BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

IN THE CASE OF [redacted]

Appellant Represented by
Gordon A. Graham, Agent

XSS XXX XX 3693
Docket No. 250826-578423

DATE: July 29, 2026

ORDER

Entitlement to a second award of special monthly compensation (SMC) at the (l) rate under 38 C.F.R. § 3.350 (b) is denied.

Entitlement to SMC at the (m) rate under 38 C.F.R. § 3.350 (c) is granted.

Entitlement to SMC at the (o) rate under 38 C.F.R. § 3.350 (e) is denied.

Entitlement to SMC at the (r)(1) rate under 38 C.F.R. § 3.350 (h) is denied.

Entitlement to SMC at the (r)(2) rate under 38 C.F.R. § 3.350 (h) is denied.

FINDINGS OF FACT

1. The Veteran died in March 2022.

2. The Veteran was in receipt of SMC at the (l) rate based on his service-connected hepatitis C with bilateral upper extremity arthralgias to include osteoarthritis for the period beginning September 11, 2024.

3. The Veteran's service-connected squamous cell carcinoma of the anus was granted service connection and assigned a 100 percent rating effective February 17, 2022.

4. The grant of SMC (l) based on hepatitis C with bilateral upper extremity arthralgias to include osteoarthritis included consideration of limitations related to the bilateral upper and lower extremities, including limited use of the arms and hands, trouble holding objects, unbalanced walking, inability to bear weight on the lower extremities, and pain in his hips, knees and feet.

CONCLUSIONS OF LAW

1. The criteria for SMC at the (l) rate under 38 C.F.R. § 3.350 (b) have not been met. 38 U.S.C. § 1114 (2024); 38 C.F.R. §§ 3.350, 3.352. (2026).

2. The criteria for SMC at the (m) rate under 38 C.F.R. § 3.350 (c) have been met. 38 U.S.C. § 1114 (2024); 38 C.F.R. §§ 3.350, 3.352. (2026).

3. The criteria for SMC at the (o) rate under 38 C.F.R. § 3.350 (e) have not been met. 38 U.S.C. § 1114 (2024); 38 C.F.R. §§ 3.350, 3.352. (2026).

4. The criteria for SMC at the (r)(1) rate under 38 C.F.R. § 3.350 (h) have not been met. 38 U.S.C. § 1114 (2024); 38 C.F.R. §§ 3.350, 3.352. (2026).

5. The criteria for SMC at the (r)(2) rate under 38 C.F.R. § 3.350 (h) have not been met. 38 U.S.C. § 1114 (2024); 38 C.F.R. §§ 3.350, 3.352. (2026).

REASONS AND BASES FOR FINDINGS AND CONCLUSIONS

The Veteran served on active duty from June 1971 to May 1974. The Veteran died in March 2022, and the appellant is the surviving spouse. This matter came before the Board of Veterans' Appeals (Board) on appeal from a May 2025 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO).

In the August 16, 2025, VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the appellant elected the Evidence Submission docket.

Therefore, the Board may only consider the evidence of record at the time of the May 2025 agency of original jurisdiction (AOJ) decision on appeal, as well as any evidence submitted by the appellant or representative with, or within 90 days from receipt of, the VA Form 10182. 38 C.F.R. § 20.303. If evidence was submitted either (1) during the period after the AOJ issued the decision on appeal and prior to the date the Board received the VA Form 10182, or (2) more than 90 days following the date the Board received the VA Form 10182, the Board did not consider it in its decision. 38 C.F.R. §§ 20.300, 20.303, 20.801.

If the appellant would like VA to consider any evidence that was submitted that the Board could not consider, the Veteran may file a Supplemental Claim (VA Form 20-0995) and submit or identify this evidence. 38 C.F.R. § 3.2501. If the evidence is new and relevant, VA will issue another decision on the claim, considering the new evidence in addition to the evidence previously considered. *Id.* Specific instructions for filing a Supplemental Claim are included with this decision.

SPECIAL MONTHLY COMPENSATION

The appellant contends that the Veteran was entitled to a higher level of special monthly compensation based on his service-connected disabilities. Entitlement to SMC may be considered part of a claim for an increased rating. *See Akles v. Derwinski,* 1 Vet. App. 118, 121 (1991). VA's duty to maximize a claimant's benefits includes consideration of whether his disabilities establish entitlement to special monthly compensation (SMC) under 38 U.S.C. § 1114. *See Buie v. Shinseki*, 24 Vet. App. 242, 250 (2011); *Bradley v. Peake*, 22 Vet. App. 280, 294 (2008).

