



## BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

**CHERYL [REDACTED]**

IN THE CASE OF

[REDACTED]  
Appellant Represented by  
Gordon A. Graham, Agent

XC [REDACTED]

Docket No. 250328-529757

**Advanced on the Docket**

DATE: January 12, 2026

### ORDER

Entitlement to Special Monthly Compensation (SMC) pursuant to 38 U.S.C. § 1114(l) due to the need for regular aid and attendance based on residuals of service-connected prostate cancer is granted from July 6, 2015, subject to controlling regulations governing the payment of monetary awards.

Entitlement to SMC pursuant to 38 U.S.C. § 1114(p)(2) is granted from April 22, 2024, subject to controlling regulations governing the payment of monetary awards.

Entitlement to SMC pursuant to 38 U.S.C. § 1114(r)(2) is granted from April 22, 2024, subject to controlling regulations governing the payment of monetary awards.

### FINDINGS OF FACT

1. The Veteran's prostate cancer was service connected and rated as 100 percent disabling as of July 6, 2015.
2. From July 6, 2015, the Veteran was unable to perform activities of daily living and required regular aid and attendance due to residuals of his service-connected

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prostate cancer, including significant incontinence, catheter dependency, need for frequent changing of absorbent materials, difficulty with self-care, and related impairments, separate from his other service-connected disabilities.

3. The Veteran's motor neuron amyotrophic lateral sclerosis (ALS) was service connected and rated as 100 percent disabling as of April 22, 2024.

4. The Veteran became substantially bedridden and required higher-level continuous care and he received ongoing home health care provided by or under the supervision of trained healthcare professionals as of April 22, 2024.

### **CONCLUSIONS OF LAW**

1. The criteria for SMC pursuant to 38 U.S.C. § 1114(l) from July 6, 2015, have been met. 38 U.S.C. §§ 1114(l), 5107(b); 38 C.F.R. §§ 3.102, 3.350, 3.352.

2. The criteria for SMC pursuant to 38 U.S.C. § 1114(p)(2) from April 22, 2024, have been met. 38 U.S.C. §§ 1114(p)(2), 5107(b); 38 C.F.R. §§ 3.102, 3.350, 3.352.

3. The criteria for SMC pursuant to 38 U.S.C. § 1114(r)(2) from April 22, 2024, have been met. 38 U.S.C. §§ 1114(r)(2), 5107(b); 38 C.F.R. §§ 3.102, 3.350, 3.352.

### **REASONS AND BASES FOR FINDINGS AND CONCLUSIONS**

The Veteran served on active duty from July 1961 to October 1967. The Board recognizes the Veteran's service to our country, and the sacrifices it necessarily entailed. Unfortunately, during the pendency of the appeal, the Veteran passed away in November 2024. The appellant is his surviving spouse.

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This case is before the Board of Veterans' Appeals (Board) on appeal from a July 2024 Department of Veterans Affairs (VA) Regional Office (RO) rating decision. In that decision, the RO denied entitlement to SMC based on aid and attendance and denied service connection for motor neuron amyotrophic lateral sclerosis (ALS).

In a January 2025 decision, the Board granted service connection for motor neuron amyotrophic lateral sclerosis (ALS) and SMC based on aid and attendance.

In March 2025, VA received the Veteran's 10182 Notice of Disagreement (NOD). The Veteran elected the Direct Review docket.

The Direct Review docket does not allow submission of any additional evidence in support of an appeal. Therefore, the Board may only consider the evidence of record at the time of the rating decision on appeal. 38 C.F.R. § 20.301. Thus, as this is a Direct Review appeal, the record closed as of the July 2024 rating decision.

Evidence added during an ineligible period will not be considered. Should the Veteran want VA to consider evidence submitted outside the eligible period, the Veteran should submit a VA Form 20-0995, Supplemental Claim, identifying such evidence.

