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Chapter 6 INTERRUPTION AND LEAVES OF ABSENCE

6.01 Introduction

This chapter provides the procedural guidelines in approving requests for and implementing leaves of absence. In addition, this chapter provides the procedural guidelines for suspending rehabilitation services.

6.02 References and Resources

Laws: 38 United States Code (U.S.C.) 3110

Regulations: 38 Code of Federal Regulations (CFR) 21.197
38 CFR 21.7139

VA Forms (VAF): VAF 28-1905d, Special Report of Training
VAF 28-1905h, Trainee Request for Leave
VAF 4107, Your Right to Appeal Our Decision

6.03 Leave of Absence

a. General Information

The intent of a leave of absence is to allow a Veteran who is participating in a rehabilitation program to stop active participation for a short period of time, but have his/her rehabilitation case remain in an active status and continue to receive subsistence allowance during the leave (38 U.S.C. 3110). A leave of absence may be approved for a Veteran who is in Extended Evaluation (EE), Rehabilitation To the point of Employability (RTE), or Independent Living (IL) status. It is applicable to a period when a Veteran, with approval of his/her case manager, is not in attendance:

- In training, as defined by the educational institution, rehabilitation center, Non-Paid Work Experience (NPWE) site, apprentice site, and on-job training site
- At work, as defined by the rules of the training establishment; or participating in a scheduled period of individual instruction

b. Requesting a Leave of Absence

A request for a leave of absence must be made by the Veteran in advance of the leave. The case manager should inform the Veteran of this requirement prior to entering a rehabilitation program.

The Veteran must provide either a written request on VAF 28-1905h, Trainee Request for Leave, or a verbal request for a leave of absence. If a verbal request is given, completion of VAF 28-1905h should occur as quickly as possible. If it is not possible for the Veteran to complete VAF 28-1905h, the case manager must document the request and assist the Veteran in completing the form and obtaining the necessary approval. See Appendix O, VA Forms, for information on how to access this, and all forms mentioned in this chapter.

The Veteran must certify that the leave will not adversely impact his/her progress from the educational institution, rehabilitation center, training establishment, or individual instructor.

c. Approval of Request for Leave of Absence

The case manager must approve the request for a leave of absence and document the decision in a Corporate WINRS (CWINRS) note or on VAF 28-1905d, Special Report of Training. This form must be filed in the center section of the Veteran's Counseling/Evaluation/Rehabilitation (CER) folder.

The case manager may not approve a request for leave of absence when such approval will result in the use of more than 48 months of entitlement under the Chapter 31 program, or an extension of the date of completion of rehabilitation services. Additionally, a leave of absence may not be approved after the completion of rehabilitation services.

d. Duration of Leave of Absence

The case manager may approve a leave of absence for no more than 30 days during a 12-month period. Under exceptional circumstances, the case manager may approve an additional 15 days of leave during the same 12-month period if failure to approve the leave would adversely affect the Veteran's ability to continue in the planned rehabilitation program.

e. Calculating Periods for Leave of Absence

The beginning date of the year for which a leave of absence is approved is the same as the beginning date of the original subsistence allowance award. The ending date is 12 months from the beginning date. After the year in which a leave of absence is authorized, subsequent 12-month periods are consecutive.

Example: A Veteran is granted a leave of absence during November 2012. The beginning date of the subsistence allowance award was September 3,

2012. The first 12-month period would be from September 3, 2012, to September 2, 2013. The second 12-month period would be from September 3, 2013, to September 2, 2014, and so on.

f. Charging a Leave of Absence

One day of approved leave is charged for each day or partial day that the Veteran is not in attendance, at work, or participating in a scheduled period of individual instruction. The Veteran's rate of pursuit does not affect the amount of approved leave.

A Veteran receiving subsistence allowance during an approved leave of absence is considered to be pursuing a rehabilitation program. Each day of leave for which the Veteran is paid a subsistence allowance is charged against his/her Chapter 31 entitlement.

g. Leave Approval Not Required

A leave of absence is not required, and the Veteran may continue to receive subsistence allowance, under the following conditions:

- When the facility where the Veteran is pursuing a rehabilitation program is temporarily not providing services, such as when the facility is closed under an executive order from the President, or the facility is closed due to an emergency situation.
- When a Veteran is participating in on-job training and the site observes holidays established by state or federal law.
- When a Veteran participating in farm cooperative training who is required, because of routing operations, to be absent from the farm or from a farm cooperative course given at an educational institution.
- When a Veteran is pursuing a standard college degree, during weekends and legal holidays, or customary vacation periods.
- When a Veteran, as part of an approved program, transfers from one institution to another.
- A Veteran pursuing a non-college degree may be excused up to five days per 12-month period when the school is not providing services because of instructor professional meetings.