The Veteran was in receipt of SMC (l) beginning September 11, 2014, based on a need for regular aid and attendance due to his service-connected hepatitis C with arthralgias of the bilateral upper extremities to include osteoarthritis. The May 2025 rating decision on appeal granted service connection and assigned a 100 percent rating for squamous cell carcinoma effective February 17, 2022.

In the August 2025 VA Form 10182, the appellant indicated that she was seeking a second award of SMC at the (l) rate based on a need for aid and attendance based on his service-connected squamous cell carcinoma alone. In the alternative, she contended that the Veteran was entitled to SMC at the (m) rate based on intermediate steps under SMC (p).

The August 2025 VA Form 10182 also listed the issues of entitlement to SMC at the (o) rate based on entitlement to two separate SMC (l) awards, as well as entitlement to SMC (r)(1) and SMC (r)(2) based on entitlement to SMC (o) along with a need for special aid and attendance.

As the appellant is seeking multiple SMC rates, the Board will address each in turn. For purposes of receiving two or more rates provided in 38 U.S.C. § 1114 (l) through (n), each entitlement must be based upon separate and distinct disabilities with no condition being considered twice. *Breniser v. Shinseki*, 25 Vet. App. 64, 65 (2011); see also 38 C.F.R. § 3.350(e)(1)(ii). 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).

When the evidence is in approximate balance in a veteran's favor or nearly equal regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant. 38 U.S.C. § 5107; *see also Gilbert v. Derwinski,* 1 Vet. App. 49, 53 (1990); *Lynch v. McDonough*, 21 F.4th 776 (Fed. Cir. 2021) (*en banc*).

1. Entitlement to special monthly compensation at the (l) rate under 38 C.F.R. § 3.350 (b)

SMC at the (l) rate 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).

Where possible, determinations should be on the basis of permanently bedridden rather than for need of aid and attendance (except where 38 U.S.C. § 1114(r) is involved) to avoid reduction during hospitalization where aid and attendance is provided in kind. 38 C.F.R. § 3.350(b) (4).

As noted above, the Veteran is already in receipt of SMC at the (1) rate beginning September 11, 2014. A March 2015 rating decision granted entitlement based on aid and attendance criteria being met from that date based on the Veteran's service-connected Hepatitis C. The May 2025 rating decision on appeal granted service connection for squamous cell carcinoma of the anus and assigned a 100 percent rating effective February 17, 2022.

The Board has considered whether the Veteran is entitled to two separate awards of SMC at the (l) rate. The appellant's attorney argued in an August 2025 statement that a second SMC (l) award was warranted as the Veteran required aid and attendance due to his carcinoma. The attorney stated that the Veteran's anal cancer had not metastasized to the liver, and therefore was separate and distinct from the Hepatitis C for which an award of SMC at the (l) rate was already in effect. In the alternative, the attorney contended that a second award of SMC (l) was warranted as the Veteran was essentially bedridden due to residuals of anal cancer as he was "chairfast" and could not ambulate, or that he had loss of use of the upper and lower extremities.

Regarding the contention that the Veteran was bedridden due to his carcinoma, the Board notes that the assignment of separate awards of SMC (l) for bedridden status and a need for aid and attendance is not permitted by regulation. The regulations indicate that the need for regular aid and attendance and permanently bedridden statuses are duplicative, without reference to the specific disability causing such. 38 C.F.R. § 3.350 (b) (3)-(4). This is evidenced by the clear direction in the regulation that when possible, determinations should be made on the basis of bedridden status rather than the need for aid and attendance.

The Board has also considered whether two separate SMC (l) awards on the basis of aid and attendance are warranted. However, nothing in the statute or regulation allows for the award of aid and attendance based on different disabilities for the

purposes of establishing entitlement to the rate provided in 38 U.S.C. § 1114 (o). Neither the statute nor the regulation state that aid and attendance may be awarded multiple times based on individual disabilities. Instead, both the statute and the regulation simply provide that the SMC rate provided in 38 U.S.C. § 1114 (l) may be awarded based on the "need for aid and attendance." The plain meaning of this phrase is that a veteran is to be compensated at the rate provided in subsection (l) when there is a factual need for aid and attendance generally. In other words, an award of SMC pursuant to 38 U.S.C. § 1114 (l) is intended to compensate a veteran for the need for aid and attendance that arises as the result of service-connected disability generally.