## **1. Entitlement to SMC based on the need for aid and attendance**

The appellant contends that SMC aid and attendance rated under 38 U.S.C. § 1114(l) should be granted due solely to the Veteran's residuals of metastatic prostate cancer. She further asserts that SMC at the maximum rate and increase to SMC(r)(1) or (r)(2) is warranted under § 3.350(h) due to the much higher level of care during the last year of the Veteran's life. *See* VA Form 10182 NOD, March 28, 2025; *see also* Appellate Brief, March 28, 2025; Appellate Brief, April 12, 2025.

Since the award of the Veteran's 100 percent evaluation for prostate cancer in July 2015, medical evidence shows that he experienced increasing incontinence and the inability to accomplish activities of daily living (ADLs). By 2022, the Veteran was substantially bedridden and in need of aid and attendance of another both due to prostate cancer residuals and his ALS. VA treatment records show that he was receiving home health care from VA clinicians several times a week due to being bedridden with use of a catheter. The VA caregivers changed the catheter as necessary and monitored for urinary tract infections. The Veteran was forced to employ a condom-style catheter to collect his urine due to complete and total incontinence. The appellant was trained by the VA medical personnel on how to "install" the catheter in their absence and was regularly supervised by them and in regular contact. The "condition" (or circumstance) of ALS is separate and distinct and involves different bodily systems from that of the Veteran's residuals of metastatic prostate cancer. *See Appellate Brief, April 12, 2025.*

Favorable findings made by the AOJ are binding on the Board unless rebutted by evidence of clear and unmistakable error (CUE). 38 C.F.R. § 3.104(c). In the July 2024 rating decision, the RO provided favorable findings that the Veteran required aid and attendance. The Veteran suffered from disabilities which led to a need for regular assistance with ADLs, as established by the May 24, 2024, disability benefits questionnaire.

SMC is available when, as the result of service-connected disability, a veteran suffers additional hardships above and beyond those contemplated by VA's schedule for rating disabilities. 38 U.S.C. § 1114; 38 C.F.R. §§ 3.350, 3.352. The rate of SMC varies according to the nature of the service-connected disabilities and basic levels are listed at 38 U.S.C. § 1114(k). Higher levels of SMC are provided under 38 U.S.C. § 1114 in the subsections following subsection (k). Additional levels of SMC are provided in 38 U.S.C. § 1114(l) through (t).

SMC at the (l) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both feet; (2) anatomical loss or loss of use of one hand and one foot; (3) blindness in both eyes with visual acuity of 5/200 or less; (4) being permanently bedridden; or (5) being 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).

Pursuant to 38 C.F.R. § 3.350(b)(3) and (4), the criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance, including a determination that he is permanently bedridden, are contained in 38 C.F.R. § 3.352(a). That regulation provides that the following will be accorded consideration in determining the need for regular aid and attendance: inability of a 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; inability to feed himself through the 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 him from hazards or dangers incident to his daily environment.

“Bedridden” is defined as that condition, which, through its essential character, actually requires that a claimant remain in bed. The fact that a claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice.

It is not required that all of the above disabling conditions be found to exist before a favorable rating may be made. The particular personal functions that a veteran is unable to perform should be considered in connection with his condition as a whole. It is only necessary that the evidence establish that a veteran is so helpless as to need regular aid and attendance, not that there is a constant need.

Determinations that a veteran is so helpless as to be in need of regular aid and attendance will not be based solely upon an opinion that his condition is such as would require him to be in bed. Determinations must be based on the actual requirement of personal assistance from others. *See* 38 C.F.R. § 3.352(a).

In *Barry v. McDonough*, the United States Court of Appeals for the Federal Circuit addressed other SMC provisions and held that 38 C.F.R. § 3.350(f)(3), when read in the context of other statutory and regulatory provisions, unambiguously permits

multiple intermediate-rate SMC increases, and that the “Veterans Court’s contrary interpretation cannot stand.” *Barry v. McDonough*, 101 F.4th 1348, 1358 (Fed. Cir. 2024). In light of this judicial interpretation, the Board finds that SMC pursuant to 38 U.S.C. § 1114(l) may be awarded based on separate disabilities, as long as the symptoms and impairments caused by these disabilities are separate and distinct.

