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(ii) A service-connected disability;
(iii) A medical condition which preexisted such service on active duty and which the Secretary of VA determines is not service-connected;

(iv) A hardship; or

(v) A physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct, but that did interfere with the individual's performance of duty, as determined by the Secretary of each service department.

(2) VA will treat all payments of educational assistance to dependents as overpayments if the transferor does not complete the required service unless the transferor does not complete the required service due to one of the reasons stated in paragraphs (m)(1)(i) through (v) of this section.

(Authority: 38 U.S.C. 3020, 38 U.S.C. 3011(a)(1)(A)(ii))

(n) Dependent is eligible for educational assistance under this section and is eligible for educational assistance under 38 U.S.C. chapter 30 based on his or her own active duty service. Dependents eligible for payment of educational assistance through transferred entitlement and who are eligible for payment under 38 U.S.C. chapter 30 based on their own active service—

(1) May receive educational assistance payable under this section and educational assistance payable based on their own active duty service for the same course.

(2) Are not subject to the 48 months limit on training provided for in §21.4020 when combining transferred entitlement with their own entitlement earned under 38 U.S.C. chapter 30 as long as the only educational assistance paid is under 38 U.S.C. chapter 30. If the dependent is awarded educational assistance under another program listed in §21.4020 (other than 38 U.S.C. chapter 30), the 48 months limit on training will apply.

(Authority: 38 U.S.C. 3020, 3033, 3034(a), 3695)
[71 FR 75675, Dec. 18, 2006]

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

COUNSELING

§ 21.7100 Counseling.

A veteran or servicemember may receive counseling from VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an educational institution appropriate for the attainment of the educational objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the veteran that would be likely to provide the veteran with satisfactory employment opportunities in light of his or her personal circumstances.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98-525)

(b) Required counseling. (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program; and

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. chapter 30 when he or she—

(i) Fails to report;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

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(4) Counseling is not required for any other individual eligible for educational assistance established under 38 U.S.C. chapter 30.

(Authority: 38 U.S.C. 3032, 3463; Pub. L. 98-525, Pub. L. 99-576)

(c) *Availability of counseling.* Counseling is available for—

(1) Identifying and removing reasons for academic difficulties which may result in interruption or discontinuance of training, or

(2) In considering changes in career plans and making sound decisions about the changes.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98-525)

(d) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. In addition, VA shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the veteran's request for counseling, the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 3034, 3463; Pub. L. 98-525, Pub. L. 99-576)

[53 FR 1757, Jan. 22, 1988, as amended at 55 FR 28385, July 11, 1990]

§21.7103 Travel expenses.

(a) *Travel for veterans and servicemembers.* (1) Except as provided in paragraph (a)(2) of this section, VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(i) VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(ii) The individual has a compensable service-connected disability.

(2) VA shall not pay for the travel expenses for a veteran who is not residing in a State.

(Authority: 38 U.S.C. 111)

(b) *Travel for attendants.* (1) VA will authorize payment of travel expenses for an attendant while the individual is traveling when—

(i) The individual, because of a severe disability requires the services of an attendant when traveling, and

(ii) VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.

(2) VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in §21.374 of this part.

(Authority: 38 U.S.C. 111)

(c) *Payment of travel expenses prohibited for most veterans.* VA shall not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 111)

CROSS REFERENCE: 21.374, Authorization for travel of attendants.

[55 FR 28385, July 11, 1990]

PROGRAMS OF EDUCATION

§21.7110 Selection of a program of education.

(a) *Payments of educational assistance are usually based on pursuit of a program of education.* In order to receive educational assistance under 38 U.S.C. chapter 30, a veteran or servicemember must—

(1) Be pursuing an approved program of education;

(2) Be pursuing refresher or deficiency courses;

(3) Be pursuing other preparatory or special education or training courses necessary to enable the veteran or servicemember to pursue an approved program of education;

(4) Have taken an approved licensing or certification test, for which he or she is requesting reimbursement; or

(5) Be an individual who has taken a course for which the individual received tuition assistance provided