



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

ROGER [REDACTED]

Represented by

Gordon A. Graham, Agent

C [REDACTED]

Docket No. 250925-578180

Advanced on the Docket

DATE: November 6, 2025

ORDER

Entitlement to special monthly compensation (SMC) under 38 U.S.C. § 1114(o) is granted.

FINDINGS OF FACT

As the result of service-connected disabilities, the Veteran has two or more conditions that would qualify him for SMC under section 1114(l), with no condition being considered twice in the determination.

CONCLUSIONS OF LAW

Resolving any doubt in favor of the Veteran, the criteria for entitlement to SMC under 38 U.S.C. § 1114(o) have been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350, 3.351, 3.352, 4.3.

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty in the U.S. Army from June 1964 to June 1967.

This matter comes to the Board of Veterans' Appeals (Board) on appeal from rating decisions issued by a Department of Veterans Affairs (VA) Regional Office (RO), which is the agency of original jurisdiction (AOJ). Following a history of pursuit for that culminated with a July 2025 claim and a September 2025 rating decision, this timely appeal of the results followed.

In the September 2025 notice of disagreement, the Veteran selected the Direct Review docket, allowing the Board to consider all evidence already of record at the time of the September 15, 2025, rating decision. *See* 38 C.F.R. §§ 20.300, 20.301, 20.801.

Any evidence that was not considered by the Board in this decision may be resubmitted along with a supplemental claim (VA Form 20-0995). *See generally* 38 U.S.C. § 5104C; 38 C.F.R. § 3.2500. If that evidence, or any new evidence the Veteran wishes to submit with his supplemental claim, is relevant to the issue VA will readjudicate it. *See* 38 U.S.C. § 5108; 38 C.F.R. § 3.2501; *Cook v. McDonough*, 36 Vet. App. 175 (2023).

The U.S. Court of Appeals for the Federal Circuit (Fed Circuit) has held that the Board should give liberal construction to appellant arguments, and the obligation to liberally construe statements extends to cases in which an appellant is represented. *See Scott v. McDonald*, 789 F.3d 1375, 1380 (Fed. Cir. 2015); *see also Robinson v. Shinseki*, 557 F.3d 1355, 1359-60 (Fed. Cir. 2009).

On the notice of disagreement the Veteran listed the specific issues as 1. "Entitlement to loss of use of the b/l upper extremities under DC 5109 due to comorbidities of DM II PN and Multiple Sclerosis (MS)," 2. "Entitlement to loss of use of the lower extremities under DC 5110 due to comorbidities of DM II PN and MS," 3. "Entitlement to aid and attendance under § 3.350(b)(3) due solely to Chronic Kidney disease," and 4. "Entitlement to aid and attendance under § 3.350(b)(3) due solely to MS."

With the additional context provided by the "Appellant's Legal Brief" where the appeal issue is framed as:

Appellant, through counsel, now files his Notice of Disagreement in the BVA AMA Direct lane with the September 15, 2025, Rating Decision (RD), denying entitlement to Special Monthly Compensation (SMC) for his a) bilateral (b/l) upper and lower extremities due to the comorbidities of both DM II and his MS; b) aid and attendance of another under § 3.350(b)(3) due solely to his Stage IV Chronic Kidney disease (CKD); and c) aid and attendance of another under § 3.350(b)(3) due solely to his MS.

the Board has interpreted the Veteran's issue of disagreement to be entitlement to SMC under 38 U.S.C. § 1114(o). The September 2025 rating decision found that SMC aid and attendance is moot as a result denying entitlement to SMC under 38 U.S.C. § 1114(o). The brief focuses on arguing that the Veteran qualifies for SMC(l) aid and attendance more than once with no condition being considered twice in the determination, which in turn would qualify the Veteran for SMC(o).

This case has been advanced on the docket pursuant to 38 U.S.C § 7107(b) and 38 C.F.R. § 20.902(c).

1. Entitlement to SMC under 38 U.S.C. § 1114(o).

The Veteran was granted SMC based on housebound criteria in a December 2020 rating decision. A higher-level of SMC, based on the need for aid and attendance, was granted for the Veteran in August 2021. In a May 2025 rating decision, SMC based on the need for aid and attendance was granted for the Veteran's spouse. An increase in SMC at a half step under 38 U.S.C. § 1114(p) was granted for the Veteran in June 2025.

Aid and Attendance Criteria

Special Monthly Compensation is authorized in particular circumstances in addition to compensation for service-connected disabilities. *See* 38 U.S.C. § 1114; 38 C.F.R. § 3.350.

