

Date: May 2, 1997

VAOPGCPREC 17-97

From: General Counsel (021)

Subj: Payment of vocational training expenses directly to a veteran

To: Director, Finance and Administrative Service Staff (241)

QUESTIONS PRESENTED

- a. Under what circumstances may a veteran attending school as part of a vocational rehabilitation program under chapter 31 of title 38, United States Code, be paid directly for "tuition, fees, and miscellaneous expenses, etc."?
- b. Can such payment for "tuition, fees, and miscellaneous expenses, etc." be withheld to satisfy, an existing account receivable for overpayment of subsistence allowance under the chapter 31 program?

DISCUSSION

1. Section 3104 of title 38, United States Code, authorizes the Secretary to provide a variety of services and assistance to a participant in a vocational rehabilitation program under chapter 31 of that title. Subsection (a)(7) specifically authorizes:

Vocational and other training services and assistance, including . . . individualized tutorial assistance, tuition, fees, books, supplies, handling charges, licensing fees, and equipment and other training materials determined by the Secretary to be necessary to accomplish the purposes of the rehabilitation program in the individual case

2. Looking first at the issue of reimbursement for tuition and fees, we note that the substantive regulations governing the chapter 31 program, found at 38 C.F.R. §§ 21.1-.430, while addressing payment for vocational training supplies, do not provide specific guidance on payment of tuition and fees. The term "supplies," moreover, is not defined to include tuition and fees, and the content and context of the regulations governing payment for supplies clearly contemplates only *physical* supplies. 38 C.F.R. §§ 21.210-.242.

3. A federal procurement regulation, 48 C.F.R. § 871.207, does outline how the costs of tuition and fees are to be reimbursed under contracts with service providers. However, we find no provision in that regulation that requires VA to pay the cost of tuition and fees only to the educational institution, rather than to the veteran, as you suggest in your inquiry. The regulation only speaks to the allowable terms and conditions to be included in contracts between VA and the provider, and the periods for which payment may be made. It does not bar direct VA payment to the beneficiary for the cost of tuition and fees, nor do we find such a substantive restriction in any of the other applicable procurement regulations found in subpart 871.2 of title 48, Code of Federal Regulations.

4. Concerning the issue of direct reimbursement for supplies, as opposed to tuition and fees, we note that section 21.220(b) of title 38, Code of Federal Regulations (part of the programmatic regulations), does state, as to replacement of supplies previously accorded the veteran, that "VA will not generally reimburse a veteran who personally buys supplies." Instead, it requires the institution to refund the supply costs to the veteran and bill VA for payment. However, two qualifications are apparent on the face of the regulation. First, the subsection is part of a regulation entitled "replacement of supplies" and its provisions are directed only to replacement items. Second, even if one were to read the rather broad language of section 21.220(b) as applying to originally authorized supplies, it, nevertheless, provides that "VA may still pay the veteran, if the facts and equities of the case are demonstrated." Consequently, where, for example, a vendor refused to refund the cost of a veteran's personally acquired supplies, the provisions of section 21.220(b) would not bar VA from paying the veteran directly considering the equities of the circumstances.

5. Section 218 of title 38, Code of Federal Regulations, provides that VA "will issue authorized supplies directly to the veteran, if [they] are not furnished by the facility providing training, rehabilitation services, or employment." This section plainly does not speak to the manner of payment for supplies purchased from outside sources on behalf of the veteran. Rather, subsection (b) only indicates that, if the particular supplies needed by the veteran are not provided by the facility as part of the rehabilitation program, VA will provide them directly to the veteran. That can be accomplished by giving the supply item to the veteran from existing VA stock, by agreeing to purchase it from another source, or, in an appropriate case, by reimbursing the veteran for the cost of an authorized supply item.

6. While we believe authorization of direct reimbursement will be the exception, not the norm, we suggest the likelihood that direct reimbursement will most frequently and appropriately need to be considered in cases where a veteran is approved for retroactive induction into a chapter 31 vocational rehabilitation training program. *See, e.g., Bernier v. Brown*, 7 Vet. App. 434 (1995). After all, in many retroactive induction cases, the veteran already would have paid the costs of tuition, fees, and supplies for the training program long before VA authorized retroactive induction into that program. Further, one can surmise that it could be extremely difficult, in such case, for a veteran to convince the educational institution attended to refund payment it received, perhaps months or even years ago, so as to rebill VA for the amount of that payment, instead.

7. Thus, rather than deny reimbursement directly to the veteran for the cost of tuition, fees, books and supplies (assistance that the veteran otherwise would be entitled to receive pursuant to in section 3104(a)(7)) in all cases where the veteran had not first sought to have VA procure or pay for them, VA regulations and policy contemplate that VA will review the facts and equities of the individual case to determine whether they demonstrate the merit of approving direct reimbursement to the particular veteran.

8. Section 3104, of course, authorizes VA to provide numerous services other than supplies and tuition and fees as part of a veteran's vocational rehabilitation program.

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Your question is not explicit as to whether you seek an opinion concerning such other categories of services and assistance. Nevertheless, for your guidance, we find that, in

the absence of any specific statutory or regulatory provisions to the contrary, VA is not barred from directly reimbursing an eligible veteran, where the demonstrated facts and equities so warrant, for authorized costs incurred by the veteran.

9. As to your second question, 38 U.S.C. § 5314 specifically provides that VA may “deduct the amount of the indebtedness of any person who has been determined to be indebted to the United States by virtue of such person’s participation in a benefits program administered by [VA] from future payments made to such person under any law administered by [VA].” Therefore, any amount payable to a veteran under chapter 31, including reimbursement of expenses authorized retroactively for participation in a vocational rehabilitation program, may be withheld toward satisfaction of the veteran’s benefits program indebtedness outstanding on the date the chapter 31 payment is authorized. See O.G.C. Prec. 12-93 (1993).

HELD

1. When VA, in its discretion, determines the facts and equities of the individual circumstances so warrant, it may directly reimburse an eligible veteran for the costs of tuition and fees, necessary supplies, and services paid by the veteran which VA retroactively approves as a required part of a vocational rehabilitation program under chapter 31 of title 38, United States Code.

2. VA may deduct the amount of a veteran’s existing VA benefits program debt from the amount due the veteran as a retroactive chapter 31 reimbursement payment.

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