

## § 21.3301

## 38 CFR Ch. I (7–1–11 Edition)

### § 21.3301 Need.

(a) *Determination of need.* When special restorative training has been requested or is being considered for an eligible person with a disability who is a child, spouse, or surviving spouse, a counseling psychologist or vocational rehabilitation counselor will obtain all information necessary to determine the need for and feasibility of special restorative training. After the counseling psychologist or vocational rehabilitation counselor completes this task, he or she will refer the case to the Vocational Rehabilitation Panel. The panel will consider whether—

(1) There exists a handicap which will interfere with pursuit of a program of education;

(2) The period of special restorative training materially will improve the child's, spouse's, or surviving spouse's ability to:

(i) Pursue a program of education,

(ii) Pursue a program of specialized vocational training,

(iii) Obtain continuing employment in a sheltered workshop, or

(iv) Adjust in his or her family or community;

(3) The special restorative training may be pursued concurrently with a program of education;

(4) Training will affect adversely the child's, spouse's, or surviving spouse's mental or physical condition;

(5) In the case of a child, whether it is in the best interest of the child to begin special restorative training after his or her 14th birthday; and

(6) The Department of Veterans Affairs:

(i) Has considered assistance available under provisions of State-Federal programs for education of individuals with disabilities; and

(ii) Has determined that it is in the eligible person's interest to receive benefits under 38 U.S.C. chapter 35.

(Authority: 38 U.S.C. 3501, 3540, 3541(a), 3543)

(b) *Report.* The Vocational Rehabilitation Panel will prepare a written report of its findings and recommendations as to the need for assistance and the types of assistance which should be provided. The report will be sent to the counseling psychologist or vocational rehabilitation counselor.

(c) *Development and implementation.* Following consultation with the panel and receipt of the panel's report, the counseling psychologist or vocational rehabilitation counselor will determine the need for and feasibility of special restorative training. If this determination is affirmative, the counseling psychologist or vocational rehabilitation counselor will prepare an individualized written plan comparable to a plan for an extended evaluation under 38 U.S.C. chapter 31. In the case of an eligible person who is a spouse or surviving spouse, or a child who has attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the spouse or surviving spouse, or the child, respectively. In the case of an eligible person who has a guardian or has not attained majority under laws applicable in his or her State of residence, the plan will be developed jointly with the eligible person and his or her parent or guardian (see § 21.3021(d)).

(Authority: 38 U.S.C. 3501, 3541(a))

(d) *Notification of disallowance.* When an eligible person, or a parent or guardian on behalf of an eligible person, has requested special restorative training, and the counseling psychologist or vocational rehabilitation counselor finds that this training is not needed or will not materially improve the eligible person's condition, VA will inform the eligible person, except that VA will inform his or her parent or guardian (see § 21.3021(d)) if the eligible person has a guardian or has not attained majority under laws applicable in his or her State of residence, in writing of the finding and of his or her appeal rights.

(Authority: 38 U.S.C. 3501, 3540, 3543, 5104)

(e) *Reentrance after interruption.* The case of an eligible person shall be referred to the panel for consideration of whether the eligible person may be permitted reentrance into special restorative training following interruption. The panel will recommend approval to the counseling psychologist if there is

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a reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306.

(Authority: 38 U.S.C. 3501, 3540, 3543)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42725, Oct. 24, 1984; 73 FR 2424, Jan. 15, 2008]

### § 21.3302 Special restorative training agreements and reports.

(a) *Agreements to provide training.* The Department of Veterans Affairs may make agreements with public or private educational institutions or others to provide suitable and necessary special restorative training for an eligible person.

(b) *Tuition charge.* When a customary tuition charge is not applicable, the agreement will include the fair and reasonable amounts charged for the training provided to the eligible person.

(c) *Reports.* Each educational institution or other provider of a course of special restorative training must report promptly the eligible person's enrollment in, interruption of, or termination of the course of special restorative training.

(Authority: 38 U.S.C. 501(a), 3543, 3680, 3684)

(The Office of Management and Budget has approved the information collection provisions in this section under control numbers 2900-0014, 2900-0073, and 2900-0156)

[48 FR 37973, Aug. 22, 1983, as amended at 73 FR 2425, Jan. 15, 2008]

### § 21.3303 Extent of training.

(a) *Length of special restorative training.* Ordinarily, special restorative training may not exceed 12 months. When the counseling psychologist or vocational rehabilitation counselor, after consulting with the Vocational Rehabilitation Panel, determines that more than 12 months of training is necessary, he or she will refer the program to the Director, Vocational Rehabilitation and Employment Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the

Director, Vocational Rehabilitation and Employment Service for approval.

(Authority: 38 U.S.C. 3543(b))

(b) *Ending dates of eligibility.* (1) No child may receive special restorative training after reaching the end of his or her eligibility period as determined under § 21.3041.

(2) No spouse or surviving spouse may receive special restorative training after reaching the end of his or her eligibility period as determined under §§ 21.3046 and 21.3047.

(Authority: 38 U.S.C. 3512)

(c) *Full-time training.* An eligible person will pursue special restorative training on a full-time basis.

(1) Full-time training requires training for:

(i) That amount of time per week which commonly is required for a full-time course at the educational institution when, based on medical findings, the Department of Veterans Affairs determines that the eligible person's physical or mental condition permits training for that amount of time, or

(ii) The maximum time per week permitted by the eligible person's disability, as determined by the Department of Veterans Affairs, based on medical findings, if the disability precludes the weekly training time stated in paragraph (c)(1)(i) of this section.

(2) If the hours per week that can reasonably be devoted to restorative training will not of themselves equal the time required by paragraph (c)(1) of this section, the course will be supplemented with subject matter which will contribute toward the objective of the program of education.

(Authority: 38 U.S.C. 3542, 3543)

[48 FR 37973, Aug. 22, 1983, as amended at 49 FR 42726, Oct. 24, 1984; 73 FR 2425, Jan. 15, 2008]

### § 21.3304 Assistance during training.

(a) *General.* A counseling psychologist or vocational rehabilitation counselor will provide the professional and technical assistance needed by the eligible person in pursuing special restorative training. The assistance will be timely, sustained and personal.