



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF

Represented by
Gordon A. Graham, Agent

SS [REDACTED]

Docket No. 250702-560083

DATE: August 3, 2026

ORDER

Entitlement to special monthly compensation (SMC) based on aid and attendance for residuals of traumatic brain injury (TBI) effective March 17, 2024 is granted.

FINDINGS OF FACT

1. For the entire period on appeal, the competent and credible evidence of record is at least evenly balanced to suggest that the Veteran at least as likely as not requires regular aid and attendance for residuals of a TBI, and that he would require hospitalization, nursing home care, or other residential institutional care in the absence of same.
2. There is no competent or credible evidence that the Veteran has service-connected disabilities manifesting in blindness, deafness, loss of use of hands or feet, that require the aid and attendance of another. Alternatively, the aid and attendance award pursuant to 38 U.S.C. § 1114(t) and 38 C.F.R. § 3.350(j) is specifically for veterans not entitled to aid and attendance under 38 U.S.C. § 1114(r) and 38 C.F.R. § 3.350(h), and SMC at 38 U.S.C. § 1114(t) yields greater or equal monetary benefits as 38 U.S.C. § 1114(r). As such, any claim for SMC at the rates of 38 U.S.C. § (r) and 38 C.F.R. § 3.350(h) should either be denied as a matter of law or else dismissed as moot.

CONCLUSION OF LAW

The criteria for entitlement to special monthly compensation (SMC) based on aid and attendance for residuals of traumatic brain injury (TBI) effective March 17, 2024 have been met. 38 U.S.C. §§ 1114(t), 1155, 5101, 5103, 5103A, 5107, 5121; 38 C.F.R. §§ 3.340, 3.341, 3.350(j), 4.15.

REASONS AND BASES FOR FINDINGS AND CONCLUSION

The Veteran served on active duty in the United States Navy from October 2012 to October 2023. **The Board of Veterans' Appeals (Board) sincerely thanks the Veteran for his honorable service to our country.**

This case comes before the Board on appeal from a June 2025 rating decision of the Department of Veterans Affairs (VA) Regional Office (RO).

In the July 2025 VA Form 10182, Decision Review Request: Board Appeal (Notice of Disagreement), the Veteran elected the Direct Review docket.

Therefore, the Board may only consider the evidence of record at the time of the June 2025 agency of original jurisdiction (AOJ) decision on appeal. 38 C.F.R. § 20.301. Any evidence submitted after the AOJ decision on appeal cannot be considered by the Board. 38 C.F.R. §§ 20.300, 20.301, 20.801.

If the Veteran 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.

The Veteran specifically asserts that he is entitled to an award of special monthly compensation based on aid and attendance for residuals of traumatic brain injury (TBI) pursuant to 38 U.S.C. § 1114(t). *See e.g.* July 2025 Appellate Brief.

Pursuant to the AMA, the Board is bound by previous findings of fact that are favorable to the Veteran. 38 C.F.R. §§ 3.104(c), 20.801. Here, the AOJ has already awarded the Veteran special monthly compensation (SMC) pursuant to 38 U.S.C. § 1114(l), based on need for aid and attendance, effective March 17, 2024. See June 2025 Rating Decision.

The Veteran's award is specifically based on his service connected disability of posttraumatic stress disorder (PTSD) with insomnia disorder and traumatic brain injury (TBI). *See June 2025 Rating Decision.*

The AOJ explained that the effective date for the award of SMC is granted as March 17, 2024, because this was the first point in time the evidence showed the Veteran met the criteria for regular aid and attendance, per a March 17, 2024 VA psychiatric examination. *Id.*

Special monthly compensation is payable at a specified rate if the Veteran, as the result of service-connected disability, needs regular aid and attendance. Need for aid and attendance means helplessness or is so nearly helpless as to require the regular aid and attendance of another person.

A Veteran will be considered to be in need of regular aid and attendance if he or she is blind or is so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; if the veteran is a patient in a nursing home because of mental or physical incapacity; or if the evidence establishes a factual need for aid and attendance or "permanently bedridden" status under the criteria set forth in 38 C.F.R. § 3.352(a). 38 U.S.C. § 1114(l); 38 C.F.R. § 3.351(b).