SMC is available when a veteran's service-connected disability or disabilities cause "additional hardships above and beyond those contemplated by VA's schedule for rating disabilities." *See Breniser v. Shinseki*, 25 Vet. App. 64, 68 (2011); *see also* 38 U.S.C. § 1114(k)-(t).

The special monthly compensation provided by 38 U.S.C. 1114(o) is payable for 1. anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; 2. conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 1114(l) through (n); 3. bilateral deafness rated at 60 percent or more disabling (and the hearing impairment in either one or both ears is service connected) in combination with service-connected blindness with bilateral visual acuity 20/200 or less; or 4. service-connected total deafness in one ear or bilateral deafness rated at 40 percent or more disabling (and the hearing impairment in either one of both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less. 38 C.F.R. § 3.350(e)(1).

Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden leaves the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement. 38 C.F.R. § 3.350(e)(3).

The special monthly compensation provided by 38 U.S.C. 1114(l) is payable for anatomical loss or loss of use of both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so

helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(l); 38 C.F.R. § 3.350(b).

According to 38 C.F.R. § 3.352(a), the following will be accorded consideration in determining the need for regular aid and attendance: inability of claimant to dress or undress himself, or to keep himself ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic appliances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself through loss of coordination of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. *See* 38 C.F.R. § 3.352(a).

Evidence and Analysis

As noted above, the Veteran is already in receipt of SMC under § 1114(l) on account of being so helpless as to require regular aid and attendance from December 4, 2019. *See* June 2018 VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance (“What disabilities restrict the listed activities/Functions? ‘Disabilities with kidney involvement CAD, AFib’”); *see also* November 2019 VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance (“Complete Diagnosis (Diagnosis needs to equate to the level of assistance described in questions 25 through 39) ‘CAD, AFib, COPD, DM, Pacemaker, Severe spin disease, MS’”); February 2021 VA Form 21-2680, Examination for Housebound Status or Permanent Need for Regular Aid and Attendance (“Complete Diagnosis (Diagnosis needs to equate to the level of assistance described in questions 25 through 39) ‘AFib, MS, COPD, CAD, CKD, DM II’”); July 2025 VA (“Provide complete diagnosis with most significant symptoms for each condition (Diagnosis needs to equate to the level of assistance described in Items 15 through 26) (Describe below) ‘1. Multiple sclerosis extremity weakness.

2. CHF dyspnea on exertion and swelling of legs. 3. Kidney disease stage 4 secondary to diabetes restricted diet and medication requirements.”).

Loss of use of a foot generally exists when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below the knee with use of a suitable prosthetic appliance. The determination is made based on the actual remaining function of the foot and whether the acts “of balance and propulsion, etc.” could be accomplished equally well by an amputation stump with prosthesis. Examples of loss of use of foot include extremely unfavorable ankylosis of the knee, complete ankylosis of two major joints of an extremity, or shortening of the lower extremity by 3½ inches or more. *See* 38 C.F.R. § 4.63.

According to his VA examination reports, functional impairment of the Veteran’s lower extremities does not exist, such that no effective function remains other than that which would be equally well served by an amputation with prosthesis. *See* November 2023, August 2024, and July 2025 VA Multiple Sclerosis examination reports.

However, giving the Veteran the benefit of a sympathetic reading of his arguments under *Clemons v. Shinseki*, 23 Vet. App. 1,5 (2009), and *Robinson v. Peake*, 21 Vet. App. 545, 552 (2008), he can establish entitlement to a second award of SMC at the (1) rate based on loss of use of feet due to his confinement to a wheelchair. Loss of use arises from a disability other than that for which the veteran is already in receipt of SMC at the (1) rate. *See Breniser, supra* at 77-78; *see also* November 2023, August 2024, and July 2025 VA Multiple Sclerosis examination reports (“Does the veteran use any assistive device(s) as a normal mode of locomotion, although occasional locomotion by other methods may be possible? [x] Yes...[x] Wheelchair [x] Constant”).

Conclusion

In summary, the evidence of record is at least approximately balanced or nearly equal that the Veteran meets the requirements for SMC under 38 U.S.C. § 1114(o). The Veteran has demonstrated a need for required aid and attendance under

subsection (l) and has loss of use of feet based on a service-connected condition not already contemplated by his current SMC award under 38 U.S.C. § 1114(l).

Therefore, entitlement to SMC under 38 U.S.C. § 1114(o) is warranted, and the claim is hereby granted.



DUSTIN L. WARE
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

Small, B.

The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.