

TRAINING MODULE 15
Study Plan
DEPENDENTS' EDUCATION ASSISTANCE

Objective:

To learn how to assist an eligible dependent or survivor to apply for VA education assistance.

References:

Title 38, U.S. Code, Chapter 35.

38 Code of Federal Regulations, Part 21, Subparts C and D, §§ 21.3020–21.4280.

Education Procedures Manual M22-4, Part 7

VA Pamphlets 22-73-3, *Summary of Educational Benefits, Dependents' Educational Assistance Program and Federal Benefits for Veterans and Survivors.*

80-05-1, *Federal Benefits for Veterans and Dependents*

Instructions:

Study the assigned reference materials to learn the criteria for benefits under this program and how to assist a veteran's dependent or survivor submit a claim for education assistance.

Summary:

VA will provide an education assistance allowance to the spouse, surviving spouse, or child of a veteran who is rated permanently and totally disabled from service-connected disability; who died in service or as the result of a service-connected disability; who died from any cause not the result of willful misconduct and who at the time of death was rated as being permanently totally disabled from service-connected causes; or an active duty service member who is listed as being missing in action or a prisoner of war for more than 90 days or who is forcibly detained or interned in line of duty by a foreign Government or power.

Generally, the eligible person will be entitled to 45 months of assistance under this program. If there is eligibility under more than one education assistance program, the maximum combined entitlement is 48 months. Entitlement is charged at the rate of one day of entitlement for one day of class or training, if attending school or training at a full-time rate. Entitlement charges are pro-rated if the eligible person attends school at less than full-time, and under certain circumstances there may be no charge to entitlement.

Although students under this program most commonly pursue institutional courses such as collegiate studies, business or vocational schools, etc., benefits may also be paid for apprenticeships, on-job training programs, or farm cooperative courses, also for secondary school courses leading to a high school diploma or remedial courses to qualify for college admission.

Assistance may be authorized for overseas study, but only if the courses lead to a college degree. Spouses and surviving spouses, but not eligible children, may take correspondence courses.

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Payments are made monthly, and are based on the rate of attendance or training (full-time, three-quarter time, etc.). Since payment under Chapter 35 is predicated on recognition as a veteran's dependent for basic eligibility, there are no additional amounts payable for the student's dependents. Marriage of the veteran's child does not affect eligibility for education assistance under this program, but if the veteran's spouse is divorced or the surviving spouse remarries, eligibility to education assistance ceases. The Veterans Benefits Act of 2003 provides that remarriage of the surviving spouse after 57 is not a bar to benefits.

An eligible person may not receive education assistance under Chapter 35 while serving in the Armed Forces, and must be discharged under honorable conditions to resume benefits upon separation from service. If the eligible person has eligibility under more than one education assistance program, he or she must elect which benefit he or she will receive for any given program or enrollment period.

There are significant differences in the length of periods of eligibility for children and for spouses or surviving spouses: Generally, a child is eligible between age 18 or completion of high school, whichever is earlier, and age 26. If eligibility arises after age 18 but before age 26, the child will be eligible for education assistance for a period of eight years (ten years if pursuing an apprenticeship or a program of on-job training), but not beyond age 31. If the child interrupts training to serve in the Armed Forces or for other reasons beyond the child's control, the period of eligibility may be extended by an amount equal to the length of the interruption, but not beyond age 31. Regardless of the basis, eligibility may not first arise after the child's 26th birthday. After the child's 18th birthday, education assistance under Chapter 35 may *NOT* be paid concurrently with compensation, pension, or Dependency and Indemnity Compensation based on school attendance.

A veteran's spouse is eligible for education assistance for 10 years from the date permanent total disability arose or 10 years from the date of notice of permanent total disability, whichever is to the spouse's advantage. If the veteran dies *while on active duty*, Public Law 108-454 *now* extends the period of eligibility for a surviving spouse from 10 years to 20 years from the date of the veteran's death in service. If a veteran dies from service-connected causes *after service*, the surviving spouse is eligible for 10 years from the date of the veteran's death or 10 years from the date of notice that the veteran's death was service-connected, whichever is to the surviving spouse's advantage. If eligibility arises based on the veteran being rated permanently totally disabled at the time of death from nonservice-connected causes, the period of eligibility is 10 years from the date of the veteran's death.

If eligibility is based upon an active duty service member being missing in action, a prisoner of war, or being forcibly held by a foreign government or power, the period of eligibility runs for 10 years after the 90th day of being listed in such status. A surviving spouse who had eligibility as the spouse of a permanently totally disabled veteran before the veteran's death will be entitled to a *new* 10-year period of eligibility from the date of the veteran's death, regardless of any eligibility prior to the veteran's death.

If the spouse or surviving spouse is unable to complete a program of education or training during the applicable 10-year period because of mental or physical disability (including the disabling effects of chronic alcoholism), the period of eligibility may be extended by an amount of time equal to the length of the disability. There is no other basis for extension of eligibility.