Note: A Veteran who wishes to receive subsistence allowance while a facility is temporarily not providing services under circumstances other than those

outlined above must request and be granted an approved leave of absence.

h. Processing Leave of Absence

The case manager must adhere to the following guidelines when processing an approved leave of absence:

1. Document the reason for the leave of absence and the approval of the request on VAF 28-1905d or in a CWINRS note.
2. Outline the ending date of the current 12-month reporting period and number of days of leave used within the approved reporting period in the remarks section of VAF 28-1905d or in a CWINRS note.
3. File VAF 28-1905h and other related documents of the approval for leave from the training facility or individual instructor on the left side of the Veteran's CER folder.
4. Notify the Veteran in writing regarding the approval of the request for leave of absence.
5. File a copy of the notification letter in the middle section of the Veteran's CER folder.
6. If the Veteran is receiving payment at the Chapter 30 rate, administer the Chapter 30 payment rate according the guidelines for Chapter 30, and determine the effect of the absence under 38 CFR 21.7139.
7. Document in CWINRS notes that the Veteran is on authorized leave and receiving subsistence allowance as an active participant in rehabilitation services. Specify the period of the leave of absence.

i. Handling Unauthorized Leave of Absence

When a Veteran takes an unauthorized leave of absence, the case manager must adjust the Veteran's subsistence allowance award to recoup the amount paid and the time used during the unauthorized leave of absence, and informs the Veteran of the adjustment.

j. Excusing an Unauthorized Leave of Absence

The case manager may excuse an unauthorized leave of absence when it was not possible for the Veteran to obtain advance approval for the leave of absence and the conditions for approval of a leave of absence would otherwise be met.

The justification for excusing the authorized leave of absence must be clearly documented in a CWINRS note or on VAF 28-1905d and filed in the middle section of the Veteran's CER folder.

6.04 Interruptions

a. General Information

The purpose of Interrupted (INT) status is to recognize that a variety of situations may arise in the course of a Veteran's rehabilitation program that would make a suspension of his/her program necessary (38 CFR 21.197). INT status is reserved for suspending services from existing rehabilitation plans. Prior to the interruption, the case manager must determine that the Veteran will be able to return to his/her program of rehabilitation or employment services after resolving the issues causing the interruption. A case may be placed in Interrupted (INT) from EE, RTE, IL, or Job Ready (JR) status. It is no longer allowable to move a case from Evaluation and Planning (EP) status to INT status.

b. Reasons for Interrupting Services

A Veteran's case may be assigned to INT status for a variety of reasons including, but not limited to the following:

1. Prior to placing the Veteran's case in Discontinued (DIS) status to ensure that all appropriate actions are taken to assist the Veteran in continuing his/her program and provide the Veteran with due process.
2. The Veteran's conduct and cooperation has become unsatisfactory.
3. The Veteran cannot continue his/her rehabilitation program because the necessary training and rehabilitation services are unavailable.
4. The Veteran is unable to initiate or continue a rehabilitation plan due to medical reasons, family emergencies, etc.
5. The Veteran is recalled to active duty.
6. The Veteran becomes a fugitive felon or is incarcerated.
7. The Veteran's rehabilitation plan is redeveloped to an Individual Independent Living Plan (IILP) from INT, EE, RTE, IL, or JR status.

c. Temporary Suspension of Services

1. Rehabilitation To the Point of Employability (RTE) Status

Cases in RTE status will not be placed in INT status during temporary periods of suspension, but will remain in RTE status during temporary periods of inactivity when the following apply:

- Services are temporarily suspended, but the Veteran will return or is expected to continue receiving services at a later time, and
- The case manager has established an anticipated date for the Veteran to return to the program.

The case manager must ensure that the temporary suspension of services is clearly documented on VAF 28-1905d or CWINRS notes specifying the estimated date of the Veteran's return to his/her program.

Example: If a Veteran takes off a semester for personal reasons, then the case should not be interrupted. However, there should be a reasonable expectation that Veteran will return on or around an agreed upon return date.

A case in RTE status must be closely monitored when services are temporarily suspended to ensure that the Veteran is progressing successfully and completing his/her rehabilitation program in a timely manner. This may be accomplished by establishing an anticipated date for the Veteran to resume active participation and by ensuring that each case manager routinely and systematically conducts Veteran follow-ups and case reviews. Follow-up should be conducted at least once per 60 days while the case is temporarily suspended.

The case may be moved to INT status if it is determined, based on the case manager's professional judgment that the Veteran's situation may not improve or develop as expected and may result in a case closure. Due process procedures must be followed prior to case closure.

Refer to M28R.V.A.7 for additional guidance on processing case closures.

