

Department of Veterans Affairs

§ 21.422

other than one which arises as a consequence of a change in training time or other such alteration in circumstances. If the veteran disagrees, he or she shall be given the opportunity, before appealing the adverse action as provided in § 21.59 of this part, to:

(1) Meet informally with a representative of VA;

(2) Review the basis for VA decision, including any relevant written documents or material; and

(3) Submit to VA any material which he or she may have relevant to the decision.

(Authority: 38 U.S.C. 3102)

[49 FR 40814, Oct. 18, 1984, as amended at 54 FR 40872, Oct. 4, 1989]

§ 21.422 Reduction in subsistence allowance following the loss of a dependent.

(a) *Notice of reduction required when a veteran loses a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce an award of subsistence allowance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that subsistence allowance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of subsistence allowance;

(i) VA is not required to send a pre-reduction notice as stated in paragraph (a)(1) of this section, but;

(ii) VA will send notice contemporaneous with the reduction in subsistence allowance.

(Authority: 38 U.S.C. 5112, 5113)

(b) *Pre-reduction notice.* Where a reduction in subsistence allowance is proposed by reason of information concerning dependency received from a source other than the veteran, VA will:

(1) Prepared a proposal for the reduction of subsistence allowance, setting forth material facts and reasons;

(2) Notify the veteran at his or her latest address of record of the proposed action;

(3) Furnish detailed reasons for the proposed reduction;

(4) Inform the veteran that he or she has an opportunity for a predetermination hearing, provided that VA receives a request for such a hearing within 30 days from the date of the notice; and

(5) Give the veteran 60 days for the presentation of additional evidence to show that the subsistence allowance should be continued at its present level.

(Authority: 38 U.S.C. 5112, 5113)

(c) *Predetermination hearing.* (1) If VA receives a timely request for a predetermination hearing as indicated in paragraph (b)(4) of this section:

(i) VA will notify the veteran in writing of the date, time and place for the hearing; and

(ii) Payments of subsistence allowance will continue at the previously established level pending a final determination concerning the proposed reduction.

(2) The hearing will be conducted by a VA employee who:

(i) Did not participate in the preparation of the proposal to reduce the veteran's subsistence allowance, and

(ii) Will bear the decision-making responsibility.

(Authority: 38 U.S.C. 5112, 5113)

(d) *Final action.* VA will take final action following the predetermination procedures specified in paragraph (c) of this section.

(1) If a predetermination hearing was not requested or if the veteran failed to report for a scheduled predetermination hearing, the final action will be based solely upon the evidence of record at the expiration of 60 days.

(2) If a predetermination hearing was conducted, VA will base final action upon:

(i) Evidence presented at the hearing;

(ii) Evidence contained in the claims file at the time of the hearing; and

§ 21.430

(iii) Any additional evidence obtained following the hearing pursuant to necessary development.

(3) Whether or not a predetermination hearing was conducted, a written notice of the final action shall be issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 5112, 5113)

[54 FR 40872, Oct. 4, 1989]

ACCOUNTABILITY

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

(a) *General.* VA shall maintain policies and procedures which provide accountability in the authorization and payment of program costs for training and rehabilitation services. The procedures established under this section are applicable to all program costs except subsistence allowance (or the optional allowance at Chapter 34 rates). Policies and procedures governing payment of subsistence allowance are governed by §§ 21.260 through 21.276, and §§ 21.320 through 21.334.

(b) *Determining necessary costs for training and rehabilitation services.* The estimates of program costs during a calendar year or lesser period shall be based upon the services necessary to carry out the veteran's rehabilitation plan during that period (§§ 21.80 through 21.98). The estimates will be developed by the VBA case manager. If additional approval is required, the VBA case manager shall secure such additional approval prior to authorization of services.

(c) *Vocational Rehabilitation and Employment (VR&E) Officer's review of program costs.* The VR&E Officer will re-

38 CFR Ch. I (7-1-14 Edition)

view the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds \$25,000. The VR&E Officer may not delegate this responsibility. The case manager will neither sign a rehabilitation plan nor authorize expenditures before the VR&E Officer approves the program costs. The services subject to this review are:

(1) Providing supplies to help establish a small business;

(2) A period of extended evaluation; or

(3) A program of independent living services.

(Authority: 38 U.S.C. 3115(b)(4))

CROSS REFERENCES: See § 21.156. Other incidental goods and services. § 21.258. Special assistance for veterans in self-employment.

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 45767, Dec. 22, 1986; 55 FR 25975, June 26, 1990; 62 FR 17710, Apr. 11, 1997]

Subpart B—Claims and Applications for Educational Assistance

AUTHORITY: 38 U.S.C. 501(a), ch. 51, and as noted in specific sections.

EDITORIAL NOTE: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, "these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 1666."

CLAIMS

§ 21.1029 Definitions.

The following definitions of terms apply to this subpart and subparts C, D, F, G, H, K, L, and P, to the extent that the terms are not otherwise defined in those subparts:

(a) *Abandoned claim.* A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and