This interpretation is supported by 38 C.F.R. § 3.352, which provides the criteria for determining whether aid and attendance is necessary. 38 C.F.R. § 3.352 (a). Much like the statutory and regulatory provisions governing the award of SMC at the (l) rate generally, the criteria contained in 38 C.F.R. § 3.352 are not disability specific. Unlike the bases for entitlement tied to specific disabilities, the provisions for aid and attendance and bedridden status are specifically worded to include consideration of all or some of a veteran's service-connected disabilities. 38 C.F.R. § 3.352 states that not all the functional impairments listed as examples of daily activities of life need be present, meaning it is the overall disability picture which must be considered rather than the presence of a particular disability and associated impact.

As discussed above, the regulation also states that a need for regular aid and attendance and permanently bedridden statuses are duplicative of each other, without reference to the specific disability causing the need for assistance or bedridden status. 38 C.F.R. § 3.350(b)(3)-(4). This supports the interpretation that the specific underlying cause of the entitlement is not relevant, but the need for assistance or the existence of bedridden status regardless of cause.

Further, the regulation specifically states that a determination that aid and attendance is warranted should be made based on the particular functions a veteran is unable to perform based on his or her condition as a whole. 38 C.F.R. § 3.352 states that not all the functional impairments listed as examples of daily activities of life need be present, meaning it is the overall disability picture which

must be considered rather than the presence of a particular disability and associated impact. Such a holistic focus in determining whether or not a veteran requires aid and attendance supports the conclusion that SMC at the (l) rate based on the need for aid and attendance is intended to be awarded only once. Thus, based on the plain meaning of the statute and regulation, SMC pursuant to 38 U.S.C. § 1114 (l) may not be awarded multiple times based on a need for aid and attendance based on multiple distinct disabilities. Instead, it may only be awarded once based on a veteran's ability to function in light of his or her disability picture as a whole.

While the evidence shows that the Veteran was admitted to hospice in February 2022 and required aid and attendance after his diagnosis and treatment for carcinoma, this did not result in a new requirement for aid and attendance. The Veteran had required such assistance since at least September 2014, over eight years earlier, and he was already in receipt of SMC at the (l) rate based on a need for aid and attendance on this basis. While he may have required a higher level of care after his diagnosis and treatment for carcinoma, as evidenced by regulations permitted the assigning SMC (l) on this basis, it would obviate the criteria for higher level and special aid and attendance, which recognize that something more than just basic assistance is needed. 38 C.F.R. § 3.352(b).

The Board has also considered whether separate awards of SMC (l) are warranted based on loss of use of the upper and lower extremities due to the service-connected carcinoma, separate and distinct from the Veteran's Hepatitis C.

Again, a Veteran who is already in receipt of SMC at the (l) rate for loss of use or actual use of an extremity cannot establish entitlement to a second award of SMC at the (l) rate based on the need for aid and attendance unless the Veteran's need arises from a disability other than that for which the Veteran is already in receipt of SMC (l). *Breniser v. Shinseki*, 25 Vet. App. 64, 77-78 (2011). The reverse is necessarily also true, and a Veteran in receipt of SMC (l) based on aid and attendance cannot establish entitlement to a second award for loss of use unless the loss of use arises from a disability other than that for which the Veteran is already in receipt of SMC (l). Each entitlement must be based upon separate and distinct disabilities with no condition being considered twice.

The February 2022 private hospice records cited by the Veteran's representative noted that he was admitted after a November 2021 diagnosis of carcinoma. The provider notes that the Veteran could only tolerate chemotherapy for a week and stopped. The provider noted that the Veteran also had a long history of chronic pain, weakness, difficulty with ambulation, nausea, confusion, abdominal pain, fibromyalgia, rashes, and neurologic disorders. The provider noted pain to the back, rectum, hips, knees and abdomen. The provider noted that the Veteran could not bear his own weight and needed assistance to a chair or a wheelchair, and that he was "chairfast" and that his ability to walk was severely limited or nonexistent. He was noted to have impaired functional mobility and to be at risk of falls, with a specific notation that pain affected his ability to move. The provider noted that he was unsteady and had difficulty walking.

December 2021 private oncology records noted that the Veteran had significant anal pain, but that he also reported arthralgias throughout his body, and the provider noted diffuse back and knee pain related to arthritis and the use of a walker for assistance.

While the evidence shows limitations in the Veteran's ability to walk and bear weight, it does not show that these limitations are due to the service-connected carcinoma alone. While the August 2025 brief stated that "[r]easonable medical minds can only concur" that the Veteran lost the use of his extremities due to his carcinoma of the anus, there is no indication in the record that the appellant's attorney has the education or experience to offer an opinion on a complex medical matter such as whether a specific disability resulted in the loss of use of extremities. The private hospice records identified limitations in the use of the Veteran's extremities, but do not identify the source of those limitations. While noting admission due to cancer, the records also specifically noted pain in the back and other joints. The Veteran's private oncology records clearly distinguished the Veteran's arthritis-related joint pain from the anal pain related to his carcinoma. The competent evidence of record therefore does not support the conclusion that the loss of function shown in the hospice records was due to the carcinoma alone.

