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Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 85

Covering period of *Federal Register* issues
through March 3, 2011

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Code of Federal Regulations

Title 38, Part 21

Vocational Rehabilitation and Education

Veterans Benefits Administration

Supplement No. 85

3 March 2011

Covering the period of Federal Register issues
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March 3, 2011**

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§§21.8010, 21.8012,
21.8014, 21.8016 &
21.8022

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HIGHLIGHTS

Book G, Supplement No. 85 March 3, 2011

Supplement Highlights references: Where substantive changes are made in the text of regulations, the paragraphs of *Highlights* sections are cited at the end of the relevant section of text. Thus, if you are reading §3.263, you will see a note at the end of that section which reads: “Supplement *Highlights* references—6(2).” This means that paragraph 2 of the *Highlights* section in Supplement No. 6 contains information about the changes made in §3.263. By keeping and filing the *Highlights* sections, you will have a reference source explaining all substantive changes in the text of the regulations.

Supplement frequency: This Book G (*Rehabilitation and Education*) was originally supplemented six times a year, in February, April, June, August, October, and December. Beginning 1 August 1995, supplements will be issued *every month* during which a final rule addition or modification is made to the parts of Title 38 covered by this book. Supplements will be numbered consecutively as issued.

Modifications in this supplement include the following:

1. On 25 January 2011, the VA published a final rule, effective 24 February 2011, to amend VA adjudication, medical, and vocational rehabilitation and employment regulations to incorporate relevant provisions of the Veterans Benefits Act of 2003. Specifically, this document amends VA regulations regarding herbicide exposure of certain veterans who served in or near the Korean demilitarized zone and regulations regarding spina bifida in their children. Changes:

- Revised heading for Subpart M;
- In §21.8010, revised definitions of *Eligible child* and *Spina bifida*, and added definition of *Veteran with covered service in Korea*;
- In §21.8012, revised the section heading; and
- In §21.8014, revised paragraph (a) introductory text and paragraph (a)(2).



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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)(3) 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)(4) of this title.

Veteran with covered service in Korea means a veteran defined at §3.814(c)(2) 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 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, 1831)

(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, 1831)

[62 FR 35457, July 1, 1997, as amended at 76 FR 4250, Jan. 25, 2011]

Supplement *Highlights* references: 85(1).

Next Section is §21.8012

§21.8012 Vocational training program for certain children of Vietnam veterans and veterans with covered service in Korea—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, 1821)

[62 FR 35458, July 1, 1997, as amended at 76 FR 4250, Jan. 25, 2011]

Supplement *Highlights* references: 85(1).

Next Section is §21.8014

§21.8014 Application.

(a) *Filing an application.* To participate in a vocational training program, the child of a Vietnam veteran or veteran with covered service in Korea (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 or veteran with covered service in Korea'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), 1821, 1832, 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, 1831)

[62 FR 35458, July 1, 1997, as amended at 76 FR 4250, Jan. 25, 2011]

Supplement *Highlights* references: 85(1).

21.8015-1 §21.8015—Notification by VA of necessary information or evidence when a claim is filed; **21.8015-1**
time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence

**§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]

Supplement *Highlights* reference: 82(2)

21.8015-2 §21.8015—Notification by VA of necessary information or evidence when a claim is filed; **21.8015-2**
time for claimant response and VA action; and VA's duty to assist claimants in obtaining evidence

Reserved

§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 must elect in writing which benefit to receive. (Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(b) *Reelections of benefits—chapter 35.* An eligible child receiving benefits under this subpart or under 38 U.S.C. chapter 35 may change his or her election at any time. A reelection between benefits under this subpart and under 38 U.S.C. chapter 35 must be prospective, however, and may not result in an eligible child receiving benefits under both programs for the same period of training. (Authority: 38 U.S.C. 1804(e)(1), 1814, 1834)

(c) *Length of benefits under multiple programs—chapter 35.* The aggregate period for which an eligible child may receive assistance under this subpart and under 38 U.S.C. chapter 35 together may not exceed 48 months of full-time training or the part-time equivalent. (Authority: 38 U.S.C. 1804(e)(2), 1814)

(d) *Nonduplication of benefits under 38 U.S.C. 1804 and 1814.* An eligible child may only be provided one program of vocational training under this subpart. (Authority: 38 U.S.C. 1804, 1814, 1834)

[62 FR 35458, July 1, 1997, as amended at 76 FR 4250, Jan. 25, 2011]

Next Section is §21.8020

Basic Entitlement Requirements

§21.8020 Entitlement to vocational training and employment assistance.

