

Procedural Advisory: 48-Month Rule and Chapter 31 Entitlement Used (Original Claims)

December 10, 2015

BACKGROUND: Education Service and Vocational Rehabilitation and Employment Service (VR& E) requested a General Council (GC) opinion regarding the appropriate interpretation of the “48-month rule” set forth in section 3695(a) and (b) of title 38, United States Code. This request was prompted by GC’s issuance of a memorandum to the Under Secretary for Benefits (USB), dated December 30, 2013, which dealt with a recommendation for equitable relief under section 503(b) of title 38, United States Code. The memorandum indicated that, in the course of adjudicating a claim for equitable relief regarding a Veteran’s use of educational assistance and vocational rehabilitation under provisions of title 38, United States Code, a Regional Office had misinterpreted the 48-month rule. GC held that the use of benefits under 38 U.S.C. chapter 31 does not limit the use of education benefits listed in 38 U.S.C. § 3695(a). However, use of educational benefits listed in section 3695(a) could limit the number of months of assistance to which a service-disabled veteran may be entitled under chapter 31. The purpose of this advisory is to issue, guidance regarding this change in interpretation.

EFFECTIVE IMMEDIATELY: Claims processors at the Regional Processing Offices (RPOs) should not enter entitlement used under chapter 31 as “Prior VA Training” in either the Long Term Solution (LTS) or the Benefits Delivery Network (BDN) for any original claim for GI Bill benefits.

ADDITIONAL INFORMATION: Education Service will provide additional guidance for non-original claims (i.e., supplementals, special cases, and disputes) for processing and retroactive scenarios in a future advisory. The only change required for this advisory is to discontinue deducting chapter 31 benefits used. When processing claims, an adjudicator should continue to review VA systems to determine if the claimant has ever applied for VR&E benefits, or if there are any running awards.

QUESTIONS: If you have any questions, please direct them to the National Training Team via email at VAVBAWAS/CO/225A.

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