

§ 3.808

38 CFR Ch. I (7–1–12 Edition)

(i) Now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power; or

(ii) Has been determined by VA to have a total disability permanent in nature incurred or aggravated in the line of duty during active military, naval, or air service; is hospitalized or receiving outpatient medical care, services, or treatment for such disability; is likely to be discharged or released from such service for such disability; and the pursuit of a course of education by such individual's spouse or child for which benefits under 38 U.S.C. chapter 35 are sought occurred after December 22, 2006.

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89–358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.40(b), (c), or (d) of this part.

(Authority: 38 U.S.C. 3565)

(c) *Service connection.* For purpose of this section, the term “service-connected disability” encompasses combinations of disabilities of paired organs or extremities treated as if service-connected under the provisions of § 3.383(a) of this part. The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 3501(a)). Cases where eligibility for service-connected benefits is established under § 3.358, 3.361, or 3.800 are not included.

(d) *Relationship*—(1) “Child” means the son or daughter of a veteran who meets the requirements of § 3.57, except as to age and marital status.

(2) “Spouse” means a person whose marriage to the veteran meets the requirements of § 3.50(a) of this part.

(3) “Surviving spouse” means a person whose marriage to the veteran

meets the requirements of §§ 3.50(b) or 3.52 of this part.

(Authority: 38 U.S.C. 1160, 3501)

CROSS REFERENCES: Discontinuance. See § 3.503(a)(8) Election; concurrent benefits. See § 3.707 Nonduplication. See § 21.3023 of this chapter.

[29 FR 9537, July 14, 1964, as amended at 31 FR 4347, Mar. 12, 1966; 34 FR 840, Jan. 18, 1969; 38 FR 8658, Apr. 5, 1973; 40 FR 54245, Nov. 21, 1975; 53 FR 46607, Nov. 18, 1988; 59 FR 62585, Dec. 6, 1994; 69 FR 46435, Aug. 3, 2004; 73 FR 1076, Jan. 7, 2008]

§ 3.808 Automobiles or other conveyances; certification.

(a) *Entitlement.* A certificate of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding the amount specified in 38 U.S.C. 3902 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be provided to—

(1) A veteran who is entitled to compensation under chapter 11 of title 38, United States Code, for a disability described in paragraph (b) of this section; or

(2) A member of the Armed Forces serving on active duty who has a disability described in paragraph (b) of this section that is the result of an injury or disability incurred or disease contracted in or aggravated by active military, naval, or air service.

(b) *Disability.* One of the following must exist:

(1) Loss or permanent loss of use of one or both feet;

(2) Loss or permanent loss of use of one or both hands;

(3) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20° in the better eye.

(4) For adaptive equipment eligibility only, ankylosis of one or both knees or one or both hips.

(Authority: 38 U.S.C. 3902)

(c) *Claim for conveyance and certification for adaptive equipment.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licensed. The application will also be considered as an application for the adaptive equipment to insure that the claimant will be able to operate the conveyance in a manner consistent with safety and to satisfy the applicable standards of licensure of the proper licensing authorities. Simultaneously with the certification provided pursuant to the introductory text of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment as may be appropriate to the claimant's losses unless the need for such equipment is contraindicated by a physical or legal inability to operate the vehicle. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with VA on the date it is shown to have been placed in the hands of military authority for transmittal.

(d) *Additional eligibility criteria for adaptive equipment.* Claimants for adaptive equipment must also satisfy the additional eligibility criteria of §§ 17.156, 17.157, and 17.158 of this chapter.

(e) *Definition.* The term *adaptive equipment*, means generally, that equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant and to assist him or her in meeting the applicable standards of licensure of the proper licensing authority.

(1) With regard to automobiles and similar vehicles the term includes a basic automatic transmission as to a claimant who has lost or lost the use of a limb. In addition, the term includes, but is not limited to, power steering,

power brakes, power window lifts and power seats. The term also includes air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(2) With regard to automobiles and similar vehicles the term includes such items of equipment as the Chief Medical Director may, by directive, specify as ordinarily necessary for any of the classes of losses specified in paragraph (b) of this section and for any combination of such losses. Such specifications of equipment may include a limit on the financial assistance to be provided based on judgment and experience.

(3) The term also includes other equipment which the Chief Medical Director or designee may deem necessary in an individual case.

(Authority: 38 U.S.C. 501(a), 1151(c)(2), 3902))

[36 FR 7588, Apr. 22, 1971, as amended at 38 FR 14370, June 1, 1973; 40 FR 37037, Aug. 25, 1975; 43 FR 4423, Feb. 2, 1978; 47 FR 24552, June 7, 1982; 53 FR 46607, Nov. 18, 1988; 66 FR 44528, Aug. 24, 2001; 71 FR 44919, Aug. 8, 2006]

§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).

A certificate of eligibility for assistance in acquiring specially adapted housing under 38 U.S.C. 2101(a) or 2101A(a) may be extended to a veteran or a member of the Armed Forces serving on active duty if the following requirements are met:

(a) *Eligibility.* A veteran must have had active military, naval, or air service after April 20, 1898. Benefits are not restricted to veterans with wartime service. On or after December 16, 2003, the benefit under this section is also available to a member of the Armed Forces serving on active duty.