

## § 21.342

## 38 CFR Ch. I (7–1–12 Edition)

be authorized for a veteran during a period of:

(1) Rehabilitation to the point of employability;

(2) Extended evaluation; or

(3) Independent living services.

(b) *Election of subsistence allowance.* If a veteran elects to receive subsistence allowance and payment of rehabilitation services by VA, he or she may be authorized leave of absence under §§ 21.342 through 21.350.

(c) *Election of benefits at the chapter 30 rate.* If a veteran elects to receive a subsistence allowance paid at the chapter 30 rate, the effect of absences is determined under §§ 21.7139 and 21.7154.

(Authority: 38 U.S.C. 1508(f) and 1510)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 4285, Jan. 30, 1989; 57 FR 57109, Dec. 3, 1992]

### § 21.342 Leave accounting policy.

(a) *Amount of leave.* A veteran pursuing one of the programs listed in § 21.340(a) may be authorized up to 30 days of leave by the case manager during a twelve-month period. The beginning date of the first twelve-month period is the commencing date of the original award, and the ending date is twelve months from the beginning date, with subsequent twelve-month periods running consecutively thereafter.

(b) *Additional leave under exceptional circumstances.* A veteran in a program may be authorized up to 15 additional days of leave during the twelve-month period by the case manager under exceptional circumstances, such as extended illness or family problems.

(c) *Absence.* For the purpose of determining when a leave of absence may be authorized, a veteran who elects subsistence allowance shall be considered absent during any period in which he or she is:

(1) Not in attendance under the rules and regulations of the educational institution, rehabilitation center, or sheltered workshop;

(2) Not considered at work under the rules of the training establishment; or

(3) Not present at a scheduled period of individual instruction.

(d) *System of records.* An educational institution, training establishment, rehabilitation center, or other facility or

individual providing training and rehabilitation services under Chapter 31 may utilize the same system of records to determine absence as the one used for similarly circumstanced non-veterans.

(e) *Change in rate of pursuit.* The amount of approved leave is not affected by the veteran's rate of pursuit of a rehabilitation program.

(f) *Charging leave.* VA shall charge 1 day of leave for each day or part of a day of absence from pursuit of a rehabilitation program.

(g) *Limitation on carrying leave over to another period.* The veteran may not carry over unused days of leave from one twelve-month period to another.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended by 56 FR 14649, Apr. 11, 1991]

### § 21.344 Facility offering training or rehabilitation services.

(a) *Approval of leaves of absence required.* Leaves of absence normally must be approved in advance by the case manager when the facility offering training or rehabilitation services arranges for the leave. The approval of the case manager is required:

(1) During periods in a rehabilitation program identified in § 21.342(c); or

(2) A period of hospitalization at VA expense during one of the periods identified in § 21.342(c).

(b) *Responsibility of the veteran in obtaining leave.* VA will not authorize leave without a verbal or written request by the veteran, and the approval of the facility.

(c) *Conditions permitting approval of leaves of absence.* (1) The case manager may approve leaves of absence up to a total of 30 days during a twelve-month period if the facility certifies that the use of the leave does not interfere materially with the veteran's progress;

(2) An additional period of up to 15 days of leave in the same twelve-month period under exceptional circumstances may be approved by the case manager if failure to approve leave will:

(i) Result in personal hardship, or

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(ii) Adversely affect the veteran's ability to continue in his or her rehabilitation program.

(Authority: 38 U.S.C. 3110)

[49 FR 40814, Oct. 18, 1984, as amended by 56 FR 14649, Apr. 11, 1991]

### § 21.346 Facility temporarily not offering training or rehabilitation services.

(a) *Approval of leave of absence not required.* A veteran may receive subsistence allowance, during a period when the facility temporarily is not offering services, without the veteran's being charged with leave when:

(1) The facility is closed temporarily under an executive order of the President or due to an emergency situation;

(2) The veteran is pursuing on-job training and he or she receives holidays established by Federal or State law;

(3) The veteran is pursuing farm cooperative training and is required in the ordinary day to day conduct of farm business to be absent:

(i) From the farm; or

(ii) From that part of a farm cooperative course which is given at the educational institution.

(4) The veteran is pursuing a standard college degree; and

(i) There is an interval between consecutive semesters, terms, quarters or periods of instruction *within a certified enrollment period* which does not exceed a full calendar month;

(ii) There is an interval, which does not exceed a full calendar month between semesters, terms or quarters when the educational institution only certifies enrollment on a semester, term, or quarter basis; or

(iii) There is an interval, which does not exceed 30 days, when the veteran, as part of his or her approved program of vocational rehabilitation, transfers from one educational institution to another for the purpose of enrolling in and pursuing a similar program at the second institution;

(5) The veteran is pursuing a non-college-degree course and there is a period of up to 5 days per twelve-month period during which the school offering non-college-degree courses is not operating, because instructors are attending professional meetings.

(b) *Case manager responsibility.* The case manager may disapprove leave under paragraph (a)(4) of this section if:

(1) Approval would result in or lead to use of more than 48 months of entitlement under Chapter 31, alone; or

(2) Approval would require extension of the scheduled completion date of the veteran's program.

(c) *Approval of leaves of absence required.* A veteran, who wishes to receive subsistence allowance while the facility temporarily is not offering training under conditions other than those identified in paragraph (a) of this section, must seek an approved leave of absence and be charged leave.

(Authority: 38 U.S.C. 3110)

### § 21.348 Leave following completion of a period of training or rehabilitation services.

(a) *Leave following completion of training or rehabilitation services.* Leave may not be approved following completion of a period of rehabilitation services described in § 21.340(a).

(b) *Postponement of the date of completion of a period of rehabilitation services prohibited.* The date of completion of the veteran's program may not be extended for the purpose of allowing the veteran to use leave.

(Authority: 38 U.S.C. 3110)

### § 21.350 Unauthorized absences.

A veteran who is unable to obtain an authorized leave of absence in advance may seek to have the unauthorized absence excused.

(a) *Excusing unauthorized absences.* VA may excuse an unauthorized absence and make proper charges against the veteran's leave when:

(1) The veteran has absented himself or herself when advance approval from VA is impracticable; and

(2) Conditions for approval of leave are otherwise met.

(b) *Unexcused, unauthorized absences.* When an unauthorized absence is not satisfactorily explained, VA will take necessary action, including recoupment of subsistence allowance for that period of absence.

(Authority: 38 U.S.C. 3110)