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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

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the veteran's child after VA first finds the veteran has a P&T disability. See paragraph (f) of this section if a stepchild becomes eligible through qualifying as the veteran's child after VA first finds the veteran is P&T disabled.

(i) *Beginning date if the effective date of the initial P&T rating is before the child's 18th birthday and notification to the veteran occurs after the child's 18th birthday and before his or her 26th birthday.* If the effective date of the P&T rating is before the child's 18th birthday, and the date of notification to the veteran occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) If the child elects a beginning date that is before his or her 18th birthday, the period of eligibility ends the earlier of the date that the veteran is no longer rated P&T disabled, or the date of the child's 26th birthday. If the child elects a beginning date after his or her 18th birthday, the period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date either—

(A) The date of his or her 18th birthday;

(B) The date he or she completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b)), if that date is on or after the effective date of the P&T rating and before his or her 18th birthday;

(C) The date he or she begins 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, if that date is on or after the effective date of the P&T rating and before the date of notification to the veteran of the P&T rating. If the child elects the beginning date of enrollment in such course, he or she may not receive educational assistance for pursuit of secondary schooling unless secondary school pursuit is otherwise authorized (see § 21.3040);

(D) The date VA notifies the veteran of the P&T rating; or

(E) Any date between the applicable date described in paragraphs (a)(2)(i)(A) through (C) of this section and the date in paragraph (a)(2)(i)(D) of this section.

(ii) *Beginning date if the effective date of the P&T rating is after the child's 18th birthday and before child's 26th birthday.* If the effective date of the P&T rating occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) The period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled, or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date—

(A) The effective date of the P&T rating;

(B) The date VA notifies the veteran of the veteran's P&T rating; or

(C) Any date in between.

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

(b) *Eligibility derived as the result of veteran's death.* An eligible child's period of eligibility 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 ends on the child's 26th birthday. VA will extend an eligible child's period of eligibility for reasons shown 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. 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 (i), (ii), or (iii) of this paragraph. The ending date of the period of eligibility is the child's 26th birthday.

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

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(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.* If the veteran's death occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. The period of eligibility ends 8 years after the beginning date the child elects. See paragraph (i) of this section for election requirements. VA may extend the period of eligibility for one of the reasons shown in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday. The child can elect as a beginning date any date between the—

(i) Date of the veteran's death; or

(ii) Date of VA's decision that the veteran's death was service-connected.

(Authority: 38 U.S.C. 3512(a)(3))

(c) *Period of eligibility for a child who serves on duty in the Armed Forces as an eligible person.* If the child serves on duty in the Armed Forces as an eligible person (as defined in § 21.3021(a)(1)) after the child's 18th birthday and before the child's 26th birthday, the child is eligible for a modified ending date based on the provisions of this paragraph. Under the provisions of this paragraph, the period of eligibility ends 8 years after the date of the child's first discharge or release from such duty, or the child's 31st birthday, whichever is earlier. VA may extend the ending date for one of the reasons shown in paragraph (g) of this section. See paragraph (h) of this section if the child is ordered to active duty as a reservist.

(Authority: 38 U.S.C. 3512(a)(5))

(d) *Eligibility derived from a parent who is listed by the Armed Forces as missing in*

action, captured in the line of duty, or forcibly detained or interned in line of duty by a foreign government or power.

(1) If a child establishes eligibility through the provisions of § 21.3021(a)(1)(iv) after his or her 18th birthday but before his or her 26th birthday, the period of eligibility will end on the earliest of the following dates:

(i) When the parent is no longer listed as described in § 21.3021(a)(1)(iv);

(ii) Eight years after the date on which the child becomes eligible under such provisions; or

(iii) The child's 31st birthday.

(2) VA may extend the ending date for one of the reasons shown in paragraphs (g) or (h) of this section. See § 21.3135(i) if the child is enrolled in an educational institution and the child's ending date is based on paragraph (d)(1)(i) of this section. See paragraph (c) of this section if the child serves in the Armed Forces as an eligible person after his or her 18th birthday and before his or her 26th birthday.

(Authority: 38 U.S.C. 3512(a)(5))

(e) *Adopted child qualifies after VA first finds the veteran P&T disabled.* If an adopted child becomes eligible through qualifying as the veteran's child (see 38 CFR 3.57(c)) and the date the child so becomes eligible is after VA first finds the veteran is P&T disabled, the beginning date of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date the adopted child qualifies as the veteran's child under § 3.57(c) of this chapter. The ending date is the child's 26th birthday. VA may extend the period of eligibility for one of the reasons in paragraph (g) or (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible person.

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

(f) *Stepchild qualifies after VA first finds the veteran P&T disabled.* If a stepchild becomes eligible through qualifying as the veteran's child and a member of the veteran's household after VA first finds the veteran is P&T disabled,

the beginning date of the period of eligibility is the date determined pursuant to paragraphs (a) through (d) of this section, but in no event before the date he or she becomes the veteran's stepchild and a member of the veteran's household. The ending date of the period of eligibility is the stepchild's 26th birthday. VA may extend the ending date for one of the reasons in paragraphs (g) or (h) of this section. See paragraph (c) of this section for the ending date of the period of eligibility if the stepchild serves on active duty in the Armed Forces as an eligible person. See § 21.3135(g) for award discontinuance dates if the veteran and the stepchild's natural or adopted parent divorce or the stepchild ceases to be a member of the veteran's household.