2. Extended Evaluation (EE), Independent Living (IL) and Job Ready (JR) Statuses

Cases in EE, IL and JR statuses may be placed in INT status when a temporary suspension of services is necessary. The case manager must ensure that the decision to interrupt services is clearly explained and

documented on VAF 28-1905d or in a CWINRS note. The case manager must also note the expected date of the Veteran's return to active status. Due process notice is not required since this is not considered an adverse action.

Example: If a Veteran will be taking a trip to South America for 3 months and will not be available to participate in monthly monitoring, job seeking or coaching, or other services specified in the plan, it would be appropriate to place the case in INT status. The case manager must note the Veteran's anticipated return date.

The case manager must conduct follow-up activities in intervals of no more than 60 days. The follow-up activities must be documented in a CWINRS note or on VAF 28-1905d and filed in the middle section of the Veteran's CER folder.

If the Veteran does not resume participation as planned, due process procedures must be followed prior to case closure since the discontinuance would be an adverse action that requires prior notice.

d. Long-term Suspension of Services

Cases in RTE status may be placed in INT status during extended periods of inactivity when the Veteran takes off more than one term from training due to personal or medical reasons and it appears that the period of inactivity may be long term. This must be clearly documented by the case manager.

If no documented attempts to reach the Veteran are documented on the case, then the case should not be placed in INT status without prior notice. Documented attempts to reach the Veteran should be done in a CWINRS note and include phone calls, emails, and mailed letters showing the case managers efforts to reach the Veteran. Extensive efforts must be made to contact the Veteran prior to placement of the case into INT status. Attempted contacts must be documented clearly in a CWINRS note or on VAF 28-1905d and filed in the middle section of the Veteran's CER folder.

After the case is placed in INT status, the case manager must conduct follow-up activities in intervals of no more than 60 days. The follow-up activities must be documented in a CWINRS note or on VAF 28-1905d and filed in the middle section of the Veteran's CER folder.

If the Veteran does not resume participation as planned, due process procedures must be followed prior to case closure since the discontinuance would be an adverse action that requires prior notice.

e. Veteran Request for Interruption

A Veteran has the right to request a temporary interruption of services for valid reasons. The issues may include, but are not limited to, major health issues, family emergencies, legal, or financial issues. The reasons for requesting an interruption include issues that may be resolved within a period of one to six months.

The Veteran's election for an interruption of services may be made in lieu of requesting for leave of absence to conserve his/her entitlement.

f. Procedures for Interrupting Services

1. Agreed Upon Interruption of Services

When an interruption is agreed upon by the case manager and the Veteran and an anticipated date to his/her rehabilitation program has been determined, an interruption is not considered an adverse action and for that reason, does not require prior notice.

The case manager must document the reason(s) for the interruption, the expected outcome, actions to be completed during the interruption, and the expected date of the Veteran's return to active status on VAF 28-1905d or in a CWINRS note.

The case manager must also inform the Veteran in writing of the following information:

- Explanation or reason(s) for the interruption
- Steps to be taken by the Veteran and VA to continue the rehabilitation program
- Explanation of the consequences if the Veteran does not follow the steps as outlined in the notification letter

2. Notification of an Intent to Deny, Reduce, or Stop Benefits

If an interruption letter is sent to provide notification of intent to deny, reduce, or stop benefits, then due process is required. The case manager must document the reason(s) for the interruption, the expected outcome and actions to be completed during the interruption on VAF 28-1905d or in a CWINRS note.

The case manager must also inform the Veteran in writing of the adverse

action and include the following information:

- Explanation or reason(s) for the interruption
- Steps to be taken by the Veteran and VA to continue the rehabilitation program
- Explanation of the consequences if the Veteran does not respond within 30 days from the date of the notification letter

Example: The interruption letter may be used to provide notification of the intent to discontinue services. In this situation, the case manager does not need to send VAF 4107, Your Right to Appeal Our Decision with the interruption letter. However, VAF 4107 must be sent with notification at the time the adverse action (discontinuance) is taken.

Refer to M28R.V.A.7 for additional guidance on case closure activities.

3. Updating CWINRS and Benefits Delivery Network (BDN)

The case manager must change the current case status to INT using Reason Code (RC) 16 in CWINRS. This will automatically update the case status in BDN. A case may be placed in INT status from EE, RTE, IL, or JR status. It is no longer allowable to move a case from EP status to INT status.

4. Case Management Activities during Interruption

The case manager must continue to provide follow-up activities during a period of interruption. These activities can be conducted via telephone, email, letter, or in person. They are designed to provide motivation and identify resources that may increase the Veteran's ability to resume his/her rehabilitation program. Follow up activities must be conducted in intervals of no more than 60 days. The case manager must document the follow up activities in a CWINRS note or on VAF 28-1905d and file in the middle section of the Veteran's CER folder.