

§3.807 Dependents' educational assistance; certification.

For the purposes of dependents' educational assistance under 38 U.S.C. Chapter 35 (see §21.3020), the child, spouse or surviving spouse of a veteran or serviceperson will have basic eligibility if the following conditions are met:

(a) *General.* Basic eligibility exists if the veteran:

- (1) Was discharged from service under conditions other than dishonorable, or died in service; and
- (2) Has a permanent total service-connected disability; or
- (3) A permanent total service-connected disability was in existence at the date of the veteran's death; or
- (4) Died as a result of a service-connected disability; or (if a serviceperson)
- (5) Is on active duty as a member of the Armed Forces and
 - (i) Now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power; or
 - (ii) Has been determined by VA to have a total disability permanent in nature incurred or aggravated in the line of duty during active military, naval, air, or space service; is hospitalized or receiving outpatient medical care, services, or treatment for such disability; is likely to be discharged or released from such service for such disability; and the pursuit of a course of education by such individual's spouse or child for which benefits under 38 U.S.C. chapter 35 are sought occurred after December 22, 2006.

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, air, or space service on or after April 21, 1898. (Pub. L. 89-358) Effective September 30, 1966, educational assistance for a child (but not for a spouse or surviving spouse) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in §3.8(b), (c), or (d) of this part. (Authority: 38 U.S.C. 3565)

(c) *Service connection.* For purpose of this section, the term "service-connected disability" encompasses combinations of disabilities of paired organs or extremities treated as if service-connected under the provisions of §3.383(a) of this part. The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 3501(a)). Cases where eligibility for service-connected benefits is established under §3.358, 3.361, or 3.800 are not included.

(d) *Relationship:*

(1) “Child” means the son or daughter of a veteran who meets the requirements of §3.57, except as to age and marital status.

(2) “Spouse” means a person whose marriage to the veteran meets the requirements of §3.50(a) of this part.

(3) “Surviving spouse” means a person whose marriage to the veteran meets the requirements of §§3.50(b) or 3.52 of this part.

(Authority: 38 U.S.C. 1160; 3501)

[29 FR 9537, July 14, 1964, as amended at 31 FR 4347, Mar. 12, 1966; 34 FR 840, Jan. 18, 1969; 38 FR 8658, Apr. 5, 1973; 40 FR 54245, Nov. 21, 1975; 53 FR 46607, Nov. 18, 1988; 59 FR 62585, Dec. 6, 1994; 62 FR 51281, Sept. 30, 1997; 69 FR 46435, Aug. 3, 2004; 73 FR 1076, Jan. 7, 2008; 87 FR 26126, May 3, 2022]

Cross references: Discontinuance. See §3.503(a)(8). Election; concurrent benefits. See §3.707. Nonduplication. See §21.3023 of this chapter.

Supplement *Highlights* references: 14(3), 63(1), 78(1), 131(1).