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If a permanently totally disabled veteran remarries, whether because of the death of or divorce from the previous spouse, the new spouse is eligible for education assistance for a period of 10 years from the date of the marriage and has 45 months of entitlement, unless the new spouse is also entitled to education assistance under another VA education or training program. In that event, the spouse's total combined entitlement again may not exceed 48 months. There is no bar to simultaneous payment of Chapter 35 benefits and payment of compensation, pension, or Dependency and Indemnity Compensation as a spouse or surviving spouse.

An eligible spouse or surviving spouse may also qualify for a VA education loan, if all of the following requirements are met:

- The eligible person's delimiting date for education benefits eligibility must have passed;
- There must have been unused entitlement remaining when the delimiting date passed;
- The eligible person must have been enrolled full-time when the delimiting date passed;
- The eligible person must be enrolled full-time for the period for which the loan is requested;
- The eligible person must have been denied a loan under the Guaranteed Student Loan Program;
- The eligible person must meet specified financial criteria regarding income, resources, and school-related expenses; and
- The eligible person must not have any outstanding indebtedness because of a prior VA overpayment.

The amount of the loan is based on a formula tied to income, school expenses, and the amount of remaining entitlement. The maximum loan amount may not exceed \$2,500 per academic year.

An eligible disabled (helpless) child whose mental or physical disability precludes pursuit of an educational program may receive Special Restorative Training under Chapter 35. Under certain circumstances, this special training may be provided for more than 45 months, but not beyond the child's 31st birthday. In addition, an eligible disabled child over the age of 14 or an eligible disabled spouse or surviving spouse may receive Specialized Vocational Training, leading to a suitable vocational objective for the particular disability. When a child has been determined to be "helpless," there is no bar to concurrent payment of benefits for special training under Chapter 35 and compensation, pension, or Dependency and Indemnity Compensation, because these payments are based on the child's disability, and not on school attendance after age 18.

Determinations of eligibility to education assistance under Chapter 35 are made by the VA Regional Office having jurisdiction of the veteran's claims file. However, once eligibility is established, the eligible child's or spouse's claim comes under the jurisdiction of one of five centralized locations, depending on where the eligible person is attending school or being trained. These are:

- Eastern Region—VARO Buffalo, New York
- Southern Region (includes Puerto Rico and the Virgin Islands)—VARO Decatur, Georgia
- Central Region—VARO St. Louis, Missouri
- Western Region (includes all U.S. Pacific islands except for the Philippines) VARO Muskogee, Oklahoma
- Republic of the Philippines—VARO Manila

Complete VA Form 22-5490 and mail to appropriate region listed above

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Study Questions: Dependents' Education Assistance

Using the assigned references and reading materials, answer the following questions:

1. An eligible surviving child under age 18 who has completed high school may be paid both DIC (or death pension) and Chapter 35 education benefits.
 - a. True
 - b. False

2. If a child becomes eligible for Chapter 35 benefits after his or her 18th birthday and attends school, he or she will remain eligible for benefits for 8 years, but not beyond:
 - a. Age 26
 - b. Age 28
 - c. Age 31
 - d. Age 35

3. If a permanently totally disabled veteran remarries, the new spouse is entitled only to the remaining portion of the previous spouse's eligibility and entitlement to education benefits under Chapter 35.
 - a. True
 - b. False

4. Which of the following types of training may an eligible child take under Chapter 35?
 - a. High school equivalency courses
 - b. Vocational flight training
 - c. Correspondence training
 - d. Personal development courses

5. The surviving spouse of a deceased veteran may extend the 10-year period of eligibility for Chapter 35 benefits if the surviving spouse is unable to begin or complete training because of mental or physical disability.
 - a. True
 - b. False

6. What is the oldest age that a child may first establish eligibility to benefits under Chapter 35?
 - a. 21
 - b. 23
 - c. 25
 - d. 28

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7. May an eligible person under Chapter 35 train or attend school at less than full-time?
 - a. True
 - b. False

8. Under what circumstances may an eligible person under Chapter 35 be paid additional allowance for dependents?
 - a. So long as the eligible person attends full-time, he or she may be paid for all dependents.
 - b. An eligible spouse or surviving spouse may be paid for dependent children in custody, but an eligible child may not be paid additional allowance for dependents.
 - c. An eligible child may be paid additional allowance for a spouse, but not for the child's own children.
 - d. None of the above.

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FORMS

VA FORM 21-22

VA FORM 22-5490 – Application for Dependent's Education Assistance Program

RATING DECISION ESTABLISHING ELIGIBILITY TO CHAPTER 35

BIRTH CERTIFICATE FOR DEPENDENT CHILD

MARRIAGE CERTIFICATE FOR SPOUSE/SURVIVING SPOUSE