

## § 21.7803

the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 511)

(c) *Determinations of satisfactory participation.* A determination made by a competent military or naval authority or by the Coast Guard as to whether or not an individual is participating satisfactorily in required training as a member of the Selected Reserve is binding upon VA.

(Authority: 10 U.S.C. 16134; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 29483, June 11, 1996]

### § 21.7803 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 511)

### § 21.7805 Conflicting interests.

In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4005 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3683; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996; 61 FR 29483, June 11, 1996]

### § 21.7807 Examination of records.

In administering benefits payable under 10 U.S.C. chapter 1606, VA will apply the provisions of § 21.4209 in the same manner as they are applied in the administration of 38 U.S.C. chapters 34 and 36.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3690; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 61 FR 20729, May 8, 1996]

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

### Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects

AUTHORITY: 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

SOURCE: 67 FR 72565, Dec. 6, 2002, unless otherwise noted.

#### GENERAL

### § 21.8010 Definitions and abbreviations.

(a) *Program-specific definitions and abbreviations.* For the purposes of this subpart:

*Covered birth defect* means the same as defined at § 3.815(c)(3) of this title.

*Eligible child* means, as appropriate, either an *individual* as defined at § 3.814(c)(2) of this title who suffers from spina bifida, or an *individual* as defined at § 3.815(c)(2) of this title who has a covered birth defect other than a birth defect described in § 3.815(a)(2).

*Employment assistance* means employment counseling, placement and post-placement services, and personal and work adjustment training.

*Institution of higher education* has the same meaning that § 21.4200 provides for the term *institution of higher learning*.

*Program of employment services* means the services an eligible child may receive if the child's entire program consists only of employment assistance.

*Program participant* means an eligible child who, following an evaluation in which VA finds the child's achievement of a vocational goal is reasonably feasible, elects to participate in a vocational training program under this subpart.

*Spina bifida* means the same as defined at § 3.814(c)(3) of this title.

*Vietnam veteran* means, in the case of a child suffering from spina bifida, the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and, in the case of a child with a covered birth defect, the same as defined at § 3.815(c)(1) of this title.

*Vocational training program* means the vocationally oriented training services, and assistance, including placement

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and post-placement services, and personal and work-adjustment training that VA finds necessary to enable an eligible child to prepare for and participate in vocational training or employment. A vocational training program may include a program of education offered by an institution of higher education only if the program is predominantly vocational in content.

VR&E refers to the Vocational Rehabilitation and Employment activity (usually a division) in a Veterans Benefits Administration regional office, the staff members of that activity in the regional office or in outbased locations, and the services that activity provides.

(Authority: 38 U.S.C. 101, 1802, 1804, 1811–1812, 1814, 1821)

(b) *Other terms and abbreviations.* The following terms and abbreviations have the same meaning or explanation that §21.35 provides:

- (1) CP (Counseling psychologist);
- (2) Program of education;
- (3) Rehabilitation facility;
- (4) School, educational institution, or institution;
- (5) Training establishment;
- (6) Vocational goal;
- (7) VRC (Vocational rehabilitation counselor); and
- (8) Workshop.

(Authority: 38 U.S.C. 1804, 1811, 1814, 1821)

### **§21.8012 Vocational training program for certain children of Vietnam veterans—spina bifida and covered birth defects.**

VA will provide an evaluation to an eligible child to determine the child's potential for achieving a vocational goal. If this evaluation establishes that it is feasible for the child to achieve a vocational goal, VA will provide the child with the vocational training, employment assistance, and other related rehabilitation services authorized by this subpart that VA finds the child needs to achieve a vocational goal, including employment.

(Authority: 38 U.S.C. 1804, 1812, 1814)

### **§21.8014 Application.**

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran (or the

child's parent or guardian, an authorized representative, or a Member of Congress acting on behalf of the child) must file an application. An application is a request for an evaluation of the feasibility of the child's achievement of a vocational goal and, if a CP or VRC determines that achievement of a vocational goal is feasible, for participation in a vocational training program. The application may be in any form, but it must:

(1) Be in writing over the signature of the applicant or the person applying on the child's behalf;

(2) Provide the child's full name, address, and VA claim number, if any, and the parent Vietnam veteran's full name and Social Security number or VA claim number, if any; and

(3) Clearly identify the benefit sought.

(Authority: 38 U.S.C. 1804(a), 1822, 5101)

(b) *Time for filing.* For a child claiming eligibility based on having spina bifida, an application under this subpart may be filed at any time after September 30, 1997. For a child claiming eligibility based on a covered birth defect, an application under this subpart may be filed at any time after November 30, 2001. (The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0579)

(Authority: 38 U.S.C. 1804, 1811, 1811 note, 1812, 1814, 1821)

### **§21.8015 Notification by VA of necessary information or evidence when a claim is filed; time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence.**

The provisions of §§21.32 and 21.33 of subpart A of this part also apply to claims for benefits and services under this subpart.

[74 FR 31857, July 6, 2009]

### **§21.8016 Nonduplication of benefits.**

(a) *Election of benefits—chapter 35.* An eligible child may not receive benefits concurrently under 38 U.S.C. chapter 35 and under this subpart. If the child is eligible for both benefits, he or she