

## § 21.3040

## 38 CFR Ch. I (7–1–10 Edition)

### ELIGIBILITY AND ENTITLEMENT

#### § 21.3040 Eligibility; child.

(a) *Commencement.* A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling.* Completion of secondary schooling means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement.* No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of § 21.3021 (a)(1)(iv) and (3)(ii).

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(g)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.

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

[30 FR 15632, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 39 FR 38227, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978; 73 FR 30489, May 28, 2008]

#### § 21.3041 Periods of eligibility; child.

(a) *Eligibility derived from a veteran with a P&T disability.* An eligible child's period of eligibility generally begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility generally ends on the earlier of the date of the child's 26th birthday or the date the veteran is no longer P&T disabled. VA will extend an eligible child's period of eligibility for the reasons listed in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his or her 26th birthday. If the veteran dies while the P&T rating is in effect and before the eligible child's 26th birthday, see paragraph (b) of this section to determine the new period of eligibility. Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday.* The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (a)(1)(i), (ii), or (iii) of this section. The period of eligibility ends on the earlier of the date the veteran is no longer rated P&T disabled or the date of the child's 26th birthday. See § 21.3135(h) if the veteran is no longer rated P&T disabled.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

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

(2) *Period of eligibility may begin after the child's 18th birthday.* A child's period of eligibility may begin after his or her 18th birthday if VA first finds the veteran has a P&T disability after the child's 18th birthday but before the child's 26th birthday. See paragraph (e) of this section if an adopted child becomes eligible through qualifying as