This is particularly the case as the evidence shows that functional impairments in the upper and lower extremities were present years before the 2021 diagnosis with

carcinoma and were specifically considered in the existing aid and attendance award based on impairments associated with hepatitis C. The September 2014 aid and attendance examination, upon which the March 2015 grant of SMC (l) was based, stated that the Veteran had limited use and range of motion in his arms and hands and could not hold objects. It also stated that he had muscle atrophy, unbalanced walking, could not bear weight on his lower extremities, and had pain in his hips, knees and feet. It also indicated that he needed assistance transferring to a chair and that he stayed in bed except for eating and using the restroom. Thus, the evidence shows that the balance problems, inability to bear weight, joint pain, and being primarily confined to bed were present as early as over eight years before the carcinoma diagnosis. This, along with the specific notations by the private oncologist and hospice providers regarding the pain and long-standing symptoms from other disabilities, in addition to those related to his carcinoma, indicates that the Veteran did not have loss of use of his bilateral upper and lower extremities due to his carcinoma alone. Notably, the private oncologist specifically indicated that the Veteran's diffuse joint pain was related to his arthritis and arthralgia.

The evidence also shows that the Veteran's functional loss in his upper and lower extremities associated was expressly considered in the existing award of SMC (l). The March 2015 rating decision was considered the September 2014 aid and attendance examination and stated that aid and attendance was warranted for symptoms of pain, fatigue, myalgias, nausea, vomiting, and anorexia due to the service-connected hepatitis C. Because the Veteran's existing award based on a need for aid and attendance was so closely tied to his mobility issues due to service-connected hepatitis C with arthralgias and osteoarthritis, the Board cannot also award SMC for loss of use of the upper and lower extremities. *Breniser v. Shinseki*, 25 Vet. App. 64, 77-78 (2011).

In sum, a second award of SMC (l) may not be assigned based on a need for aid and attendance or for loss of use of the upper or lower extremities. The statutes and regulations do not allow for the assignment of SMC pursuant to 38 U.S.C. § 1114 (l) based on the need for aid and attendance for individual disabilities. Instead, the statute and regulation allow for the award of SMC under 38 U.S.C.

§ 1114 (l) once based on the general need for the aid and attendance of another in light of the Veteran's condition as a whole. 38 C.F.R. §§ 3.350 (b)(3), 3.352(a). Neither the statute nor the regulation allows for the award of multiple rates based on the need for aid and attendance alone, and the plain meaning of the regulations governing the award of aid and attendance clearly reflect that it is intended to be awarded only once.

An award based on loss of use is also not warranted as the evidence does not show that the underlying service-connected disability was separate and distinct from that upon which the aid and attendance award was based. The disability that results in loss of use cannot also serve as the basis for satisfying the requirement for aid and attendance. *Breniser v. Shinseki*, 25 Vet. App. 64, 77-78 (2011). The evidence indicates that upper and lower extremity impairments were present as early as 2014, well before the 2021 diagnosis with carcinoma, and that they were part of the basis of the existing award of SMC (l) based on aid and attendance.

Accordingly, a second award of SMC (l) based on a need for aid and attendance or for loss of use of the upper or lower extremities is not warranted. The evidence is persuasively against a second award of SMC at the (1) rate and is not in approximate balance or nearly equal in the Veteran's favor. As such, the benefit-of-the-doubt doctrine is inapplicable. 38 C.F.R. § 4.3. For these reasons, the claim is denied.

2. Entitlement to special monthly compensation at the (m) rate under 38 C.F.R. § 3.350 (c)

SMC at the (m) rate is payable for anatomical loss or loss of use of both hands, Anatomical loss or loss of use of both legs at a level, or with complications, preventing natural knee action with prosthesis in place, anatomical loss or loss of use of one arm at a level, or with complications, preventing natural elbow action with prosthesis in place with anatomical loss or loss of use of one leg at a level, or with complications, preventing natural knee action with prosthesis in place, blindness in both eyes having only light perception, or blindness in both eyes leaving the veteran so helpless as to be in need of regular aid and attendance. 38 C.F.R. § 3.350 (c) (1).

When a veteran has an additional service-connected disability independently ratable at 100 percent, SMC (p) affords entitlement to the next higher statutory rate under 38 U.S.C. § 1114, or if a veteran is already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o). The single permanent disability independently ratable at 100 percent must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. § 1114 (l) through (n).