Meanwhile, subject to section 5503(c) of this title, if any Veteran, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of traumatic brain injury, is not eligible for compensation under subsection (r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care, the Veteran shall be paid, in addition to any other compensation under this section, a monthly aid and attendance allowance equal to the rate described in subsection (r)(2), which for purposes of section 1134 of this title shall be considered as

additional compensation payable for disability. An allowance authorized under this subsection shall be paid in lieu of any allowance authorized by subsection (r)(1). 38 U.S.C. § 1114(t); 38 C.F.R. § 3.350(j).

Factual need for aid and attendance is based on the following criteria: the inability of the Veteran to dress or undress himself or herself, or to keep himself or herself 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.); the inability of a Veteran to feed himself or herself through the loss of coordination of upper extremities or through extreme weakness; the inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect a Veteran from the hazards or dangers incident to his daily environment. 38 C.F.R. § 3.352(a).

Although a Veteran need not show all the disabling conditions identified in 38 C.F.R. § 3.352(a) to establish entitlement to aid and attendance, the Court has held that it is logical to infer there is a threshold requirement that "at least one of the enumerated factors be present." *Turco v. Brown*, 9 Vet. App. 222, 224 (1996).

As an initial matter, after review of the evidence of record, the Board agrees with the AOJ that March 17, 2024 is the first date in time where the evidence of record shows that the Veteran met the criteria for aid and attendance, because this was the first point in time the evidence showed that the Veteran's wife was regularly assisting him with activities of daily living (ADLs). *See Bradley v. Peake*, 22 Vet. App. 280 (2008) (stating that special monthly compensation benefits are to be accorded when a Veteran becomes eligible without need for a separate claim).

Specifically, a March 17, 2024 VA psychiatric examiner found that "his wife manages his ADL's: takes care of managing and giving him his medications, medical appointments, instructions to shower, helps him with instructions to take a shower, pays bills." March 2024 VA Examination.

Turning to point of contention in this case, there is clearly no dispute that the Veteran does in fact require regular aid and attendance because the Veteran has already been awarded SMC for aid and attendance.

Rather, the dispute in this case is that the AOJ has concluded that “although the posttraumatic stress disorder and traumatic brain injury are evaluated together as 100 percent disabling, the evidence of record clearly indicates that the predominate symptoms which established the evaluation is based on the symptoms of posttraumatic stress disorder. Since the traumatic brain injury is not the predominant reason for the aid and attendance a higher level of special monthly compensation would not be warranted at this time.” *See* June 2025 Rating Decision.

The Veteran asserts that his TBI disability is the predominant reason he requires regular aid and attendance. *See* July 2025 Appellate Brief.

During the Veteran’s initial VA psychiatric examination, the examiner was asked whether it is possible to differentiate which of the Veteran’s symptoms are attributable to TBI and which are attributable to other psychiatric disabilities. *See* December 2022 VA Examination. The examiner answered “no” explaining that “symptoms overlap and exacerbate each other.” *Id.*

However, during the Veteran’s initial TBI examination the examiner was able to identify tremors as a TBI specific symptom. *See* December 2022 VA Examination.

During the Veteran’s more detailed follow-up VA TBI examination, the examiner reiterated that the Veteran’s tremors are a TBI symptom, discussed the Veteran’s impaired and inappropriate decision making, such as regarding personal finances, as evidence of his impaired judgement, and found that the Veteran has astasia abasia when walking [neurological inability to walk without assistance.] *See* March 2023 VA Examination.

The Veteran received an Aid and Attendance VA examination in November 2024. The examiner found that the Veteran “has dizziness and risk of falls with loss of memory issues which make it unsafe for him to walk around,” that “Veteran is not able to walk without assistance of another person given risk of injury and falls”

and that “due to his TBI, he has difficulties retaining information and processing which would impact his ability to manage his financial affairs.” November 2024 VA Examination. (The Board notes the Veteran’s wife has since been made his fiduciary after the Veteran was found not competent to handle his funds. See May 2025 Rating Decision.)

In other words, the specific symptoms that have already been found to form the basis for the Veteran’s need for aid and attendance have in fact been identified as predominately symptoms of TBI, not PTSD.

Ultimately, with the evidence at least evenly balanced, all remaining reasonable doubt should be resolved in the Veteran's favor. The claim for aid and attendance benefits effective March 17, 2024 pursuant to 38 U.S.C. § 1114(t) as due to a service-connected traumatic brain injury, must accordingly be **GRANTED**.



J.P. Norman
Veterans Law Judge
Board of Veterans’ Appeals

Attorney for the Board

Jimenez, Christina

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.