(g) *Extensions to ending dates.* (1) If an eligible child suspends pursuit of his or her program due to conditions that VA determined were beyond the child's control, VA may extend the period of eligibility ending date (see § 21.3043). VA cannot grant an extension beyond age 31 to those children whose period of eligibility ending date (as determined under paragraphs (a) through (f) of this section) is subject to an age limitation.

(2) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is enrolled in an educational institution, VA may extend the period of eligibility (extensions may be made beyond age 31)—

(i) To the end of the quarter or semester, for a child enrolled in an educational institution that regularly operates on the quarter or semester system; or

(ii) To the end of the course, not to exceed 12 weeks, for a child who completed a major portion of a course while enrolled in an educational institution that operates under other than a quarter or semester system.

(3) If an eligible child's period of eligibility ending date (as determined under paragraphs (a) through (f), or (h) of this section) occurs while the child is pursuing training in a training establishment (as defined in § 21.4200(c)), VA cannot extend the ending date.

(Authority: 38 U.S.C. 3512(a)(7)(c)).

(h) Notwithstanding any other provision of this section, if during an eligible child's period of eligibility, as determined in paragraphs (a) through (g) of this section, but after September 10, 2001, an eligible child is ordered to active duty or involuntarily ordered to full-time National Guard duty VA will grant an extension of the child's period of eligibility. The extension will be equal to the length of the period served plus an additional 4 months for each qualifying period and applies if after September 10, 2001, the eligible child is—

(i) Ordered to serve on active duty under section 688, 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, United States Code; or

(ii) Involuntarily ordered to full-time National Guard duty under section 502(f) of title 32, United States Code.

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

(i) *Elections.* (1) VA must provide written notice to certain eligible children informing them of their right to elect the beginning date of their period of eligibility. The written notice must identify the beginning dates the child may choose from and must contain a statement that the child must make the election within 60 days of the date of the written notice. An eligible child may elect his or her beginning date if—

(i) The effective date of the P&T rating is before the child's 18th birthday, and date of the notification to the veteran from whom the child derives eligibility occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(i) of this section);

(ii) The effective date of the P&T rating, or the date of notification to the veteran from whom the child derives eligibility, occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (a)(2)(ii) of this section);

(iii) The veteran's death occurs after the child's 18th birthday but before the child's 26th birthday (see paragraph (b)(2) of this section);

(iv) The child makes such election within 60 days of VA's written notice to the child informing him or her of the right to elect his or her beginning date; and

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(v) The child's election is in accordance with the choices VA identified in the written notice described in paragraph (i)(1) of this section.

(2) If the child does not elect a beginning date within 60 days of VA's written notice informing him or her of the right to elect a beginning date, the period of eligibility beginning date will be whichever of the following applies—

(i) The date of VA's decision that the veteran has a P&T disability; or

(ii) The date of VA's decision that the veteran's death is service-connected.

(3) If upon review of the child's application VA determines the child is entitled to and eligible for an immediate award of educational assistance under 38 U.S.C. chapter 35, VA will for purposes of such award—

(i) Consider the beginning date of the child's period of eligibility to be the date of VA's decision that the—

(A) Veteran has a P&T disability in the case of a child whose eligibility is derived from a veteran with a P&T disability; or

(B) Veteran's death is service-connected in the case of a child whose eligibility is derived due to the veteran's death.

(ii) Notify the child of his or her right to elect a beginning date in accordance with paragraph (i)(1) of this section.

(iii) Adjust the child's beginning date based on the child's election if the child makes an election within 60 days after VA's written notice in accordance with paragraph (i)(1) of this section.

(Authority: 38 U.S.C. 3512(a)(3), (a)(4))

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-0703)

[73 FR 30489, May 28, 2008; 73 FR 31742, June 3, 2008]

§ 21.3042 Service with Armed Forces.

(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.3135(f).

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

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(b) If the eligible person served with the Armed Forces, his or her discharge or release from each period of service must have been under conditions other than dishonorable.

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

[30 FR 15633, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 41 FR 42929, Nov. 1, 1976; 61 FR 26109, May 24, 1996; 73 FR 30491, May 28, 2008]

§ 21.3043 Suspension of program; child.

For an eligible person who suspends his program due to conditions determined by the Department of Veterans Affairs to have been beyond his or her control the period of eligibility may, upon his request, be extended by the number of months and days intervening the date the suspension began and the date the reason for suspension ceased to exist. The burden of proof is on the eligible person to establish that suspension of a program was due to conditions beyond his or her control. The period of suspension shall be considered to have ended as of the date of the person's first available opportunity to resume training after the condition which caused it ceased to exist. The following circumstances may be considered as beyond the eligible person's control:

(a) While in active pursuit of a program of education he or she is appointed by the responsible governing body of an established church, officially charged with the selection and designation of missionary representatives, in keeping with its traditional practice, to serve the church in an official missionary capacity and is thereby prevented from pursuit of his or her program of studies.

(b) Immediate family or financial obligations beyond his or her control require the eligible person to take employment, or otherwise preclude pursuit of his or her program.

(c) Unavoidable conditions arising in connection with the eligible person's employment which preclude pursuit of his or her program.

(d) Pursuit of his or her program is precluded because of the eligible person's own illness or illness or death in his or her immediate family.