SMC at the (m) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both hands; (2) anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place; (3) anatomical loss or loss of use of one arm and of one leg at a level, or with complications, preventing natural elbow and knee action with prosthesis in place; (4) blindness in both eyes having only light perception; or (5) blindness in both eyes which results in being so helpless as to be in need of regular aid and attendance. 38 U.S.C. § 1114(m); 38 C.F.R. § 3.350(c).

SMC at the (n) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss or loss of use of both arms at a level, or with complications, preventing natural elbow action with prosthesis in place; (2) anatomical loss of both legs so near the hip as to prevent use of a prosthetic appliance; (3) anatomical loss of one arm and one leg so near the shoulder and hip as to prevent use of a prosthetic appliance; or (4) anatomical loss of both eyes or blindness without light perception in both eyes. 38 U.S.C. § 1114(n); 38 C.F.R. § 3.350(d).

SMC pursuant to 38 U.S.C. § 1114(o) is warranted if a veteran has suffered disability under conditions which would entitle him to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. § 1114(l) through (n). 38 U.S.C. § 1114(o); 38 C.F.R. § 3.350(e)(1)(ii). For combinations, determinations for entitlement under § 1114(o) must be based upon separate and distinct disabilities. That 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 those extremities. 38 C.F.R. § 3.350(e)(3).

SMC(p) raises up the rate assigned under other provisions in half step or whole step increments. 38 U.S.C. § 1114(p); 38 C.F.R. § 3.350(f). Bump-ups in excess of the (l) rate, but in no event higher than the (o) rate, are assigned for various combinations involving loss or loss of use of the feet, legs, arms, and/or hands, as well as for various combinations involving blindness and deafness. 38 C.F.R. § 3.350(f)(1), (2). Further, additional disability or disabilities independently ratable at 50 percent or more warrants the assignment of the next highest half step rate. 38 C.F.R. § 3.350(f)(3). Similarly, additional disability or disabilities independently ratable at 100 percent without consideration of total disability based on individual unemployability (TDIU) warrants the assignment of the next highest whole step rate. 38 C.F.R. § 3.350(f)(4). In no event can the rate be higher than (o), however. The additional disability or disabilities must be separate and distinct as well as involve different anatomical segments or bodily systems from those used to achieve SMC at the (l) through (n) rate or a half step rate. 38 C.F.R. §§ 3.350(f)(3), (4). Finally, the next highest half step or whole step rate is assigned for anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities. 38 C.F.R. § 3.350(f)(5).

SMC at the (r) rate concerns special aid and attendance. 38 U.S.C. § 1114(r); 38 C.F.R. § 3.350(h). It is an additional allowance available when not hospitalized at government expense. 38 C.F.R. § 3.350(h). To qualify under the (r)(1) or the (r)(2) rate, receipt of the (o) rate, the maximum rate under (p), or an intermediate rate between the (n) and (o) rates plus a (k) rate is required. The need for regular aid and attendance is also required to qualify under the (r)(1) and (r)(2) rates. SMC(r)(2) applies when, as a result of a service-connected disability, a Veteran otherwise entitled to SMC at the (l) rate needs in-home personal health-care services provided by either (1) a person who is licensed to provide such services, or (2) a person who provides such services under the regular supervision of a licensed health-care professional.

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SMC may be warranted pursuant to 38 U.S.C. § 1114(s) if a Veteran has a service-connected disability rated as 100 percent disabling and (1) has an additional service-connected disability or disabilities independently rated at 60 percent or more, or (2) by reason of such service-connected disability or disabilities is permanently housebound. 38 U.S.C. § 1114(s); 38 C.F.R. § 3.350(i).

The Veteran filed a claim for prostate cancer, among other disabilities, on July 6, 2015. *See* VA 21-4138 Statement in Support of Claim, July 6, 2015.

