

§ 21.35

38 CFR Ch. I (7–1–12 Edition)

including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(v) A notice that the claimant is ultimately responsible for obtaining the evidence.

(5) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the existence of such records and ask that the claimant provide a release for the records. If the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will ask that the claimant obtain the records and provide them to VA.

(6) For the purpose of this section, if VA must notify the claimant, VA will provide notice to:

- (i) The claimant;
- (ii) His or her fiduciary, if any; and
- (iii) His or her representative, if any.

(Authority: 38 U.S.C. 5102, 5103(a), 5103A)

[74 FR 31856, July 6, 2009]

DEFINITIONS

§ 21.35 Definitions.

(a) *Employment handicap*. This term means an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(1), 3102)

(b) *Independence in daily living*. This term means the ability of a veteran, without the service of others, or with a reduced level of the services of others, to live and function within such veteran's family and community.

(Authority: 38 U.S.C. 3101(2))

(c) *Program of education*. This term means:

- (1) A combination of subjects or unit courses pursued at a school which is generally acceptable to meet requirements for a predetermined educational, professional or vocational objective; or
- (2) Such subjects or courses which are generally acceptable to meet requirements for more than one objective if all objectives pursued are generally

recognized as being related to a single career field; or

(3) Any unit course or subject, or combination of courses or subjects, pursued by an eligible veteran at any educational institution required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of section (7)(i)(1) of the Small Business Act.

(Authority: 15 U.S.C. 636(i)(1), 38 U.S.C. 3452(b))

(d) *Program of independent living services and assistance*. This term includes:

- (1) The services provided in this program that are needed to enable a veteran to achieve maximum independence in daily living, including counseling, diagnostic, medical, social, psychological, and educational services determined by the Department of Veterans Affairs to be necessary, and
- (2) The monthly allowance authorized by 38 U.S.C. Chapter 31 for such a veteran.

(Authority: 38 U.S.C. 3101(4))

(e) *Rehabilitated to the point of employability*. This term means that the veteran is employable in an occupation for which a vocational rehabilitation program has been provided under this program

(Authority: 38 U.S.C. 3101(5))

(f) *Rehabilitation program*. This term includes, when appropriate:

- (1) A vocational rehabilitation program (see paragraph (i) of this section);
- (2) A program of independent living services and assistance (see paragraph (d) of this section) for a veteran for whom a vocational goal has been determined not to be currently reasonably feasible; or

(Authority: 38 U.S.C. 3101(6); Pub. L. 99–576)

(3) A program of employment services for employable veterans who are prior participants in Department of Veterans Affairs or state-federal vocational rehabilitation programs.

(Authority: 38 U.S.C. 3117)

(g) *Serious employment handicap*. This term means a significant impairment

Department of Veterans Affairs

§ 21.35

of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3101(7))

(h) *Vocational goal.* (1) The term *vocational goal* means a gainful employment status consistent with a veteran's abilities, aptitudes, and interests;

(2) The term *achievement of a vocational goal is reasonably feasible* means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances does not prevent the veteran from successfully pursuing a vocational rehabilitation program and becoming gainfully employed in an occupation consistent with the veteran's abilities, aptitudes, and interests;

(3) The term *achievement of a vocational goal is not currently reasonably feasible* means the effects of the veteran's disability (service and nonservice-connected), when considered in relation to the veteran's circumstances at the time of the determination:

(i) Prevent the veteran from successfully achieving a vocational goal at that time; or

(ii) Are expected to worsen within the period needed to achieve a vocational goal and which would, therefore, make achievement not reasonably feasible.

(Authority: 38 U.S.C. 3101(8))

(i) *Vocational rehabilitation program.* This term includes:

(1) The services that are needed for the accomplishment of the purposes of 38 U.S.C. Chapter 31 including such counseling, diagnostic, medical, social, psychological, independent living, economic, educational, vocational, and employment services as are determined by the Department of Veterans Affairs to be needed;

(i) In the case of a veteran for whom the achievement of a vocational goal has not been found to be currently infeasible, such services include:

(A) Determining whether a vocational goal is reasonably feasible;

(B) Improving the veteran's potential to participate in a program of services designed to achieve a vocational goal;

(C) Enabling the veteran to achieve maximum independence in daily living;

(ii) In the case of a veteran for whom achievement of a vocational goal is feasible, such services include assisting the veteran to become, to the maximum extent feasible, employable and to obtain and maintain suitable employment; and

(2) The term also includes the monetary assistance authorized by 38 U.S.C. Chapter 31 for a veteran receiving any of the services described in this paragraph.

