complete a period of rehabilitation to the point of employability;

(2) To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months;

(3) To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services;

(4) Following rehabilitation to the point of employability:

(i) The veteran has been unable to secure employment in the occupation for which training has been provided despite intensive efforts on the part of the Department of Veterans Affairs and the veteran, and a period of re-training or additional training is needed;

(ii) The skills which the veteran developed in training for an occupation in which he or she was employed are no longer adequate to maintain employment in that field and a period of re-training is needed;

(iii) The veteran's service-connected disability has worsened to the point that he or she is unable to perform the duties of the occupation for which the veteran has been trained, and a period of training in the same or different field is required;

(iv) The occupation in which the veteran previously completed training is found to be unsuitable due to the veteran's abilities and employment handicap.

(5) The assistance to be provided in excess of 48 months consists, only of a

38 CFR Ch. I (7-1-08 Edition)

period of employment assistance. (see § 21.73).

(Authority: 38 U.S.C. 3105(c)(2))

(d) *Approval of extension beyond 48 months.* All extensions of a rehabilitation program beyond 48 months of total entitlement under all Department of Veterans Affairs programs requires the approval of the counseling psychologist and concurrence of the Vocational Rehabilitation and Employment Officer. Concurrence of the VR&C officer is not required for an extension due to provision of employment assistance (see § 21.21).

(Authority: 38 U.S.C. 3105(b))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4283, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

§ 21.79 Determining entitlement usage under Chapter 31.

(a) *General.* The determination of entitlement usage for chapter 31 participants is made under the provisions of this section except as provided in paragraph (f) of this section. Charges for entitlement usage shall be based upon the principle that a veteran who pursues a rehabilitation program for 1 day should be charged 1 day of entitlement. The determination of entitlement is based upon the rate at which the veteran pursues his or her rehabilitation program. The rate of pursuit is determined under the provisions of § 21.310 of this part.

(Authority: 38 U.S.C. 3108(d))

(b) *No charge against chapter 31 entitlement.* No charge will be made against chapter 31 entitlement under any of the following circumstances:

(1) The veteran is receiving employment services under an Individualized Employment Assistance Plan (IEAP);

(2) The veteran is receiving an employment adjustment allowance; or

(3) The veteran is on leave from his or her program, but leave is not authorized by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3108(d), 3117)

(c) *Periods during which entitlement may be charged.* Charges for usage of