The Veteran's service-connected disabilities include prostate cancer, rated 100 percent from July 6, 2015; ALS, rated 100 percent from April 22, 2024; PTSD, rated 30 percent from June 16, 2008, 50 percent from December 18, 2018, and 70 percent from April 22, 2024; tinnitus, rated 10 percent from April 12, 2012; scar (shrapnel right knee), 0 percent from June 16, 2008, and 10 percent from September 18, 2013; diabetes mellitus Type II, rated 10 percent from July 6, 2015; and noncompensable evaluations of hypertension (October 11, 2011), bilateral hearing loss, (April 12, 2012), and erectile dysfunction (July 6, 2015). The Veteran was in receipt of TDIU from December 18, 2018.

The Veteran was in receipt of SMC(k) from July 6, 2015 (loss of use of a creative organ); SMC(s) from December 18, 2018 (based on prostate cancer rated 100 percent and additional service-connected disabilities of tinnitus, diabetes mellitus, scar, shrapnel right knee, and PTSD, independently ratable at 60 percent or more); SMC(k) from April 22, 2024 (based on loss of use of one hand); SMC(l) from April 22, 2024, (on account of being so helpless as to be in need of regular aid and attendance); and SMC(p)(at the rate equal to m) based on entitlement to the rate equal to (l) with additional disability, prostate cancer independently ratable at 100 percent from April 22, 2024.

The Veteran underwent VA examinations for prostate cancer in October 2015, September 2016, November 2017, July 2019, and April 2020, as well as a March 2016 private medical examination.

Per the October 2015 VA examiner, the Veteran's prostate cancer did not impact his ability to work. The Veteran had a voiding dysfunction that caused urine leakage, requiring absorbent material that was changed less than two times per day, nighttime awakening to void two times, hesitancy, and slow or weak stream. *See* C&P Examination, October 6, 2015.

The March 2016 examiner asserted that the Veteran's prostate cancer impacted his ability to work due to low morale and uncertainty from cancer, debilitation, and general deconditioning. The Veteran's voiding dysfunction caused urine leakage (requiring absorbent material which must be changed 2 to 4 times per day), increased urinary frequency (resulting in nighttime awakening to void 3 to 4 times), and hesitancy, slow stream, weak stream, and decreased force of stream. *See* C&P Examination, March 20, 2016.

Due to his service-connected disability, the Veteran leaked all the time and did not want to be embarrassed from the wet spots on his clothes. He had to change his pads continuously all day due to this condition and was not able to maintain gainful employment as a result. *See* VA 21-4138 Statement in Support of Claim, May 31, 2016.

The September 2016 VA examiner determined that the Veteran's prostate cancer did not impact his ability to work; however, the November 2017 examiner determined that his cancer did impact his ability to work. The November 2017 VA examiner remarked that the Veteran's fatigue limited him to sedentary work; he must have ready availability of bathroom facilities. The Veteran's voiding dysfunction caused increased urinary frequency, resulting in nighttime awakening to void two times, and urine leakage, requiring absorbent material which must be changed 2 to 4 times per day. *See* C&P Examinations (September 2, 2016; November 15, 2017).

The July 2019 VA examiner asserted that the Veteran was diagnosed with prostate cancer in 2015, but noted no residuals that impacted his ability to work. *See* C&P Examination, July 22, 2019.

The April 2020 VA examiner found that the Veteran's prostate cancer did not impact his ability to work. His voiding dysfunction caused urine leakage (requiring absorbent material which must be changed more than 4 times per day), urinary frequency (resulting in daytime voiding interval between 1 and 2 hours), and nighttime awakening to void 3 to 4 times. *See* C&P examination, April 7, 2020.

Since November 2022, the Veteran increasingly required a cane, walker, and a wheelchair due to the loss of ambulation. *See* Correspondence, March 17, 2024.