(Authority: 38 U.S.C. 3101(9); Pub. L. 99-576)

(j) *Program of employment services.* This term includes the counseling, medical, social, and other placement and post-placement services provided to a veteran under 38 U.S.C. Chapter 31 to assist the veteran in obtaining or maintaining suitable employment.

(Authority: 38 U.S.C. 3117)

(k) *Other terminology.* The following are primarily intended as explanations rather than definitions of terms to which frequent reference will be made in these regulations.

(1) *Counseling psychologist.* Unless otherwise stated, the term *counseling psychologist* refers to a counseling psychologist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

(2) *Vocational rehabilitation specialist.* Unless otherwise stated, the term *vocational rehabilitation specialist* refers to a vocational rehabilitation specialist in the Vocational Rehabilitation and Employment Division in the Veterans Benefits Administration of the Department of Veterans Affairs, or to a Department of Veterans Affairs counseling psychologist performing the duties of a vocational rehabilitation specialist.

(Authority: 38 U.S.C. 3118(c))

(3) *School, educational institution, institution.* These terms means any public or private school, secondary school, vocational school, correspondence school,

§ 21.40

business school, junior college, teachers' college, college, normal school, professional school, university, or scientific or technical institution, or other institution furnishing education for adults.

(Authority: 38 U.S.C. 3452(c))

(4) *Training establishment.* This term means any establishment providing apprentice or other training on the job, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency, or any State board of vocational education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 3452(e))

(5) *Rehabilitation facility.* This term means a distinct organizational entity, either separate or within a larger institution or agency, which provides goal-oriented comprehensive and coordinated services to individuals designed to evaluate and minimize the handicapping effects of physical, mental, social and vocational disadvantages, and to effect a realization of the individual's potential.

(Authority: 38 U.S.C. 3115(a))

(6) *Workshop.* This term means a charitable organization or institution, conducted not for profit, but for the purpose of carrying out an organized program of evaluation and rehabilitation for handicapped workers and/or for providing such individuals with remunerative employment and other occupational rehabilitative activity of an educational or therapeutic nature.

(Authority: 38 U.S.C. 3115(a))

(7) *Vocational rehabilitation counselor.* Unless otherwise stated, the term vocational rehabilitation counselor refers to a vocational rehabilitation counselor in the Vocational Rehabilitation and Employment Division in the Vet-

38 CFR Ch. I (7-1-12 Edition)

erans Benefits Administration, Department of Veterans Affairs.

(Authority: 38 U.S.C. 3118(c))

[49 FR 40814, Oct. 18, 1984; 50 FR 9622, Mar. 11, 1985, as amended at 53 FR 50956, Dec. 19, 1988; 62 FR 17707, Apr. 11, 1997]

ENTITLEMENT

§ 21.40 Basic entitlement to vocational rehabilitation benefits and services.

An individual meets the basic entitlement criteria for vocational rehabilitation benefits and services under this subpart if VA determines that he or she meets the requirements of paragraph (a), (b), (c), or (d) of this section. For other requirements affecting the provision of vocational rehabilitation benefits and services, see §§ 21.41 through 21.46 (period of eligibility), § 21.53 (reasonable feasibility of achieving a vocational goal), and §§ 21.70 through 21.79 (months of entitlement).

(a) *Veterans with at least 20 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated 20 percent or more under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of an employment handicap.

(b) *Veterans with 10 percent disability.* The individual is a veteran who meets all of the following criteria:

(1) Has a service-connected disability or combination of disabilities rated less than 20 percent under 38 U.S.C. chapter 11.

(2) Incurred or aggravated the disability or disabilities in active military, naval, or air service on or after September 16, 1940.

(3) Is determined by VA to be in need of rehabilitation because of a serious employment handicap.

(c) *Servicemembers awaiting discharge.* The individual is a servicemember who, while waiting for discharge from the active military, naval, or air service, is hospitalized, or receiving outpatient medical care, services, or treatment,