

## 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.

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(2) If VA places the veteran in “discontinued” status following a term in which the grades the veteran receives include both those that count in the grade point average and nonpunitive grades, and the case manager does not find mitigating circumstances:

(i) VA will terminate subsistence allowance for courses in which the veteran receives nonpunitive grades effective the first day of the term or December 1, 1976, whichever is later.

(ii) VA will terminate subsistence allowance for courses in which the veteran receives grades that will count in the grade point average effective the veteran’s last day of attendance or approved leave status, whichever is applicable.

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

(h) *Wages or salary received in apprentice or on-job training.* (1) If the sum of the training wage plus the scheduled subsistence allowance is more than the journeyman wage when the training commences, the subsistence allowance will be decreased by VA effective the first day of the second month following the month in which the veteran enters on-job training.

(2) Subsequent adjustments will be effective the first day of the second month following the month in which wages or salary changes are made which justify the adjustment under provisions of § 21.266(e).

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

(i) *Reduction in rate of pursuit of the program.* End of month in which reduction occurs, except that if the rate of pursuit is reduced as a result of the veteran’s withdrawal from a unit course or courses with nonpunitive grade(s) or as a result of the veteran’s completion of a unit course or courses with nonpunitive grade(s) (§ 21.4200(j)), VA will reduce subsistence allowance as follows:

(1) If it is determined that there are mitigating circumstances:

(i) Withdrawal with nonpunitive grades: The end of the month or the end of the term in which the veteran withdraws, whichever is earlier; if the reduction occurs at the beginning of the term benefits will be reduced the

first day of the term in which the veteran withdraws.

(ii) Completion with nonpunitive grades. No reduction required.

(2) If it is determined there are no mitigating circumstances VA will reduce the veteran’s subsistence allowance effective the first day of the term in which the veteran withdraws or which the veteran completes with nonpunitive grades. The term *mitigating circumstances* means circumstances beyond the veteran’s or serviceperson’s control which prevent him or her from continuously pursuing a rehabilitation program. The following circumstances are representative of those which are considered mitigating.

(i) An illness of the program participant;

(ii) An illness or death in the program participant’s family;

(iii) An unavoidable change in the veteran’s conditions of employment;

(iv) An unavoidable geographical transfer resulting from the veteran’s employment;

(v) Immediate family or financial obligations beyond the control of the veteran which are found by VA to require the veteran to suspend pursuit of the rehabilitation program;

(vi) Discontinuance of the course by the educational institution;

(vii) In the first instance of withdrawal on or after June 1, 1989 by a program participant from a course or courses with respect to which such veteran has been paid subsistence allowance under the provisions of § 21.260(b), mitigating circumstances shall be considered to exist with respect to courses totaling not more than six semester hours or the equivalent thereof;

(viii) Difficulties in obtaining child care or changes in such arrangements which are beyond the control of the program participant and which require interruption of the rehabilitation program in order for the participant to provide or arrange for such care.

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

(j) *Severance of service-connection.* Last day of the month in which the severance becomes final.

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

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(k) *Fraud*. The later of the following dates:

- (1) The beginning date of the award of subsistence allowance, or
- (2) The day preceding the date of the fraudulent act.

(Authority: 38 U.S.C. 6103(a))

(1) *Error*—(1) *Payee error*. Effective date of the award of subsistence allowance or day preceding the act, whichever is later, but not prior to the date the veteran's entitlement ceases, on an erroneous award based on an act of commission or omission by a payee with his or her knowledge.

(2) *Administrative error*. Except as provided in paragraph (j) of this section, date of last payment on an erroneous award based solely on administrative error or an error in judgment by a VA employee.

(m) *Treasonable acts, subversive activities*. The later of the following dates:

- (1) Beginning date of the award of subsistence allowance, or
- (2) Day preceding the date of commission of the treasonable act or subversive activities for which the veteran is convicted.

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

(n) *Incarceration in prison or jail*—(1) *Felony conviction*. If a veteran's subsistence allowance must be reduced because of incarceration for a felony conviction under provisions of §21.276, his or her rate of payment will be reduced the later of:

- (i) The date of his or her incarceration in a prison or jail; or
- (ii) The commencing date of his or her award as determined by §21.322.

(2) *Halfway house or work-release program*. The subsistence allowance of a veteran in a halfway house or work release program as a result of conviction of a felony will not be reduced under the provisions of §21.276 the date on which the Federal Government or a State or local government pays all of the veteran's living expenses.

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

(o) *Specialized rehabilitation facility*. Date payment for room and board by

VA begins, reduce the rate paid to the amount payable for dependents.

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

(p) *Termination of subsistence allowance while hospitalized at VA expense*. Date before the beginning date of the increased disability compensation award, which results in a reduced subsistence allowance under the provisions of §21.266.

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

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 22808, June 23, 1986; 51 FR 25525, July 15, 1986; 55 FR 48843, Nov. 23, 1990]

### § 21.326 Authorization of employment services.

(a) *General*. Authorization of employment services shall be based upon the services identified and goals established in an IEAP (Individualized Employment Assistance Plan) under provisions of §21.88. The effective dates for the commencement, or termination of such services will be determined under this section.

(Authority: 38 U.S.C. 3117(a))

(b) *Commencing date*. The commencing date authorizing a period of employment services will be the later of:

- (1) The date following completion of the period of rehabilitation to the point of employability; or
- (2) The date of the original IEAP.

(Authority: 38 U.S.C. 3107, 3117(a))

(c) *Termination of the authorization of employment services*. Authorization for employment services will be terminated the earliest of:

- (1) The last day employment services are provided under the terms of an IEAP when employment services are interrupted, discontinued, or the veteran is rehabilitated;
- (2) The date the authorization is found to be erroneous because of an act of omission or commission by the veteran, or with his or her knowledge;
- (3) The last day of the month in which severance of service connection becomes final;
- (4) The day preceding the date of a fraudulent act;