(a) *Basic entitlement requirements.* Under this subpart, for an eligible child to receive vocational training, employment assistance, and related rehabilitation services and assistance to achieve a vocational goal (to include employment), the following requirements must be met:

(1) A CP or VRC must determine that achievement of a vocational goal by the child is reasonably feasible; and

(2) The child and VR&E staff members must work together to develop and then agree to an individualized written plan of vocational rehabilitation identifying the vocational goal and the means to achieve this goal. (Authority: 38 U.S.C. 1804(b), 1814)

(b) *Services and assistance.* An eligible child may receive the services and assistance described in §21.8050(a).

(1) The following sections in subpart A of this part apply to the provision of these services and assistance in a manner comparable to their application for a veteran under the 38 U.S.C. chapter 31 program:

- (i) Section 21.250(a) and (b)(2);
- (ii) Section 21.252;
- (iii) Section 21.254;
- (iv) Section 21.256 (not including paragraph (e)(2));
- (v) Section 21.257; and
- (vi) Section 21.258.

(2) For purposes of this subpart, the requirements for application of §21.257(e)(1) and (2) are deemed met for an individual in a self-employment program regardless of whether the individual is described in §21.257(b), if the individual has been determined by VA to have limitations affecting employability arising from the effects of the individual's spina bifida and/or other covered birth defect(s) which are so severe as to necessitate selection of self-employment as the only reasonably feasible vocational goal for the individual. (Authority: 38 U.S.C. 1804, 1814)

(c) *Requirements to receive employment services and assistance.* VA will provide employment services and assistance under paragraph (b) of this section only if the eligible child:

(1) Has achieved a vocational objective;

(2) Has voluntarily ceased vocational training under this subpart, but the case manager finds the child has attained sufficient skills to be employable; or

(3) VA determines during evaluation that the child already has the skills necessary for suitable employment and does not need additional training, but to secure suitable employment the child does need the employment assistance that paragraph (b) of this section describes. (Authority: 38 U.S.C. 1804, 1814)

(d) *Additional employment services and assistance.* If an eligible child has received employment assistance and becomes suitably employed, but VA later finds the child needs additional employment services and assistance, VA may provide the child with these services and assistance if, and to the extent, the child has remaining program entitlement. (Authority: 38 U.S.C. 1804, 1814)

(e) *Program entitlement usage.*

(1) *Basic entitlement period.* An eligible child will be entitled to receive 24 months of full-time training, services, and assistance (including employment assistance) or the part-time equivalent, as part of a vocational training program.

(2) *Extension of basic entitlement period.* VA may extend the basic 24-month entitlement period, not to exceed another 24 months of full-time program participation, or the part-time equivalent, if VA determines that:

(i) The extension is necessary for the child to achieve a vocational goal identified before the end of the basic 24-month entitlement period; and

(ii) The child can achieve the vocational goal within the extended period.

(3) *Principles for charging entitlement.* VA will charge entitlement usage for training, services, or assistance (but not the initial evaluation, as described in §21.8032) furnished to an eligible child under this subpart on the same basis as VA would charge for similar training, services, or assistance furnished a veteran in a vocational rehabilitation program under 38 U.S.C. chapter 31. VA may charge entitlement at a half-time, three-quarter-time, or full-time rate based upon the child's training time using the rate-of-pursuit criteria in §21.8310. The provisions concerning reduced work tolerance under §21.312, and those relating to less-than-half-time training under §21.314, do not apply under this subpart. (Authority: 38 U.S.C. 1804, 1814)

[67 FR 72565, Dec. 6, 2002, as amended at 75 FR 3170, Jan. 20, 2010]

Supplement *Highlights* reference: 83(3)

Next Section is §21.8022

§21.8022 Entry and reentry.

(a) *Date of program entry.* VA may not enter a child into a vocational training program or provide an evaluation or any training, services, or assistance under this subpart before the date VA first receives an application for a vocational training program filed in accordance with §21.8014. (Authority: 38 U.S.C. 1151 note, 1804, 1811, 1811 note, 1812, 1814)

(b) *Reentry.* If an eligible child interrupts or ends pursuit of a vocational training program and VA subsequently allows the child to reenter the program, the date of reentrance will accord with the facts, but may not precede the date VA receives an application for the reentrance. (Authority: 38 U.S.C. 1804, 1814, 1832)

[62 FR 35459, July 1, 1997, as amended at 76 FR 4250, Jan. 25, 2011]

Next Section is §21.8030