

DATE: 07-18-90

CITATION: VAOPGCPREC 48-90  
Vet. Aff. Op. Gen. Couns. Prec. 48-90

**TEXT:**

**Subject:** Prison Training

(This opinion, previously issued as General Counsel Opinion 7-76, dated March 2, 1976, is reissued as a Precedent Opinion pursuant to 38 C.F.R. §§ 2.6(e)(9) and 14.507. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

**QUESTIONS PRESENTED:**

(1) Must educational assistance be provided incarcerated veterans even though the State provides full tuition and/or subsistence for their education?

(2) May the Veterans Administration, under certain circumstances, restrict educational assistance benefits without specific legislation authorizing such restriction?

**COMMENTS:**

Section 1681(a) of title 38, United States Code, reads as follows

"The Administrator shall, in accordance with the applicable provisions of this section and section 1780 of this title, pay to each eligible veteran who is pursuing a program of education under this chapter an educational assistance allowance to meet, in part, the expenses of his subsistence, tuition, fees, supplies, books, equipment, and other educational costs."

This section of the law sets forth what the educational assistance allowance payable to veterans is designed to cover. There is no provision in this section, or in any other section of title 38, which specifies what part of the allowance is to be allocated to tuition, to subsistence, or to any of the other segments set forth therein. Thus, if a veteran chooses to attend a school which charges a limited amount of tuition, or which does not charge any tuition at all, more of the benefit payment may be allocated to subsistence or to other educational costs, or otherwise. Conversely, the veteran may attend a high- cost, school, thereby leaving less available for subsistence, etc. The choice, therefore, is the veteran's.

It is pointed out that the Congress has, in various other sections of title 38, provided for payment of reduced benefits. These reduced benefit payments are premised, in general, on cost of the course. These include: Less than half-time attendance (section 1682(b)(2)); servicemen pursuing courses while on active duty (section 1682(b)(1)); flight training (section 1677); correspondence training (section 1786); and PREP training (section 1696(b)). Also, section 505(a) of title 38 limits the pension that may be paid when an individual has been imprisoned in a Federal, State, or local penal institution for more than 61 days as the result of a conviction of a felony or misdemeanor. We believe that this demonstrates that when the Congress desires to limit the payment of benefits it knows how to accomplish such purpose. There are no specific provisions in the law for reducing educational benefits where an incarcerated veteran is pursuing a program of education on a half-time or more basis at an educational institution.

The question regarding the payment of educational benefits to prisoners incarcerated in penal institutions has been passed upon in prior unpublished opinions of the General Counsel. There has been no change in the law which would provide a basis for a change in the holding of our earlier opinions that it would be improper to pay either chapter 34 or chapter 35 benefits to an inmate of a penal institution who is assigned to, and is pursuing, a program of education therein at no cost to the veteran or his or her relatives, where the program is conducted by the institution itself as part of a rehabilitation program.

It is our view that an eligible veteran, who is incarcerated and is pursuing an approved program of education other than one described in the paragraph above, may be paid an educational assistance allowance premised upon the amount of training pursued without regard to whether or not the cost of the program is borne by the veteran.

We previously held that, where the veteran was incarcerated in a Federal prison and subsistence was being paid for by the prison, simultaneous payment of an educational assistance allowance under chapter 34 or chapter 35 of title 38 would be barred by the provisions of section 1781 of title 38, which prohibited duplication of benefits paid from the Federal Treasury. Subsequent to this opinion, section 1781 was amended by Public Law 91-219 to remove the duplication bar. Instead, that law limited payments only in the case of individuals on active duty with the Armed Forces or the Public Health Service whose course of education is being paid for them by the military, and in the case of Federal employees attending a course of education paid for under the Government Employees' Training Act whose full salary is paid to them while training. Therefore, that part of the opinion holding that a bar exists in the case of Federal prisons paying any part of the tuition for the individual no longer applies.

**HELD:**

(1) The fact that the State pays the full tuition for incarcerated veterans to attend college or other schools for training does not in any way abrogate their entitlement to educational assistance benefits if otherwise so qualified.

(2) Since the law is silent as to the breakdown of how a veteran must spend his educational allowance and there is no provision for reduction of such an allowance because of incarceration, specific legislation would be necessary to restrict assistance benefits.

VETERANS ADMINISTRATION GENERAL COUNSEL  
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