BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF [redacted]

SS XXX XX [redacted]
Docket No. 251101-604095

Represented by
Gordon A. Graham, Agent

DATE: November 6, 2026

ORDER

Entitlement to special monthly compensation (SMC) based on aid and attendance due to residuals of traumatic brain injury (TBI) pursuant to 38 U.S.C. § 1114(t) is granted.

FINDING OF FACT

Entitlement to special monthly compensation (SMC) based on aid and attendance due to residuals of traumatic brain injury (TBI) pursuant to 38 U.S.C. § 1114(t).

CONCLUSION OF LAW

The criteria for SMC based on aid and attendance due to residuals of TBI pursuant to 38 U.S.C. § 1114(t) have been met. 38 U.S.C. §§ 1114, 5107; 38 C.F.R. §§ 3.102, 3.350.

REASONS AND BASES FOR FINDING AND CONCLUSION

The Veteran had active-duty service from January to April 1991, November 1997 to July 1999, from October 2004 to December 2005, and from April 2007 to September 2008.

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

Therefore, the Board may only consider the evidence of record at the time of the October 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[s], considering the new evidence in addition to the evidence previously considered. Id. Specific instructions for filing a Supplemental Claim are included with this decision.

SMC

SMC provided by 38 U.S.C. § 1114(t) is payable to a Veteran who, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of TBI, is not eligible for compensation under 38 U.S.C. § 1114(r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care.

The United States Court of Appeals for Veterans Claims has held that the implementing regulation for 38 U.S.C. § 1114(t), 38 C.F.R. § 3.352(b)(2)(ii), is invalid as it is beyond the requirements of 38 U.S.C. § 1114(t). *Laska v. McDonough*, 37 Vet. App. 460 (2024). The Court evaluated the relevant statutory language and concluded that the plain language of 38 U.S.C. § 1114(t) definitively specifies that the level of care needed for SMC(t) is the need for regular aid and attendance. The level of care specified in subsection (t) - the need for "regular aid and attendance" - explicitly matches the language in subsection (l), not the higher-level care required in subsection (r)(2). Id. at 467.

Accordingly, as determined in *Laska*, the Board will not consider the provisions of 38 C.F.R. § 3.352(b)(2)(ii) and will consider eligibility under the language of the

statute only. As such, SMC(t) requires the same level of "regular aid and attendance" as required under 38 U.S.C. 1114(l). Laska at 470.

Entitlement to special monthly compensation (SMC) based on aid and attendance due to residuals of traumatic brain injury (TBI) pursuant to 38 U.S.C. § 1114(t)

The Veteran seeks entitlement to SMC based on aid and attendance due to residuals of TBI under 38 U.S.C. § 1114(t). After a review of the evidence of record, the Board concludes that his claim should be granted.

The Veteran is service connected for: PTSD with TBI at 100 percent; migraines with TBI at 30 percent; low back strain/DDD at 20 percent; DDD with spinal stenosis and cervical strain at 20 percent; right and left upper extremity radiculopathy at 20 percent; tinnitus at 10 percent; right knee strain at 10 percent; right and left lower extremity radiculopathy (sciatic) at 10 percent; right and left lower extremity radiculopathy (femoral) at 10 percent; and ED rated as noncompensable.

The Veteran has been in receipt of SMC under 38 U.S.C. § 1114(s), (i), and (k) based upon housebound status and the loss of use of a creative organ.

The evidence does not demonstrate that the Veteran meets the requirements to receive compensation as listed under 38 U.S.C. § 1114(r)(2). Eligibility for SMC(r)(2) requires a Veteran to be in receipt of SMC at the (o) rate, the maximum rate under (p), or an intermediate rate between the (n) and (o) rates plus a (k) rate. 38 U.S.C. § 1114(r); 38 C.F.R. § 3.350(h). Eligibility for SMC at the (n), (o), and maximum (p) rates requires that a Veteran, due to service-connected disability, experience anatomical loss or loss of use of an extremity, bilateral blindness, bilateral deafness, or paraplegia. 38 U.S.C. § 1114 (n)-(p); 38 C.F.R. § 3.350 (d)-(f). The evidence does not reflect that the Veteran has anatomical loss or loss of use of any extremities, bilateral blindness, bilateral deafness, or paraplegia.

As the Veteran is already in receipt of SMC(s)(1) due to housebound status, and he is not eligible for SMC(r)(2), the remaining requirement for entitlement to SMC(t)

is that in the absence of regular aid and attendance the Veteran would require hospitalization, nursing home care, or other residential institutional care.

Statements from the Veteran's wife, who serves as his caregiver, have been submitted as part of the appeal. In her statements, the Veteran's wife indicates that she must aid in most if not all activities of daily living, including but not limited to: bathing; eating; grooming; taking medication; and overall supervision.

A private medical opinion was submitted in September 2025. The physician opined that the Veteran's symptoms required the aid and attendance of a caregiver and if not his wife, then by a hospital, nursing home, or residential institutional care. Importantly, she also noted that the Veteran required care to accomplish activities of daily living.

The Board notes that the VA examinations of record do not fully contemplate the functional impact of his cognitive symptoms on his ability to function. An aid and attendance examination was completed in October 2025. The examiner found that none of the Veteran's disabilities were totally disabling. This runs contrary to the Veteran's 100 percent PTSD with TBI rating, his housebound status, and most importantly, the statements of record from the Veteran's wife. There is no explanation of the conclusions reached. For this reason, the Board finds the examinations of record to be inadequate.

The Board also notes that the Veteran's PTSD with TBI symptoms are the basis for the SMC rating that has already been granted. Given that the determination that his symptoms render him housebound, including those due to his TBI, it would be illogical to not grant SMC based on aid and attendance at the (t) level.

The third requirement of 38 U.S.C. § 1114(t) is that the Veteran need "hospitalization, nursing home care, or other residential institutional care" in the absence of regular aid and attendance. The evidence of record indicates that this is the case.

After a review of the evidence of record, the Board finds that the Veteran is entitled to SMC benefits based upon aid and attendance at the (t) level. Furthermore, the Board finds that this should be granted effective August 10, 2018, the effective date

for his SMC housebound benefits. As noted above, the grant of housebound benefits includes his TBI symptoms and as such, SMC (t) is more appropriate. The Veteran's claim is granted.

JIMMY L. BARDIN
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board Hernan, Quincy

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.