The evidence does not show that the criteria of SMC (m) are met. The evidence does not show that the Veteran has either anatomical loss or loss of use of both legs or either arm at the level required to warrant SMC (m) as there is no indication that the Veteran was prevented from natural elbow or knee action, and it also does not show that he had blindness.

However, the Veteran was in receipt of SMC (l) based on a need for aid and attendance due to his hepatitis C with arthralgias including osteoarthritis beginning September 11, 2014. He was also assigned a 100 percent rating for his carcinoma beginning February 17, 2022.

Thus, beginning February 17, 2022, the Veteran had an additional service-connected disability rated at 100 percent, separate and distinct from his service-connected hepatitis C. He was therefore entitled to the next higher statutory rate based on SMC (p). He was therefore entitled to SMC at the (m) rate.

Entitlement to SMC at the (m) rate, based on receipt of SMC at the (l) rate along with additional service-connected disability independently rated at 100 percent, is therefore granted.

3. Entitlement to special monthly compensation at the (o) rate under 38 C.F.R. § 3.350(e)

SMC at the (o) rate is payable if, as the result of service-connected disability, the Veteran has suffered: (1) anatomical loss of both arms so near the shoulder as to prevent use of a prosthetic appliance; (2) when two or more of the rates (l) through (n) are warranted, with no disability being considered twice; (3) bilateral deafness

rated at 60 percent or more (when 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 (when the hearing impairment in either one or both ears is service-connected) in combination with service-connected blindness of both eyes having only light perception or less. 38 U.S.C. § 1114(o); 38 C.F.R. § 3.350 (e) (1).

The evidence does not show that the Veteran had anatomical loss of either arm, bilateral deafness, total deafness, or blindness. Thus, the Board has considered whether two or more of the rates (1) through (n) are warranted, with no disability being considered twice.

The Board finds that the criteria for an award of SMC (o) are not met. While the Veteran was in receipt of SMC at the (l) rate based upon his hepatitis C with arthralgias including osteoarthritis, and entitlement to SMC at the (m) rate has been awarded above, the requirement that no disability be considered twice is not met. The criteria for SMC at the (m) rate are met based on the operation of SMC (p), specifically the assignment of the next higher rate from SMC (l) due to a second disability rated at 100 percent. Thus, the assignment of SMC (m) required consideration of the existing entitlement to SMC (l) based on his service-connected hepatitis C with arthralgia. The awards of SMC (l) and SMC (m) thus both involve consideration of the hepatitis C (i.e. that disability is considered twice). The criteria for SMC (o) are therefore not met.

Entitlement to SMC at the (o) rate is therefore denied. The evidence is persuasively against an award of SMC at the (o) rate and is not in approximate balance or nearly equal in the Veteran's favor. As such, the benefit-of-the-doubt doctrine is inapplicable. 38 C.F.R. § 4.3. For these reasons, the claim is denied.

4. Entitlement to special monthly compensation at the (r)(1) rate under 38 C.F.R. § 3.350(h)

5. Entitlement to special monthly compensation at the (r)(2) rate under 38 C.F.R. § 3.350(h)

SMC at the (r) rate is payable when a veteran receiving the maximum rate under 38 U.S.C. § 1114 (o) or (p) is in need of regular aid and attendance or a higher level of care during periods he or she is not hospitalized at United States Government expense. 38 C.F.R. § 3.350 (h).

Entitlement to SMC at either the (r)(1) or (r)(2) rates is predicated on receipt of SMC (o) or (p). As discussed in detail above, the criteria for entitlement to SMC (o) are not met in this case. In addition, while the Veteran is entitled to a higher level of SMC under SMC (p) based on the assignment of a second service-connected disability rated as total, he is not receiving the maximum rate. The maximum rate assignable on the basis of SMC (p) is SMC at the (o) rate. The Veteran in this case is entitled to the (m) rate, and thus he is not in receipt of the maximum rate under SMC (p). Thus, the Veteran is not in receipt of the maximum rate under either SMC (o) or SMC (p). As a result, the criteria for entitlement to SMC at either the (r)(1) or (r)(2) rates are not met.

(Continued on next page)

Entitlement to SMC at the (r)(1) and (r)(2) rates must therefore be denied. The evidence is persuasively against an award of SMC at either (r) rate and is not in approximate balance or nearly equal in the Veteran's favor. As such, the benefit-of-the-doubt doctrine is inapplicable. 38 C.F.R. § 4.3. For these reasons, the claim is denied.

E. I. VELEZ
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board — A. Arnold, Counsel

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.