

## Department of Veterans Affairs

## § 21.322

veteran's plan. Subsistence allowance is not payable during such periods.

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

### AUTHORIZATION OF SUBSISTENCE ALLOWANCE AND TRAINING AND REHABILITATION SERVICES

#### § 21.320 Awards for subsistence allowance and authorization of rehabilitation services.

Awards providing for payment of a subsistence allowance and authorization of services necessary for rehabilitation may be prepared when an IWRP (Individualized Written Rehabilitation Plan) or other plan has been completed and other requirements for entrance or reentrance into a rehabilitation program have been met.

(a) *Commencing date of subsistence allowance.* The commencing date of an award of subsistence allowance will be determined under the provisions of § 21.322.

(b) *Commencing date of authorization of training and rehabilitation services.* The commencing date for authorization of training and rehabilitation services is the same as the effective date for awards for subsistence allowance under provisions of § 21.322, except when:

(1) The commencing date for authorization of a program of employment services is determined under provisions of § 21.326;

(2) An earlier commencement date is established in the veteran's plan or the veteran is entitled to earlier induction under § 21.282;

(3) The veteran elects payment at the educational assistance allowance rate, in which case the commencing date of payment is determined under provisions applicable to commencement of payment under Chapter 30.

(Authority: 38 U.S.C. 3108 (a) and (f))

(c) *Ending date of subsistence allowance.* The ending date of an award for subsistence allowance will be the earliest of the following dates:

(1) The ending date provided in the veteran's IWRP or other plan;

(2) The ending date of a period of enrollment as certified by a training or rehabilitation facility;

(3) The ending date specified in § 21.324.

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

(d) *Ending date for training and rehabilitation services.* The ending date of training and rehabilitation services will be the same as the termination date for subsistence allowance under paragraph (c) of this section, except when:

(1) The ending date for a period of employment services is determined under provisions of § 21.326;

(2) A later termination date is established in the veteran's plan;

(3) A veteran has elected payment at the educational assistance rate paid under Chapter 30. The ending date of the award is determined under regulations applicable to termination of training under Chapter 30.

(Authority: 38 U.S.C. 3108 (a) and (f))

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4284, Jan. 30, 1989; 57 FR 57108, Dec. 3, 1992]

#### § 21.322 Commencing dates of subsistence allowance.

(a) *General.* VA will determine the commencing date of an award or increased award of subsistence allowance under this section. VA will not authorize subsistence allowance for any period prior to the earliest date for which disability compensation is payable or would be payable but for the veteran's receipt of retired pay.

(Authority: 38 U.S.C. 3108, 3113)

(b) *Entrance or reentrance into vocational rehabilitation, extended evaluation, independent living services.* Except in the case of retroactive induction into a rehabilitation program, as provided in § 21.282, the commencing date of an award of subsistence allowance shall be the earlier of:

(1) The date the facility requires the veteran to report for prescribed activities; or

(2) The date training or rehabilitation services begin.

(c) *Increases for dependents—*(1) *Dependency exists at the time of entrance or reentrance into a rehabilitation program.* A veteran may have one or more dependents on or before the date he or

**§ 21.322**

**38 CFR Ch. I (7-1-10 Edition)**

she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period of submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) The effective date of the increase will be the date VA receives notice of the dependents existence if:

(A) VA receives the claim for the increase more than one year after the date of entrance or reentrance; and

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part;

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) *Dependency arises after entrance or reentrance into a rehabilitation program.* If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of

the event is received within one year from the date of the event;

(B) Date notice is received of the dependents's existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(C) Date VA receives evidence of the dependent's existence if this date is more than one year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) *Date dependency arises—(3) Increased award not permitted.* No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally.

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

(d) *Correction of military records.* In accordance with the facts found, but not earlier than the date the change, correction, or modification was made by the service department, if eligibility of a veteran arises as the result of correction or modification of military records under 10 U.S.C. 1552, or change, correction or modification of a discharge or dismissal under 10 U.S.C. 1553, or other competent military authority.

(e) *Bar to benefits removed by VA.* In accordance with the facts found, but not earlier than the date the change was made by VA, if eligibility of a veteran arises as the result of review of the evidence of record regarding the character of discharge by VA, when the veteran's discharge or dismissal was a bar to benefits under 38 U.S.C. 5301.

(Authority: 38 U.S.C. 3103(b))

(f) *Incarcerated veterans.* (1) Date of release from Federal, State, or local penal institution of a veteran incarcerated for conviction of a felony.

(2) Earlier of the following dates in the case of a veteran residing in a half-way house or participating in a work-

## Department of Veterans Affairs

## § 21.324

release program as a result of a felony conviction.

(i) Date of release from the half-way house or work-release program, or

(ii) Date a veteran becomes obligated to pay part of his or her living expenses.

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

(g) *Temporary 100 percent award terminated.* Date of reduction of a temporary award of disability compensation at the 100 percent rate because of hospitalization.

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

(h) *Liberalizing laws and VA issues.* In accordance with facts found, but not earlier than the date of the act or administrative issue.

(Authority: 38 U.S.C. 5113)

CROSS-REFERENCE. See § 21.260(c) for definition of dependents.

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 52 FR 42113, Nov. 3, 1987; 55 FR 12821, Apr. 6, 1990]

### § 21.324 Reduction or termination dates of subsistence allowance.

(a) *General.* The effective date of the reduction of the amount paid or termination of payment of subsistence allowance will be the earliest of the dates specified in this section. If an award is reduced, the reduced rate will be effective the day following the date of termination of the greater benefit.

(b) *Death of a veteran.* Date of death, if death occurs while the veteran is in attendance or authorized leave status; otherwise date of last attendance.

(c) *Death of a dependent.* (1) Before October 1, 1982. Last day of the calendar year in which death occurs, unless the veteran's program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(2) *After September 30, 1982.* Last day of the month in which death occurs unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(d) *Divorce—(1) Before October 1, 1982.* Last day of the calendar year in which divorce occurs, unless the veteran's

program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(2) *After September 30, 1982.* Last day of the month in which divorce occurs unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(e) *Child—(1) Marriage—(i) Before October 1, 1982.* Last day of the month in which the marriage occurs, unless the veteran's program is terminated earlier under other provisions.

(Authority: 38 U.S.C. 5113)

(ii) *After September 30, 1982.* Last day of the month in which the marriage occurs, unless discontinuance is required at an earlier date under other provisions.

(Authority: 38 U.S.C. 5112(b), 5113)

(2) *Age 18.* Day preceding the child's 18th birthday.

(3) *School attendance.*

(i) Last day of the month in which the child ceases attending school; or

(ii) The day preceding the child's 23rd birthday, whichever is earlier.

(4) *Helplessness.* Last day of the month in which 60 days has passed from VA's notice to the payee that the child's helplessness has ceased.

(f) *Interrupted, rehabilitation to the point of employability, independent living program completed, and extended evaluation completed status.* Last day of attendance, or approved leave status, whichever is applicable.

(Authority: 38 U.S.C. 5113)

(g) *Discontinued.* Last day of attendance or approved leave status, whichever is applicable, except as follows:

(1) If VA places the veteran in "discontinued" status following the veteran's withdrawal from all courses with nonpunitive grades or following his or her completion of all courses with nonpunitive grades and the case manager does not find mitigating circumstances, VA will terminate subsistence allowance effective:

(i) The first date of the term, or

(ii) December 1, 1976, whichever is later.