VA treatment records include a December 14, 2023, record showing that the Veteran had urinary incontinence since his diagnosis of prostate cancer. On March 21, 2024, the Veteran asserted that his ALS had reached the stage of severity that he was bedridden in addition to being confined to a wheelchair. The Veteran's doctor described that he was paralyzed in all four extremities and his torso. *See* CAPRI, May 2, 2024; *see also* Medical Treatment Record – Government Facility, March 17, 2024.

The appellant reported that the Veteran was no longer able to attend any outside appointment due to the fact that he was bedbound and receiving full home care. *See* VA 27-0820 Report of General Information, May 3, 2024.

Prior to the Veteran's 100 percent rating for his service-connected prostate cancer on July 6, 2015, he did not have a single service-connected disability rated at 100 percent. Thus, he was not eligible for SMC(s) at that time. As noted above, the Veteran was in receipt of SMC(s) from December 18, 2018, at which time his other service-connected disabilities increased to a combined rating of 60 percent or more.

As of April 22, 2024, the Veteran's ALS was rated as 100 percent disabling, to include loss of use of the right hand, impairment in the bilateral upper and lower nerves, and other associated disorders. A May 2024 VA examination for ALS identified the profound medical and neurological conditions and functional limitations caused by ALS, including high risk for falls, being confined to a

wheelchair, severe weakness and atrophy of the upper and lower extremities requiring assistance with all ADLs. *See* VA Examination, May 29, 2024. At that time, the Veteran's ALS diagnosis introduced additional impairments, including functional loss in his upper and lower extremities, necessitating additional assistance. The Veteran's combined disabilities surpassed the criteria for the preceding rates of compensation due to their severity and the combined impact on the Veteran's functional capacity.

Regarding SMC(r)(2) from April 22, 2024, the competent medical evidence of record documents home healthcare needs, provided under professional supervision, involving catheter management, infection control, and general health maintenance. The Veteran's combined conditions required daily medical intervention surpassing regular aid and attendance and escalating to professional health care levels. As such, 38 C.F.R. § 3.350(h)(2) criteria are met, and the medical evidence shows that a higher level of care was required, involving trained healthcare professionals, contemplated under the regulations for SMC(r)(2).

The Veteran's conditions (metastatic prostate cancer and ALS) significantly impaired his daily living capacities, mandating continuous higher-level medical care. The gradual worsening from July 6, 2015, and severe functional decline by April 22, 2024, justify increasing the SMC rate to (r)(2).

Based on the foregoing, the Board finds that SMC based on aid and attendance is warranted due to the Veteran's service-connected residuals of prostate cancer from July 6, 2015, and ALS separately from April 22, 2024. Moreover, the Veteran's service-connected disabilities resulted in a need for a higher level of care as of April 22, 2024, when the manifestations of the Veteran's service-connected disabilities resulted in a need for in-home personal health-care services provided by a person who is licensed to provide such services or a person who provides such services under the regular supervision of a licensed health-care professional.

The evidence in the Veteran's record demonstrates a clear need for regular aid and attendance due to the severe residuals of service-connected prostate cancer as of July 6, 2015. Although the Veteran was later diagnosed with service-connected

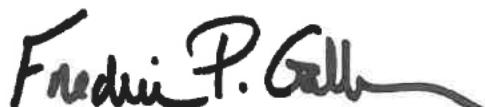
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ALS on April 22, 2024, the need for aid and attendance due to prostate cancer existed independently and significantly earlier. The consistent and well-documented history of prostate cancer leading to severe incontinence and functional limitations necessitates additional compensation. The awarding of SMC (l) from July 6, 2015, and (p)(2) and (r)(2) from April 22, 2024, is supported by the evidence, which demonstrates that the Veteran's residuals of prostate cancer worsened over time, followed by, and coinciding with, the symptoms associated with the Veteran's ALS which presented with its own separate difficulties, justifying the enhanced levels of SMC.



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Frederic P. Gallun  
Veterans Law Judge  
Board of Veterans' Appeals

Attorney for the Board

*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.*

Labi, Aileen